

CASE NO.:
Appeal (civil) 6055 of 2005

PETITIONER:
Geeta

RESPONDENT:
State of M.P & Ors

DATE OF JUDGMENT: 16/05/2007

BENCH:
H.K. SEMA & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

H.K. SEMA, J.

1. The challenge in this appeal is to the order dated 25-8-2004 passed by the High Court in W.P.No. 28707 of 2003, dismissing the writ petition filed by the appellant.
2. The short question arises for determination in this appeal is, as to whether the appellant Geeta belongs to Majhi Tribe, which is Scheduled Tribe or Nishad/Mallah, which is not Scheduled Tribe.
3. We have heard the parties.

4. The appellant was granted Scheduled Tribe Certificate dated 29.8.1986 by the District Magistrate Lucknow. The order reads:-
FORM OF CASTE CERTIFICATE

This is to certify that Kumari Geeta daughter of M.S. Nishad of village/town D-72, Nirala Nagar in District/Division Lucknow of the State Uttar Pradesh belong to the Majhi Tribe which is recognized as a Scheduled Tribe.

Under:-

The Constitution (Scheduled Castes) Order, 1950 (as amended by the Scheduled Castes & Scheduled Tribes lists (Modification) Order, 1956)

2. This certificate is issued on the basis of the Scheduled/Tribe certificate issued to Shri M.S. Nishad father of Kumari Geeta of Village/Town Kripalpur in District Satna of the State Madhya Pradesh, who belong to the Majhi/tribe which is recognized as a Scheduled Tribe in the State Madhya Pradesh issued in the Distt. Magistrate Satna (name of prescribed authority vide Letter No.87114 dated 03.11.77.

Signature C.S.Singh
Designation on Officer Incharge

(Certificate)

(with seal of office)
District Magistrate, Lucknow

Place: Lucknow
Date: 29.08.1986

5. It would appear from the order itself that she was given Scheduled Tribe Certificate on the basis of Scheduled Tribe Certificate issued to the father of the appellant Shri M.S. Nishad by the District Magistrate, Satna in the State of M.P. by an order dated 3.11.1977

6. At this stage, we may point out that the said Scheduled Tribe Certificate dated 3.11.1977 issued to the father of the appellant Shri M.S. Nishad has also been cancelled subsequently. The appellant's father was also placed under suspension. It is brought to our notice that the order dated 28.2.1995 has been challenged in W.P. No.192(SB) of 1995 in the Lucknow Bench of the Allahabad High Court and the same is still pending.

7. Be that as it may, it is clear that the Scheduled Tribe Certificate issued in favour of the appellant on 29.8.1986, that the appellant belongs to Majhi Tribe, which is recognized as Scheduled Tribe in the State of M.P., was issued by the District Magistrate, Lucknow, on the basis of the Scheduled Tribe Certificate issued by the District Magistrate, Satna, in favour of her father by an order dated 3.11.1977.

8. On the strength of the Scheduled Tribe Certificate, the appellant applied for the post of Deputy Superintendent of Police from the reserved quota of Scheduled Tribes. She was selected from the reserved quota and included in the merit list. Thereafter, by an order dated 28.3.2001 she was appointed as Deputy Superintendent of Police and is still continuing in the said post.

9. An inquiry was initiated against the appellant preceded by a complaint. On the basis of the Inquiry Report, the services of the appellant was sought to be terminated by an order dated 9.4.2001 inter alia on the ground that the caste certificate issued to her father has been cancelled by the Collector, Satna in 1995. Aggrieved thereby, the appellant filed O.A.No.1426 of 2001 before the Madhya Pradesh Administrative Tribunal, which was dismissed in limine by an order dated 26.4.2001. Aggrieved thereby, the appellant preferred Writ Petition No. 2237 of 2001 before the High Court, which was dismissed on 13.5.2002, with the direction to conduct an inquiry whether the appellant belongs to Majhi Tribe or not.

10. Pursuant to the direction of the High Court, show cause notice was issued to the appellant, by the Scheduled Tribe Certificate Investigating Committee, Madhya Pradesh.

11. After show cause notice, the High Level Caste Screening Committee was constituted in the light of the decision of this Court in the case of Kumari Madhuri Patil vs. Addl. Commissioner, Tribal Development, (1994) 6 SCC 241 with the following Members:

(i) Principal Secretary/Secretary, Government Of Madhya Pradesh, Adhim Jhathi Kalyan Vibhagh.

..Adhyaksh

(ii) Commissioner, Tribal Development
Madhya Pradesh

Member
Secretary

(iii) Secretary, Madhya Pradesh State
Scheduled Tribes Commission, Bhopal.

Member

(iv) Member/Representative, Adhim Jhathi
Anusandhan Sansthan.

Member

12. After giving an opportunity and hearing the appellant and after examining the documents, the High Level Caste Screening Committee, by its order dated 18.9.2003 came to the following findings:

"5. After scrutiny of inquiry report of Superintendent of Police, Satna, report of Additional District Magistrate (Administration), Lucknow, Uttar Pradesh, order of Collector Satna, Caste (Nirjatiya) information, statements, statement of other persons, educational qualifications and other documents, the Screening Committee has arrived at following conclusions:

(i) She has not made available any such authentic documents or facts to the Committee on the basis of which it could be proved that she belongs to Majhi caste.

(ii) On a special examination of caste issues also, it was found that she does not belong to Majhi caste because the gothras stated by her are not found in this caste and she did not narrate any tribal language. The occupations stated like fishing, labouring, farming are also not characteristics of Majhi.

6. On scrutiny of aforesaid facts, the Committee found that the original caste of Ku. Geeta Nishad "Mallah" confirms backward caste."

13. The aforesaid finding recorded by the High Level Caste Screening Committee was assailed by the appellant before the Madhya Pradesh High Court in W.P. No. 28707 of 2003. which was dismissed by the impugned order. Hence the present appeal.

14. The forceful contention urged before us by the counsel for the appellant is that no opportunity was afforded to prove her caste before the High Level Caste Screening Committee and as such the finding recorded by the High Level Screening Committee is vitiated for non-observance of principles of natural justice. We do not agree.

15. Show cause notice was issued on 28.7.2003. It is not the case of the appellant that she has not received the show cause notice.

16. She was asked to appear at 11.30 A.M. on 14.8.2003 along with all necessary documents to prove her caste before the Committee. Paragraph 6 of the show cause notice reads:-
"6. In this regard, the certificates/documents which you wish to produce alongwith your response should be properly verified necessarily. In case of non-appearance on the fixed date, it will be deemed that you have nothing to say regarding your doubtful caste certificate and Investigation Committee will be free to take final decision in your matter on the basis of available records."

17. The next date fixed for hearing was 18.9.2003 on which date the impugned order was passed. In our view, therefore, adequate opportunity has been afforded to the appellant of personal hearing as well as to produce documents in support of her caste. In our view, it is sufficient compliance of principles of natural justice.

18. We may notice that both her father and the appellant are well educated. The appellant's father was said to

have been born on 1.1.1947. No birth certificate was produced. No documents whatsoever were produced prior to 3.11.1977 to prove that they belong to Majhi Tribe, which is Scheduled Tribe.

19. Counsel for the appellant invited our attention to Anthropological Survey of India prepared by one Majumdar D.N., 'The Racial Basis of Indian Social Structure', Eastern Anthropologist published in Oxford University Press 1994. He particularly referred to the "term Majhi" means boatman. He has also observed that Majhi take part in agricultural operations, fetch water, and also take part in social and religious activities. He has also referred to the observation that the major economic resource of the Majhi is land. Their traditional occupation was fishing, some worked as boatmen. By this learned counsel would like to show that the finding recorded by the High Level Caste Screening Committee is erroneous. In our view, these are not authenticated documents. It is not prepared by the competent authority. No such reliance can be placed for deciding the Tribal status of the appellant.

20. Counsel also brought to our notice the Urban and Non-urban Region Mutation Register in which the family tree of Marakahn alias Mulu Majhi is shown. It is clear that Aaraji No.607, area 33 D. Village Madhavgarh is recorded in the name of Lessee Bisheshar, s/o Marakhan Mallah, Atma Ram. This would also show that she belongs to Mallah/Nishad.

21. Even in the midst of hearing of this appeal, we granted more time to the appellant, to produce any document, which will establish her tribe as Majhi, which is Scheduled Tribe, prior to 3.11.1977, but she utterly failed. This would clearly show that the Tribe Certificate showing the appellant as Majhi Tribe obtained on 29.8.1986 on the basis of Tribe Certificate of her father obtained on 3.11.1977 are without any documentary proof and manufactured documents.

22. Counsel for the appellant has drawn our attention to the decision of this Court in Kumari Madhuri Patil vs Addl. Commissioner, Tribal Development, (1994) 6 SCC 241. In that case the Scheduled Tribe Certificate was fraudulently obtained and admission was secured in Medical College. The candidate completed her course of study and sought permission to appear only in the final examination. In the particular facts and circumstances of that case the Principal of the college was directed to allow her to appear in the examination as a special case without making it a precedent. Therefore the decision in Madhuri (supra) was in particular facts and circumstances of that case. Secondly, here is the case where an undeserved candidate occupies the post of deserving candidate in the reserved quota meant for them. In such a situation, the deserving candidate is pushed out of the queue and the constitutional guarantee reserving the post for the deserving candidate is frustrated. This must be stopped with a strong hand.

23. In the result, there is no merit in this appeal and is, accordingly, dismissed. Parties are asked to bear their own costs.