

പതിമൂന്നാം കേരള നിയമസഭ

പന്ത്രണ്ടാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ 4744

18.12.2014-ന് മറുപടിയ്ക്ക്

മിശ്ര വിവാഹിതരുടെ മക്കളുടെ ജാതി

ചോദ്യം

ഉത്തരം

ശ്രീ. ഇ.കെ.വിജയൻ

ശ്രീ. അടൂർ പ്രകാശ്
(റവന്യൂവും കയറും വകുപ്പ് മന്ത്രി)

(എ) മിശ്രവിവാഹിതരുടെ മക്കൾക്ക് മാതാപിതാക്കളുടെ ജാതിയിൽ ഏത് വേണമെങ്കിലും സ്വീകരിക്കാൻ എന്നതു സംബന്ധിച്ച് കോടതി വിധി നിലവിലുണ്ടോ; പകർപ്പ് ലഭ്യമാക്കാമോ;

(എ) ഉണ്ട്. പകർപ്പ് ഉള്ളടക്കം ചെയ്യുന്നു.

(ബി) പ്രസ്തുത കോടതി വിധിയുടെ അടിസ്ഥാനത്തിൽ സർട്ടിഫിക്കറ്റ് നൽകുന്നതിന് താലൂക്ക്-വില്ലേജ് ഓഫീസുകൾക്ക് നിർദ്ദേശം നൽകിയിട്ടുണ്ടോ;

(ബി) ഉണ്ട്.

(സി) ഇല്ലെങ്കിൽ നടപ്പിലാക്കുന്നതിന് സ്വീകരിക്കുമോ?

നിർദ്ദേശം നടപടി

(സി) ബാധകമല്ല.

Ashala S

സെക്ഷൻ ഓഫീസർ.

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Supreme Court of India
Rameshbhai Dabhai Naika vs State Of Gujarat & Ors on 18 January, 2012
Bench: Aftab Alam, Ranjana Prakash Desai

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 654 OF 2012

(Arising out of S.L.P (CIVIL) NO.4282 of 2010)

Rameshbhai Dabhai Naika

... Appellant

versus

State of Gujarat & Others

... Respondents

J U D G M E N T

Aftab Alam, J.

1. Leave granted.

2. The question that once again arises before this Court is what would be the status of a person, one of whose parents belongs to the scheduled castes/scheduled tribes and the other comes from the upper castes, or more precisely does not come from scheduled castes/scheduled tribes and what would be the entitlement of a person from such parents to the benefits of affirmative action sanctioned by the Constitution. The Gujarat High Court has proceeded on the basis that the issue is settled by the decisions of this Court in *Valsamma Paul v. Cochin University and others*, (1996) 3 SCC 545 followed by *Punit Rai v. Dinesh Chaudhary*, (2003) 8 SCC 204 and *Anjan Kumar v. Union of India and others*, (2006) 3 SCC 257. On the strength of those three decisions the High Court upheld the order passed by the Scrutiny Committee cancelling the tribal certificate earlier obtained by the appellant on the sole ground that his father was a non-tribal, belonging to the Hindu caste

38. A full bench decision of the Kerala High Court in *Indira v. State of Kerala*, AIR 2006 Ker. 1, is a case in point.

39. The Government of Kerala had issued G.O. (Ms) No. 298 dated 23/6/1961 stating that children born of inter-caste marriages would be allowed all educational concessions if either of the parents belonged to scheduled caste/scheduled tribe. Later, on a query made by the Kerala Public Service Commission, the Government clarified vide a G.O. (Ms) dated 25/1/1977 that the Government Order dated 23/6/1961 could be adopted for determining the caste of the children born of such inter-caste marriage for all purposes. Resultantly, such children were treated as belonging to scheduled caste or scheduled tribe if either of their parents belonged to SC/ST. After the decision of this Court in *Punit Rai* (supra) and in light of the separate though concurring judgment of Sinha J. the State of Kerala cancelled the earlier G.O. (Ms) dated 23/6/1961 and its clarification dated 25/1/1977 and replaced it by another order G.O. (Ms) No. 11/2005/SCSTDD dated 20/6/2005 directing that the competent authorities would issue Scheduled Caste/Scheduled Tribe community certificates to the children born from inter-caste marriage only as per the caste/community of his/her father subject to the conditions of acceptance, customary traits and tenets as stipulated in the judgments of the Supreme Court. The validity of the Government Order dated 20/6/2005 came up for consideration before the full bench of the Kerala High Court. The High Court considered the decisions of this Court in a number of cases including *Valsamma*, *Sobha Hymavathi Devi* and *Punit Rai* and in Paragraph 21 of the judgment came to hold as follows:

"The Government, vide order G.O. (Ms) No. 25/2005/SCSTDD dated 20/6/2005 directed the competent authority to issue SC/ST community certificates to the children born out of intercaste married couples as per the caste/community of the father subject to the conditions of acceptance, customary traits and tenets stipulated in *Punit Rai*'s case and *Sobha Hymavathi Devi*'s case. The above government order would also be applicable to the children born out of intercaste married couple if the mother belongs to SC/ST community. Subject to the above direction, rest of the directions contained in G.O. (Ms) No. 11/05/ and G.O. (Ms) No. 25/2005 would stand."

40. We are in agreement with the view taken by the Kerala High Court.

41. A division bench of the Delhi High Court in *Kendriya Vidyalaya Sangathan v. Shanti Acharya Sisingi*, 176(2011) DLT 341, after considering a number of decisions of this Court summed up the legal position as to the offspring of an inter- caste marriage or a marriage between a tribal and a non-tribal in clauses 3 and 4 under Paragraph 30 of the judgment as follows:

"III The offshoot of wedlock between Scheduled Caste/Scheduled Tribe male and a female belonging to forward community can claim Scheduled Caste/Scheduled Tribe status for Indian society is patriarchal society where the child acquires the caste of his father.

IV The offshoot of wedlock between Scheduled Caste/Scheduled Tribe female and a male belonging to forward community cannot claim Scheduled Caste/Scheduled Tribe status unless he demonstrates that she has suffered the disabilities suffered by the members of the community of his mother."

42. In Arabinda Kumar Saha v. State of Assam, 2001 (3) GLT 45 a division bench of the Gauhati High Court had a case before it in which a person whose father belonged to the upper caste and mother to a scheduled caste claimed scheduled caste status. The court found and held that though the father of the writ petitioner was admittedly a forward caste man he was brought up as a member of the scheduled caste. This was evident from the fact that the writ petitioner had not only been the office holder of Anushchit Jati Karamchari Parishad but the scheduled caste community treated the appellant as belonging to scheduled caste and even the non-scheduled caste people treated him as scheduled caste, in as much as in his college career and in his service career he was treated as a person belonging to a scheduled caste.

43. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the scheduled caste/scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well.

44. In the case in hand the tribal certificate has been taken away from the appellant without advertent to any evidences and on the sole ground that he was the son of a Kshatriya father. The orders passed by the High Court and the Scrutiny Committee, therefore, cannot be sustained. The orders passed by the High Court and the Scrutiny Committee are, accordingly, set aside and the case is remitted to the Scrutiny Committee to take a fresh decision on the basis of the evidences that might be led by the two sides. It is made absolutely clear that this Court is not expressing any opinion on the merits of the case of the appellant or the private contesting respondent.

45. Before parting with the records of the case, we would like to put on record our appreciation for the assistance that we got from Mr. Sanjay R. Hegde counsel appearing for the appellant and Mr. Sanjeev Kumar counsel appearing for respondent No. 6. The assistance we received from the amicus curiae, Mr. Aman Ahluwalia was especially invaluable.

Kalsab S.O
Sehari Officer