

Sumangala Vs. State of Karnataka

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Court : Karnataka

Decided On : Dec-15-1995

Reported in : ILR1996KAR235; 1995(6)KarLJ360

Judge : G.C. Bharuka, J.

Acts : Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment) Rules, 1992 - Rule 9A

Appeal No. : W.P. No. 26792 of 1992

Appellant : Sumangala

Respondent : State of Karnataka

Advocate for Def. : N.B. Vishwanath, HCGP for R-1 and R-2 and ;Ashok Patil, Adv. for R-3

Advocate for Pet/Ap. : G. Shanthappa, Adv.

Judgement :

ORDER

G.C. Bharuka, J.

1. Petitioner has secured admission to the Engineering Course during the academic year 1992-93 in a reserved category (Group-A) claiming herself to be

belonging to 'Beda Jangama'. Her said claim was accepted on the basis of an affidavit filed by her father wherein it was stated that he belongs to the said caste as per his ancestry. According to her, she was originally admitted in the Rural Engineering College, Hulkoti. But thereafter she took her transfer to B.V.B. Engineering College, Hubli.

2. In the present Writ Petition, the petitioner is aggrieved by the order dated 29.7.1992 (Annexure 'C') issued by the Principal of the College whereunder she was required to produce the Caste Certificate in Form No. I duly signed by the Tahsildar before 5.8.1992 failing which her admission was to stand cancelled but for the Interim Order passed by this Court on 27.10.1992.

2A. It appears that the State Government had issued various Circulars like dated 22.7.1978, 5.8.1978, 18.1.1995 seeking to clarify regarding the persons who belong to the castes Beda Jangama, Budaga Jangama and Mala Jangama. These Circulars were subjected to challenge before this Court in a batch of Writ Petitions including Writ Petition No. 18012 of 1989, Mala Jangama, Beda Jangama, Budaga Jangama Samaja Samsthe v. Union of India DD., It was contended before this Court that the said Circulars were without authority of law since the State Government has no power to add to or detract from the Presidential Notification issued under Articles 341 and 342 of the Constitution as amended by the Parliament regarding declaration of Scheduled Castes and Scheduled Tribes which are conclusive in nature. Keeping in view the said challenge and its unassailability, the learned Advocate General fairly conceded before this Court that the State Government would constitute a Committee which will examine individual applications of the persons claiming to be belonging to the said three castes - Beda Jangama, Budga Jangama and Mala Jangama without being in any way influenced by the Government Circulars referred to above.

3. Accordingly, keeping in view the said undertaking, in exercise of the powers conferred on the State Government under Section 12(1) of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Act. 1990 ('the Act', for short) under its Notification dated 8.9.1995 inserted a new Rule 9A in the Karnataka Scheduled Castes, Scheduled

Tribes and Other Backward Classes (Reservation of Appointment, etc.) Rules 1992 (in short, 'the Rules'). The said Rule 9A is to the following effect:

'9A. Scrutinising Committee: (1) Notwithstanding anything contained in Rules 4 to 7, the State Government shall constitute a State Level Scrutinising Committee consisting of the following:-

(a) an Officer not below the rank of Additional Secretary to Government appointed by the State GovernmentChairman

(b) Director of Social WelfareMember

(c) An Officer not below the rank of Deputy Director of Social Welfare who has intimate knowledge of Scheduled Castes/Scheduled Tribes, appointed by the State GovernmentMember

(2) The Scrutinising Committee shall verify the caste status of the Beda Jangama, Budga Jangama and Mala Jangama, etc. The members belonging to the above castes may file application for caste verification certificate before the said Scrutinising Committee. Rule 6 shall mutatis mutandis apply for filing application before the State Level Scrutinising Committee. The Committee shall make such enquiry as it deems fit, if necessary by getting it verified by the Directorate of Civil Rights Enforcement, and pass orders as it deems fit.

(3) All applications pertaining to verification of castes of Beda Jangama, Budga Jangama and Mala Jangama and pending at the level of District Level Committee or in appeal before the Divisional Commissioner shall stand transferred to the Scrutinising Committee and the Scrutinising Committee shall hold enquiry afresh as if they were filed before it and pass such orders as it deems fit.

(4) The orders of the Scrutinising Committee shall be final.'

4. Consequent upon the insertion of said Rule 9A in the Rules, by its order dated 5.10.1995 the Government has constituted a State Level Scrutinising Committee consisting of the following members:

1. Additional Secretary to Government

(Litigation-3), D.L.P.A - Chairman

2. Director of Social Welfare - Member

3. Deputy Director of - Member

Social Welfare (E&T)

Directorate of Social Welfare

5. The State Level Scrutinising Committee in functioning in the Social Welfare Directorate, 5th Floor, Multistoried Building, Dr. Ambedkar Veedhi, Bangalore 560 001. In the said order dated 5.10.1995 it has been clarified that the Committee has to strictly follow the procedure laid down by the Supreme Court in the case of Kumari Madhuri Patil and another v. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT, : AIR 1995 SC94 , as noticed by this Court in the case of Mala Jangama, Beda Jangama and Budga Jangama Samaja Samsthe (Supra) without being in any way influenced by the Government Circulars issued earlier in this regard.

6. Therefore, keeping in view the Rule 9A of the Rules, the question as to whether the petitioner belongs to Beda Jangama caste or not can be determined only by the State Level Scrutinizing Committee referred to above. It is accordingly directed that the petitioner should file an application seeking the desired Caste Certificate before the State Level Scrutinising Committee within two weeks from today, and the Committee on receiving such an application should dispose of the same within three months from its filing. If the petitioner fails to produce the Caste Certificate issued by the said Committee by 31st March 1996 certifying that she belongs to Beda Jangama as claimed by her, the impugned order of cancellation of her admission will become operative.

7. Before parting, I may notice here the observations of the Supreme Court made in Madhuri Patil's Case, : AIR 1995 SC94 (supra) regarding the right of continuance of candidates obtaining seats on false caste pleas. It has been held by their Lordship thus:

'15. Whether the appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the Courts. The Courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the Court with false claim, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC and ST Amendment Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and wary in considering such cases.'

8. For the aforesaid reasons and discussions, Writ Petition is disposed with the directions and observations made as above. No costs.