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Bekaru Vs. District Judge, Sidharth Nagar and Others

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Court : Allahabad

Decided On : Sep-24-1999

Reported in : 2000(1)AWC149

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Public Service Reservation of Scheduled Castes and Scheduled Tribes and others Backward Classes Act, 1993; Uttar Pradesh Public Service Reservation of Scheduled Castes and Scheduled Tribes and others Backward Classes (Amendment) Act, 1995 - Sections 3

Appeal No. : C.M.W.P. No. 8805 of 1996

Appellant : Bekaru

Respondent : District Judge, Sidharth Nagar and Others

Advocate for Def. : Jokhan Prasad, ;S.C. and ;P.N. Tripathi, Adv.

Advocate for Pet/Ap. : M.D. Mishra, Adv.

Judgement :

D.K. Seth, J.

1. The application for recalling the order dated 23rd of August, 1999 is allowed since the writ petition was dismissed as infructuous whereas fn the said

application, it was contended that it has not become infructuous. The writ petition is, therefore, restored to its original file and number.

2. After restoring the writ petition, the matter is treated to be on day's list and is being taken up for hearing by consent of the parties both of whom had addressed the Court.

3. The election of the Pradhan was challenged in Election Petition No. 41 of 1995, which was decided by the Prescribed Authority by an order dated 27th December, 1995. ElectionRevision No. 2 of 1995 was preferred against the order passed by the Prescribed Authority in the said Election Petition No. 41 of 1995. The learned District Judge, Siddharth Nagar by its order dated 2nd March, 1996 has dismissed the said Revision No. 2 of 1995 and confirmed the order dated 27th December, 1995 passed in the Election Petition No. 41 of 1995. These two orders have since been challenged before the Court.

4. Mr. M.D. Mishra, counsel for the petitioner has contended that it was found that the petitioner belongs to Barai community which comes within the sub group of Tamoli. Inasmuch as Tamoli is also in some cases known as Barai which is apparent from the clarification or amendment of the Schedule to the U. P. Public Services Reservation of Scheduled Castes and Scheduled Tribes and Other Backward Classes Act, 1995. According to him, both the Courts below had failed to exercise their jurisdiction and overlooked the same in holding that the petitioner was not a member of backward class and his election was invalid on that ground. He has contended that the schedule relates to Section 3 which was amended by Section 3 (a) and was inserted by Act 2 of 1993 and as such the said amendment shall be deemed to have been effective from the date when the said Act came into force, namely, 11th December, 1993. Therefore, the election having been held in April 1995, the petitioner was to be regarded a member of backward community and as such is eligible and his election could not have been set aside.

5. Mr. Jokhan Prasad, learned counsel for the respondent on the other hand, contends that the amendment was brought on 6th September, 1995. So on the date of the election, the petitioner was not eligible as a member of the backward community. The said amendment could not have been given retrospective effect.

He also relies upon the decision of the Raghav Prasad v. Special Judge/Additional District Judge, Gorakhpur and others, 1999 (90) RD 481, in support of hiscontention that the petitioner cannot take the benefit of the amendment which has come into force after the election was over. The question is to be gone into on the basis of the Act, as it stood on the date of the filing of nomination.

6. Heard both the counsel atlength.

7. A perusal of the decision in the case of Raghav Prasad, (supra), shows that an identical question was gone into and it was held that the amendment in the Schedule incorporating Barai in item No. 23 as one of the sub-groups of Tamoli could not be given retrospective effect and as such election held before the said amendment does not entitle a Barai to be regarded as a member of backward community to take advantage of the reservation in the election.

8. I have gone through the said decision and I do not find any reason to defer with the reasoning given therein. The said decision appears to have taken into consideration all major decisions of the Apex Court with regard to retrospectivity of an Amending Act. There is nothing to show that this amendment shall be deemed to have been always there from 11th December, 1993. Neither it is shown that the said amendment was made by virtue of any Ordinance so as to include Barai in the category of Tamoli before the election took place or nomination was filed.

9. So far as the amendment of Section 3 by inserting Section 3 (a) through Act 2 of 1993 is concerned, the same does not show that Tamoli includes Barai. An amendment which was brought about on 6th September, 1995, cannot be included in Section 3 or 3 (a) by reason of Act 2 of 1993 which was ante-dated with that of the amendment. There is nothing in Section 3 or Section 3 (a) to indicate that any amendment that is made in the Schedule subsequently, shall have effect from the date of the incorporation of the original Act, namely, 11th December, 1993. However, such a proposition, even if included would be void on account of its absurdity.

10. I have gone through the impugned judgments and relevant records placed before me. I do not find that there is any specific provision of law, which has been

overlooked contrary to the decision arrived at in the said decision in the case of Raghav Prasad, (supra). After hearing the submission of Mr. Mishra, I am unable to pursuade myself to agree with his contention. On the other hand, I respectfully agree with the reasoning given in the decision in the case of Raghau Prasad, (supra) which was supported by various decisions cited therein.

11. Mr. Mishra has contended that the respondent was Yadav and not Ahir and, therefore, he could not maintain the election petition and should not have been declared elected since Yadav is not included in the Schedule as a Member of the Backward community. Therefore, the matter should be remanded for decision on this question. He also says that no issue was framed with regard to the same.

12. Mr. Jokhan Prasad, however, contends that both the Courts below have given concurrent findings that the opposite party-respondent belongs to Ahir community as is apparent from the records and his name is shown as member of the Ahir community. If it is disputed that he is Yadav, then on the basis of the record there being nothing to show that he is a member of the Yadav community, the dispute cannot be sustained. There has been a concurrent finding of the Courts to the extent that the respondent is a member of the Ahir community. Therefore, sitting in writ jurisdiction, this Court cannot interfere with the concurrent findings of fact arrived at by both the Courts below, when there is no infirmity or perversity in the orders impugned.

13. However, let it be noted that the decision on the said issue would not bind the rights inter se therespondents.

14. Therefore, for all thesereasons, I am not inclined to interfere with the writ petition. The writ petition, therefore, fails and isaccordingly dismissed. Interim order, if any, stand discharged. No cost.

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