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Dr. Ashok Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-26-1998

Reported in : 1998(3)AWC2193

Judge : O.P. Garg, J.

Acts : Hindu Adoptions and Maintenance Act, 1956 - Sections 12, 16 and 23; Constitution of India - Articles 14, 15(4), 16(4) and 226

Appeal No. : C.M.W.P. No. 12668 of 1997

Appellant : Dr. Ashok Kumar

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : C.B. Yadav, Adv.

Judgement :

O.P. Garg, J.

1. The short question that arises for determination in the present petition under Article 226 of the Constitution of India is 'whether a person who had taken birth in the family of Thakurs (Sawarns) can by virtue of his having been adopted in the family of Ahirs (backward class) be treated as belonging to the backward class

and consequently entitled to the privileges. facilities and benefits available to the persons belonging to the Backward class. This question has cropped up in the backdrop of the following facts.

2. Dr. Ashok Kumar. petitioner took birth on 1.1.1967 in the family of Thakur's. His natural father is Rushtam Singh son of Pothi Ram and the name of his natural mother is Smt. Bhagwan Dei. resident of village Nalar Jamuni Bhan, Mazra Mauza Pheem Shree, Tehsil Fatehabad, District Agra. It is alleged that he was adopted by the friend of his father whose name incidentally is also Rushtam Singh son of Atar Singh belonging to Ahir caste, which admittedly is a Backward class, resident of Arsena. Tahsil Kirawali, District Agra on 25.10.1974, when the petitioner was aged about 8 years. A deed of adoption was also executed though it was not registered.

3. The petitioner appeared in the Intermediate examination from the U. P. Board of High School and Intermediate Education in the year 1986 and appeared in Combined Pre-Medical Test (for short 'C.P.M.T.J. He was duly selected in the M.B.B.S. course and studied at Sarojini Naldu Medical College, Agra. In the year 1992, the petitioner was awarded M.B.B.S. degree. In the C.P.M.T., for admission to M.B.B.S. course, the necessity of seeking reservation did not arise as the policy of reservation was made applicable by the State Government in the medical field for the first time in the year 1990. After having obtained the M.B.B.S. degree, the petitioner appeared in Post Graduate Entrance Examination and took admission in the Post Graduate Course of Diploma in Child Health Care and pursued his studies.

4. A complaint was received through the Chairman State Backward Commission that the petitioner has been successful in securing admission in the Post Graduate Diploma Course on the basis of forged and fictitious certificate that he belongs to the Backward class. After obtaining report from the District Magistrate, Agra, the State Government by Government Order dated 31.3.1997 addressed to the Director General, Medical Education and Training, and copy endorsed to the Principal, S. N. Medical College, Agra, cancelled the admission of the petitioner and directed that a first information report be lodged against the petitioner for

using a forged and fictitious certificate to secure admission as a candidate belonging to the Backward class. The Principal of the college accordingly, in compliance with the orders of the State Government, cancelled the admission of the petitioner by order dated 2.4.1997 and also relieved the petitioner from Junior Residency. The aforesaid orders passed by the State Government and the Principal of the College were challenged by the petitioner by filing the present writ petition. An Interim order was passed on 11.4.1997 staying the operation of the aforesaid two orders dated 31.3.1997 passed by the State Government and 2.4.1997 passed by the Principal of the College. It was further ordered :

'........It is further directed that the petitioner shall file arepresentation stating therein the facts which have been stated in this writ petition before respondent No. 1 within 10 days from today. If the representation is filed within the aforesaid time, the respondent No. 1 shall decide the same within one month thereafter by means of a speaking order. The interim grant by this Court shall be subject to the decision of the representation to be filed by the petitioner before respondent No. 1.'

The petitioner accordingly moved the respondent No. 1 by making a representation, which has been finally decided by Sri Love Varma by order dated 16.5.1997, the then Secretary. Medical Department, Government of U. P., Lucknow. After taking into consideration the various factors, the respondent No. 1 came to the conclusion that the petitioner continues to belong to the Thakur community. The representation of the petitioner was rejected. Subsequently, another order dated 21.5.1997 was passed cancelling the admission of the petitioner and relieving him from the post of Junior Resident by the Principal of the College. By means of an amendment application, which has been allowed, a number of grounds have been incorporated in the petition to challenge the order dated 16.5.1997 by which the representation of the petitioner was rejected by the respondent No. 1.

5. The case of the petitioner, in short, is that though he had admittedly taken birth in Thakur family, he was adopted in the year 1974 by Rushtam Singh, son of Alar Singh. an Ahir by caste ; that in the year 1974. the deed of adoption was not required to be registered as the provision for the registration of the deed of

adoption has come to be in force by U. P. Act No. 57 of 1997 ; that the petitioner has filed Civil Suit No. 431 of 1997 in the Court of Civil Judge (Senior Division) Agra for the relief of declaration that he is the adopted son of plaintiff No. 2 Rushtam Singh, and plaintiff No. 3 Smt, Raj Rant Ahir wife of Rushtam Singh, residents of Arsena. Tahsil. Karawali. District Agraand that in the said suit which was contested by the State Government and others, a decree has been.passed on 3.3.1998 declaring the petitioner as the adopted son of plaintiff Nos. 2 and 3, above. The order passed by the respondent No. 1 rejecting the representation of the petitioner has also been challenged on the ground that he has not taken into consideration the report of enquiry submitted by Tahsildar or the statements made before Tahsildar by a number of persons including the.,adoptive parents. It is prayed that the Impugned orders cancelling the admission of the petitioner to Post Graduate Diploma Course in Child Health Care and relieving him of Junior Residency be quashed and the respondents be restrained from preventing the petitioner from pursuing the Post Graduate Diploma Course in Child Health Care.

6. In the counter-affidavit, the respondents have taken the stand that the petitioner continues to belong to Thakur (Sawama) family. He has always represented and held out his parentage as son of Rushtam SIngh son of Pothi Ram Thakur and that even in the application form for the Entrance Examination for admission to the Post Graduate Course, he has not shown himself as the son of Rushtam SIngh son of Pothi Ram that the name of the petitioner still appears in the village family register and the electoral rolls as the son of Rushtam Singh son of Pothf Ram and consequently the certificate obtained by him as belonging to Ahir caste was forged and fictitious and that the adoption set up by the petitioner cannot be recognised. Rejoinder-affidavit has also been filed by the petitioner explaining each and every fact.

7. Heard Sri C. B. Yadav, learned counsel for the petitioner and learned standing counsel for the respondents.

8. To begin with, it may be mentioned that the factum of adoption of the petitioner by Rushtam Singh son of Atar SIngh Ahir, resident of Arsena, Tahsil Kirawall. District Agra and his wife Smt. Raj Rani, through the deed dated 25.10.1974 is

beyond the pale of challenge for one simple reason that the Civil Suit No. 431 of 1997 instituted by the petitioner for declaration has been decreed after contest by the State Government. There is thus an unassailable finding of the competent Court that the petitioner is the adopted son of Rushtam SIngh son of Atar Singh and his wife. Smt. Raj Rani, the adoptive parents are admittedly Ahirs belonging to Backward class. A perusal of the order dated 16th May, 1997 passed by the principal Secretary, Medical and Health Department, Government of U. P., Lucknow would indicate that it has been passed without taking into consideration the fact whether Rushtam Singh son of Atar Singh and his wife Raj Rani residents of village Arsena. Tahsll Klrawall, District Agra were in fact in existence and had adopted the petitioner. During the course of enquiry by Tahslldar, statements of adoptive parents and other respectable residents of the locality were recorded. All of them have confirmed the fact of adoption of the petitioner by Rushtam Singh. Ahir. This aspect of the matter has been conveniently ignored by the respondent No. 1 while passing order dated 16.5.1997. Not only this, the Secretary, Medical and Health Services appears to have been swayed away by the fact that the name of the petitioner still continues in the family register of his natural father--Rushtam SIngh son of Pothi Ram Thakur and that in the electoral rolls also, the petitioner has been shown as the son of Rushtam Singh son of Pothi Ram Thakur. After the adoption, the petitioner obviously ceased to be the member of the family of his natural parents. By fiction of law. he has taken birth in the family of adoptive, parents from the date of adoption. Therefore, even if the petitioner was shown as a member of the family of his natural father--Rushtam Singh Thakur and in the electoral roll also he is shown as the son of Rushtam Singh Thakur, it would hardly be of any consequence. The petitioner has filed an extract of the family register as Annexure-3 to the petition, along with an affidavit dated 29th May. 1997. This extract relates to the family of Rushtam SIngh son of Atar Singh, Ahir, of village Arsena. Tahsll Kirawali District Agra. The name of Ashok Kumar petitioner as the adopted son of Rushtam Singh is mentioned and the year ofhis birth is shown as 1967 which year clearly corresponds to the date of birth of the petitioner. This document has also not been taken into consideration by the Secretary, Medical and Health who. It appears, has taken one-sided view of the matter on the cryptic report of the District Magistrate. Agra.

9. There appears to be considerable force in the submission of learned counsel for the petitioner that the petitioner never took advantage of his having acquired backward status on account of adoption in an Ahir family as no such opportunity had arisen before Entrance Examination for admission to the Post Graduate Course. The petitioner qualified for admission in M.B.B.S. course on his own merits and could not have claimed benefit of reservation, as the policy of reservation for the first time, came to be introduced in the medical field by the State Government in the year 1990. In the year 1986, there was no occasion for the petitioner to avail of the benefit of reservation. After the policy of reservation was made applicable to the medical education, the petitioner applied in the year 1996 for Post Graduate Entrance Examination and to secure admission for the Post Graduate Diploma Course, he had to avail of the benefit of reservation and it was at this juncture that he had to obtain a certificate that he belongs to a Backward class. After due enquiries, a certificate was accordingly issued on the basis of which the petitioner was able to secure benefit of reservation in admission to the Post Graduate Course.

10. Learned standing counsel, however, urged that mere adoption of the petitioner in the family of Ahir i.e., Backward community, would not ipso facto make him a person belonging to the Backward class and since the petitioner himself held out and was treated as such, as belonging to the Thakur community, the factum of adoption was, for all practical purposes, otiose. This submission appears to be based on the decision of the Apex Court in the case of C. M. Arumugan v. S. Copal, AIR 1976 SC 939 and Guntur Medical College v. Mohan Rao, AIR 1976 SC 1905. View taken by the Apex Court is that if the other members of the caste accept a convert as a member and admit him within the fold, then only he will be treated to be the member of the converted caste. It is for the members of the caste to decide whether or not to admit a person within the caste. According to Apex Court, since the caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel an existing member. Learned counsel for the petitioner placed reliance on N. E. Horn v. Smt. Jahan Am Jaipal Singh, AIR 1972 SC 1640, in which it was held that even if a female is not a member of a. tribe by virtue of birth she having been married to a tribal after due observance of all formalities and after

obtaining the approval of the elders of the tribe would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile.

11. It is an indubitable fact that caste is a voluntary association in the sense that persons can go or be sent out of the caste, equally new comers may be admitted into a caste. S. Ganapathy Iyer points out in Hindu Law, it cannot be said that 'membership of caste is determined only by birth and not by anything else'. A caste is a voluntary association of persons for certain purposes. It is well-defined yet fluctuating group of persons governed by their own rules and regulations for certain Internal purposes. They are formed on the basis of community of religion or of functions. Now it is not correct to say that it is a social combination the members of which are enlisted by birth and not by enrolment. Therefore, a person may belong to a particular caste either by birth or by his voluntary association. As a matter of act. since in the present case, an established fact of adoption has been set up, it is no longer necessary to view the matter in its historical retrospect. Therefore, leaving the matter as to under what circumstances the caste system came into being in our country, it would be proper to Immediately switch over the effect of a valid adoption, vis-a-vis, the social structure of a particular community and theconstitutional rights, an enshrined in Articles 14. 15(4) and 16(4) of the Constitution of India.

12. After the enactment of Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956), the various controversies surrounding the effects of adoption have come to be removed. The result and effects of adoption under the Act are quite notable. After stating the rules relating to capacity of the parties and the requirements of a valid adoption, the Act proceeds to lay down the effects and consequences of adoption. An adopted child is to be deemed to be the child of his or her adopted father or mother for all purposes with effect from the date of adoption. In view of the provision of Section 12 of the Act of 1956, the position seems to be quite clear and explicit. Under the old Hindu Law, an adoption to a sonless parent was for all purposes equivalent to a birth of a son directly to him. The question of caste, however, did not assume any importance because adoption was permitted only between the members of same caste. Section 12 deals with the effect of adoption.

It makes a specific provision. The language of the section is not only quite clear and explicit but emphatic also. The adoptee child is deemed to be the child of the adoptive father for all purposes ; and all the ties of the child in the natural family shall be deemed to be severed and replaced by those of the adoptive family. The emphatic repetition of the word 'all' in relation to the 'purposes' and 'ties' is significant. The word 'ties' is very wide and comprehensive word and would Include all types of bonds, social, religious, cultural or any other that bound the adoptee to his natural family. All his relationships are. according to the mandate of the section, replaced by the corresponding ties in relation to the adoptive family. It is very difficult to see why the tie of caste which indeed was perhaps still is a very strong tie that binds a Hindu should be said to be outside the purview of this provision. Besides, the section enacts a statutory fiction and this statutory fiction should be given effect to. To conclude, it may be observed that after the commencement of the Act of 1956, the adoptee becomes a member of the caste by reason of his status as an adopted son and not as an outsider seeking admittance depending upon the sweet will and pleasure of the other members of the community. In Khazan Singh V. Union of India and others, AIR 1980 Del 60, it was held, after going through the provisions of Section 12 of the Act of 1956 that the adoptee is to be treated from the date of his adoption as if he were born in the adoptive family for all practical purposes. Therefore, on adoption, as in the case of birth, the adoptee acquires the caste of the adoptive parents without anything more to be done by him or by others. The adoptee does not require sanction of the adoptive community for treating him a member thereof. This view is not opposed in the long run to the object and scheme of the Constitution in regard to reservation for Scheduled Caste and Tribes. On the other hand, genuine adoption both ways may eventually lead to the development of social equality at which the Constitution aims.

13. Khazan Singh's decision (supra) came to be considered by a latter decision of Andhra Pradesh High Court in A. S. Sallaja v. Principal Kurnool Medical College and others. AIR 1986 SC AP 209. After reviewing a series of authorities on the point, it was observed that an adoption under the Act of 1956 is personal the purpose of Section 23 of the Act is that he or she who is adopted becomes completely a member of the adoptive family 'for all purposes' be it the religious or

secular purpose, but 'for the purpose of the Constitution' under Articles 14, 15(4) and 16(4), the adopted child must satisfy not only that he or she belongs to the particular homogeneous group or class or tribe, also had suffered or subjected to all the disadvantages or handicaps which the members of the homogeneous group class or tribe, are subjected to or have undergone, or is undergoing. In that context, recognition of such a person by the caste or community elders to which the adoptee has already been assimilated or seeks an entry is a relevant factor which has to be established as a fact. The purpose of adoption under Section 12 is personal tothe adoptee and is distinct and apart to the constitutional scheme under Articles 14, 15(4) and 16(4). The registration under Section 16 furnishes only a rebuttable presumptive evidence that the adoption was made in compliance with the provisions of the Act. Therefore, the presumption advanced thus far and no further and is of little avail to the benefits under Articles 15(4) and 16(4) of the Constitution. In the Sailaja's case (supra), much emphasis was laid on the fact that there should be assimilation of the adoptee in the homogeneous group or class and in this background it was observed that where a person admittedly does not belong to that homogeneous group or class but attempts by process of law to acquire the status of such a class, the question whether such person fulfilled the test of social and educational backwardness, laid down in determining the class of citizens of homogeneous group would also be relevant and the Court could go Into that question. The point of view was illustrated by giving an example of a child belonging to a Brahmin, i.e., upper class. If a child belonging to a Brahmin is given and taken in adoption to a shepherd (backward class), fairly at a young age, say at first year or second year or even up to fifth year and the child is brought up in the adoptive family in the locality lived by the members of the Backward class treating as Qurasa son, daughter, presumptive evidence furnishes that the child is assimilated in the homogeneous group and Integrated himself/herself as a member of such group imbibing all the traits of the group of undergoing sufferings or subjected to all the disadvantages or handicaps, Ignomy which the members of the homogeneous group are subjected to. In these circumstances, such a child may be considered to be a member of the homogeneous group though had the birth in Brahmin caste. But conversely. If a boy or girl born in the advanced section of the society had the advantage of the natural parental bringing up in an

atmosphere of affluence, social, cultural and educational advanced staff off up to fairly a good age of 15 years or so and then taken in adoption, he or she cannot be said to belong to homogeneous group Into which he/she was transplanted by operation of law nor he/she be said to be socially and educationally backward and, therefore, would not be entitled to benefits of reservation.

14. The decision in A Sailaja's, case (supra), proceeds on the assumption that the effect and object of adoption is two-fold-firstly, that it is personal, inasmuch as an adopted becomes a member of the adoptive family for all purposes and secondly, the benefit of adoption for' purposes of Articles 15(4) and 16(4) of the Constitution cannot be granted unless test of socially and educationally backwardness laid down in determining the classes of citizen of homogeneous group IS not fulfilled. The said decision, in effect, therefore, means that though adoption may be valid and operative for all the purposes, but it may not be so when a person seeks to enforce his right under Articles 15(4) and 16(4) of the Constitution. As has been held in K. S. Jayasree v. State of Kerala, AIR 1976 SC 2381. the object of reservation under Article 15(4) is to recognise the factual existence of socially and educationally backward classes in our country, and to make a sincere attempt to promote the welfare of the weaker sections of the community. Article 15(4) gives effect to this principle. Social backwardness can contribute to educational backwardness and educational backwardness may perpetuate social backwardness. Both are often to more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition. Sociological and economic considerations come into play in evolving proper criteria for determining the backwardness. In the Instant case, the petitioner was adopted virtually in his age of Infancy. He was -adopted by a person of Ahir, which is admittedly a backward class, in U. P. The various statements which were made during the course of enquiry and the extract of the family register indicate that the petitioner was accepted and assimilated in the homogeneous class of Ahirs. Therefore, the adoption of the petitioner would enure to his benefit for all the purposes. The point may further be fortified by making a reference to the decision of the Apex Court in State of Karnataka andanother v. K. B. Urushabendra Kumar and others. AIR 1994 SC 1528. K. B. Urushabendra Kumar respondent No. 1 in that case was adopted in 1979. In August 1987 a question arose whether the

income criteria of the natural family or the adoptive family, though both of them belonged to the same backward class, would be applicable. It was held that valid adoption which was evidenced by registered deed on 1979 had the effect of severing all relationship of respondent No. 1 with his natural family and consequently, he stood uprooted from that family and transplanted in his adoptive family whose Income alone could be taken Into account. It was further observed that :

'.....It appears to us that when respondent No. 1 was taken Inadoption in his adoptive family in the year 1979 he could not have visualised or anticipated or calculated that one day in August. 1987 he would be seeking a post of Sericultural Extension Officer so as to claim such a reservation. When the factum Of adoption and its legality remains unquestionable the law of the Hindus on the subject must necessarily have it s consequences. Having gone to his new family, respondent No. 1 rightfully acquired their economic status......'

The facts of the present case are almost akin to the facts of K. B. Urushabendra Kumar's, case (supra). It is true that Apex Court has in Km. Madhuri Patil v. Additional Commissioner. (1994) 6 SCC 241. has observed that the Committee which is empowered to evaluate the evidence, placed before it when records a finding of fact. It ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of Interference with findings of fact. The committee when considers all the material facts and records a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts. The same view has been reiterated in Director of Tribal Welfare Government o JA.P. v. Laveti Giri. (1995) 4 SCC 32 : 1995 AIR SCW 2289.

15. Applying the above test to the facts of the present case, I feel satisfied that the respondents have failed to consider all the relevant materials placed before it and did not apply their mind to the various materials and important documents, such as

the entry in the family register of Rushtam Singh son of Attar Singh, belonging to Ahir caste, resident of village Arsena. Tahsil Kerawall, district Agra as well as various statements recorded during the course of enquiry by the Tahsildar. I am constrained to observe that a one-sided decision has been taken in the matter. As said above, the petitioner was adopted in 1974, which adoption has been upheld by civil court in Suit No. 431 of 1997 after contest by the State. At the time of adoption, the petitioner was only 8 years of age. The question whether the petitioner is entitled to the benefit of backward class for the purposes of admission in Post Graduate Entrance Examination for Diploma in Child Health Care cropped up after the year 1992 when the petitioner has passed M.B.B.S. degree examination. The petitioner or his guardian could not have anticipated in the year 1974 that after 18 years, the question whether the petitioner belongs to backward class or not would be drawn into controversy. The adoption of the petitioner by a member of Ahir caste would survive to his benefit for all the purposes Including for that of admission to Post Graduate Course in the Diploma of Child Health Care. The petitioner was adopted at such stage of his age that he stands assimilated in the homogeneous group of the backward class as has also been laid down in A. S. Sailaja's, case (supra).

16. In the result, the writ petition succeeds. Allowing the petition, the Impugned order dated 31.3.1997 passed by the State Government and the consequential order dated 2.4.1997 passed by the Principal of the respondent-College cancelling the admission of the petitioner to post Graduate Diploma InChild Health Care as well as relieving the petitioner from Junior Residency are hereby quashed. It is directed that the respondents shall not prevent the petitioner from pursuing the said Diploma Course.

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