SAU KUSUM

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 7313 of 2008)

DECEMBER 16, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Election – Panchayat elections in State of Maharashtra – Reserved seat – Entitlement to contest – Of migrants to State pursuant to re-organisation thereof – Appellant contested elections claiming OBC status stating that she belonged to carpenter caste – Family of appellant had purportedly migrated from Madhya Pradesh to Maharashtra, after reorganization of the two States – Election of appellant challenged on ground that she did not belong to OBC – Caste Scrutiny Committee relying upon a Government circular concluded that appellant was not a resident of Maharashtra prior to 1967 and accordingly declined to verify her caste claim – Writ petition – On direction of High Court, Scrutiny Committee considered the matter afresh and concluded that appellant was a 'Sutar' – Order of Scrutiny Committee placed before High Court – Writ petition ultimately dismissed – On appeal, held: If people belonging to carpenter Caste are recognized as OBC, both in Madhya Pradesh and Maharashtra being 'Badhai' in former and 'Sutar' in latter and since Caste Scrutiny Committee found appellant to be belonging to 'Sutar' caste, the matter requires reconsideration – If appellant migrated to Maharashtra before 1967, she would be considered to be a permanent resident of Maharashtra – Matter to be considered afresh by Scrutiny Committee with liberty to appellant to adduce evidence on the question as to when she had migrated.

Appellant contested panchayat elections in Maharashtra claiming OBC status stating that she belonged to the carpenter caste, and was elected.

A **The family of appellant had purportedly migrated from Chhindwara region in the State of Madhya Pradesh to Nagpur in the State of Maharashtra, after a part of Chhindwara region came to Maharashtra on reorganization of the two States. People belonging to**
B **carpenter Caste were purportedly recognized as OBC, both in Madhya Pradesh and Maharashtra being *Badhai* in the former and *Sutar* in the latter.**

The election of appellant was challenged on ground that she did not belong to OBC caste. In this regard, an
C **application was filed before Caste Scrutiny Committee. The Scrutiny Committee arrived at a finding as regards the parentage of appellant and relying upon a circular issued by the State of Maharashtra dated 21.8.1996 concluded that appellant was not a resident of Maharashtra prior to 1967 and accordingly declined to**
D **verify her caste claim.**

Aggrieved, appellant filed writ petition. On an interim direction of the High Court, the Scrutiny Committee considered the matter afresh and concluded that appellant was a 'Sutar'. The order of the Scrutiny
E **Committee was placed before High Court, which ultimately dismissed the writ petition.**

In appeal to this Court, it was contended that the High Court failed to consider that even the Caste Scrutiny Committee opined that the appellant was a `Sutar', which
F **comes within purview of OBC in the State of Maharashtra and, thus, the said decision could not have been set aside by High Court and that too in the writ petition filed by the appellant.**

Allowing the appeal, the Court

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HELD: 1.1. If it is a fact that the people belonging to the carpenter Caste are recognized as OBC, both in Madhya Pradesh and Maharashtra being *Badhai* in the former and *Sutar* in the latter and keeping in view of the fact that the Caste Scrutiny Committee has found

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appellant to be belonging to the Sutar caste, the matter requires reconsideration. [Para 11] [684-C] A

1.2. There is nothing on record to show as to when appellant had migrated to the State of Maharashtra. If she had migrated to the State of Maharashtra before 1967, she would be considered to be a permanent resident of Maharashtra. [Para 12] [684-G] B

1.3. It is one thing to say that appellant, being not a permanent resident of the State, would not be entitled to contest any election. If she is to be conferred the said status, she will be entitled to all the benefits to which members of the said caste are entitled to but would also be entitled to other benefits i.e. not the benefit to contest in the reserved categories of the election of the *panchayat* alone but other benefits as well. [Para 14] [685-A-B] C

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1.4. Interest of justice would be subserved if the impugned orders are set aside and the matter is directed to be considered afresh by the Caste Scrutiny Committee wherein the appellant may be permitted to adduce evidence inter alia on the question as to when she had migrated. Further if the appellant is aggrieved by the finding of the Caste Scrutiny Committee in regard to her parentage, she would undoubtedly be entitled to file a suit for an appropriate declaration. [Para 15] [685-C-D] E

Sudhakar Vithal Kumbhare v. State of Maharashtra and Others **[(2004) 9 SCC 481], relied on.** F

Union of India and others v. Dudh Nath Prasad **[AIR 2000 SC 525: (2000) 2 SCC 20 and** *Hitesh Dasiram Murkute v. State of Maharashtra and others* **[2007 (5) Mah LJ 454], referred to.**

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Case Law Reference:

AIR 2000 SC 525	**referred to**	**Para 8**
(2004) 9 SCC 481	**relied on**	**Para 9**
2007 (5) Mah LJ 454	**referred to**	**Para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. H

7313 of 2008.

From the Judgment and final Order dated 22.09.2005 of the High Court of Judicature at Bombay, Nagpur in Writ Petition No. 14 of 2005.

Dr. Rajeev B. Mosadkar and Anil K. Jha for the Appellant.

Asha G. Nair, Gargi Khanna and Varinder Kumar Sharma for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant claims to be belonging to the carpenter caste. According to her, she hails from the Vidarbha area which is the border area of the State of Madhya Pradesh and Maharashtra. Carpenters in the State of Madhya Pradesh are known as 'Badhai', whereas in the State of Maharashtra, they are known as 'Sutar'. Their occupation is said to be the same. According to appellant, in both the States, people belonging to the said caste are entitled to be considered as Other Backward Class (OBC).

3. It is not known when the family of the appellant migrated from the State of Madhya Pradesh to the State of Maharashtra. Inter alia on the premise that she belongs to OBC, she contested an election for a Member of Panchayat in Village Chincholi. The post of Sarpanch was reserved for the OBC category candidates. She was elected in the said category. An application, however, was filed before the Caste Scrutiny Committee by respondent No. 4 contending that she does not belong to the OBC category and, therefore, could not have been elected.

4. The Caste Scrutiny Committee relying on or on the basis of a purported circular letter issued by the State of Maharashtra dated 21.08.1996 refused to go into the said question holding that the appellant is not the daughter of Gulabrao Deulkar but was the daughter of Marotrao Chindhuji

Shingnapure. Marotrao Chindhuji Shingnapure was a resident of Madhya Pradesh and as such she is not a resident of Maharashtra prior to 1967. It was, therefore, held:

> "As per the directions given in Govt. Circular dated 21st August 1996, those candidates who are not residents of Maharashtra, the caste claim should not be verified. Therefore, Smt. Kusum Akotkar is not the resident of Maharashtra prior to 1967; her caste claim cannot be verified. Hence this decision. The candidate has submitted the documents in respect of her residence are doubtful. Therefore the Committee has decided not to verify her caste claim."

5. Aggrieved by and dissatisfied therewith, she filed a writ petition before the High Court of Judicature at Bombay, Nagpur Bench, Nagpur. By an interim order dated 1.04.2005, a Division Bench of the said Court, directed:

> "The petitioner has impugned the order dated 29-12-2004 passed by respondent No. 2 – Social Welfare Department, which held that as the petitioner was born on 21-7-1962 in Chhindwara District and being not a resident of Maharashtra prior to 1967, the caste claim could not be verified.
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> In the course of hearing, we are of the opinion that respondent No. 2, rather than refusing to examine the caste claim of the petitioner on the ground that she was not the resident of Maharashtra prior to 1967, should scrutinize the caste claim of the petitioner and give its finding. In so far as the issue of the petitioner being a resident of Maharashtra prior to 1967 or not is concerned, the same can thereafter be considered by this Court.
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> We, therefore, direct the petitioner to appear before respondent No. 2 on 25-4-2005 at 11 a.m. and extend all possible co-operation to respondent No. 2 in getting her caste claim examined.

A Respondent No. 2 to take a decision in the matter within a period of six weeks.

The petition be listed before this Court for further orders on 20-6-2005."

B 6. Pursuant thereto or in furtherance of the said direction, the Caste Scrutiny Committee considered the matter afresh. By an order dated 5.07.2005, it was held:

"The school certificate of Smt. Kusum Vithalrao Akotkar (Miss Kusum Gulabrao Deulkar) as well as the certificate C of Sarpanch, Gram Panchayat, Jam, Dist. Chhindwara (Madhya Pradesh) shows that the caste of Shri Marotrao Chindhbaji Singnapure is Badhai (in Maharashtra, Sutar); hence the Committee maintains its decision dt. 29.12.2004 and further holds that the caste of Smt. Kusum D Vithalrao Akotkar is Sutar."

7. The said order of the Caste Scrutiny Committee was placed before the High Court, and by reason of the impugned judgment the writ petition was dismissed, opining:

E "We have considered the contentions canvassed by the respective counsel. In the instant case, there is no reason for us to disbelieve the evidence collected by the Vigilance Cell, which is an independent agency meant for the purposes of collecting the documentary as well as other evidence in order to find out whether the person really F belongs to caste which he or she claims, as well as the place from where such person belongs."

8. Before the Division Bench, reference was made to a decision of this Court in *Union of India and others v. Dudh Nath Prasad* [AIR 2000 SC 525 : (2000) 2 SCC 20], which G according to the Division Bench was of no assistance to the appellant in view of the peculiar facts obtaining therein.

9. Dr. Rajeev B. Masodkar, learned counsel appearing on behalf of the appellant, would submit that the High Court H committed a serious error insofar as it failed to take into

consideration that even the Caste Scrutiny Committee opined that the appellant is a 'Sutar', which comes within the purview of the OBC in the State of Maharashtra and, thus, the said decision could not have been set aside by the High Court and that too in the writ petition filed by the appellant.

The learned counsel would contend in that view of the matter the High Court must be held to have committed a serious error in refusing to follow the decision of this Court in *Dudh Nath Prasad* (supra), wherein this Court held:

> "17. The word "reside" came to be considered by this Court in *Jagir Kaur v. Jaswant Singh* 1 in the context of the jurisdiction of the Magistrate under Section 488 of the Code of Criminal Procedure, 1898, for entertaining the petition of a wife for maintenance. After considering the meaning of the word "reside" in Oxford Dictionary, which we have already set out above, the Court observed as under:
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> "The said meaning, therefore, takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meanings, including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a casual stay in, or a flying visit to, a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. In this case the context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense." (emphasis supplied)
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> 29. We have already explained the meanings of the words "ordinarily resident" and have found that notwithstanding that the parents of the respondent lived at one time in a village in District Siwan in the State of Bihar and that they

A owned some property there also, they had shifted to the State of West Bengal long ago and had been living there since then. For all intents and purposes, therefore, they shall be treated to be "ordinarily residing" in the State of West Bengal. For the State of West Bengal, the President, B in exercise of his powers under Article 341(1) read with Article 366(24) had already declared the "Nuniya" caste as a Scheduled Caste and, therefore, the respondent was rightly treated to be a Scheduled Caste candidate and was rightly appointed against a reserved vacancy, after being declared successful at the examination held by UPSC for C the Indian Administrative and Allied Services in 1966."

It was urged that even if appellant is said to have migrated from Chhindwara to Nagpur as was contended by the complainant having regard to the fact that a part of that area D was transferred to the State of Maharashtra upon reorganization, the principles laid down by this Court in *Sudhakar Vithal Kumbhare v. State of Maharashtra and Others* [(2004) 9 SCC 481] should have been applied.

10. In *Sudhakar Vithal* (supra), this Court took into E consideration the peculiar situation obtaining that the border areas of a State where a part of the territory is transferred and a part of the territory remained may be inhabited by the people of same group having same traits and culture, holding:

"5. But the question which arises for consideration herein F appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for development and growth in several States. They require protective preferences, facilities and benefits G inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantaged and developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State H of Madhya Pradesh as well as in the State of Maharashtra

having their origin in Chhindwara region, a part of which, on States' reorganisation, has come to the State of Maharashtra, was entitled to the benefit of reservation. It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind.

7. In view of fact that the appellant's case was not referred to the appropriate Committee, the judgment and order under challenge deserves to be set aside. It will be open

A to the Maharashtra State Electricity Board to refer the matter to the Scrutiny Committee for verifying the eligibility of the appellant. We direct that the appellant shall be reinstated forthwith as Assistant Engineer and shall continue to hold the said post till the matter is decided by the Committee. The appeal is allowed on the aforementioned terms. There shall be no order as to costs."

11. In that view of the matter, if it is a fact that the people belonging to the said Caste are recognized as OBC, both in C Madhya Pradesh and Maharashtra being Badhai in the former and Sutar in the latter and keeping in view of the fact that the Caste Scrutiny Committee has found her to be belonging to the Sutar caste, we are of the opinion that the matter requires reconsideration.

D It may be noticed that the Bombay High Court also in *Hitesh Dasiram Murkute v. State of Maharashtra and others* [2007 (5) Mah LJ 454] opined:

"(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the schedule on E the date of such inclusion with reference to locality identified in the schedule. Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in schedule from a place identified in the schedule. In other words, the relevant date is not date of F migration but date of inclusion of caste or tribe in the schedule."

12. There is nothing on record to show as to when she had migrated to the State of Maharashtra. If admittedly she had migrated to the State of Maharashtra before 1967, she would G be considered to be a permanent resident of Maharashtra.

13. Dr. Masodkar states that the appellant had been residing in Maharashtra for a long time and, thus, there is no reason as to why she should not be held to be a permanent H resident.

14. It is one thing to say that she, being not a permanent resident of the State, would not be entitled to contest any election. If she is to be conferred the said status, she will be entitled to all the benefits to which members of the said caste are entitled to but would also be entitled to other benefits i.e. not the benefit to contest in the reserved categories of the election of the panchayat alone but other benefits as well. A B

15. We, therefore, are of the opinion that interest of justice would be subserved if the impugned orders are set aside and the matter is directed to be considered afresh by the Caste Scrutiny Committee wherein the appellant may be permitted to adduce evidence inter alia on the question as to when she had migrated. We may further observe that if the appellant is aggrieved by the finding of the Caste Scrutiny Committee in regard to her parentage, she would undoubtedly be entitled to file a suit for an appropriate declaration. C D

16. For the reasons aforementioned, the appeal is allowed to the aforementioned extent. But, in the facts and circumstances of the case, there shall be no order as to costs.

B.B.B. Appeal allowed.