* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA.648/2019 & C.M. No.44163/2019 (delay of 14 days in filing the appeal)**

Date of decision: 17th September, 2020

IN THE MATTER OF:

RUMY CHOWDHURY ..... Appellant

Through: Mr. Sanjay R. Hegde, Senior Advocate with Mr.Pranjal Kishore, Advocate

versus

THE DEPARTMENT OF REVENUE, GOVERNMENT OF NCT OF DELHI & ANR ..... Respondents

Through: Mr. Ramesh Singh, Standing Counsel, GNCTD with Mr. Gautam Narayan, ASC, Mr. Shadan Farasat, ASC, Mr. Chirayu Jain, Ms. Dacchita Shahi, Mr. Nitesh Mishra and Ms. Vipasha Mishra, Advocates for respondent No.1.

Mr. Amit Bansal and Ms. Seema Dolo, Advocates for respondent No.2/National Testing Agency.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant appeal is directed against the judgment and order dated 14.08.2019, whereby the learned Single Judge has dismissed W.P.(C). No.8780/2019 filed by the appellant/petitioner and has upheld the order dated 31.07.2019, passed by the Tehsildar/Executive Magistrate Delhi Cantt,

rejecting her request for a caste certificate in respect of her two children. The learned Single Judge has also upheld the Office Orders dated 26.11.2015 and 07.03.2017, issued by the respondent No.1/GNCTD, which lay down the procedure for issuance of a caste certificate in faovur of a dependent.

2. Shorn of extraneous details, the brief facts leading to filing of the present appeal are as follows:

(a). The appellant is serving as a Wing Commander in the Indian Air Force and belongs to a Scheduled Caste community in Assam. In the year 1999, the appellant had married one Vikas Hora, also serving in the Indian Air Force and belonging to a forward caste. The said marriage was solemnized in Lucknow. Two children (both sons) were born from out of the wedlock in the years 2001 and 2004 respectively. In May 2005, the appellant initiated divorce proceedings against her husband on the ground of cruelty before the Court at Tezpur, Assam. By an order dated 07.03.2009, the Court at Tezpur had dissolved the marriage of the parties. Pursuant to the divorce, the appellant and her two children had resided at the Air Force Station, Jorhat, Assam and later on, between the years 2010 to 2016, they had resided at the Air Force Station accommodation in Delhi where she was posted.

(b). On 05.10.2016, the appellant had filed an application before the Executive Magistrate, Delhi for grant of Scheduled Caste certificates in respect to her two children claiming that they are entitled to a certificate certifying that they belong to the same community to which she belongs. Since no response was received from the authorities, the appellant approached the High Court by filing W.P.(C). No. 4947/2017. By an order dated 05.07.2018, the learned Single Judge disposed of the writ petition directing the appellant to file an application for issuance of a Scheduled Caste certificate online and furnish requisite material to establish that the

children are entitled to such a certificate. Pursuant to the above order, the appellant submitted an application on 31.07.2018 before the respondent No.1. Vide order dated 14.08.2018, the said application was rejected by the respondent No.1 on the ground that the appellant had not furnished the paternal side Scheduled Caste certificate.

(c). The said order dated 14.08.2018 was challenged by the appellant by filing W.P.(C). No.9424/2018. Vide order dated 07.09.2018, the learned Single Judge had set aside the order rejecting the application for a caste certificate on the ground that no reasons had been provided for rejecting the same and the respondent No.1 was directed to consider the case of the appellant and communicate a reasoned/speaking order to her on or before 25.09.2018. Pursuant to the remand order, by a detailed order dated 31.07.2019, the respondent No.1 had rejected the appellant's application. The Executive Magistrate observed that the nexus between the children and the community is the real test for grant of a community certificate. It was held that, in the absence of any evidence to support the fact that the children have grown-up in the company of the relations on the maternal side and that the appellant and the children had attended all family holidays, ceremonies, rituals, gatherings, etc. held in the village of the appellant, the children would not be entitled to the caste certificate, as prayed for. It was this order that was challenged by the appellant in W.P.(C) 8780/2019.

3. By the impugned judgment and order dated 14.08.2019, placing reliance on the decision of the Supreme Court in Rameshbhai Dabhai Naika v. State of Gujarat and Ors., reported as **(2012) 3 SCC 400**, the learned Single Judge observed that the appellant had failed to produce any evidence or material to establish that the children have suffered deprivations, indignities, humilities and handicaps faced by persons belonging to the

Scheduled Caste community, to which the appellant belongs; that in the absence of any material on record to establish that the two sons of the appellant have suffered disadvantages of persons belonging to the Scheduled Caste community, they would not be entitled to a Scheduled Caste certificate; that there is nothing to show that the environment in the school, where the children studied, has placed them in any disadvantageous position compared to students belonging to the forward class and that the appellant herein is a Senior Officer of the Indian Air Force and there is little scope for caste discrimination in such an environment.

4. The learned Single Judge was of the opinion that the onus of establishing that her children had suffered any of the disadvantages of belonging to a Scheduled Caste, rested with the appellant and no material whatsoever was produced to establish the same. The court held that it cannot be ignored that both the children of the appellant bear the surname of their father, thus holding out a clear representation of belonging to a forward caste. Holding that the practice of issuing a certificate is based on the caste of the father, the Office Orders impugned by the appellant were upheld. The learned Single Judge opined that where it is established that the children have grown-up in a notified community or tribe and have suffered the disadvantages and deprivations on account of belonging to such a community, the Office Orders could not come in the way of issuance of a caste certificate certifying that they belong to the caste of their mother. Aggrieved by the judgment and order dated 14.08.2019, the appellant has filed the present intra-court appeal.

5. It was the contention of Mr. Sanjay Hegde, learned Senior Advocate appearing for the appellant that the appellant is a Single parent and a member of the Scheduled Caste. Following the divorce, ever since they were 04 and

01 years respectively, the children have grown-up in the complete absence of their father. He contended that the children have never grown-up with their father or interacted with the members of his community and there is no likelihood of their being considered as a part of their father's community; that after a divorce was granted to the appellant, her husband had got re-married and he has children from the second marriage, who he has nominated as his dependents; that after the divorce, neither the appellant, nor the children have received any support whatsoever from her husband. It was stated that the matter of alimony and maintenance to be paid by the husband of the appellant, was a subject matter of litigation and in fact, the High Court of Assam in its order dated 18.06.2013, passed in Matrimonial Application No.2/2010, had recorded that the appellant's husband has not paid any amount towards maintenance since the decree dissolving the marriage between the parties was granted. As a result, an execution petition has been filed by the appellant against her ex-husband. It was the contention of learned Senior Advocate that the very fact that the father has not provided any support to the children and had abandoned them ought to be treated as humiliation. It is the appellant who has raised the children and the fact that she admittedly belongs to a Scheduled Caste, is reason enough to issue a Scheduled Caste certificate in favour of the children.

6. It was next asserted on behalf of the appellant that as long as the dominant heritage is of the mother and the children have lived with the mother throughout, there is no requirement of producing evidence of non-acceptance of the children by the mother's community; that a Single schedule caste mother should not be deprived of the opportunity to pass on an advantage provided under the Constitution of India to her children merely because the father hails from a forward cast. Instead, efforts should be made

to equalize as much as is possible. It was also sought to be urged that the Office Order dated 07.03.2017 makes a distinction on the basis of gender and is therefore, violative of Articles 14 and 15 of the Constitution of India. If a father is from a Scheduled Caste community and is singly raising the children, then that alone is considered sufficient for issuance of a caste certificate, whereas if the child is brought up by a Single Scheduled Caste mother, who had married someone from the forward caste, then apart from her certificate, it is also required to be demonstrated that the child has faced deprivations, indignities, humilities and handicaps, thereby, putting the mother to a more disadvantaged position. This *per se*, is arbitrary, discriminatory and unsustainable in law.

7. Mr. Hegde, learned Senior Advocate sought to urge that insistence on the caste certificate of the father goes against the grain of the judgment in Rameshbhai Dabhai Naika (supra) where the Supreme Court had rejected the decision of the High Court that had held that in all cases and regardless of other considerations, children of an inter-caste marriage or marriage between a tribal and non-tribal, would take their caste from the father. Asserting that the Supreme Court has held that if such a view is taken, it will lead to serious problems, learned Senior Advocate has particularly relied on para 48 of the judgment in the captioned case, which reads as under:-

> *"48. It is also clear to us that taking it to the next logical step and to hold that the off-spring of such a marriage would in all cases get his/her caste from the father is bound to give rise to serious problems. Take for instance the case of a tribal woman getting married to a forward caste man and who is widowed or is abandoned by the husband shortly after marriage. She goes back to her people and the community carrying with her an infant or may be a child still in the womb. The child is born in the community from where her mother came and to which she went back and is*

> *brought up as the member of that community suffering all the deprivations, humiliations, disabilities and handicaps as a member of the community. Can it still be said that the child would have the caste of his father and, therefore, not entitled to any benefits, privileges or protections sanctioned by the Constitution."*

8. It was also contended on behalf of the appellant that a perusal of the Office Order dated 07.03.2017 would show that for a Single mother belonging to a Scheduled Caste, where the father happens to belong to a forward caste, in order to get a caste certificate, she has to further prove that the children have been accepted by her community and should have suffered the same problems that are faced by members of the Scheduled Caste community. Such an extra burden placed on a lady, was stated to be discriminatory and it was canvassed that the very fact that the appellant herein is a Single mother belonging to a Scheduled Caste community and the father who belongs to the forward caste, has abandoned the children, is in itself sufficient evidence of the children having suffered humiliations, thus entitling them to the caste certificate.

9. *Per contra*, Mr. Ramesh Singh, learned Standing Counsel appearing for the respondent No.1/Govt. of NCT of Delhi pointed out that the husband of the appellant belonged to a forward caste. The marriage of the appellant and her husband was never accepted by her community, which is evident from the fact that their marriage was solemnized at Lucknow, far away from the village of the appellant. Nothing has been placed on record to show that after the marriage, the appellant and her husband had ever resided with the members of the appellant's community. On the other hand, the facts show that they have always resided outside the community and the village of the

appellant. The children were born in the years 2001 and 2004, respectively and till the year 2005, they were brought up jointly by the parents which demonstrates that they had never been put to any disadvantage in their early years of upbringing and they have never even visited the village of the appellant. Moreover, the children have continued to retain the surname of their father and there is nothing to show that they have faced any disability or disadvantage during the course of their education. In fact, they have studied in schools at the Air Force Station/bases. Learned counsel canvassed that in the absence of any evidence to show that the two children were transported back to the community of the appellant whose members had accepted them and further, in the absence of any evidence that after the appellant's divorce, the children had suffered any socio-economic disability, or a disadvantage on the educational front, they are not entitled to a caste certificate, as claimed by the appellant.

10. Mr. Ramesh Singh, learned Standing Counsel (Civil), GNCTD has cited Director of Tribal Welfare, Government of Andhra Pradesh v. Laveti Giri and Anr., reported as (**1995) 4 SCC 32**, to urge that the Supreme Court has stated that the burden to prove the social status is always on the person who professes to seek constitutional socio-economic advantages and in the absence of any proof to the said effect, no caste certificate can be issued to the appellant's children. The judgment of the Supreme Court in Anjan Kumar v. Union of India and Ors., reported as **(2006) 3 SCC 257** was referred to submit that the condition precedent for granting a Scheduled Caste certificate is that one must show that one suffered a disability from where one belongs. Reliance was also placed on the judgment in Sobha Hymavathi Devi v. Setti Gangadhara Swamy & Ors., reported as **(2005) 2 SCC 244**, to substantiate the above submissions.

11. We have perused the impugned order, examined the record and given our thoughtful consideration to the arguments advanced by both sides.

12. The short issue which arises for consideration is that in the absence of any material to show that they have faced any difficulties, indignities, deprivations, humilities or disability, would the appellant's children be entitled to a caste certificate based on the plea that the appellant is a Single mother belonging to a Scheduled Caste community and has brought up her children without any assistance or contribution from her ex-husband, who belongs to the forward community.

13. Before examining the facts of this case, it is considered expedient to examine the view expressed by the Supreme Court on the legal position. In Director of Tribal Welfare (supra), the Supreme Court has held that the burden of proof of social status is on the person who seeks the benefit of constitutional socio economic advantages and observed as under:

> *"6. .....We agree with the learned counsel for the appellant that the High Court adopted its traditional approach of placing burden of proof of social status founded on the entries in Government record etc. and called upon the State to rebut it on the touch-stone of Evidence Act. We are unable to appreciate the view taken by the Division Bench.* ***Burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages.*** *It is no part of the duty of the State to disprove or otherwise.The criteria to obtain caste certificate from Native Tahsildar/Mandal Revenue Officer/ Revenue Divisional Officer is relevant for the reason that Scheduled Tribes generally live in forest areas, mountainous regions and specified pockets and will be known to local officers or easily accessible for verification."* (emphasis supplied)

14. In V.V. Giri vs D.S. Dora, reported as **AIR 1959 SC 1318**, the Supreme Court has observed as under:-

> *"24. .....The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry. There is no evidence on this point at all. Besides the evidence produced by the appellant merely shows some acts by Respondent 1 which no doubt were intended to assert a higher status; but unilateral acts of this character cannot be easily taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken and in our opinion the High Court is absolutely right....."*

15. In Sobha Hymavathi Devi (supra), the Supreme Court has observed that:-

> *"8. Elaborating her argument, learned counsel for the appellant contended that even though the appellant was born to Murahari Rao, a Sistu Karnam, she was still being treated as a member of the Bhagatha Community to which her mother belonged and that she had married a person belonging to the Bhagatha Community; that the Bhagatha Community had always accepted her as belonging to that community and in such a situation, she must be considered to belong to the Bhagatha Community, a Scheduled Tribe and hence eligible to contest from a constituency reserved for the Scheduled Tribes.* ***That the appellant had married Appala Raju, her maternal uncle belonging to the Bhagatha Community, is not in dispute. But the claim of the appellant that she was being brought up and was being recognized as a member belonging to the Bhagatha Community, cannot be accepted in the face of the evidence discussed by the High Court including the documentary evidence relied on by it.*** *The document Exh. 10 and the entry therein marked as Exh. X-11 relating to the appellant, show her caste as Sistu Karnam and not as Bhagatha. This entry was at an undisputed point of time. Moreover, the evidence also shows that she was always being*

educated at Visakhapatnam and she was never living as a tribal in Bhimavaram village to which her mother's family belongs. There is no reason for us to differ from the conclusion of the High Court on this aspect." (emphasis supplied)

16. In Anjan Kumar (supra), this is what the Supreme Court had to state:-

"6. ***Undisputedly, the marriage of the appellant's mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha) was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or ex-communicated from the village community. Therefore, there is no question of such marriage being accepted by the village community****. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to forward class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practiced by the tribals from time immemorial and accepted by the community of the village as a member of tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose.* ***Often than not, such acceptance is preceded by feast/rituals performed by the parties where the elders of the village community participated****. However, acceptance of the marriage by the community itself would not entitle the woman (Forward class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward class) who does not suffer disabilities wherefrom*

she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled Castes and Scheduled Tribes. It would be a negation of Constitutional goal.

7. ***It is not disputed that the couple performed court marriage outside the village; settled down in Gaya and their son, the appellant also born and brought up in the environment of forward community did not suffer any disability from the society to which he belonged. Mr. Krishnamani, learned senior counsel contended that the appellant used to visit the village during recess/holidays and there was cordial relationship between the appellant and the village community, which would amount the acceptance of the appellant by the village community. By no stretch of imagination, a casual visit to the relative in other village would provide the status of permanent resident of the village or acceptance by the village community as a member of the tribal community."*** (emphasis supplied)

17. In Rameshbhai Dabhai Naika (supra), the Supreme Court has observed as follows:-

"54. ***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.*

55. ***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, humilities 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."*** (emphasis supplied)

18. A perusal of the authoritative judicial dicta quoted above shows that it is now well settled that in an inter caste marriage, the caste status of a person would have to be determined in the light of acceptance from the other members of the very same caste into which the person seeks an entry. Unless and until there is some positive evidence adduced to demonstrate that the community had accepted the Scheduled Caste person and her offsprings back into the fold, the children would not be entitled to the benefit of a caste certificate. In an inter-caste marriage between a tribal and non-tribal, the determination of the caste of the offspring is a question of fact to be decided on the basis of the facts adduced in each case and it has to be brought out that the children have suffered from any disability or disadvantage because of the abandonment by the father.

19. The facts of the instant case are undisputed. The appellant is a senior ranking Air Force Officer from Assam, belonging to a Scheduled Caste community. She had married one Vikas Hora, a colleague, who is from a forward caste. The marriage was solemnized at Lucknow and not at the

village/place of origin of the appellant. Two children were born from out of the wedlock. The appellant had initiated divorce proceedings against Vikas Hora in a court in Tezpur, Assam. From the years 2001 to 2007, the appellant and her children were residing at the Air Force Station at Tezpur. Divorce was granted in favour of the appellant in March, 2009. Even after the divorce, the appellant did not return to her home or to her native village. Rather, she and her children stayed away. The appellant has always resided at the Air Force Station at Assam and the Air Force Headquarters at Delhi where she was provided official accommodation. Presently, the appellant is posted at Hyderabad and staying in the official accommodation provided at Secundrabad. The children are with her. The children of the appellant have continued to retain the surname of her husband. They were studying in good schools at Jorhat, Delhi and now in Hyderabad. The elder son was to take the JEE main examination in the first week of September, 2020, which was cited by the appellant as a reason for an early hearing of the appeal in the expectation that if she succeeds, the children will get a caste certificate which will place the elder son at an advantageous position at the time of allotment of seats reserved for the Scheduled Caste category.

20. The appellant has however miserably failed to rebut the presumption drawn against her that the children have the caste of their father, who belongs to a forward caste. Apart from contending that the ex-husband of the appellant has re-married and has nominated his children from the second marriage for all the benefits and that he has not provided any alimony to the appellant, no evidence has been brought on record to demonstrate the deprivations, humilities, handicaps, faced by the appellant or her children in their life. Such positive evidence is woefully lacking. The children were born when the marriage was subsisting and therefore, they were not entitled

to the community certificate of the caste to which the appellant belongs. After the divorce, the children continued to keep the surname of the father, going to show that they have projected themselves to the society as belonging to a forward community.

21. In the absence of any positive or cogent evidence demonstrating that the community of the mother had accepted the children, simply on the strength of the appellant having raised the children on her own, they cannot be entitled to a certificate of the caste to which their mother belongs. The Executive Magistrate can therefore not be faulted in observing that in the absence of any cogent documentary evidence to support the fact that the appellant's children have grown-up in the company of their relatives from the maternal side and had attended family holidays, ceremonies, rituals, gatherings, etc., thereby assimilating into the community, no Scheduled Caste certificate can be issued in their favour.

22. In India, determination of the caste of a person is governed by the customary laws. Under the customary Hindu law, a person inherits his caste from the father. As has been rightly observed by the learned Single Judge, where it is established that the children have grown up in a notified community or tribe and have suffered all the disadvantages and deprivations of belonging to such a community, the impugned Office orders do not come in the way of issuance of the caste certificate certifying that the children belong to the caste of their mother.

23. Viewed from the above perspective, we do not find that the Office orders impugned in the writ petition are violative of Article 14 of the Constitution of India. Nor can it be said that the Office orders put a Single mother belonging to a scheduled caste community who has separated from her husband belonging to a forward caste, in a more disadvantageous

position as she has brought up the children on her own. Thanks to the appellant serving at a senior post in the Indian Air Force, her children have had the advantage of a safe, secure and sheltered environment, excellent schooling and other related opportunities. There was no occasion for them to have suffered any destitution, deprivation or denial, as would have been suffered by a member of the Schedule Caste tribe from which their mother hails, to be eligible for a caste certificate. On the contrary, issuance of a caste certificate to the appellant's children would result in depriving a genuine schedule caste person of an opportunity to claim entitlement to the limited number of schedule caste seats reserved in higher education and in service, thereby causing a setback to the equality goal enshrined in the Constitution.

24. In view of the above facts and circumstances, we do not find any error in the order dated 31.07.2019, passed by the Executive Magistrate rejecting the application of the appellant's children, for issuance of a caste certificate, duly affirmed by the impugned judgment. The appeal is accordingly dismissed as meritless but with no orders as to costs.

SUBRAMONIUM PRASAD, J.

HIMA KOHLI, J.

SEPTEMBER 17, 2020
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