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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.37095 of 2022**
**(Through hybrid mode)**

***Jayanti Naik*** .... ***Petitioner***

*-versus-*

***State of Odisha and others*** .... ***Opposite Parties***

Advocates appeared in this case:

For petitioner: Mr. Santosh Kumar Dash, Advocate

For State: Mr. A.K. Nanda, Addl. Govt. Advocate

**CORAM: JUSTICE ARINDAM SINHA**

**JUDGMENT**

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**Date of hearing and judgment: 28.03.2023**

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**1.** The writ petition was moved on 20th January, 2023. Mr. Dash, learned advocate appearing on behalf of petitioner had submitted, his client belongs to a scheduled tribe. She married a person, who possessed SEBC certificate. The husband deserted her. There was a child from the marriage. The child was brought up in the tribe. Application for caste certificate in respect of the child was rejected by the Tahsildar and confirmed in appeal. Hence, orders dated 17th October, 2019 and 13th December, 2021, respectively rejecting the application and confirmation

in appeal, had been impugned.

**2.** Today Mr. Nanda, learned advocate, Additional Government Advocate appears on behalf of State. He prays for further extension of time to file counter. On query from Court he submits, instructions have not yet been had. In this connection, text of our last order dated 28th February, 2023 is reproduced below.

> *"1. Mr. Rout, learned advocate, Additional Government Advocate appears on behalf of State and prays for extension of time to file counter. Mr. Dash, learned advocate appears on behalf of petitioner.*
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> *2. Extension of time to file counter granted is peremptory. It be filed by 14th March, 2023. Petitioner may file rejoinder, to be accepted on adjourned date upon advance copy served.*
>
> *3. List on 21st march, 2023.*

Petitioner being before Court and pressing for adjudication after peremptory extension was earlier granted, it would be unfair to grant further extension of time.

**3.** Mr. Dash draws attention to paragraph-11 in the petition. The paragraph is reproduced below.

> ***"**That, the appellate authority i.e. Collector, Sambalpur proceeded with hearing the appeal of the petitioner **without giving opportunity of hearing to the petitioner or to her counsel to presence their case stating due to***

> ***Covid-19 it is not possible to hear the petitioner or her advocate though in the order sheet it is mentioned heard the advocate for the petitioner. Moreover without calling for records from the Tahasildar Bamara, dispose of the appeal basing on letter of the Tahasildar Bamra*** *without ascertain the veracity of statement of the Tahasildar Bamara and without examining the record confirm the order of the Tahasildar relying the letter of the Tahasildar, Bamara by his order dated 30.12.21 stating that, the Tahasildar Bamara has followed the rule and justified in rejecting the application without even seeing the present position of law."*
>
> (emphasis supplied)

It will appear from aforesaid, there is no counter filed.

**4.** Mr. Dash relies on **judgment dated 18th January, 2012** of the Supreme Court in **Civil Appeal no.654 of 2012 (Rameshbhai Dabhai Naika v. State of Gujarat and others)**, inter alia, paragraphs 22 and 43 in Indian Kanoon print. The paragraphs are reproduced below.

> *"22. It is, thus, clear* ***that it is wrong and incorrect to read Valsamma, Punit Rai and Anjan Kumar as laying down the rule that in an inter-caste marriage or a marriage between a tribal and a non-tribal, the child must always be deemed to take his/her caste from the father regardless of the attending facts and circumstances of each case****. Now, we propose to consider why the observation in Valsamma to the effect that an inter- caste marriage or a marriage between a*

*tribal and a non-tribal the woman becomes a member of the family of her husband and takes her husband's caste (Paragraph 31 of the judgment) is not the ratio of that decision and more importantly what inequitable and anomalous results would follow if that proposition is taken to its next step to hold that the offspring of such a marriage would in all cases take the caste from the father.*

*xxx xxx xxx xxx xxx xxx*

*43. 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.* ***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)

**5.** He also relies on annexure-1 in circular dated 4th March, 1975 issued by Ministry of Home Affairs on status of children belonging to a couple, one of whom belongs to Scheduled Castes/Scheduled Tribes. He submits, the circular clearly states that in view of observations by superior Courts, it can safely be concluded that the crucial test to determine is whether a child born out of such a wedlock has been accepted by the Scheduled Caste community as a member of their community and has been brought up in that surrounding and in that community or not.

**6.** It appears petitioner's contention needs adjudication. This adjudication does not appear to have happened on face of impugned order. There is recital in impugned order and reliance on letter dated 17th October, 2019, by which the Tahsildar, informed petitioner that the certificate could not be issued. The appellate authority said that the Tahsildar had examined the points and thereupon application of the

appellant had been rejected. The appellate authority thereafter went on to take view that the Tahsildar had properly followed the procedures as per rules and regulations, while rejecting the application of appellant. Assertion of petitioner on facts regarding bringing up of her son in the tribal community was not even looked at.

**7.** Impugned order dated 30th December, 2021 is set aside and quashed. The appeal is restored to the Collector. Petitioner will communicate this order to the Collector, whereupon the authority is to reconsider the appeal and expeditiously disposed of it, within six weeks thereafter.

**8.** The writ petition is disposed of.

***(Arindam Sinha)***
***Judge***

*Sks*