

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 10571 OF 2010

SUMAN RATHOD

Appellant (s)

VERSUS

AJAMEERA HARI NAIK & ORS.

Respondent(s)

WITH

Civil Appeal NO. 8137 of 2011

O R D E R

CIVIL Appeal No. 10571 of 2010

This Appeal has been filed under Section 116A of the Representation of People Act, 1951 by the returned candidate whose election has been set aside by the High Court. It raises the questions in relation to the interpretation of the Constitution (Scheduled Tribes) Order, 1950 and the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 (Act No. 10 of 2003).

2. Mr. A.K. Ganguli, learned senior counsel for the appellant, places heavy reliance upon a two Judge Bench decision of this Court in Union of India & Others Vs. Dudh Nath Prasad¹, in support of his argument that the appellant has been residing in Adilabad District in the State of Andhra Pradesh since 1972 and even as per respondent No. 1 since 1983 after her marriage and 'Banjara' is a Scheduled Tribe in Andhra Pradesh since 07.01.2003 and, therefore, the appellant was entitled to contest the assembly seat reserved for Scheduled Tribe in the election held in 2009. Mr. A.K. Ganguli, learned senior counsel, also referred to paragraphs 2 and 3 of the Constitution (Scheduled Tribes) Orders, 1950.

3. On the other hand, Mr. Bhoja Tarkam, learned senior counsel for the respondent No. 1, submits that Dudh Nath Prasad¹ does not lay down good law on the face of two Constitution Bench decisions, namely, (i) Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College & Others² and (ii) Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.³. Learned senior counsel for the respondent No. 1 further submits that caste is acquired by birth and not by migration and merely because the appellant has migrated to Adilabad District after marriage in the State of Andhra Pradesh, she cannot be considered to be belonging to Scheduled Tribe.

4. In view of the controversy raised before us by the learned senior counsel for the respondent No. 1 that Dudh Nath Prasad¹ does

not lay down good law, we are of the considered view that Civil Appeal must be heard by a Bench of at least three Judges of this Court.

5. Let the papers of Civil Appeal be placed before Hon'ble the Chief Justice for the constitution of an appropriate Bench.

6. Since the subject matter of Civil Appeal is challenge to the judgment of the High Court setting aside the election of the appellant to the Andhra Pradesh State Legislative Assembly held in 2009 and more than three years have already elapsed, it is appropriate that Civil Appeal is heard and disposed of at the earliest.

Civil Appeal NO. 8137 of 2011

7. List this Civil Appeal along with Civil Appeal No. 10571 of 2010.

.....J.
(R.M. LODHA)

NEW DELHI;J.
SEPTEMBER 25, 2012 (ANIL R. DAVE)

ITEM NO.102 COURT NO.7 SECTION XVII
PART-HEARD

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 10571 OF 2010

SUMAN RATHOD Appellant (s)

VERSUS

AJAMEERA HARI NAIK & ORS. Respondent(s)

(With appln(s) for stay and with office report)

WITH

Civil Appeal NO. 8137 of 2011

(With appln.(s) for condonation of delay in filing appeal and condonation of delay in filing appeal and with office report)

Date: 25/09/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)

CA 10571/2010 Mr. A.K. Ganguli Sr. Adv.
Mr. Guntur Prabhakar, Adv.

CA 8137/2011 Mr. Bhoja Tarkam, Sr. Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Ms. Anindata Pujari, Adv. for

M/S. Lawyer'S Knit & Co

For Respondent(s)

CA 10571/2010

Mr. Bhoja Tarkam, Sr. Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Ms. Anindata Pujari, Adv. for
M/S. Lawyer'S Knit & Co.

CA 8137/2011

Mr. A.K. Ganguli Sr. Adv.
Mr. Guntur Prabhakar, Adv.

Mr. G.N.Reddy ,Adv

UPON hearing counsel the Court made the following
O R D E R

CIVIL Appeal No. 10571 of 2010

Let the papers of Civil Appeal be placed before Hon'ble the Chief Justice for the constitution of an appropriate Bench in terms of the signed order.

Since the subject matter of Civil Appeal is challenge to the judgment of the High Court setting aside the election of the appellant to the Andhra Pradesh State Legislative Assembly held in 2009 and more than three years have already elapsed, it is appropriate that Civil Appeal is heard and disposed of at the earliest.

Civil Appeal NO. 8137 of 2011

List this Civil Appeal along with Civil Appeal No. 10571 OF 2010.

| (Rajesh Dham)
| Court Master

| | (S.S.R. Kriahna)
| | Court Master

(signed order is placed on the file)

1 (2000) 2 SCC 20
2 (1990) 3 SCC 130
3 (1994) 5 SCC 244