
(2012) 03 MP CK 0038
In the Madhya Pradesh High Court
Case No : Writ Petition No. 973 of 2012

Devendra Gupta

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Citation : AIR 2012 MP 116

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Abhijeet Awasthy, for the Appellant; Pushpendra Kaurav, Dy. Advocate General, Kishore Shrivastava and Sanjay Tamrakar, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—I.A. No. 3407/12 has been filed for dismissing the writ petition and recalling the order issuing notice on the writ petition. Even though, during the course of hearing of this writ petition today, Shri Abhijeet Awasthy sought permission to withdraw the writ petition but Shri Kishore Shrivastava, learned Sr. Counsel raised serious objections to the same. Having heard learned counsel for the parties, it transpires that the petitioner has filed this writ petition seeking a direction for conducting an enquiry by the High Power Committee constituted in accordance with the judgment rendered by the Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others,

2. Considering the prayer made by the petitioner, notices were issued and from the objection filed by the respondent No. 7, it transpires that respondent No. 7 is an elected representative and has also held office of the minister in the State Cabinet. Respondent No. 7 had contested the election in a seat reserved for "scheduled caste" candidate and he had claimed his caste status to be that of a "Kumhar" belonging to the said category.

3. Inter alia contending that the respondent No. 7 does not belong to the said

community and has misused his position, the writ petition is filed seeking relief as indicated hereinabove.

4. From the documents filed by respondent No. 7 along with the application for dismissal of writ petition, I.A. No. 3407/12, it transpires that earlier also when respondent No. 7 was elected to the said Legislative Assembly in a seat reserved for Scheduled Caste candidate, election petition was filed before this Court in the year 1985 being Election Petition No. 9/1985, Umrao Singh and others v. Narbada Prasad and another, the matter was heard by a Bench of this Court and one of the issue i.e. issue No. 1 (a) in the said writ petition was as to whether respondent Narbada Prasad is "Kumhar" by caste and whether he is entitled to be declared as Scheduled Caste candidate in the district of Narsinghpur. After recording of evidence and on a detail trial conducted in the election petition, the same was decided by an order passed on 24/12/85 and the findings recorded in the said election petition, particularly with regard to issue No. 1 (a) is that respondent No. 7 is a member belonging to the "Kumhar" community, this is a Scheduled Caste community and the benefit of reservation has rightly been granted to respondent No. 7. Subsequently, when the respondent had contested the election again in the year 1993-94, similar issues were raised by various other persons and again in an election petition being Election Petition No. 15/94 decided by a Bench of this Court on 14th September, 1995, one of the issue framed was as to whether respondent No. 7 is a member belonging to the Scheduled Caste community i.e. a "Kumhar". This issue was also answered in favour of respondent No. 7 and in the judgment rendered by the Election Tribunal as is evident from Annexure R-7/2, the finding recorded is in favour of respondent No. 7. This election petition was also dismissed after imposing the cost of Rs. 2000/-and in para 23 of the said order, it has been so directed and held by a Bench of this Court:

As already mentioned above, that the respondent shall be deemed to be a fictionally Kumhar of Shahdol district by virtue of Clause (2) of Order of 1950, as he is a resident of Shahdol. Therefore, even if for the time being, this evidence is ignored then also he is an ordinary resident of Shahdol and his name find mentioned in the electoral roll. Therefore, for all purposes, the respondent shall be deemed to be a Kumhar by caste of Shahdol district. Hence, the issue No. 1 is decided against the petitioner and in favour of the respondent.

(Emphasis supplied)

5. Subsequently, this order was challenged by one of the contesting parties before the Supreme Court and in the case of Beni Prasad and Anr. v. Narbada Prasad, (1997) 9 SCC 631 the question has been decided and it has been held that respondent No. 7 belongs to a Scheduled Caste community and he has been granted the benefit of contesting the election under the said category correctly.

6. Shri Kishore Shrivastava, learned Sr. Counsel by bringing on record various newspaper cuttings and circulars in this regard points out that in spite of the fact

that petitioner is a local resident of the area and was aware of the fact, he has still filed this writ petition, mala fide only to harass respondent No. 7, for publicity purpose and somehow tarnish the image of respondent No. 7.

7. Inter alia contending that petitioner has misused the due process of law and by suppressing the material with regard to caste status of respondent No. 7, the writ petition has been filed, prayer made is to dismiss the writ petition and take suitable action against the petitioner.

8. When the matter was being heard by this Court on 16th March after going through the submissions made, this Court was prima facie of the opinion that the petition has been filed with ulterior motive and it was observed as to why the petition be not dismissed with heavy cost. On this, counsel for the petitioner has taken time and today learned counsel for the petitioner stated that petitioner did not know the correct facts with regard to the earlier decision rendered in the election petition and by the Supreme Court, he was not aware of all these facts, a mistake has been committed by him and, therefore, he be permitted to withdraw this writ petition. Petitioner also submits an apology to this Court for wasting its time by filing this writ petition.

9. The question with regard to social status of respondent No. 7 has already been finalized. Apart from the orders passed in two election petitions even the Supreme Court has given the declaration that respondent No. 7 belongs to a particular caste which falls in the category of Scheduled Caste and the benefit of this category has rightly been extended to him. Once, a declaration to that effect is given in favour of respondent No. 7, petitioner cannot challenge the social status of respondent No. 7 and when respondent No. 7 is a public personality, petitioner is supposed to have known all these factors and should have been more careful while filing this writ petition and seeking for the relief as claimed for.

10. The declaration given by this Court in the election petition and confirmed by the Supreme Court cannot be now subjected to any further enquiry by the High Power Committee. The High Power Committee has no jurisdiction to sit over the finding recorded in the election petition and confirmed by the Supreme Court. The prayer made by the petitioner for referring the matter to the High Power Committee is a misconceived prayer and on this count, the petition should be dismissed. As far as imposition of cost is concerned, petitioner having realized his mistake has submitted an apology before this Court, he is warned to be more careful in future, this Court therefore takes a lenient view of the matter. However, petitioner should file an affidavit in this regard, petitioner is directed to file an affidavit within 15 days before the Registrar General of this Court expressing his apology and regret for having filed this petition in the manner done.

11. In case, the aforesaid affidavit is filed by the petitioner within a period of 15 days from today, no action would be undertaken else this Court may proceed in the matter for the improper act as indicated hereinabove, However, as now

petitioner does not want to prosecute the matter, therefore, it is no more necessary for this Court to go into the dispute on merit. With the aforesaid, petition is dismissed as withdrawn.