
(2004) 12 AHC CK 0220
In the Allahabad High Court
Case No : Writ Petition No. 1659 (M/S) of 1999

Ghanshyam Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Constitution of India, 1950 — Article 341

Citation : (2005) 2 AWC 1848

Hon'ble Judges : U.K. Dhaon, J; Rakesh Sharma, J

Bench : Division Bench

Advocate : S.P. Shukla, for the Appellant; C.S.C., Sharad Kumar Srivastava, U.K. Srivastava and Anurag Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

U.K. Dhaon and Rakesh Sharma, JJ.—Heard Sri S.P. Shukla, learned counsel for the petitioner, Sri U.K. Srivastava, learned counsel appearing on behalf of opposite party No. 5, Sri Sharad Kumar Srivastava, Additional Standing Counsel for the Central Government appearing on behalf of opposite party No. 1 and Sri Anurag Srivastava, learned counsel appearing on behalf of opposite party No. 6.

2. The petitioner has approached this Court against the order dated 31.3.1999, whereby the caste certificate dated 6.12.1996 issued in favour of the petitioner was cancelled. The petitioner has alleged that he is Kasera by birth, which is sub-caste of Shilpkar caste. The petitioner has alleged that on his representation a Caste Certificate dated 6.12.1996 was issued which provides that the petitioner belongs to Scheduled Castes category and without affording any opportunity the said certificate was cancelled by the order dated 31.3.1999. The learned counsel for the petitioner submits that Kasera is a sub-caste of Shilpkar and the Scheduled Castes Certificate are being issued to the persons of Kasera of sub-caste in the State of U. P. He further submits that the certificate of caste was issued to the petitioner on 6.12.1996 and the Kasera community was added in Schedule-I at Serial No. 59 in the category of backward by the Notification dated

15.9.1997 and, therefore, on the basis of the Notification dated 15.9.1997 the caste certificate issued to the petitioner cannot be cancelled. He further submits that before passing of the impugned order, no opportunity was afforded to the petitioner and the impugned order is violative of principle of natural justice.

3. Sri Sharad Kumar Srivastava, learned standing counsel for the Union of India submits that at no point of time the Kasera community was included in the list of Scheduled Castes in relation to the State of U. P. as synonym to Shilpkar community. He further submits that the petitioner has filed the writ petition on misconceived facts and the writ petition deserves to be dismissed for the facts and reasons given in paragraphs 7 and 9 of the counter-affidavit.

4. The learned standing counsel appearing on behalf of the State of U. P. submits that the certificate was obtained by the petitioner by concealing material facts, which was rightly cancelled by the authorities by the impugned order. He further submits that Annexure-5 filed by the petitioner is a forged document and the correct Notification dated 22.5.1957 is Annexure-CA-3 to the writ petition and the petitioner does not belong to Scheduled Castes category.

5. Sri U.K. Srivastava, learned counsel for opposite party No. 5 submits that there is no illegality in the impugned order and the opposite party No. 5 belongs to the Scheduled Castes category and he has all rights to challenge the caste certificate, which was issued in favour of the petitioner. He further submits that the caste Kasera do not belong to the Scheduled Castes but it belongs to Other Backward Castes category.

6. We have considered the arguments of the learned counsel for the parties and gone through the record.

7. A caste certificate was issued to the petitioner on 6.12.1996 thereafter a complaint was made by opposite party No. 5 and after making the necessary enquiry the Tehsildar, Bahraich by the order dated 31.3.1999 cancelled the caste certificate of Scheduled Castes category issued to the petitioner. The documents, which have been filed on behalf of the State of U. P. reveals that the petitioner does not belong to the Scheduled Caste community.

8. In paragraphs 7 and 9 of the counter-affidavit filed by the Union of India is as under :

(7) "That in reply to the contents of paras 8 to 10 of the writ petition, it may be pointed out that the list of Scheduled Castes of Uttar Pradesh is contained in Part XVIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950, as amended up to date. The community "Shilpkar" has been specified as Scheduled Castes at serial No. 65 in relation to the State of Uttar Pradesh. That the Kasera Community does not find place in the said order. It may be stated that Article 341 of the Constitution prescribes procedure for specification of community as Scheduled Castes. Clause (1) envisage that first specification of Scheduled Castes in relation to a particular State is by a notified Order of the President,

after consultation with the State Government concerned. Under Clause (2) the notification once issued in exercise of powers contained in Clause (1) can be modified subsequently only through an Act of Parliament. At no point of time the Kasera Community was scheduled as S. C. in relation to the State of Uttar Pradesh. Thus, Annexure-5 stated to have been issued by the Government of Uttar Pradesh is not legally tenable. The State Government may merely recommend and it cannot include in or exclude from the list of Scheduled Castes any community.

(9) That the contents of paras 18 and 19 of the writ petition are not admitted as framed. It may be pointed out that the State Government of Uttar Pradesh have no power to amend the S. C. list of that State contained in Part XVIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950. It is also submitted that at no point of time the community Kasera was included in the S. C. list of Uttar Pradesh. The order stated to have been issued by the Government of Uttar Pradesh in the year 1957 is not legally tenable. The Government of U. P. vide U. P. Act No. 4 of 1994 has neither added nor excluded from the lists of Scheduled Castes any community. The Government of Uttar Pradesh is within its power to notify any community other than S.Cs. and S.Ts. as other Backward Class."

9. From the record, it reveals that at no point of time the Kasera community was included in the list of Scheduled Castes of U. P. The petitioner who belongs to Kasera community cannot be said to be Scheduled Castes. There is no illegality in the impugned order. The writ petition is devoid of merits. It is accordingly dismissed.