
(2014) 03 RAJ CK 0149
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8623/2010

Inder Mohan Singh Dhanka

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226
States Reorganisation Act, 1956 — Section 41

Citation : (2014) 2 WLN 476

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : S.D. Goswami, Advocate for the Appellant; Sanjeet Purohit, O.P. Boob, Government Counsel, Digvijay Singh, Addl. Govt. Counsel, B.D. Sharma, Deputy Government Counsel, and Tribhuvan Gupta, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—In the instant writ petition and 12 other cognate writ petitions, particulars of which are mentioned in the annexed schedule, which may be treated as part of this order, common question of law and facts are involved, therefore, all these petitions are heard together and are disposed of by this common order. For disposal of this petition and cognate petitions, it is worthwhile to take cognizance of the facts narrated in this petition.

2. The brief facts, giving rise to this petition, are that as per petitioners, all of them belong to Dhanka Community and are residents of District Hanumangarh and Sri Ganganagar. It is specifically averred in the writ petition by the petitioners that as per the Scheduled Castes and Scheduled Tribes Order (Amendment) Act 1976 dt. 18.09.1976, published by the Ministry of Law, Justice and Company Affairs, (Legislative Department, Government of India, in the Gazette of India, Extraordinary Part II No. 151 dt. 20.09.1976, Part XV Rajasthan enforced w.e.f. 27.07.1977 in the State of Rajasthan, Dhanka Caste is mentioned as Serial No. 4 of the Scheduled Tribe List. The petitioners have also placed on record the Notification dt. 27.07.1977 wherein part XIII refers to the Scheduled Tribe Communities of Rajasthan and at Serial No. 4 following Communities are

shown as Scheduled Tribes:

Dhanka

Tadvi

Tetaria

Valvi.

The petitioners have further placed on record order/circular dt. 13.07.2010 issued by the Secretary to the Government of India, Ministry of Tribal Affairs, New Delhi, containing certain onerous conditions for issuance of Caste Certificates. The said letter/circular was issued by the Government of India with the sole object that there may not be abuse in issuance of Social Status Certificate to an individual i.e. whether he belongs to Scheduled Caste or Scheduled Tribe. In the circular/letter, it is mentioned that under the State of Rajasthan tribal groups of Dhanka, Tadvi, Tetaria and Valvi, having origin from Abu Road Taluka of District Sirohi are entitled for issuance of ST Certificate. Clause 3 & 7 of the order are reproduced as under:

3. In pursuance of Section 41 of the States Reorganisation Act, 1956, the Scheduled Castes & Scheduled Tribes Lists (Modification) Order 1956 was Notified (29.10.1956). The entry "Dhanka" including Tadvi, Tetaria and Valvi continued under Bombay State at S. No. 5. Since Abu Road taluka of Banaskantha Districts of Bombay State was transferred to Sirohi District of Rajasthan, as a consequence, "Dhanka" including Tadvi, Tetaria and Valvi entry was listed at S. No. 5 under 3 in Abu Road taluka of Sirohi District under the State of Rajasthan having area restriction meaning that Dhanka, Tadvi, Tetaria and Valvi tribal groups of Abu Road Taluka were only eligible for S.T. Certificate.

7. Therefore, the Scheduled Tribe group "Dhanka including Tadvi, Tetaria and Valvi", whose origin could be ascertained/traced in Abu Road taluka of Sirohi District at the time of the Scheduled Castes and Scheduled Tribes (modification) Act, 1956, is eligible to get the benefits meant for Scheduled Tribes. In other words, Scheduled Tribe Certificates of "Dhanka" tribe issued to persons of Dhanka Tribal Communities (S. No. 4 - Dhanka, Tadvi, Tetaria, Valvi) who belonged to Abu Road taluka of Sirohi District at the time of Notification of Scheduled Castes and Scheduled Tribes list (modification) Act, 1956 only and their children are valid. Any Scheduled Tribe Certificate in the name of Dhanka, Tadvi, Tetaria or Valvi tribe on the basis of S. No. 4 of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 issued to a person who does not belong to the Dhanka, Tadvi, Tetaria or Valvi Tribal Community of Abu Road taluka of Sirohi District of Rajasthan at the time of Notification of the Scheduled Castes & Scheduled Tribes Lists (Modification) Order, 1956 and his son or daughter is invalid.

3. The petitioners have also averred in the writ petition that the circular/letter dt. 13.07.2010 is contrary to the Presidential Order, and therefore, the same is

wholly without jurisdiction and nullity in the eye of law.

4. The writ petition is contested by the respondents and separate replies were submitted on behalf of the respondents.

5. After submission of reply to the writ petition, the petitioners have placed on record the communication dt. 20.02.2014 from Ministry of Tribal Affairs, Government of India, New Delhi addressed to the Chief Secretary, Government of Rajasthan, Jaipur, whereby it is conveyed that the earlier letter/circular dt. 13.07.2010 issued by the Ministry has been withdrawn with immediate effect. The complete text of letter dt. 20.02.2014 is reproduced as under:

Dt.: 20.02.2014

To

Shri Rajiv Mehrishi

Chief Secretary,

Government of Rajasthan, Schivalaya, Jaipur

Rajasthan-302 005.

Sir,

I am directed to draw your attention to the letter dt. 16.08.2012 by the then Chief Secretary, Rajasthan, regarding the hardship in ST Certification of "Dhanka Community" in the wake of Ministry's clarification issued vide letter dt. 13.07.2010 (copy enclosed) with respect to area restriction on "Dhankas including Tadavi, Tetaria and Valvi" in Rajasthan.

I am directed to inform you that the letter No. 12026/4/2009-C&LM-1 dt. 13.07.2010 issued by this Ministry stands withdrawn with immediate effect.

Yours sincerely,

Sd/-

(Ashok Pai)

6. In view of subsequent developments, learned counsel Mr. S.D. Goswami has urged that as the Circular/letter, which is impugned in the writ petition, has been withdrawn, now he is confining his prayer only to the extent that competent authority may be directed to issue Caste Certificate to the petitioners in accordance with law.

7. Mr. Sanjeet Purohit, learned counsel appearing for Union of India has submitted that the fact pertaining to withdrawal of the circular/letter dt. 13.07.2010 is no more in dispute and now there is no restriction for issuance of Caste Certificate to a person belonging to Dhanka Community and the restriction which was imposed in the circular/letter dt. 13.07.2010 confining issuance of

such certificates to the incumbents belonging to Abu Road Taluka of District Sirohi, stands done away. However, he submits that issuance of Caste Certificate denotes social status of an individual, which is a serious matter and the competent authority while doing so is not expected to act in an absolute casual and cavalier manner. According to submission of Mr. Purohit, a Caste Certificate carries a great significance and on the strength of that certificate, the incumbent can claim many privileges and such privileges are to be extended to genuine scheduled tribe individuals and not to someone who is impersonating as a member of Scheduled Tribe. Mr. Purohit has submitted that the Hon''ble Supreme Court way back in the year 1994 in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, has taken cognizance of this fact and has observed that all endeavour should be made that spurious Caste Certificates may not be issued which may result in denial of legitimate right to the eligible individuals. The Hon''ble Apex Court, while taking note of these facts, has issued certain guidelines and made an endeavour to streamline the procedure for issuance of Social Status Certificates. The necessary guidelines were incorporated in Para 13 of the verdict, which reads as under:

13. The admission wrongly gained or appointment wrongly obtained on the basis of false Social Status Certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of Social Status Certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a Social Status Certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of Social Status Certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.
2. The parent guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent Gazetted Officer or non-Gazetted Officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the Caste Certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the Social Status Certificates. In the case the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The Vigilance Officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the Vigilance Officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the director concerned should issue show cause notice supplying a copy of the report of the Vigilance Officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through

counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the Social Status Certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the Social Status Certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Art. 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Art. 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation

simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

8. Relying on the verdict of the Hon''ble Apex Court, Mr. Purohit submitted that the competent authority while issuing Caste Certificate is bound to strictly adhere to the guidelines and procedure prescribed by the Hon''ble Apex Court so that spurious certificates may not be issued to an individual.

9. The learned Government Counsel appearing for the respondents have also supported the arguments advanced by the learned counsel for Union of India Mr. Sanjeet Purohit and submitted that no general directions can be issued to the competent authority for issuance of Caste Certificate dehors the guidelines prescribed by the Hon''ble Apex Court.

10. I have heard the learned counsel for the parties and perused the materials available on record.

11. The basic impediment for issuance of Caste Certificates to the petitioners was the Circular/letter dt. 13.07.2010 which is impugned in the instant writ petition. The said circular has imposed certain restrictions for issuance of Caste Certificate and as per that circular vis-a-vis Dhanka community, there was a restriction that Scheduled Tribe certificate can be issued only to an individual who belongs to Abu Road Taluka of District Sirohi in the State of Rajasthan. The contention of the learned counsel for the petitioners, that the circular runs contrary to the Presidential Order, has lost its significance for all practical purposes for the simple reason that Ministry of Tribal Affairs, Government of India, New Delhi has withdrawn the same by its communication dt. 14.02.2014 and now the restriction which was incorporated in the circular dt. 13.07.2010 has been done away. In view of withdrawal of the circular dt. 13.07.2010, now there remains no impediment in issuance of Caste Certificate to an individual belonging to Dhanka community in Rajasthan in accordance with law. In above view of the matter, the instant petition and all other cognate writ petitions are disposed of with the direction to the competent authorities to issue Caste Certificates to the petitioners indicating their social status strictly in accordance with law. The competent authority is expected to take cognizance of the letter dt. 14.02.2014 issued by the Ministry of Tribal Affairs, Government of India, New Delhi and the guidelines prescribed by the Hon''ble Apex Court in judgment dt. 02.09.1994 rendered in case of Kumari Madhuri Patil (supra). If the petitioners apply for the same, their applications may be processed in accordance with law for issuance of Caste Certificates.