
(1996) 12 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 6768 of 1994

Kumari Maina Nagar

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Citation : (1996) 12 AHC CK 0029

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : Umesh Chandra Mishra, for the Appellant;

Final Decision : Allowed

Judgement

Ravi S. Dhavan and V.P. Goel, JJ.—The first thing which needs to be set on the record is that despite an opportunity being given by the High Court to the Respondent arrayed, the District Magistrate, Etawah, no counter-affidavit has been filed to the writ petition. Thereafter, on 2 September, 1996, noticing that the petition has not been replied another opportunity was given to this Respondent that the record itself may be produced. Today, neither the petition has been replied nor the record has been produced before the High Court. The averments in the writ petition remain unanswered and uncontroverted despite notice issued on the petition more than 2 1/2 years ago.

2. The facts and the issues in this case are that the Petitioner Kumari Maina Nagar was working with the Indian Air Lines as a hostess. She received this employment as she was a reserved candidate. She was born to a scheduled caste mother and had applied and received a certificate from the office of the District Magistrate, Etawah. dated 28.10.1986, certifying that she, daughter of Kailash Nath Nagar, Civil Lines, Etawah, is a "PASF, a scheduled caste and that this caste is mentioned in the schedule of Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1956.

3. Eight years later the Petitioner learnt that this certificate had been cancelled

by the District Magistrate, Etawah. The cancellation was done by an order of 24 January, 1994, Annexure "3" to the writ petition addressed by the District Magistrate, Etawah to Sri S. R. Singh, Under Secretary, National Scheduled Caste and Scheduled Tribes Commission, 5th floor, Lok Nayak Bhawan, New Delhi. This meant that her job with Indian Air Lines would have been in jeopardy. The Petitioner's mother represented to the District Magistrate, Etawah with the requisite evidence from the village pradhan, the Petitioner's grandfather and members of the community. The mother represented to say that the order cancelling the certificate granted to her daughter, needs to be recalled and corrected. In effect, the Petitioner had represented against the cancellation so caused by the District Magistrate, Etawah. The affidavits of the Pradhan, the Petitioner's grandfather and the members of the community filed as evidence before the District Magistrate, Etawah, are dated 7 February, 1994, appended to a supplementary affidavit. The affidavits state that the Petitioner's mother is a scheduled caste and born to a scheduled caste parent. The averment in the writ petition is that nothing was done.

4. Today, the Petitioner submits that she had to resign her Job with the Indian Air lines but the cause on which she brought this writ petition continues to aggrieve her. Her simple contention is that she should have been given a reasonable opportunity of being heard as also an opportunity to receive a reasoned order so that she knows why the certificate granted to her earlier had been recalled.

5. In the writ petition and the supplementary affidavit, the Court is pained to notice that the Petitioner and her mother have had to take an affirmation on oath that the Petitioner's mother married a widower one Kailash Nath Nagar, who was Brahmin by caste, a wed-lock which was never accepted by the members of the family of the former. The relationship between Kailash Nath Nagar and the Petitioner's mother, saw the birth of two children both girls. The Petitioner's mother has also had to submit on an affidavit, acknowledging that she had lived with Kailash Natha Nagar, and formally a marriage had never been solemnised.

6. On record it is a dilemma for the Petitioner on what exactly is her identity? A Brahmin or a Scheduled Caste? The Petitioner feels that she has been left between the devil and the deep sea neither having the identity of her father nor the mother. The Court has no concern in reference to this case and the issue raised, that Kailash Nath Nagar and the Petitioner's mother may not have been married. The Court is only concerned that they had two children. The law lends itself to legitimacy in favour of a child and treats the child as a normal citizen. The exceptions are third party rights within the family affecting succession. This is not the case before the Court.

7. In the circumstances, the Court has now been left with no option but to presume that there was sufficient material before the District Magistrate, Etawah, to consider the case of the Petitioner objectively whether she was bom to a scheduled caste mother. But, the certificate granted to the Petitioner, dated 28th October, 1986, was cancelled with giving an opportunity of a hearing to the

Petitioner. The Petitioner was the first person to be affected on an order passed behind her back. The District Magistrate, Etawah has not answered the writ petition also. The Court has an ex parte version to doubt but it is not that an opportunity was not given to reply to the writ petition or place the record before the Court, which was never done.

8. In the circumstances, the order of the District Magistrate, in effect, cancelling the certificate granted to the Petitioner certifying that she is scheduled caste, by the communication dated 24.1.1994 vide letter No. 425/A.J.A./93-94, addressed to the Under Secretary, National Scheduled Caste Avam Scheduled Caste Jan Jati Ayog, 5th Floor, Lok Nayak Bhawan, New Delhi, Annexure 3 to the writ petition, is quashed. The certificate granted to her by the Additional District Magistrate. No. 59, dated 28th October, 1986, Annexure "1" to the writ petition shall hold, unless recalled for good and sufficient reasons after hearing the Petitioner.

9. The petition is allowed with costs.