

(2017) 12 MP CK 0006
In the Madhya Pradesh High Court
Case No : 1895 of 2016

Mamta Haseeja & Others

APPELLANT

Vs

Nitin Arora & Another

RESPONDENT

Date of Decision : 05-12-2017

Acts Referred:

Citation : (2017) 12 MP CK 0006

Hon'ble Judges : Vandana Kasrekar

Bench : Single Bench

Advocate : Anjali Shrivastava, N.S. Chouhan

Judgement

1. The petitioners have filed the present petition challenging the order dated 21.12.2015 passed by respondent No. 2 thereby cancelling the caste certificate of respondent No. 2.

2. The petitioner No. 1 is the father of petitioner No. 2. The petitioner No. 1 by caste is Halbi which is notified as Scheduled Tribe. The petitioner No. 2 Priya is a student of Xth Class in Saraswati Shishu Mandir, Garhakota, Tehsil Garhakota, District Sagar. Addhar Card was issued in her favour in which her caste Halbi was mentioned. The father of the petitioner No. 1 Umrao was having one brother Sunderlal. A sale deed was executed by Hira Singh and Surat Singh in favour of Sitaram, cousin of petitioner No. 1 on 13.01.1992 in which also, the caste of

Sitaram was shown as Halbi. Thus, the entire family of the petitioners are by caste Halbi. An application in the prescribed format was submitted by the petitioner No. 1 for issuance of a certificate of Scheduled Tribe in favour of petitioner No. 2. In the said application, all the particulars which are required to be submitted in the format prescribed were submitted by the petitioners. After receipt of the said application, the petitioners were required to submit all documents. The same were verified by the authority concerned and thereafter, the certificate was issued in favour of petitioner No. 2 certifying that she by caste is Halbi on 21.09.2015. However, suddenly after a period of three months, the petitioner No. 1 was called upon to submit the said certificate in the office of respondent No. 2, on the ground that by mistake, the same was issued and petitioners were also directed not to use the said certificate in any of the Organizations either of the State Government or of the private, otherwise, the disciplinary action would be taken against them. The respondents, thereafter, passed an order dated 21.12.2015 by which the caste certificate issued in favour of the petitioners were cancelled, on the ground that the same was obtained by mistake. Being aggrieved by that order, the petitioners have filed the present petition.

3. Learned counsel appearing on behalf of the petitioners argues that before passing the impugned order dated 21.12.2015, no notice or any opportunity of hearing was given to the petitioners. She further argues that respondent No. 2 has failed to consider that the petitioner No. 1 was also granted certificate in the year 1996 and,

therefore, petitioner No. 2 being his daughter ought to have been granted the said certificate. The certificate issued in favour of petitioner No. 1 has never been cancelled. In the school register in Dakhila Panji and the Aadhar Card, everywhere, the caste of petitioner No. 2 has been mentioned as Halbi. She further submits that the Hon"ble Supreme Court in the case of Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 has held that the verification or the cancellation of the caste certificate is to be done in accordance with the guidelines laid down by the Apex Court and in the manner prescribed. In the present case, the respondents have not followed the guidelines issued by the Supreme Court in the case of Kumari Madhuri Patil (supra). The certificate was issued in favour of petitioner No. 2, on the basis of the application submitted by the petitioners in prescribed format. All the necessary documents which were sought and are required to be attached were accompanied and, thereafter, the said certificate was issued, therefore, there is no reason for suppressing the facts. In light of the aforesaid, learned counsel for the petitioners submits that the order dated 21.12.2015 deserves to be and is hereby set aside.

4. The respondents have filed their reply and in the said reply, the respondents have stated that petitioner No. 2 being a minor has filed an application for grant of caste certificate through her father. Along with the said application, she had submitted only one document i.e. letter of declaration. The other documents were mandatory

required for issuing a caste certificate has not been submitted by the petitioner along with her application form. It has further been submitted that the petitioners by caste Kosti which comes under the category of OBC. However, by mistake caste certificate of Scheduled Tribe was issued in favour of the petitioners on 21.09.2015. When such mistake was came to the knowledge of respondent No. 2, he verified the application of the petitioner No. 2 and found that petitioner No. 2 has not submitted the all relevant documents as mentioned in the application and respondent No. 2 has also found that the petitioner does not belongs to caste Halbi but belongs to caste Kosti, which comes under the category of OBC, therefore, she is not entitled for caste certificate of the category of Scheduled Tribe. To rectify his mistake respondent No. 2 vide order dated 21.12.2015 has cancelled the caste certificate of petitioner No. 2. The respondents have further submitted that the petitioners have an alternate remedy of filing an appeal before the Collector/Upper Collector and thereafter, without availing the remedy of second appeal before the Divisional Commissioner and, thereafter, without availing the alternate remedy to file an application before the State Level High Power Scrutiny Committee, the petitioners have directly approached before this Court, therefore, the said writ petition deserves to be dismissed on the ground of availability of the alternate remedy.

5. I have heard learned counsel for the parties and perused the record. From perusal of the record, it reveals that the petitioner No. 1 is the father of petitioner No. 2

has submitted an application for issuance of caste certificate in favour of petitioner No. 2. Petitioner No. 1 belongs to caste Halbi which includes in the Scheduled Tribe. The application has been submitted in prescribed format along with the documents. Initially, respondent No. 2 has allowed the application submitted by the petitioners and granted a certificate in favour of the petitioner No. 2 on 21.09.2015. Thereafter, within a period of three months, respondent No. 2 had issued an order dated 21.12.2015, thereby, cancelling the caste certificate issued in favour of the petitioners. Admittedly, before passing the order dated 21.12.2015, no notice or any opportunity of hearing was given to the petitioners, therefore, the order dated 21.12.2015 is deserves to be set aside only on this short ground. So far as, availability of the alternate remedy is concerned, as the impugned order dated 21.12.2015 has been passed without given any opportunity of hearing, therefore, in light of the judgment passed by the Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others (1998) 8 SCC 1, the said writ petition is maintainable.

6. Thus, in view of the aforesaid, I allow this writ petition. The impugned order dated 21.12.2015 is hereby set aside. However, respondent No. 2 is at liberty to pass a fresh order after issuing show cause notice and giving opportunity of hearing to the petitioners, with no order as to costs.