

(2011) 05 GUJ CK 0074

In the Gujarat High Court

Case No : MISC. Civil Application for Review No. 1227 of 2011 in Letters Patent Appeal No. 334 of 2011 in Special Civil Application No. 2903 of 2010

Mavsing Pratapsing Pateliya

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 05 GUJ CK 0074

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : K.B. Pujara, for the Appellant; Monali Bhatt, Asstt. Government Pleader, for the Respondent

Judgement

G.B. Shah, J.—We have heard learned Counsel Mr. K.B. Pujara for the applicant and learned Assistant Government Pleader Ms. Monali Bhatt for the Respondents.

The applicant is the original Appellant and the Respondents are the original Respondents and they are referred to as such hereafter.

2. Being aggrieved and dissatisfied with judgment dated 11.3.2011 passed by this Court rendered in Letters Patent Appeal No. 334 of 2011, in Special Civil Application No. 2903 of 2010, the applicant has preferred this application for review and seeking relief to recall the said judgment and to hear and decide Letters Patent Appeal No. 334 of 2011 afresh.

3. Learned Counsel for the applicant has drawn our attention on the memo of Letters Patent Appeal No. 334 of 2011 and submitted that the applicant had raised specific grounds, which had not been dealt with while passing judgment dated 11.3.2011 in Letters Patent Appeal No. 334 of 2011 and hence, he prays for review of the judgment. The said specific grounds are also narrated in paragraphs Nos. 2 and 3 in this review application, which are as under:

(2) That the Petitioner had taken specific contentions in paragraph-2 of the

memo of Appeal raising specific grounds, inter alia with regard to non-supply of the copy of the report of the Caste Certificate issuing authority stating that the Caste Certificate of the Petitioner was bogus, as well as non-examination of any witness by the department in that regard and not giving of opportunity to cross examine such witness to the Petitioner; decision of the District Scrutiny Committee dtd. 4.11.2004 and other material collected and relied by the Collector behind the back of the Petitioner in his report dtd. 30.11.2004; non-consideration of the documents of the School Leaving Certificates dtd. 3.8.1996, 10.12.2003, 30.12.2004, Identity-Card, Registration Card of Employment Exchange, Extracts of Village Form No. 7x12 and village form No. 8-A, Voters' Lists at page-12 and 13 and page 15 to 20 of the writ petition wherein the Petitioner's and his family members' names are appearing with sub-caste as "Pateliya" and it is three times stated in the order dtd. 30.7.2009 that in the voters' lists the surname is shown as "Bariya" which shows complete non-application of mind on the part of the authority; all the documents and materials relied upon by the Respondent No. 2 in his order dtd. 30.7.2009 not having been provided to the Petitioner; non-examination of any witness in the enquiry so as to prove the allegation against the Petitioner and not proving but merely producing the documents is not the enquiry as contemplated by law but it is merely a farce; etc. have not been dealt with by the Hon'ble Court while passing the impugned judgment....

(3) The Hon'ble Court while passing the impugned judgment has failed to consider the law laid down in the following judgments, inter alia, to the effect that the Caste Scrutiny Committee is a quasi judicial body and not only documentary but oral evidence also can be adduced before it, that the principles of natural justice, equity, good conscience and fairness demand that the Caste Scrutiny Committee should have heard the Ld. Counsel before deciding the matter that the Caste Scrutiny Committee is required to consider all the documents including the school records, that the Caste Scrutiny Committee must be comprising of three officers, namely, (I) an Additional or Joint Secretary or any office higher in rank of the Director of the concerned department (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 of Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

(1) Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others,

(2) JT 2001 (10) SC 125 Vasant Pandurang Narwade @ Narvde v. Suhash

(3) Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others,

(4) Shantidevi Kamaleshkumar Yadav Vs. State of Maharashtra and Others,

(5) State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another,

4. The learned Counsel for the applicant has mainly drawn our attention to paragraphs 9 and 10 of order dated 7.4.2010 passed in Special Civil Application No. 2903 of 2010 and submitted that in both the paragraphs, nothing has been observed by the learned Single Judge regarding the fact that though sufficient opportunity was given to the Petitioner, but he did not remain present. Though as a matter of fact, the applicant/ Petitioner was present. But no materials relied upon by Respondent No. 2 had been supplied to the Petitioner nor the documents produced by the applicant/Petitioner had been taken into consideration by the authorities.

5. In light of the above-referred submissions made by the learned Counsel for the applicant, we have again gone through judgment dated 11.3.2011 passed by us in Letters Patent Appeal No. 334 of 2011 along with its record and proceedings of the Special Civil Application No. 2903 of 2010.

Paragraphs Nos. 9 and 10 of order dated 7.4.2010 passed by the learned Single Judge in Special Civil Application No. 2903 of 2010, have also been reproduced in judgment dated 11.3.2011 delivered by us in Letters Patent Appeal No. 334 of 2011. In para 10 of order dated 7.4.2010 passed in Special Civil Application No. 2903 of 2010, the learned Single Judge has observed that issuing authority itself had made it clear that no such caste certificate was issued and on this solitary ground, he was not inclined to interfere in order dated 30.7.2009 passed by the Commissioner, Tribal Development, Gandhinagar. It is important to note that in the said para 10, the learned Single Judge has placed reliance on the grounds taken into consideration by Respondent No. 2, i.e. Commissioner, Tribal Development, Gandhinagar. Said order dated 30.7.2009 is at page Nos. 23 to 27 of the record and proceedings of the Letters Patent Appeal No. 334 of 2011. On page No. 25 of said order dated 30.7.2009 passed by the Commissioner, Tribal Development, Gandhinagar, it had been specifically observed that Shri Pateliya Mavsinh Pratapsinh, i.e. present applicant, remained present before the Scrutiny Committee meeting held on 10.4.2008 and asked for three months' time to produce further evidence and the same was granted. But, Shri Pateliya Mavsinh Pratapsinh had not produced any further evidence. Though he remained present before the Scrutiny Committee meeting held on 16.1.2009, he did not produce any further evidence. He had given in writing that he would produce further evidence within 10 days and if he fails to do so, decision may be taken accordingly. On 8.6.2009, he remained present before the Scrutiny Committee and had produced Village Form No. 7x12 as well as Form No. 8A along with pedigree duly certified by Talati Sarpanch. But all these documents had already been produced earlier. From the above, one can easily come to a conclusion that in fact opportunities were given to the applicant by the Scrutiny Committee, but the applicant had not availed the same and there is no substance in the above-referred submissions made by the learned Counsel for the applicant.

6. In our view, to challenge the action of other side, the active presence of oneself is very much required. Thus, it appears that for production of further evidence also, enough opportunity had been given, but the applicant had produced the documents which he had produced earlier and now by raising the above-referred grounds, in our view, the applicant wants to start another inning to prolong the matter by submitting that there was violation of the provisions of the Constitution of India. In our view, the applicant is not entitled for the same. All care which was required to be taken had already been taken by us in para 7 to 11 of our order dated 11.3.2011 passed in Letters Patent Appeal No. 334 of 2011. It is true that in order dated 30.7.2009, referred above, it is written by the concerned official that in the voter list, surname of the applicant shown as "Bariya" instead of "Pateliya". As per the submission made by the learned Counsel for the applicant, the same is based on complete non-application of mind. Considering the entire order dated 30.7.2009, referred above and considering the same as a whole, in our view, it is a typographical error and it cannot be said that it is complete non-application of mind on the part of the authority.

7. It has also been submitted by the learned Counsel for the applicant that while passing the impugned judgment dated 11.3.2011, we have failed to consider the law laid down in the following judgments:

- (1) Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others,
- (2) JT 2001 (10) SC 125 Vasant Pandurang Narwade @ Narvde v. Suhash
- (3) Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others,
- (4) Shantidevi Kamaleshkumar Yadav Vs. State of Maharashtra and Others,
- (5) State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another,

During the course of submissions in Letters Patent Appeal No. 334 of 2011, learned Counsel Mr. Pujara has put reliance on the citation referred at serial No. 1 alone, which has also been referred in the memo of Letters Patent Appeal No. 334 of 2011 and rest of the case law has not been cited before us and therefore, in our view, the question of review on the said issue does not arise at all. So far as citation at serial No. 1 is concerned, we had dealt with the same while passing the order dated 11.3.2011 in Letters Patent Appeal No. 334 of 2011.

8. On the above discussion, we are of the considered opinion that there is no sufficient ground to review order dated 11.3.2011 passed in Letters Patent Appeal No. 334 of 2011 and we have not committed any mistake or error apparent on the face of the record justifying us to recall said judgment dated 11.3.2011 and to hear and decide Letters Patent Appeal No. 334 of 2011 afresh. Hence, this Misc. Civil Application fails and is accordingly rejected.