

(2010) 09 AHC CK 0366
In the Allahabad High Court

Mohd. Shueb

APPELLANT

Vs

State of U.P. and others.

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0366

Hon'ble Judges : F.I.Rebello, CJ and Pradeep Kant, J

Final Decision : Allowed

Judgement

Pradeep Kant, J.—This petition by Mohd. Shueb, challenges the refusal on the part of the District Magistrate to issue him caste certificate belonging to Other Backward Class. The order impugned only mentions as follows:

Reason for refusal : caste is wrong

This is a cyclostyled proforma on which "caste is wrong" is only typed and on that basis rejection order has been passed.

2. Before proceeding to deal with the issue in question, we would like to observe that issuance of caste certificate though may be by an administrative order but it has civil consequences, so far the person, who claims caste certificate is concerned and, therefore, such an order cannot be passed without application of mind of the concerned authority, who is to issue the caste certificate. The mechanism normally required would be that when such an application is moved, the concerned authority is to look into the evidence/material which is before him or which is collected by him, by making any enquiry himself or through any other agency of the government including revenue authority and thereafter if he finds that the certificate can be issued, of course, there would be no necessity of providing any opportunity to the applicant but in case he forms a tentative opinion that the caste certificate cannot be issued or in other words, the application can be rejected, it is his duty to apprise the applicant about the aforesaid fact and evidence and give him an opportunity to establish the he belongs to the caste for which he is claiming certificate. In not doing so, the

applicant though may be entitled for issuance of caste certificate but because of some mistaken report or inadmissible and incorrect evidence, which may be rebutted by the applicant, he could be refused such a caste certificate.

3. Needless to state that caste certificates are of much value these days, may be in the elections of Panchayats or Assembly or Parliament or admissions in colleges for studies or for seeking job. Such a certificate can neither be issued in a casual manner nor can be issued without there being valid reasons.

4. Present is the case where the petitioner claims that he belongs to OBC category, but the certificate has been refused after saying that the "caste is wrong".

5. Sri Mukund Tiwari, learned Additional Chief Standing Counsel has produced before us the record which shows that a report was submitted by the Naib Tehsildar, saying that the person does not belong to OBC category and, therefore, his application be rejected. This report was furnished on 12.9.2010. On 14.9.2010, the Tehsildar has rejected the application.

6. This proximity of the date of submission of report and passing of the order clearly establishes that the petitioner was not afforded any opportunity to meet the report which was submitted by Naib Tehsildar. Even otherwise, the record also shows that no such opportunity was afforded to the petitioner.

7. Before us, khatauni has also been placed to show that the caste recorded therein is shown as "Sheikh" and not "Sheikh Sarwari". Again for the same reason that no opportunity was afforded to the petitioner, this Court would not address itself upon the validity of the aforesaid document and the binding nature thereof upon the petitioner.

8. We, therefore, while setting aside the order passed by the Tehsildar, rejecting the application for issuance of caste certificate of OBC, further observe that in a case where on an application being moved by any person claiming caste certificate of a particular category, the issuing authority is satisfied that the caste certificate can be issued, he can issue the same without giving any further opportunity to the applicant, but in case the authority finds that it is a case where caste certificate, as claimed, cannot be issued or there is requirement of some clarification in the matter, he should necessarily issue notice to the applicant and give him an opportunity to meet the requirement or to rebut the evidence/report which has been furnished before him, and for doing this, reasonable time should be granted but without issuing any notice or giving any opportunity, caste certificate cannot be refused.

9. The writ petition is thus allowed. The matter is remitted to the Tehsildar for reconsidering the petitioner's application for issuance of caste certificate, after affording opportunity to him.