

(2013) 07 GUJ CK 0044
In the Gujarat High Court

Case No : Special Civil Application No. 54 of 2005

Parmar Rameshbhai Bhembhai

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 3 GLR 2542

Hon'ble Judges : R.P. Dholaria, J

Bench : Single Bench

Advocate : Mamta R. Vyas, for the Appellant; Vishal Patel, A.G.P. for Respondent Nos. 1 to 3 and H.S. Munshaw, for the Respondent

Judgement

R.P. Dholaria, J.—The petitioner has preferred present petition praying inter alia that:

(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the

order dated 10-11-2004 passed by the respondent No. 1-authority and the order dated 24-8-2004 passed by the respondent No. 3-authority

and further be pleased to restrain the respondent No. 5-School authority from terminating the services of the petitioner.

Precisely, on going through the records, it reveals that the petitioner Parmar Rameshbhai Bhembhai obtained caste certificate from the District

Social Welfare Officer, inter alia, certifying the caste and sub-caste of petitioner as Hindu Pateliya (Schedule Tribe).

2. On the strength of the said certificate the petitioner got admission in the P.T.C. After obtaining the degree of P.T.C., the petitioner got

employment and he is presently serving as teacher with respondent No. 5-School. It appears that on 2-6-2002 certain news items were published

in "Gujarat Samachar" daily to the effect that the petitioner is not belonging to Schedule Tribe and he has obtained a bogus caste certificate on the strength of which he has obtained the admission in the P.T.C. course.

3. By taking cognizance of the aforesaid news, the office of respondent No. 3 initiated proceedings against the petitioner. By order dated 24-8-

2004, respondent No. 3 cancelled the Caste Certificate No. 4337 dated 27-4-1995 issued in favour of the petitioner.

4. While going through the impugned order passed by the respondent No. 3 (which is at pages 66 to 68 of the petition), it appears that vide letter

dated 28-4-2004 the petitioner was directed to remain present on 21-5-2004 before the committee. On going through the impugned order, it

appears that respondent No. 3 has not carried out detailed inquiry and has not given reasonable opportunity to the petitioner to pursue his case.

On the contrary, surprisingly, respondent No. 3 has recorded the findings that as the petitioner failed to prove that he is belonging to the Schedule

Tribe, his aforesaid Caste Certificate No. 4337 dated 27-4-1995 is required to be cancelled. On the basis of the aforesaid reason, the caste

certificate of the petitioner was ordered to be cancelled and even his degree certificate of P.T.C. was ordered to be impounded, and consequently

his service was directed to be terminated.

5. Being aggrieved by the aforesaid order, the petitioner has preferred present petition.

6. Heard Ms. Mamta Vyas, learned Advocate for the petitioner, Mr. Vishal Patel, learned A.G.P. for respondent Nos. 1 and 3 and Mr. Rajesh

Chauhan, learned Advocate for Mr. Munshaw, learned Advocate for respondent No. 2.

7. Learned Counsel for the petitioner submitted that respondent No. 3 passed the impugned order in violation of principle of natural justice as well

as against the provisions of Evidence Act while shifting the onus upon the petitioner himself. Therefore, the matter may be remitted back to the

competent authority for deciding afresh after issuing a fresh notice as well as giving reasonable opportunity of hearing to the petitioner.

8. The principle of natural justice is the fundamental rule of the procedure for any administrative action. While dealing with any administrative

action, the administrator has to keep in mind the principle of natural justice. In

other words, before taking any action, the party affected must be given a notice to show-cause against the proposed action and seek his explanation. This procedure is sine qua non of the right of fair hearing. If any action is taken in violation of the aforesaid procedure by any administrator then such action renders itself void ab initio. In other words, an adjudicating authority must observe the principles of natural justice and must give a reasonable opportunity of being heard to the person against whom the action is sought to be taken. The aforesaid principle does not merely fix an empty formality of service of notice and hearing, but also contemplates that the reasons are also required to be recorded by the adjudicating authority in support of the decision taken. In present case, as already observed, it appears that the respondent No. 3 has not recorded the reasons for arriving at a decision. On the contrary, the authority has observed that the petitioner failed to prove that his certificate is genuine. The authority could have noticed that the certificate in question was issued relying upon the caste/sub-caste of the father of the petitioner mentioned in the school leaving certificate of father of the petitioner at Annexure ""A to this petition. In the said certificate the caste of the father of the petitioner is stated to be "Hindu Pateliya" which falls in the category of Schedule Tribes. Under the circumstances, the authority was required to inquire as to whether the petitioner belongs to that particular sub-caste and as to whether the sub-caste is included in the Schedule Tribes or not. That exercise was required to be carried out before arriving at a final decision. In present case, that is precisely not done so far. Therefore, without entering into the merits of the controversy involved in present petition, this Court deems it fit to quash and set aside the impugned order dated 24-8-2004 passed by respondent No. 3 and remit the matter back to the competent authority to decide it afresh in accordance with the settled principle of natural justice and in accordance with law.

9. Before parting with the matter, it appears appropriate to observe that in number of decisions this Court noticed that in number of cases the administrative decisions are taken without observing the principle of natural justice, fair hearing and without recording reasons for arriving at a particular decision and such decisions become vulnerable to challenge before this Court. In order to avoid the aforesaid eventualities the

administrative authorities are required to follow the principle of natural justice and the authority should pass reasoned order so that appropriate

decision on merits of the case can be taken by the higher forum whenever the same is challenged.

10. Admittedly, the respondent No. 3 has not issued any show-cause notice so that the petitioner can meet with the allegations and properly

explain regarding the contemplated action against him as well as it also reveals that the respondent No. 3 has not passed any reasoned order.

Precisely, in absence of any reasoned order this Court is also not in a position to render any decision on the merits of the case and having no

option, but to remand the matter back to the competent authority for fresh consideration on merits of the case.

11. The Counsel for the rival party agreed to the suggestion to remit the matter back to the competent authority for fresh hearing.

12. In the result, the order dated 24-8-2004 passed by respondent No. 3 is quashed and set aside with a direction to the competent authority to

issue a fresh show-cause notice to the petitioner and decide the matter afresh in accordance with law and after affording reasonable opportunity to

the petitioner. It is made clear that the subsequent orders, if any, passed in consequence of the order dated 24-8-2004 shall have no effect in view

of quashing of the order dated 24-8-2004. The petition stands disposed of accordingly. Rule made absolute accordingly.