

(2004) 10 AHC CK 0121
In the Allahabad High Court
Case No : Writ Petition No.4015 of 2004 (M/S)

Radhey Shyam Sharma

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)(G)(iiia)

Citation : (2004) 10 AHC CK 0121

Hon'ble Judges : A.N.Varma, J

Final Decision : Allowed

Judgement

A.N. Varma, J.—The petitioner through the instant writ petition under Article 226 of the Constitution of India has assailed the order dated 3.9.2004 passed by the District Magistrate, Sultanpur, a copy of which has been filed alongwith the writ petition as Annexure No.1 whereby in exercise of powers conferred under Section 95(1)(G)(iiia) he has been removed from the office of Pradhan, Gram Panchayat Rajapur, Vikas Khand Kudwar, District Sultanpur. The order of removal has been passed on the ground that the petitioner contested the election for the Office of Pradhan in 2000 on a false caste certificate showing himself to be belonging to the Backward Class Category, subcaste being "Giri". This certificate was said to be issued to him on 19.3.1996 by the Tahsildar Sadar, Sultanpur. A copy of the said certificate has been annexed alongwith the writ petition as Annexure No.6. Earlier when this fact was detected the caste certificate of the petitioner was cancelled and an FIR was directed to be lodged against him. Against the order cancelling his caste certificate the petitioner approached this Court to W.P. No.3978 (MB) of 2003. On 31.7.2003 a Division Bench of this Court passed the following order:

?Notice on behalf of opp. Parties has been accepted by the learned Chief Standing Counsel, who prays for and is granted four weeks time to file counter affidavit. List thereafter.

In the meantime in view of the fact that no opportunity was given to the

petitioner before passing the impugned order cancelling caste certificate issued to the petitioner in the year 1996, the operation of the impugned order dated 22.7.03 as contained in Annexure 01 to the writ petition shall remain stayed. It is, however, open to the opposite parties to pass appropriate orders afresh after affording opportunity to the petitioner.?

2. Pursuant to the aforesaid order, the petitioner was called upon to submit his reply and thereafter on 28.7.2004 he was also afforded an opportunity of personal hearing. He appeared and filed no documents in support of his case which could establish the genuineness of his caste certificate. Since his explanation was not found satisfactory, and on the basis of the report submitted by the Additional District Magistrate, who was authorized to conduct an enquiry, on the question of genuineness of the caste certificate procured by the petitioner an enquiry was got conducted by the Additional District Magistrate through the Naib Tahsildar. A report was submitted on 18.2.2004 and it was found that the petitioner did not belong to the Backward Class "Giri". While passing the impugned order this report was also taken into account. Earlier to the said enquiry the matter was got investigated by the Tahsildar Sadar, Sultanpur who on 27.9.2003 submitted a report which revealed that no caste certificate bearing serial No.12880 dated 19.3.1996 was issued to the petitioner from the office of the Tahsildar.

3. Thus, as would appear the report of the Additional District Magistrate, Sultanpur, as well as Tahsildar Sadar, Sultanpur, clearly revealed that neither any certificate regarding the petitioner being Backward Class was issued by the opposite parties nor did he, in fact, belong to the said caste. In view of such circumstances the order impugned in the writ petition followed.

4. I have heard the learned Counsel for the petitioner Shri A.K. Tripathi as well as the learned Standing Counsel at some length. Shri Tripathi vehemently argued that the impugned order suffers from manifest illegality inasmuch as no reason has been assigned as to why the reply submitted by him was not found satisfactory. He further submitted that the material on record clearly revealed that he belongs to the Backward Class category and as such was issued with a caste certificate upon which he contested the election for the office of Pradhan and was elected. According to him he cannot be removed from an elected office. His submission further is that no opportunity was afforded to him in the process of enquiry conducted by the Additional District Magistrate and the Naib Tahsildar, therefore, the same could not have been relied upon while coming to the conclusion that the caste certificate was false and, therefore, he deserves to be removed from the Office of Pradhan.

5. In support of his arguments he placed reliance upon 1999 (17) LCD page 586, Smt. Sandhya Gupta v. District Magistrate Auraiya and others, 2002 Selected Allahabad Cases 227, Chandrajeet Rajbhar v. District Magistrate, Pilibhit and others and 1999 (1) SCC page 45, Vasant Deeh Bhavsar v. Bar Council of India and others.

6. Section 95(1)(G) (iiia) reads as follows:

?Section 95(1)(G)(Remove a Pradhan, Uppradhan or member of a Gram Panchayat (* * *) or a Joint Committee or Bhumi Prabandhak Samiti, or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he

(i)???????

(ii)???????

(iii)???????

(iiia) has taken the benefit of reservation under subsection (2) of Section 11A or subsection (5) of Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of Scheduled Castes, the Scheduled Tribes or the backward classes, as the case may be.)

7. In the case at hand, enquiry with regard to the genuineness of the caste certificate was conducted by the Additional District Magistrate and the Tahsildar who were better equipped with the material to examine the question regarding validity or otherwise of the caste certificate. Prior to passing of the impugned order, due opportunity was given to the petitioner to put forth his defence but he did not file any document in support of his case. The petitioner contested the election of the Office of Pradhan on the basis of a caste certificate which was later on found to be false as he did not belong to the Backward Class category. He cannot claim a right to the said office as he had usurped the same meant for reserved category candidate by playing fraud and producing false certificate.

8. The decisions referred to and relied upon by the petitioner in support of his case, in the considered opinion of this Court, have no application to the facts and circumstances of the case at hand.

9. Fraud and collusion vitiate even most solemn proceedings in any civilized system of Jurisprudence. Hon''ble Supreme Court while commenting upon fraud, in 1994 (1) SCC page 1, S.P. Chengalvaraya Naidu v. Jagannath. In paras 5 and 6 held as follows:

?The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, taxevaders, bankloandodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

* * * *

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

10. In (2003) 8 SCC 311, *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education*, the Hon'ble Supreme Court held that fraud vitiates all transactions. In para 14 of the said report following observation was made:

¶14. In *Lazarus Estates Ltd. v. Beasley* the Court of Appeal stated the law thus (All ER p.345 Cd):

¶I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.

11. In 2003 (8) SCC page 319, *Ram Chandra Singh v. Savitri Devi and others*, the Apex Court on fraudulent conduct has commented as follows:

¶16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conducted of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is fraud in law if a party makes representations which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad.

12. Further in para 21 of the same report (*Ram Chandra Singh*) the Hon'ble Court observes as follows:

¶21. In *Bigelow, on Fraudulent Conveyances*, at p.1, it is stated:

¶If on the facts the average man would have intended wrong, that is enough.

It was further opined:

¶This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent

confusion in regard to "moral" fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as "fraud upon the law". What is fraud upon the law? Fraud can be committed only against a being capable of rights, and "fraud upon the law" darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question.?

13. In (1994) 6 SCC 241, *Kumari Madhuri Patil v. Addl. Commissioner*, Apex Court in para 13 observed as follows:

?13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion to the inquiries by the Scrutiny Committee.?

14. In (1984) 1 SCC 43, *K.L. Tripathi v. State Bank of India and others*, the Apex Court in para 33 held as follows:

?33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.?

15. Thus as would appear from the discussion made hereinabove, fraud and fraudulent act vitiates every solemn proceedings and all transactions. There being categorical finding based on material on record that the petitioner obtained caste certificate by playing fraud, is not entitled for any relief. The petitioner, despite opportunity having been afforded did not rebut the veracity of evidence said to have been gathered behind his back, cannot be expected to allege violation of the principles of natural justice in subsequent proceedings nor can he complain about the order being nonspeaking when in fact no prejudice is caused.

16. Even if no reasons have been assigned as to why the explanation submitted by the petitioner was not found satisfactory, still the conclusion arrived at by the authorities that the caste certificate was obtained by playing fraud stands fortified and is not vitiated. The petitioner cannot be allowed to hold an office which he, in fact, usurped by playing fraud.

17. In view of what has been said hereinabove the impugned order does not call for any interference by this Court in exercise of powers conferred under Article 226 of the Constitution of India.

18. The petition being devoid of merits is accordingly dismissed.

(Petition dismissed)