
(2012) 05 GUJ CK 0025
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1680 in Sca No. 2902 of 2010

Rameshbhai Mathurbhai Pateliya

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Citation : AIR 2012 Guj 106

Hon'ble Judges : J.B. Pardiwala, J;A.L. Dave, J

Bench : Division Bench

Advocate : V.M. Dhotre, for the Appellant;

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This appeal is at the instance of the original petitioner and is directed against the judgment and order passed by the learned Single Judge dated 07.04.2010 in Special Civil Application No. 2902 of 2010 and thereby His Lordship has rejected the writ petition and confirmed the order dated 30th July, 2009 passed by respondent No. 2 holding and declaring that the appellant - original petitioner does not belong to Scheduled Tribe community and the caste certificate issued by the District Social Welfare Officer, District Panchayat, Godhra was not a genuine certificate. Facts giving rise to this appeal may be summarised thus :

1.1 The petitioner is serving as a constable in Central Industrial Security Force ("CISF" for short). He was appointed in the year 1998 and is presently posted at Assam. It appears that in response to a letter dated 18.01.2006 addressed by Assistant Inspector General, CISF, HQ Delhi with regard to the caste certificate of the petitioner, the Collector, Dahod initiated an inquiry in this regard. The report of the Collector was placed before the State Level Scrutiny Committee constituted by the State Government and after giving an opportunity of hearing to the petitioner, passed an order cancelling the caste certificate, as there was no evidence worth the name adduced by the petitioner indicating that he was a

"Hindu - Pateliya". Being aggrieved by the order passed by the Committee cancelling the caste certificate, the petitioner preferred writ petition being Special Civil Application No. 2902 of 2010.

1.2 Learned Single Judge, upon consideration of the materials on record, rejected the writ petition by recording the following findings :

11. So far as Special Civil Application No. 2902 of 2010 is concerned, it is very clear that at the time of issuance of the certificate in favour of the petitioner, the District Social Welfare Officer has not taken into consideration any aspect and the certificate was issued considering the petitioner as Hindu Pateliya. However, no inquiry was made whatsoever by him as to whether petitioner really belongs to the Hindu Pateliya. Pursuant to the communication received from the Assistant Inspector General, CISF, HQ Delhi the Collector has sent the intimation to the petitioner. The father of the petitioner was present and his statement was recorded. The documents which are there on record were already taken into consideration. Thereafter, detailed inquiry was conducted by the Scrutiny Committee. Three notices were issued by the Scrutiny Committee. However, the petitioner did not remain present. All these documents were there on record and were duly discussed in the presence of the father of the petitioner as the petitioner did not remain present. The Scrutiny Committee has taken into consideration that no inquiry was made by the District Social Welfare Officer at the time of issuance of the certificate and no evidence was produced in support of the said certificate that the petitioner belonged to the Hindu Pateliya.

12. On the contrary, it was made clear that the petitioner belonged to Koli community. The petitioner's father admitted that he did not belong to Hindu Pateliya. No one in his family except the petitioner, possesses such certificate. After considering the material on record, the Scrutiny Committee and the Commissioner took the decision that petitioner is not Hindu Pateliya. The petitioner did not remain present and hence, it is not permissible to raise the dispute at this stage that no materials were supplied to the petitioner. Even otherwise, there is no document which was collected behind the back of the petitioner and which was relied on either by the Scrutiny Committee or by the Commissioner. Hence, the decision relied upon by Mr. Dhotre does not render any assistance to the petitioner. Enough opportunities were given to the petitioner. However, no such opportunity was availed of by the petitioner. It appears that the petitioner has deputed his father to represent his case and accordingly, statement of the father of the petitioner was recorded and the evidence was produced. After considering all these documents and evidence which are duly put to the notice of the petitioner's father as the petitioner never appeared, the impugned decision was taken.

2. Being aggrieved by the judgment and order passed by the learned Single Judge, the appellant - original writ petitioner has come up by way of this appeal.

3. Mr. V.M. Dhotre, learned advocate for the appellant, submitted that the

learned Single Judge has failed to appreciate that the caste certificate in question was issued way back in the year 1992 by Social Welfare Officer, District Panchayat, Godhra, after proper verification and the same could not have been taken up for review in the year 2006 i.e. after a period of 14 years. Mr. Dhotre, learned advocate, further submitted that thumping material was produced before the authority to show that the appellant belongs to the caste "Hindu Pateliya". However, the material has not been taken into consideration in its true perspective. He, therefore, urged that the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

4. Having heard Learned Counsel for the appellant - original petitioner and having perused the material on record, we find that learned Single Judge has recorded the following findings of fact :

(i) At the time when the caste certificate came to be issued in the year 1992, there was no inquiry worth the name at the end of District Social Welfare Officer as to whether the petitioner is a "Hindu - Pateliya".

(ii) The father of the petitioner remained present before the Scrutiny Committee and his statement was recorded. Thereafter, a detailed inquiry was conducted by the Scrutiny Committee. In spite of three notices issued by the Scrutiny Committee, the petitioner failed to remain present before the Committee.

(iii) The documents, which were on record, were discussed in the presence of the father of the petitioner, as petitioner failed to remain present.

(iv) Petitioner belongs to "Koli" community, as there is a clear admission on the part of the father that they do not belong to "Hindu -Pateliya".

(v) No one in the family of the petitioner possesses such certificate certifying that they belong to "Hindu - Pateliya".

5. In the aforesaid view of the matter, we find that learned Single Judge has taken into consideration all the relevant aspects of the matter including the report of the Scrutiny Committee constituted by the State Government in this regard.

6. The Hon"ble Supreme Court of India in case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, has observed at paragraph 15 as under :

15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reserve the findings. The court has to see whether the Committee considered all the relevant material

placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

7. The same view has been reiterated by the Hon''ble Supreme Court of India in case of Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, .

8. Applying the above tests to the facts of the present case, we are satisfied that the Committee took into consideration all the relevant material placed before it and learned Single Judge also took into consideration the reasoning assigned by the Committee in this regard. Therefore, it is not permissible for us to accept the contention of learned advocate Mr. Dhotre that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document. It is also not possible to accept the contention of learned advocate Mr. Dhotre that learned Single Judge, without appreciating the probative value of the documents placed before it, dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the Committee.

9. On the facts of this case, we are of the view that no error much less an error of law can be said to have been committed by the learned Single Judge so as to warrant our interference in this appeal. The appeal, therefore, fails and is, accordingly, dismissed. However, there shall be no order as to costs.