
(2019) 09 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 465 Of 2019

Ruby Khatoon

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

Citation : (2019) 09 UK CK 0031

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : P.C. Petshali, N.S. Pundir, S.R. Joshi, Ashish Joshi

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court is a civil servant working as a Marketing Inspector in Food & Supply Department of Uttarakhand. The petitioner claims that she belongs to OBC community being a member of "Momin Ansaar" caste. It appears that a complaint was made against the petitioner by some person that the petitioner has fraudulently obtained caste certificate from the State of Uttarakhand. Consequently, the matter was referred before the District Scrutiny Committee. Aggrieved, the petitioner had earlier filed a writ petition being Writ Petition No. 2991 of 2016 (M/S) challenging the proceedings of the Scrutiny Committee. This Court vide order dated 12.03.2018 disposed of the writ petition with the following observations:-

"7. What has been said by the State in its counter affidavit is again being reiterated at the hands of the private respondent that there were some manipulations. However, neither the State nor the private respondent addressed the main issues which are as follows:-

(a) Whether the petitioner belongs to 'Momin Ansaar' or not?

(b) Whether she is actually residing in the State of Uttarakhand and on the basis

of the facts that she was born in Uttarakhand and had completed her schooling from the State of Uttarakhand she was liable to be considered for the permanent resident or not?

8. What is being harped upon by the respondents is that in the revenue records there has been some kind of "manipulations". It is not the case of the respondents that these manipulations have been made by the petitioner. All that is being said is that these manipulations are for the benefit of the petitioner.

9. This Court is satisfied that the petitioner is a member of OBC community known as 'Momin Ansaar', and she would also be considered as a permanent resident of Uttarakhand inasmuch as she was born in the State of Uttarakhand and had done her entire schooling from the State of Uttarakhand itself. Moreover, this is nobody's case that the petitioner has also obtained a permanent resident certificate from other States as well. This being the fact, the denial of either the permanent resident certificate or the caste certificate is not proper.

10. However, one fact remains which has come in the first writ petition being WPMS No.2991 of 2016 that there are certain manipulations in the records of the revenue authorities, which have benefited the petitioner. What was the need of such manipulations is not being stated. However, the State would always be at liberty to make necessary enquiry in this regard and take appropriate action under the law.

11. This Court has been informed that first information report has already been registered and the charge sheet has already been filed in the matter. On this, nothing can be said by this Court. Let the law take its own course.

12. Let the enquiry be completed in the matter within a period of six months from the date of production of a certified copy of this order. However, till then provisional caste certificate shall remain in force, and its ultimate fate shall depend upon the final enquiry.

13. With the above observations, the writ petitions stand disposed."

2. It is an admitted fact that "Momin Ansaar" is notified as OBC in the State of Uttar Pradesh as well as in the State of Uttarakhand. There is also no dispute that the petitioner belongs to this community i.e. "Momin Ansaar". The only question is that whether the petitioner belongs to the State of Uttarakhand or State of Uttar Pradesh and can she claim benefit of OBC in the State of Uttarakhand.

3. It is also an admitted fact that the petitioner has not obtained any OBC certificate from the authorities of Uttar Pradesh. The case of the petitioner is that the petitioner was born on 02.05.1984 at Jaspur, District Udham Singh Nagar and the entire schooling of the petitioner was from Jaspur and Kashipur, which are in District Udham Singh Nagar (which is now a part of the State of Uttarakhand).

4. However at the time of adjudication of the earlier writ petition i.e. Writ Petition (M/S) No. 2991 of 2016, it had come up before this Court that in the revenue record some kind of manipulation was done and therefore for abundant precaution, writ petition was disposed of with the following observations :

"10. However, one fact remains which has come in the first writ petition being WPMS No.2991 of 2016 that there are certain manipulations in the records of the revenue authorities, which have benefited the petitioner. What was the need of such manipulations is not being stated. However, the State would always be at liberty to make necessary enquiry in this regard and take appropriate action under the law.

11. This Court has been informed that first information report has already been registered and the charge sheet has already been filed in the matter. On this, nothing can be said by this Court. Let the law take its own course.

12. Let the enquiry be completed in the matter within a period of six months from the date of production of a certified copy of this order. However, till then provisional caste certificate shall remain in force, and its ultimate fate shall depend upon the final enquiry.

13. With the above observations, the writ petitions stand disposed."

5. The scrutiny committee thereafter continued with the matter and came to the conclusion that the petitioner is not a member of "Momin Ansaar" community, which is notified as OBC. In view of this Court, such a finding could not have been given by the scrutiny committee unless there is a manipulation in the revenue record done by the petitioner. The finding that the petitioner belongs to "Momin Ansaar" has already been given by this Court in its earlier order dated 12.03.2018 passed in Writ Petition (M/S) No. 2991 of 2016. There is, however, no such finding in the impugned order dated 22.06.2018 that any manipulation, etc. was done by the petitioner.

6. The fact remains that the petitioner was born on 02.05.1984 at Jaspur, District Udham Singh Nagar, which is now a part of the new State of Uttarakhand. On this there is no dispute. Yet the scrutiny committee is harping on the issue that the petitioner has not been able to show that she is a permanent resident of Uttarakhand, which is wholly misconceived. Moreover, the finding of the Scrutiny Committee that the petitioner is not a member of "Momin Ansaar" community is contrary to the findings of this Court.

7. Permanent resident in any case has a limited purpose. There is also no malafide or malice on the part of the petitioner inasmuch as it is not the case of the respondent authorities that the petitioner has taken similar certificate from the State of Uttar Pradesh or for seeking benefits therein. There is only one permanent resident certificate and only one OBC certificate granted to the petitioner by the State of Uttarakhand.

8. In view of the above, writ petition is allowed. Order dated 22.06.2018 is

hereby quashed.

9. It is, however, made clear that in case there is any criminal complaint against the petitioner, this order shall not affect the proceedings therein.