

(2016) 11 AHC CK 0046

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 56384 of 2014.

Shambhu Chaudhary - Petitioner @HASH State of U.P. and 3 Others

Date of Decision : 17-11-2016

Acts Referred:

Citation : (2017) 2 ADJ 411 : (2016) 11 ADJ 217 : (2017) 1 AllWC 523 : (2017) 1 ESC 522

Hon'ble Judges : Arun Tandon and Sangeeta Chandra, JJ.

Bench : Division Bench

Advocate : Bharat Singh Pal, Advocate, for the Petitioner; Vineet Kumar Singh, C.S.C, for the Respondents

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by one Shambhu Chaudhary challenging the Government Order dated 27.01.2011 and the order dated 28.02.2011 (Annexures 5 & 8 to the present writ petition) with a further prayer to quash the entire proceedings which are pending before the District Magistrate, Kushi Nagar and to issue a computerized caste certificate to the petitioner's family in place of old manual caste certificates.

2. Facts in short relevant for deciding the controversy are as follows :-

Petitioner claims to be Kharwar by caste. By means of a letter dated 23.04.2014 issued by respondent no. 4, information has been given to the persons concerned that a meeting the District Level Caste Scrutiny Committee has been called on 28.04.2014 regarding verification of caste certificates of seven persons who may remain present in the aforesaid meeting.

It is admitted to the petitioner that his caste certificate was not under scrutiny and at least no notice in that regard had been issued to him. Petitioner claims to be an M.L.A. elected against a seat reserved for Scheduled Caste on the basis of the caste certificate which was issued to him showing that he was Kharwar by caste which was a Scheduled Caste.

We need not enter into the issue of caste certificate which was issued in favour of the petitioner inasmuch as we have been informed that his election was set aside by the High Court in Election Petition No. 02 of 2007 vide judgment and order dated 02.03.2009 reported in 2009 (3) ADJ, 5 on the ground that he does not belong to Scheduled Caste. The matter was taken to the Apex Court by means of Civil Appeal No. 1761-1762 of 2009 which has been allowed and the matter with regard to the caste of the petitioner was directed to be re-examined. The election petition is stated to have become infructuous by efflux of time.

3. The petitioner however challenges the very Government Order where-under the District Level Caste Scrutiny Committee as well as Regional Level Committee have been constituted for examining the issued in the matter of caste certificate issued by the subordinate authorities to the District Magistrate.

4. This Government Order and the pending proceedings in the matter of verification of caste certificate is being questioned on the ground that in the case of *Km. Madhuri Patil & Another v. Addl. Commissioner, Tribal Development & Others* reported in (1994) 6 SCC, 241 in paragraph 13 a direction has been issued by the Apex Court requiring the State to lay down the procedure for issuance of social status certificate, their scrutiny and thereafter their approval. Thereafter in paragraph 14, a direction has been issued to the effect that so long as the legislature of the State does not do the needful the procedure prescribed in the judgement must be followed as the said procedure was fair and just. Every State must give effect to the same. It is then stated that the said directions of the Apex Court were subject matter of consideration before a 3 Judges bench of the Apex Court in the case of *Daya Ram v. Sudhir Batham & Others* reported in (2012) 1 SCC, 333. In the said judgment the Apex Court in paragraph 35 & 36 has explained that the scheme formulated under the judgment in the case of *Madhuri Patil* (Supra) would continue till the legislature concerned makes an appropriate legislation with regard to the verification of claims for caste status as Scheduled Caste/Scheduled Tribe and issuance of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.

5. It is stated that the Apex Court has clarified that scheme and directions issued therein have been functioning satisfactorily for last one and a half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme.

6. Based on the aforesaid paragraphs of the judgment of the Apex Court it is stated that the State of U.P. could not have issued a Government Order dated 27.01.2011 as the scheme framed in the case of *Madhuri Patil* (Supra) could be modified by an Act of legislation only. Since passing of the Government Order is not an Act of legislature, the procedure prescribed for scrutiny of the caste certificate by the District Level Committee and thereafter appeal before the Regional Level Committee is in teeth of the judgment of the Apex Court, therefore, unsustainable.

7. We have heard learned counsel for the parties and have gone through the records of the present writ petition.

For appreciating the controversy raised by means of the present writ petition we deem it fit and proper to reproduce relevant part of paragraph nos. 13 & 14 of the judgment of the Apex Court in the case of Madhuri Patil (Supra) which are as below :-

"13.For the purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following :-

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal Level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which the originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate

together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the Committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/

guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution of India.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

"14. Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons."

8. We may also take note of the observations which have been made by the Apex Court in paragraph nos. 35 & 36 of the judgment in the case of Daya Ram v. Sudhir Batham & Others (Supra) which has been so heavily relied upon by the counsel for petitioner. The same are quoted herein below :-

"35. The Scrutiny Committee is not an adjudicating authority like a court or tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities,

the orders of the Scrutiny Committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this Court wanted to eradicate. As this Court found that a large number of seats or posts reserved for the Scheduled Castes and Scheduled Tribes were being taken away by bogus candidates claiming to belong to Scheduled Castes and Scheduled Tribes, this Court directed the constitution of such Scrutiny Committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil will only continue till the legislature concerned makes an appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.

36. Having regard to the scheme for verification formulated by this Court in Madhuri Patil the Scrutiny Committee carry out verification of caste certificates issued without prior enquiry, as for example, the caste certificates issued by Tehsildars or other officers of the departments of Revenue/Social Welfare/Tribunal Welfare, without any enquiry or on the basis of self-affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Madhuri Patil provides for verification only to avoid false and bogus claims. The said scheme and the directions therein have been satisfactorily functioning for the last one-and-a-half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme. We see no reason why the procedure laid down in Madhuri Patil should not continue in the absence of any legislation governing the matter."

9. In our opinion the observations made by the Apex Court in the matter of framing of legislation by the State so as to give effect to the scheme in the case of Madhuri Patil (Supra) will not in any way take away the right of the State Government to come out with a Government Order constituting the District Level Committee and the Regional Level Committee to decide complaints in the matter of issuance and non-issuance of caste certificates by the competent authority.

10. Counsel for the petitioner has not been able to point out any provision of the Government Order which could be said to be contrary to the scheme provided in the case of Madhuri Patil (Supra).

11. As a matter of fact, in order to avoid disputed issues of fact being examined in writ petitions before the Hon"ble High Court at the first instance, the State has created a forum of appeal where the parties can agitate against cancellation/grant of certificate by the competent authority.

12. After the matter is examined by the District Level Committee by way of first appeal another right of appeal before the Regional Level Committee has been provided. In our opinion the challenge made to the Government Order has no substance. It is settled law that so long as the law is not framed by the legislature, the State Government can always provide what is required by the executive orders. Even otherwise we see no cause for the petitioner to file this writ petition as the notice is not addressed to him.

13. For all the aforesaid reasons, the present writ petition is dismissed.

14. Interim order, if any, stands discharged.