

(2013) 11 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 68576 of 2010

Smt. Gyanmati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 10 ADJ 368 : (2013) 101 ALR 777 : (2014) 1 AWC 663 :
(2014) 1 ESC 64 : (2014) 1 UPLBEC 518

Hon'ble Judges : Uma Nath Singh, J; Ran Vijai Singh, J

Bench : Division Bench

Advocate : Bheem Singh and Ashok Khare, for the Appellant; Munna Pandey, Rakesh Pandey and S.C. Pandey, for the Respondent

Judgement

1. We have heard learned counsel for parties and perused the pleadings of writ petition; averments of affidavits and other connected documents. The petitioner has assailed the order dated 17.11.2010, passed by Sub Divisional Magistrate, Dhanghata, district Sant Kabir Nagar, whereby the caste certificate dated 31.5.2000 issued by Tehsildar, Dhanghata, has been cancelled allegedly without giving opportunity to show-cause. It is submitted by learned counsel for the petitioner that in terms of Government Order dated 5.1.1996, a caste certificate has to be issued by the competent authority and the power of verification has been given to the Scrutiny Committee. Para-3 of the Government order is reproduced as:

2. Learned counsel during the course of arguments also referred to a latest Government Order dated 28.2.2011, whereby now the District Level Committee headed by the District Collector has been given power to issue the caste certificate after proper verification in terms of the judgment of Hon'ble the Apex Court in the matter of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . As per the judgment the certificate issued by the competent authority can be cancelled on the ground as permissible under law by the State Level/District Level Scrutiny Committee as

the case may be. Learned counsel also submitted that the impugned cancellation order was issued on a gazetted holiday, and thus, there was a non application of mind.

3. On the other hand, learned State Counsel, while referring to averments made in counter-affidavit, submitted that since the certificate itself was illegal, for, it is a forged document, it was not felt necessary to await the response of the petitioner. However, a show-cause notice was issued, which the petitioner alleged to have not been served.

4. Shri Rakesh Pandey, learned counsel, appearing for the complainant contends that from the format of the certificate it is obvious that the document is a forged one. At the bottom of format there is a reference to website, which was launched only in 2005 and that format was prescribed and applied only thereafter. It is also a submission of Shri Pandey that the petitioner is occupying the statutory post of Chairman, Zila Panchayat on the strength of the forged caste certificate, and thus, the impugned order does not require any interference.

5. On due consideration of rival submissions, the questions that we are required to consider are namely;

(i) whether the petitioner was entitled to be given opportunity to show-cause in the facts and circumstances of the case and the show-cause notice, as claimed by the State, was served upon her?

(ii) whether the conduct of Tehsildar and/or other officials who were instrumental in issuance of the certificate also need to be noticed?

(iii) and as to whether the matter is to be remitted to the District Level Scrutiny Committee in terms of the Government Order of 2011, for inquiry into the genuineness of the certificate after giving opportunity to the petitioner?

6. From the pleadings of writ petition and the averments of counter-affidavits, it is noticeable that the show-cause notice claimed to be issued was not served upon the petitioner, and therefore, she was not afforded any opportunity to submit a response. We also find that the petitioner is a democratically elected representative and holding a responsible statutory position. Thus, as the result of cancellation of the caste certificate in a manner, as alleged in the petition, a serious prejudice has been caused to her. Regarding the conduct of Tehsildar and other officials working in his office, for commission and/or omission on their part, the petitioner cannot be made to suffer. The petitioner herself was not in the custody of office register, wherein, as alleged, a fake entry was made and the caste certificate was issued. It is also not revealed as to in what way, she influenced the authority and facilitated issuance of the certificate. Moreover, there is no authentic document on record to show that she is not a "Dushand" a Scheduled Caste. It is also not indicated that she is in fact a "Dhandi" by caste and also in what category this caste is mentioned as per the caste based census. No evidence, whatsoever, on the basis of anthropological and ethnological inquiry

about the social status of parents of petitioner and/or that of her husband has been presented on affidavit by the State in support of its stand.

7. Thus, we find considerable force in the submissions of learned counsel for petitioner. The balance of convenience is also in favour of the petitioner. Being an elected representative of people and holding the position of Chairman, Zila Panchayat, the minimum that was required was to grant the opportunity to show-cause. Thus, the impugned order dated 17.11.2010, passed by the Sub-Divisional Magistrate, Dhanghata, is not sustainable in law. Hence, it is hereby quashed. However, our order would not create a bar, for the complainant to submit a fresh complaint before the appropriate authority as permissible under law. The Writ Petition is allowed in the premises set out herein above.