
(2010) 12 UK CK 0125

In the Uttarakhand High Court

Case No : Writ Petition No. 2151 of 2008 (M/S)

Smt. Minta Chauhan

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Constitution of India, 1950 — Article 341, 342

Citation : (2010) 12 UK CK 0125

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this petition the Petitioner has sought the following relief-

(i) to issue a writ, order or direction in the nature of certiorari calling for record and quashing the order dated 3-12-2008 passed by the Respondent No. 3 (contained in Annexure No. 1 to the writ petition).

(ii) to issue a writ, order or direction in the nature of mandamus directing the Respondents to continue the Petitioner's already granted caste certificate issued in the year 1996 of Other Backward Class (O.B.C.) to the Petitioner as was initially issued to her by the Respondent No. 3 on 31.1.1996, which continued thereafter regularly.

2. According to the Petitioner she is originally a resident of Village Birlanagar, Tehsil Gwalior, District Gwalior (M.P.) and from parental side she belongs to Rawat (Meena) caste, which is an O.B.C. Caste in the State of Madhya Pradesh. Her father Sri Vikaram Singh Rawat has been residing in the said Village for more than about 50 years. The Petitioner was born in the said village and all his upbringing and education took place there and her marriage was also solemnized in the said village. Since Rawat (Meena) caste was recognized as O.B.C. in the State of M.P., therefore, her entire family has been availing the benefits of O.B.C.

there. The Petitioner has filed her educational certificates collectively as Annexure No. 2. The Petitioner got married in the year 1986 with Sri Digambar Singh Chauhan resident of Village Kota, Patti Ghurdaursyun, Tehsil Pauri, District Pauri Garhwal. According to the Petitioner her husband Sri Digambar Singh Chauhan also belongs to O.B.C. Caste in the State of Uttarakhand, therefore, even after marriage the status of the Petitioner did not get changed. In the year 2001 the village-wise census was conducted at the behest of the Government of India, and in Petitioner's village Kota Block Pabou, 241 residents are shown as belonging to O.B.C. Thereafter vide order dated 12-5-2005 rapid survey was ordered to be conducted by the District Magistrate Pauri under the Government Order No. 228-II/XXII/5/86 (09) 2004 T.C.-1, dated 5.5.2005 and in the same manner in the entire State of Uttarakhand in every districts such rapid survey was ordered to be conducted with regard to the population belonging to O.B.C. so as to facilitate the State Government to formulate reservation policy. Block Development Officers of the Districts constituted the committee to conduct rapid survey. The name of the husband of the Petitioner as well as of the Petitioner are shown at serial No. 189 and 190 respectively in the list so prepared belonging to O.B.C. Chauhan (Sunar) of Village Kota, Block Pabou, Tehsil Pauri, District Pauri Garhwal. The survey report in prescribed format -4 is enclosed as Annexure -6.

3. Further case of the Petitioner is that one Sri Brijmohan Singh Rawat made some misconceived complaint against the Petitioner to Respondent No. 3/ Tehsildar Pauri, pursuant to which the Respondent No. 3 issued a show cause notice dated 5.11.2008 to the Petitioner. The Petitioner sought 15 days time to file reply to the show cause notice inasmuch as before filing her reply Petitioner wished to obtain some informations under Right to Information Act but the requisite information could not be supplied, therefore, she sought further time to file the reply but ignoring the said aspect of the matter the Respondent No. 3 passed the order cancelling the caste certificate of the Petitioner, which was initially issued to her in the year 1996. Hence this petition.

4. The Respondents filed counter affidavit and alleged that prior to the marriage the Petitioner was Rawat and the said caste Rawat is not included in the other backward class category in the State of Uttarakhand. After the marriage the Petitioner became Rajput Chauhan and the said caste is also not included in the other backward class category. It is also averred in the counter affidavit that mere inclusion of name of a person in a rapid survey, cannot be said that the person belong to O.B.C. category. The Petitioner was given ample opportunity to submit documents in support of her case but despite the time granted the said information was not submitted by the Petitioner. It is also stated in the counter affidavit that the certificate of 1996 was renewed by the Tehsildar on a wrong notion and the fact remain that the Petitioner prior to her marriage or after her marriage does not belong to O.B.C. category.

5. The Petitioner filed rejoinder affidavit and reiterated the facts mentioned in the writ petition.

6. I have heard learned Counsel for the parties and perused the record.

7. Learned Counsel appearing on behalf of the Petitioner has submitted that the Petitioner originally is resident of District Gwalior Madhya Pradesh and from parental side she belongs to Rawat (Meena) Caste, which is an O.B.C. Caste in the State of Madhya Pradesh. After her marriage with Sri Digambar Singh Chauhan resident of District Pauri, she migrated to District Pauri Uttarakhand and her husband is also O.B.C. category, therefore, the Petitioner comes under the category of O.B.C. and the Tehsildar Pauri has wrongly rejected the O.B.C. Certificate dated 31-1-1996 and renewed certificate dated 1-8-2008 issued in favour of the Petitioner.

8. On the other hand the learned Standing Counsel has vehemently opposed the submission of learned Counsel for the Petitioner and contended that Rawat Caste is not in the O.B.C. category in the State of Uttarakhand and the Petitioner got obtained the O.B.C. Caste Certificate on the basis of false affidavit knowing that her husband is Chauhan by caste and Chauhan (Goldsmith) is in the category of O.B.C. in Uttarakhand, therefore, the cancellation order passed by learned Tehsildar is perfectly justified.

9. Undisputedly, in the State of Uttarakhand Rajput Chauhan does not come in the category of O.B.C. This fact is also not disputed by the Petitioner that her Maika is in village Binjoli Patti Guradsyun Tehsil Chobattakhal District Pauri Garhwal and she was married with Sri Digambar Singh Chauhan in the year 1986. The Tehsildar Pauri has found that in Ibbutson Settlement the family of the Petitioner was entered in the category of Rajput Chauhan while the Revenue Inspector in his report submitted in form No. 4, has shown the family of the Petitioner in the category of Chauhan (Goldsmith) which is in the category of O.B.C. and the said entry has been got made by giving affidavit from the matrimonial side of the Petitioner on wrong facts. Therefore, the entry in Ibbutson settlement will prevail over the report of the Revenue Inspector submitted later on.

10. Here it is also to be mentioned that the Tehsildar before passing the impugned order has issued notice to the Petitioner to show cause and file evidence in support of her case, but he has failed to do so and it cannot be said that no opportunity of hearing was given to the Petitioner before rejecting the OBC caste certificate.

11. Learned Counsel for the Petitioner next submitted that the Petitioner prior to marriage from parental side belongs to OBC Caste as Rawat (Meena) is OBC Caste in Madhya Pradesh and after her marriage with Sri Digambar Singh in State of Uttarakhand, she is entitled to get benefit of O.B.C. Caste in Uttarakhand also, as she has got migrated to State of Uttarakhand by virtue of her marriage. On the point of migration learned Counsel has cited before me the case of S. Pushpa and Others Vs. Sivachanmugavelu and Others, .

12. Learned Standing Counsel appearing on behalf of the State has contended

that in the event of the Petitioner migrating to State of Uttarakhand due to her marriage with Sri Digambar Singh Chauhan, cannot get benefit of OBC category of State of Uttarakhand. In support of his contention he has cited before the case of Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India (UOI) (1994) 5 SCC 24.

13. I have gone through the above cited judgment.

14. In the case of S. Pushpa and Ors. v. Sivachanmugavelu and Ors. (supra) the matter relates to United Territory of Pondicherry and the migrated candidates of Scheduled Caste from other states were held eligible for selection and appointment on the posts reserved for SC candidates in United Territory of Pondicherry. Since the United Territory of Pondicherry is governed by Central Government and it has no status of a separate State, therefore, by allowing reservation to the S.C. candidates of other State in United Territory of Pondicherry is a different issue and the same does not apply in the instant case.

15. In another case cited by learned Counsel for the Petitioner, titled as Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, , the matter of eligibility for benefits in another State pertaining to tribe belonging to a region bifurcated between two States, was referred to Scrutiny Committee constituted on the basis of directions issued in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . However, the issue in hand is different. This matter does not relate to OBC belonging to a region bifurcated between two States.

16. The Constitution Bench of Hon"ble Apex Court in para -16, of "Action Committee" case, (supra) has recorded the findings as below-

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/ Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in tow States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another Sate the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution- makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a

question by Mr. Jaipal Singh, Dr. Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area?. It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.."

Relying on this statement the Constitution Bench ruled that the Petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.

17. Learned Counsel for the Petitioner also submitted that in view of the observation made in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , the Tehsildar ought to have referred the matter to scrutiny committee to verify whether the Petitioner belongs to O.B.C. category or not.

18. I do not find any force in the above submission of learned Counsel for the Petitioner. The certificate of O.B.C. can only be issued on the basis of caste of parents and no useful purpose would have been served in referring the matter to scrutiny committee for the reason that if it is presumed that the Petitioner is O.B.C. of Madhya Pradesh State, from parental side, even then the Petitioner is not entitled for any benefit of reservation of OBC caste in Uttarakhand, in view of the law laid down by the Apex Court in the above cited case of Action Committee.

19. Therefore, in view of law laid down by Hon"ble Apex Court in Action Committee case (supra) and the discussions made in foregoing paragraphs, I do not find any illegality in the impugned order passed by the Tehsildar Pauri, whereby the OBC caste certificate and thereafter its renewal was rejected.

20. The writ petition lacks merit and is liable to be dismissed.

21. The writ petition is dismissed. No order as to costs.