

(2006) 05 DEL CK 0101

In the Delhi High Court

Case No : Writ Petition (C) 18257 of 2004

Union of India (UOI) and Another

APPELLANT

Vs

Durjan Mehto

RESPONDENT

Date of Decision : 02-05-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2006) 131 DLT 282 : (2008) 1 SLJ 117

Hon'ble Judges : P.K. Bhasin, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : H.K. Gangwani and R.L. Dhawan, for the Appellant; A.K. Behra and Meenu Maini, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—The present writ petition challenges the order dated 6-7-04 passed by the CAT. The core issue arising in the present petition is the applicability of the judgment of the Hon''ble Supreme Court reported as Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, where on the issue of social status certificate and cancellation of appointment of a Government employee the following guidelines were laid down:

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, tribes, tribal community, parts or groups of tribes or tribal communities, the place from which the originally falls 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) 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 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 caste 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 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 is in favor 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 is 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 finalisation 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 the 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.

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 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.

2. The tribunal in its impugned judgment by relying upon the judgment reported as *R. Vishwanatha Pillai Vs. State of Kerala and Others*, observed that it was incumbent upon the concerned Government department where the employee was alleged to have obtained appointment on forged caste certificate, to refer the matter to the Verification Committee constituted in each State to verify the genuineness of the caste certificate. In the present case the finding as to the respondent's certificate was based upon an investigation held by the CBI which the tribunal noted had even not contacted its Collector for the verification and was further merely based upon a finding by the District Welfare and Circle Officer.

3. In our view since the petitioner had not referred for the verification of the caste certificate of the respondent before the Verification Committee required to be formed after the judgment of the Hon'ble Supreme Court in *Madhuri Patil's case*(supra) the tribunal has rightly given an opportunity to the petitioner, Union of India, to refer the caste certificate of the applicant to the verification committee and pass a further direction on the basis of the findings of the verification committee.

4. The learned Counsel for Union of India Mr. Gangwani submits that there is no Verification Committee in existence in the State of Bihar. Such a plea was not taken before the tribunal and has been raised for the first time in this court. Even if it is so no State can ignore the mandate of the Hon'ble Supreme Court judgment given for all States for formation of the Verification Committee, and Verification Committee if not already in existence ought to be formed immediately. Consequently it will be open to the petitioner Union of India to require the State of Bihar to form the Verification Committee in accordance with the direction of the Hon'ble Supreme Court in *Madhuri Patil's case*.

5. We find no fault in this finding of the tribunal since the tribunal's impugned judgment is based upon the position of law laid down in *Madhuri Patil* and *Vishwanath Pillai's case*. Thus the writ petition has no merit and the CA Tribunal's order dated 6th July, 2004 is affirmed. However, taking into account the fact that the allegations against the respondents are serious about forging a caste certificate, if and when a reference is made for verification to the verification committee by the petitioners, such verification shall be done by the concerned Verification Committee in the state of Bihar not later than 8 weeks from the receipt of the reference from the petitioner. The respondents are directed to fully co-operate with the process of verification by the Verification Committee. The writ petition is accordingly disposed of with the above direction.