
(2019) 05 UK CK 0069

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1483 Of 2012

Vivek Verma Minor

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0069

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Mukesh Rawat, Ajay Veer Pundir, Pankaj Purohit

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J

1. This is the second round of litigation, which has been initiated by the petitioner being aggrieved against the impugned order dated 05.07.2012, as

passed by respondent no. 3, by virtue of which his OBC certificate has been cancelled on the premise, that on an enquiry it was found that the

grandfather of the petitioner was a permanent resident of Village Gangdaspur, Tehsil Devband District Saharanpur, Uttar Pradesh and it had also

considered the fact that the grandfather of the present petitioner had purchased the property in District Haridwar in 1984. But on the ground that since

the grandfather of the petitioner was found to be the resident of District Saharanpur, the application for the grant of OBC certificate was rejected.

2. The argument of learned counsel for the petitioner is that the grandfather of the petitioner had purchased the property in question, i.e. 641 Sainik

Colony, Tehsil Roorkee, District Haridwar as back as in 1984, and ever since then the entire family of the petitioner is residing on the said address. It

was much thereafter that District Haridwar was carved out from District Saharanpur in the year 1988.

3. The argument of the learned counsel for the petitioner is that the rejection order is bad as the father of the petitioner and the other family members,

who all are residing at the aforesaid address since 1984, they have already been issued with the permanent resident certificate by the competent

authority, which is still prevailing and subsisting, which is contained in Annexure-2 to the writ petition. According to the petitioner this in itself is a

sufficient proof to show that the petitioner happens to be the permanent resident of State of Uttarakhand, as reflected from the certificate dated

17.04.2006 issued in favour of the father of the petitioner and, hence, a positive presumption which would be that the petitioner is a permanent resident

of the State as residing in its territory ever since purchase made in 1984 by his grandfather.

4. In order to get a caste certificate of OBC to which the petitioner belongs the petitioner had submitted an application before the competent authority,

i.e. respondent no. 4, on 16.06.2012 for issuance of the same, and he has contended that since the grandfather of the petitioner himself was awarded

with the OBC caste certificate issued by the Tehsildar, Roorkee as back as on 18.10.1997 his caste would also flow from his family hierarchy from

his grandfather, and he ought to have been accorded with the caste certificate of OBC as issued in continuation to the certificate of caste as already

given to the grandfather of the petitioner. The office of the respondent had refused to accept the application on account of the fact that since the

Lekhpal at the relevant point of time were on strike, which constraint the petitioner to file the said application through speed post on 16.06.2012 and,

later on he filed a writ petition before this Court being Writ Petition No. 1249/2012 *Vivek Verma vs. State of Uttarakhand* and the said writ

petition was disposed of by this Court vide its judgment dated 26.06.2012 with the direction to respondent nos. 2 to 10 to take a decision on the

application of the petitioner dated 16.06.2012, for the grant of the OBC certificate as expeditiously as possible, but preferably within a period of four

weeks from the date of production of the certified copy of the order.

5. On being served with the certified copy of the order dated 26.06.2012, in the office of respondent no. 4, the respondent no.4 had considered the

application and passed the impugned order dated 5.07.2012 and rejected the application, for the reason already referred above in this judgment, that his grandfather hailed his residence from District Saharanpur.

6. This Court is of the view that looking to the reason, which has been assigned for rejecting the application dated 16.06.2012 for the grant of caste

certificate submitted by the petitioner on 16.06.2012 by speed post in itself is based on a non-existing and irrelevant ground, for quite obvious reasons

the grandfather of the petitioner, who is shown to be the resident of District Saharanpur, would be so because for the first time prior to his purchase of

the property in the territory of State of Uttarakhand in 1984, and ever since 1984, thereafter even the permanent resident certificate has been issued in

favour of the father of the petitioner and other family members. Hence, from the aforesaid fact atleast one aspect which is quite clear is that the

permanent resident certificate issued in favour of the father of the petitioner showing him to be the resident of State of Uttarakhand, and also because

of the property having being purchased in 1984, since now falls within the territory of Tehsil Roorkee, District Haridwar, there cannot be any dispute

that the petitioner happens to be the permanent resident of the State of Uttarakhand, because all the facts of grant of permanent resident certificate

had occasioned prior to 09.11.2000.

7. The question which now occurs for consideration before this Court is the rejection of his application for the grant of OBC certificate, that too has

been wrongly rejected for the reason being that the rationale which has been assigned therein in the impugned order was without considering the fact

that his grandfather was already granted the OBC certificate by the then State of Uttar Pradesh way back in 1997 and the caste do not change with

the bifurcation of the State. Though the category to which the petitioner was claiming his certificate as to be the other backward class OBC, would

always depend upon their acceleration to their economic status because in this developing world it is quite obvious that even the oppressed class too

with the passage of time might have attained the economic viability due to the subsequent acquisitions made by himself or by the family members. Be

that as it may, but since the reason, which has been assigned for rejecting the application for the grant of OBC certificate, was absolutely non-existent

and without application of mind and even without considering the fact that earlier

OBC certificate already stood issued in favour of the grandfather of the petitioner. Order dated 05.07.2012 cannot be sustained and hence it is hereby quashed.

8. The matter is remitted back to the Tehsildar, i.e. respondent no. 4, to reconsider the application of the petitioner for the grant of OBC certificate, based on the law as framed by the State of Uttarakhand prevailing at present.

9. However, there would be no order as to cost.