

(2000) 11 AHC CK 0051

Allahabad High Court

Case No: C.M.W.P. No. 45711 of 2000

Jauwad Ali

APPELLANT

Vs

State of U. P. and
another

RESPONDENT

Date of Decision: Nov. 2, 2000

Citation: AIR 2001 All 86 : (2001) 1 AWC 309 : (2001) 1 UPLBEC 107

Hon'ble Judges: S. K. Sen, C.J; Sudhir Narain, J

Bench: Division Bench

Advocate: Syed Wajid Ali, for the Appellant; S. C., for the Respondent

Final Decision: Allowed

Judgement

S. K. Sen, C. J.

1. Heard learned counsel for the parties.

2. The petitioner has challenged the impugned order dated August 7, 2000, whereby the Caste Certificate granted to the writ petitioner on June 21, 2000, by the Tehsildar, Tehsil Sahjanwan, district Gorakhpur (respondent No. 2) has been cancelled. By means of the present writ petition, the petitioner has challenged the legality and validity of the impugned order dated August 7, 2000, cancelling the Caste Certificate issued to the petitioner on June 21, 2000.

3. It is the contention of the petitioner that the petitioner belongs to the "Sheikh" caste and the said caste was recognized as Backward Caste by respondent No. 1., i.e., the State of Uttar Pradesh. The petitioner applied for issuance of the Caste Certificate before respondent No. 2. Respondent No. 2 after having made necessary enquiry issued the Caste Certificate in favour of the petitioner on June 21, 2000. By the impugned order dated August 7, 2000, respondent No. 2 has cancelled the Caste Certificate issued to the petitioner on June 21, 2000, on the ground that on account of the amendment made by the Backward Caste Kalyan Anubhag-1, State of U. P., in Notification No. 315/64-1-98-70/96 Lucknow, dated May 31, 1998, the "Sheikh" caste

has been amended as "Sheikh Sarvari (Pirayee) and, therefore, the Caste Certificate issued for "Sheikh" caste is not in accordance with law. The contention of the learned Advocate for the petitioner is that on the basis of the Caste Certificate that he was a "Sheikh" by caste, certain facilities and rights accrued to the petitioner which he will be deprived of under the impugned order. The impugned order will affect him adversely and as such, it is bounden duty on the part of the concerned authority to take action after affording an opportunity of hearing to the petitioner. The impugned order violates the principles of natural justice and appears to be absolutely arbitrary being issued after amendment. It is not in dispute that no opportunity of hearing was afforded to the petitioner before the Caste Certificate was cancelled.

4. The contention of the learned standing counsel, however, is that under the original notification issued in 1997 "Sheikh" caste was treated as a Backward Caste. However, after amendment in that notification instead of "Sheikh" caste, "Sheikh Sarvari (Pirayee)" has been recognized as Backward Caste.

5. It is significant, therefore, that when the petitioner was granted Caste Certificate on June 21, 2000, the amendment had already come into force and the petitioner was granted the Caste Certificate after such amendment. There is no reason for the authorities to take it back now on the basis of the amendment itself without giving opportunity to the petitioner. In any event, even if the Caste Certificate was wrongly issued, it was incumbent duty on the part of the authorities to provide an opportunity of hearing and to issue a show cause notice to the petitioner before cancelling the Caste Certificate issued earlier to him. Before cancelling the Caste Certificate the petitioner has been denied any such opportunity. It is well-settled principle that when an order is passed by any authority bearing penal consequences, it is proper that an opportunity of hearing should be given. In the instant case, the same has not been done. Shri S. W. Ali, learned advocate for the petitioner, has relied upon the judgment and decision rendered by the Hon"ble Supreme Court in the case of [Gulzar Singh Vs. Sub-Divisional Magistrate and Another](#), . In the aforesaid decision, a certificate was issued to the appellant to the effect that the appellant belonged to "Majhbi Sikh" caste which was recognized as Scheduled Caste. On enquiry conducted, it was found that the appellant belonged to Christian community. The Scheduled Caste certificate of the appellant was cancelled without issuing any show cause notice to the appellant. The Hon"ble Supreme Court held that the said order of cancellation violated the principles of natural justice.

6. We are of the view that the argument advanced by the learned advocate for the petitioner cannot be said to be without any substance. We feel it appropriate in the circumstances to reproduce the relevant portion of the aforesaid judgment of the Hon"ble Supreme Court which is set out herein below :

"The appellant had been issued a Caste Certificate on October 10, 1988, in which it was inter alia stated that the appellant belongs to Majhbi Sikh Caste which was

recognized as Scheduled Caste. The grievance of the appellant was restricted to the decision communicated to him by the Sub-Divisional Magistrate, Gurdaspur, dated June 3, 1997, whereby the Certificate No. 9336 dated 10.10.1988 was cancelled. The said certificate was cancelled because of an enquiry, which was stated to have been conducted. It was found that the appellant belongs to the Christian community. The cancellation of the Scheduled Caste certificate was challenged by the appellant by filing a writ petition in the High Court. The High Court dismissed the same by observing as follows :

"From the pleading of the parties it is crystal clear that an open enquiry was made with regard to the Scheduled Caste certificate issued to the petitioner and in the said enquiry petitioner was associated. On proper appraisal of all aspects of the case, it has been held that the petitioner is not Scheduled Caste but a Christian. That being so, we find nothing wrong in the order vide which Scheduled Caste certificate issued to the petitioner has been cancelled."

It is clear from the facts on record that prior to the cancellation of the Scheduled Caste certificate by the impugned order dated June 3, 1997, no show cause notice was issued to the appellant. It cannot be denied that with the issuance of Scheduled Caste certificate, certain rights accrued to the appellant. If this certificate was to be cancelled on the basis of some enquiry which had been conducted by the department it was incumbent on the department, keeping in view the principles of natural justice, to issue a show cause notice to the appellant requiring him to explain as to why the Scheduled Caste certificate which had been issued should not be cancelled. If there were statements of other persons which were recorded, as seem to have been done in the present case, on the basis of which the department came to the conclusion that the appellant was not Majhbi Sikh by caste but was Christian, then fairness would require that the said statements should be put to the appellant before a final decision is taken.

In view of the fact that principles of natural justice were violated in the present case we allow this appeal, set aside the judgment of the High Court and quash the impugned order passed on June 3, 1997, leaving it open to the respondent to take action in accordance with law. There will be no order as to costs."

7. Following this settled principle that since by issuance of Caste Certificate, certain rights have accrued to the petitioner which cannot be taken away without giving him any opportunity of hearing and which violates the principles of natural justice, we are of the view that it was not proper on the part of the authorities to cancel the Caste Certificate without, issuing any show cause notice and without giving him any opportunity of hearing and the said order of the cancellation of the Caste Certificate suffers from violation of the principles of natural justice.

8. The impugned order dated August 7, 2000, cancelling the Caste Certificate accordingly stands quashed and set aside. This will, however, not restrain the

respondent authorities to take appropriate action in accordance with law. The petition accordingly succeeds and the writ petition is allowed.