

(2010) 11 AHC CK 0301

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 69019 of 2010

Hizwana Bano

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 26, 2010

Acts Referred:

- Constitution of India, 1950 - Article 136, 142, 226
- Uttar Pradesh Public Services Act, 1994 - Section 2, 9

Citation: (2011) 1 ADJ 440 : (2011) 2 AWC 1962

Hon'ble Judges: F.I. Rebello, C.J; Vineet Saran, J

Bench: Division Bench

Judgement

1. Admit

By consent, heard forthwith.

In view of the order, which is proposed to be passed, notice to Respondent No. 3 is dispensed with.

2. The Petitioner was aggrieved by the caste certificate issued in favour of Respondent No. 3. The post of Village Pradhan of Gaon Sabha-Lotha was reserved for female candidate of backward caste. According to the Petitioner, Respondent No. 3 obtained a caste certificate that she belongs to Muslim Kayasth, which has been issued by Respondent No. 2. According to the Petitioner, Respondent No. 3 belongs to the caste "Sekh Firozi". In the list of Other Backward Class, meant for the State of Uttar Pradesh, this caste has not been included in the category of backward class.

3. On 11.10.2010, the Petitioner filed an application to the Assistant Election Officer contending that the caste certificate obtained by Respondent No. 3 was forged. Similarly, on 30.10.2010, the Petitioner filed a complaint before the Respondent No. 2 for cancellation of the caste certificate issued in favour of Respondent No. 3. The Respondent No. 2, till today, has not taken any decision upon the complaint of the

Petitioner. According to the Petitioner, the Respondent No. 2 is the only competent authority to cancel the forged certificate and since he has failed to exercise the jurisdiction vested in him, the present writ petition.

4. We have heard learned Counsel for the Petitioner as also the learned Standing Counsel for Respondent Nos. 1 and 2.

The State of Uttar Pradesh has issued a notification dated 5th January, 1996 in the matter of issuance of caste certificates in the State of U.P. The English translation of the said notification as per the Official Translation is being reproduced in its entirety and reads as under:

"Chapter 22 Received from General and Merger 1263

(89)

Personnel Section -2

No. 22/16/92-Ka/1996-T.C. 111

To,

Kalika Prasad,
Secretary,
Govt. of UP.

1. All Principal Secretaries/Secretaries,
Govt. of Uttar Pradesh

2. All Heads of Departments/Principal Heads
Uttar Pradesh.

3. All Divisional Commissioners/District Mag
Uttar Pradesh.

Lucknow: Dated 5th January, 1996

Subject: Caste Certificate for Reservation in Services under the State.

Sir,

I am directed to draw your attention to Govt. Order No. 484/Ka-1 941/ 1994, dated 29th March, 1994, in para 3 of which it was in respect of the decision taken u/s 9 of Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes of Citizens in Uttar Pradesh Public Services Act 1994, intimated by the Government that "Caste Certificate" required for laying claim for reservation in future shall be issued by District Magistrate/Additional District Magistrate/City Magistrate/Tehsildar of the area where the concerned candidate resides or where he was born. But in case of Scheduled Castes and Scheduled Tribes, such Certificate may be issued by any other stipendary Magistrate or by the District Social Welfare Officer of the Concerned District as well.

As enclosure to the said Government Order, proformas for the Caste Certificate prescribed by the Government were also issued, of which the proforma of the Caste Certificate for other Backward Classes of Uttar Pradesh has been amended vide proforma enclosed with Government Order No. 22/ 16/92 - Ka - 2 - 95 - T.C. dated 13th December 1995.

2. In continuation of the above I am directed to say that in compliance with the judgment passed on 2nd September, 1994 by Hon"ble Supreme Court in the Case of [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others](#), and the Order dated 27th October, 1995 passed in pursuance thereof by Hon"ble High Court, Lucknow Bench Lucknow in Writ Petition No. 2884(M.P.) of 1995 - Dr. Anand Pratap Singh v. Uttar Pradesh and Ors., the following decisions laying down procedure have been taken by the Government, in exercise of the powers conferred by Section 9 of the aforesaid Act:

Presentation of the application and issuance of the Caste Certificate

1. An application seeking issuance of Caste Certificate for admissibility of reservation shall be presented to the District Magistrate or Additional District Magistrate or City Magistrate or Sub Divisional Magistrate or Tehsildar of the Area where the concerned candidate resides or where he was born, by the concerned candidate if he is a major or by his parents or guardian if he is a minor. Alongwith the same shall be presented an affidavit certified by the Gazetted Officer giving such details with regard to caste, sub-caste, tribe, tribal community or class or part of such community, native place, etc. of the candidate as shall be prescribed by the Director, Scheduled Castes and Scheduled Tribes Welfare, Uttar Pradesh in case of Scheduled Castes and Scheduled Tribes and by the Director, Backward Classes Welfare Uttar Pradesh in case of other Backward Classes of citizens.

2. An application for Caste Certificate shall be presented to the District Magistrate as mentioned above and the Caste Certificate shall be issued by that officer on being satisfied

3. Claim for reservation on the Caste Certificate issued as per the aforesaid arrangement, shall be subject to verification of such certificate to be done by the following Scrutiny Committee constituted by the Government. An application for the same shall be presented to the said Scrutiny Committee, as the case may be by the candidate himself or by his parents or guardians, as far as possible 6 months prior to admission in educational institutions, etc or appointment to any post/service.

(1) Principal Secretary, Social Welfare Department, Government of Uttar Pradesh...
Chairman

(2) Director, Scheduled Castes and Scheduled Tribes Welfare, Uttar Pradesh (in case of Scheduled Castes and Scheduled Tribes) or Director, Backward Classess Welfare, UP (in case of other Backward Classes of Citizens.)... Member

(3) In case of Scheduled Castes, any Officer nominated by Principal Secretary, Social Welfare Department and having much knowledge of the concerned subject, or

in case of Scheduled Tribes, any Officer nominated by Principal Secretary, Social Welfare Department, Government of Uttar Pradesh and associated with research work with regard to identification of tribes, tribal communities or class/part of such

communities... Member.

Remarks - If the candidate is to be admitted in any educational institution, etc. or appointed in any service under the reservation category even before the completion of the process of the verification, he can be accorded provisional admission/appointment, which shall be subject to verification of caste certificate.

(4) Vigilance Cell shall function one each under the Directorate of Uttar Pradesh Scheduled Caste and Scheduled Tribes Welfare and the Directorate of Uttar Pradesh Backward Classes Welfare and each cell shall comprise Police Superintendent- level officer to be designated as "Vigilance Officer" and Police Inspectors in required numbers, whose services/posts shall be made available to the said Cells by Home (Police) department.

(5) On application being presented to the Scrutiny Committee for verification of Caste Certificate, it will transmit the same to the concerned Directorate, who shall mark it to Vigilance Cell working under it. Police Inspectors associated with the Vigilance Cell shall pay visit to the dwelling place, native place and ordinary place of residence, etc. of the candidates and shall examine the Caste Certificate, and after the enquiry thereof the vigilance officer shall personally verify the facts and shall collect relevant facts. They shall inquire from some other person acquainted with the candidates and their parents or guardians and with the social standard of the candidates and after such enquiry shall present to the concerned Directorate his report on the prescribed proforma alongwith extensive details etc.

(6) If the Caste Certificate gets verified upon the examination carried out by the concerned Vigilance Cell, then the Caste Certificate shall be Certified by the concerned Director, but in the event of the issued Caste Certificate being found not verified, the following action shall be taken--

(1) Sending a copy of the report of the Vigilance Officer, a show cause notice shall be issued by the concerned Director to the candidate by registered post or through the head of the concerned institution where he is studying or in service, thereby requiring him to make a representation or reply, if he so wishes, within two weeks of the receipt of the notice.

(2) For submitting such an application or reply, a maximum period of 30 days from the receipt of the copy of the notice can be given on the candidate's request, but not more than that.

(3) If the candidate, by means of his representation or reply presented within time, requests for being afforded an opportunity of hearing or for holding enquiry in this matter, then the director receiving the representation or reply shall apprise the Scrutiny Committee and its chairman, who shall afford a reasonable opportunity to the candidate or to his parents or guardians for adducing all evidence in favour of the veracity of the said Caste Certificate and shall publicise a public notice by

declaration in the concerned village or settlement or by any other available method and on such public notice being given, if any person or organisation, either personally or through his/its advocate, registers objection, then he/it shall be given an opportunity to adduce evidence in support of such objection. The candidate will also be entitled to present his stand through advocate on this occasion.

(4) The Scrutiny committee shall, after considering the facts presented by the candidate and the objections etc. raised by the opposite parties, shall pass an order, also making mention of reasons in brief in support of findings of the Committee.

(5) The aforesaid proceeding shall be conducted as soon as possible and on day to day basis so that it may be completed in the period not exceeding two months.

(6) The decision of the Committee shall be conveyed, as the case may be, either to the candidate or to his parents or guardian within one month of such decision.

(7) If as per the decision of the Scrutiny Committee, the Caste Certificate is found to be incorrect,

(A) an Order shall be passed by the Committee cancelling the Caste Certificate or the said Certificate shall be seized.

(B) A request shall be made, as the case may be, to the concerned educational institution etc. or to appointing authority to immediately cancel the admission/appointment of the concerned candidate without giving him any notice, and accordingly he will be divested of the right to continue his studies any further or to remain on his post/in services the case may be.

(C) Proceedings shall be initiated for bringing prosecution, as the case may be, against the concerned candidate or his parents or guardians for laying false claim.

3 It is requested that strict compliance of the aforesaid decision of the Government may please be ensured with immediate effect.

Truly Yours

Kalika Prasad

Secretary

5. Before dealing with the issue, we may refer a judgment of the Supreme Court in [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others](#), The Supreme Court in para 13 of the said judgment laid down the following guidelines:

... For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

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, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails 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) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, 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 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 status claimed by the candidate or the parent or guardian, as the case may be. He also should 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, daiety, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities 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 concerned

educational institution 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/Addl. Secretary as Chair-person 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 to adduce evidence may be given to him/it. After giving such 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 favour 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 be 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 "or 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 finalising 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 that 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 as 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 the 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 concerned educational institution 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 for further study or continue in office in a post.

6. The Supreme Court thereafter observed that every State should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be, are not defeated by unscrupulous persons.

We may also note direction No. 11, which states that the order passed by the Committee shall be final and conclusive and only subject to the proceedings under Article 226 of the Constitution.

7. These directions have been issued under Article 142 of the Constitution of India and are binding, till such time the State makes a law to that effect. Thus no other Court or Tribunal or authority considering the directions issued in Kumari Madhuri Patil (supra), would have jurisdiction to verify the caste certificate except the Committee constituted for the said purpose in terms of the directions of the Supreme Court as set out earlier.

The administrative instructions, therefore, issued by the State Government are in furtherance of the directions issued by the Supreme Court in Kumari Madhuri Patil (supra).

8. In Kumari Madhuri Patil (supra), the relevant directions of the Supreme Court are contained in direction Nos. 4 to 9. In other words, the caste certificate issued in terms of direction No. (1) to be valid, can only be verified by the Committee and not by the Revenue Officers, like Sub-Divisional Officers, Deputy Collector or Deputy

Commissioner, in the present case, the Respondent No. 2.

The Respondent No. 2, for the purpose of granting a caste certificate, has to consider what has been set out in para 3 of the Government Order, which is in consonance with the direction No. 2 of the directions issued by the Supreme Court in Kumari Madhuri Patil (supra). It is only in the event, the Respondent No. 2 is satisfied, based on the material produced before him that the applicant belongs to the caste/tribe, then only the certificate would be verified. Once that be the procedure, it is not open to the Respondent No. 2 to assume jurisdiction to cancel the caste certificate except may be in a case of fraud on the face of the record, as fraud vitiates all actions. Respondent No. 2, therefore, ordinarily would have no jurisdiction to reconsider the issuance of the caste certificate and pass orders cancelling the certificate or otherwise.

9. When a complainant contends that a caste certificate was wrongly issued or obtained by suppressing facts or the like, then in that event, it would be open to the complainant, even if the complainant is a stranger as long as his rights are affected, to move the Caste Scrutiny Committee, to verify the caste certificate by setting out the reasons and objections as to why the caste certificate should not be verified. Para 3 of the Government Order would show that verification is not only with regard to admission in any educational institution or appointment in any service but also for other reasons. Therefore, whenever a person seeks to rely on a caste certificate for claiming any benefits, he would be entitled to, then in that event, if a complainant intervenes to oppose the verification of such caste certificate or independently applies before the Caste Scrutiny Committee, the procedure for verification shall be followed and necessary orders shall be passed by the Committee after following due procedure.

10. We may further point out that even if a caste certificate is verified, it does not prevent an aggrieved person from challenging the validity of the caste certificate before this Court, even if he had not complained earlier, as long as he is an aggrieved person and there is material to show that the verification was obtained by suppressing facts or material or by playing fraud on the Committee or the like.

11. If the issue is now considered in the light of the above discussions, it would be clear that the Respondent No. 2 would cease to have jurisdiction, once the caste certificate was issued. The Tehsildar in these circumstances would have no authority to recall or cancel the same, except may be in a case of fraud. Respondent No. 2, however, would have the power to correct clerical or artificial mistakes. The jurisdiction to verify the caste certificate and whether it should be validated or invalidated is of the Caste Scrutiny Committee.

12. Clearly, therefore, the prayer sought for by the Petitioner to direct the Respondent No. 2 to decide the complaint, in our opinion, cannot be granted in the absence of jurisdiction vested in Respondent No. 2. It is, however, open to the

Petitioner to move the Competent Authority, i.e. Caste Scrutiny Committee to dispute the validity of the caste certificate issued in favour of Respondent No. 3, if not already verified. The Committee can then consider the issue. What happens if the Committee fails to validate the caste certificate, is not required to be answered in the present petition as there is nothing on record to show that the Petitioner has filed an election petition challenging the election of Respondent No. 3. With the above observation, Rule is discharged. There is no order as to cost.