

## Lal Mani Prasad Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Dec. 19, 2006

**Citation:** (2007) 1 ADJ 259 : (2007) 5 AWC 4423 : (2007) 2 UPLBEC 64

**Hon'ble Judges:** Ajoy Nath Ray, C.J.; Ashok Bhushan, J

**Bench:** Division Bench

### Judgement

Ajoy Nath Ray, C.J. and Ashok Bhushan, J.

This is a writ petition directed against a determination given by the Collector on the 30th of

June, 2005 determining the caste of the respondent No. 5 as Majhwar.

2. The facts giving rise to this writ petition are to be noted briefly. The respondent No. 5 was issued scheduled caste certificate of Majhwar, dated

30.5.1993 issued by Tahsildar, which is one of the castes listed as scheduled caste in the Constitution (Scheduled Caste) Order, 1950 (as

applicable for Uttar Pradesh). The said certificate of scheduled caste was subsequently cancelled by an order dated 15th May, 1996 passed by

the Additional District Magistrate pursuant to some inquiry to the effect that respondent No. 5 do not belong to Majhwar caste. The order dated

15.5.1996 was challenged by respondent No. 5 by Writ Petition No. 19067 of 1996. The said writ petition was allowed by order of this Court

dated 2.11.2004 holding that the order dated 15.5.1996 was passed without giving an opportunity to the petitioner, hence the order is liable to be

set-aside and the matter needs to be reconsidered. In the said writ petition, the present petitioner, Lal Mani Prasad, was also heard and this Court

while disposing of the writ petition permitted filing of objection by the present petitioner before the Collector. The petitioner as well as the

respondent No. 5 filed their objections and the Collector after hearing the parties passed the impugned order dated 30.6.2005, which is challenged

in this writ petition.

3. The writ petitioner and the respondent are both sitting M.Ps. The respondent is filling a scheduled caste constituency seat and the petitioner is

also filling a reserved category seat. There is a long history of political rivalry between- the petitioner and the respondent.

4. The Division Bench hearing this writ petition noticed the submission of the petitioner that the petitioner having contested the earlier writ petition

and he having also opposed the matter before the Collector, he is a person aggrieved to challenge the order dated 30.6.2005. The Division Bench

also noticed that in this writ petition issue of public importance and public interest has arisen as to whether the Godia is synonym of Majhwar. The

Division Bench thought it appropriate that since the writ petition involves matter of public importance and public interest as well as the questions

which could be dealt with by a Bench having jurisdiction to hear miscellaneous cases and since both the questions are interlinked the petition be

heard by a Division Bench having jurisdiction of public interest litigation as well as miscellaneous jurisdiction. In view of the order of the Division

Bench dated 12.9.2006 the writ petition has been placed before this Bench and is disposed of as such.

5. The basic case of the petitioner is that the respondent is a Godia and therefore he is of different caste and cannot be of the caste Majhwar.

6. The respondent has had certificates issued in his favour declaring him to be a Majhwar and there is one such certificate from the Tahsildar in

1971 and another from the Tahsildar dated 20.10.1993, which, however was directed to be cancelled vide order dated 15.5.1995 passed by

Additional District Magistrate, against which order respondent filed a writ petition which was allowed by this Court and the matter was remitted to

the Collector for reconsideration. The present determination of the Collector has been made pursuant to above mentioned order passed by the

Division Bench in the writ petition on the 2nd of November, 2004 whereby the Collector was required to determine the caste status of the

respondent.

7. The principal submission of the petitioner has been that there are numerous pleadings and documents wherein the respondent has claimed

himself to be of Godia caste and nowhere has Godia been alleged by, the respondent as being a mere surname or a title, as argued by the learned

Advocate General if this be so, then and in that event, the law clearly stipulates that he could not be turned into a scheduled caste person on the

basis of synonymity or equivalence. Although several cases were cited before us , suffice it to refer to the case of State of Maharashtra v. Milind

and Ors. reported at (2001)1 S.C.C. 4 and reference might be made in that case to the dicta in paragraph 36 at page 30 and 31 of the report.

8. The law is that the lists giving scheduled castes, scheduled tribes cannot be added to or varied by any interpretation or determination of identity.

Even slightly differently termed castes are not to be confused with the castes, which are mentioned in the list. The observance and the determination

of caste in this regard has to be extremely strict.

9. The respondent supported his case before us submitting that the decision of the Collector was not given only on the basis that Godia is Majhwar

and therefore the respondent is a Majhwar but that that is a snap and infelicitous conclusion drawn near the end of the order. It was submitted that

the order proceeds on numerous documents and affidavits which support the case of the respondent being a Majhwar. School leaving certificate

and High School marks certificate of the year 1971 were referred to; affidavits of several persons aged over 70 were referred to; Lagan receipts

issued by Zamindars even in pre independent era were referred to. Inter alia on these it was submitted that if the Collector could have decided in

two different ways even, on this basis, the writ Court will not substitute its own decision but will uphold the Collector's decision because it is not

baseless or unreasonable.

10. On behalf of the writ petitioner it was submitted that after the claim made by the respondent as being a Godia, his case ends because a person

who is Godia by caste can never be Majhwar by caste also because that would be deciding against the law and deciding that one caste is

practically the same as another caste, which is a listed scheduled caste. It was also said that mining licences were applied for and obtained by the

respondent in the name of Sankh Lal Nishad and this further shows that he is not a Majhwar.

11. There are some other documents to which we need not refer at the present moment.

12. The Collector in the impugned order recorded that the respondent No. 5 has accepted himself originally belonging to "Godia" caste, which is

claimed to be a caste synonymous to "Majhwar" and from the documents filed the caste of respondent "Godia" and "Majhwar" has been proved

to be one and same. In concluding paragraph the Collector come to the conclusion that the original caste of respondent is "Godia" but objector

having failed to prove that Godia is a backward caste and from the documents filed by Sankhlal the "Godia" caste has been found as synonymous

of "Majhwar", hence there is no ground to cancel the certificate dated 20.10.1993.

13. Mr. Kazmi, the learned Advocate General submitted that "Godia" is not a caste but only a title or surname, he also took us through the

objection filed by respondent before the Collector but we do not find that there was any such categorical stand taken by the respondent and

further Collector's decision is also not to that effect.

14. It appears that the Collector has laboured in the impression that a Godia might be a Majhwar and his decision in favour of the respondent has

been given at least partly because of this impression. This vitiates the decision and a fresh decision is to be given.

15. From the order passed by the Collector, we are of the view that while deciding the issues he did not address himself to the extent of inquiry,

which is permissible under such determination as laid down by the Constitution Bench judgment of the Apex Court in Milind's case (supra).

16. Our orders and observations are without prejudice to the rights and contentions of the parties before the Collector to whom they will again

approach and who will hear them and their representatives, if they so choose including learned advocates. Lawyers' representation is necessary

because the correct legal manner in which the scheduled caste status of a disputed category person is to be determined requires clear exposition

before the authority, who is to take a decision in the matter.

17. We are aware that until such decision is forthcoming the old Tahsildar's certificate of 1993 will remain outstanding; however the decision of the

Collector will be final and supervening and on that basis the further acceptability or otherwise of the Tahsildar's certificate of 1993 will be

dependant.

18. We also clarify that there is an old Tahsildar's certificate of 1971 declaring the respondent as a Majhwar. This certificate will also be subject to

the final decision to be given by the Collector. It is clarified that the cancellation of 1993 certificate given by the Tahsildar was reversed by order

dated, the 25th of May, 1996 and ultimately set aside in an earlier writ but this part of the controversy need not again be gone into by the

Collector.

19. There will be no order as to costs. The decision of the Collector will be given within six months from the date hereof. The impugned order

dated 30th of June, 2005 is quashed so that there is no obstacle in the way of the Collector deciding afresh.