

Shamiuddin Vs. Additional District Judge (i), Mathura and Others

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Court : Allahabad

Decided On : Oct-16-1997

Reported in : 1998(1)AWC536; (1997)3UPLBEC2203

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 11A (2), 12C and 12C(1); Costitution of India - Articles 226 and 227

Appeal No. : C.M.W.P. No. 13838 of 1997

Appellant : Shamiuddin

Respondent : Additional District Judge (i), Mathura and Others

Advocate for Def. : S.C. and ;Manjoorul Islam, Adv.

Advocate for Pet/Ap. : P.C. Srivastava, Adv.

Judgement :

S.R. Singh, J.

1. The controversy involved in this case relates to validity of the election to the office of the Pradhan of Gram Panchayat Dautana, Vikas Khand Chhata, district Mathura which election was held on 18.4.1995 in which the petitioner herein was declared elected as a result of counting of votes on 21.4.1995.

2. Indisputedly, the office of Pradhan of the said Gram Panchayat was reserved for a male candidate belonging to backward class. The petitioner filed his nomination paper as a Muslim backward class candidate. The opposite party Bahori and three others also filed their nomination papers as backward class candidates, but they lost the present election to the petitioner who, as stated above, was declared elected on 21.4.1995. The opposite party Bahori (hereinafter referred as the election-petitioner) then filed an election petition under Section 12C of the U. P. Panchayat Raj Act, 1947 for setting aside the election of the petitioner on the ground that the constituency was reserved for a male candidate belonging to backward class and the successful candidate, namely, the petitioner herein was, albeit, not a member belonging to backward class yet filed his nomination paper as a backward class candidate on the basis of caste certificate obtained fraudulently from Tehsildar, Mathura even though he was the resident of Gram Panchayat Dautana, Vikas Khand Chhata, district Mathura. It was also alleged that Ved Ram who was also a candidate in the said election had filed an objection on 28.3.1995 alleging that the petitioner did not belong to backward class and that he had obtained the caste certificate fraudulently from the Tehsildar Mathura, but the Returning Officer did not pay any heed to the objection filed by Ved Ram.

3. The election petition was contested by the petitioner herein on the allegation that he was 'Momin Ansar' by caste which is admittedly one of the castes constituting Muslim backward class in the State of Uttar Pradesh. It was also alleged that 'Sheikh' is not a caste amongst the Muslim Community and that his nomination paper as a backward class candidate was rightly accepted by the Returning Officer. It was further alleged that the caste certificate issued to him was illegally cancelled without any notice to him and that the dispute in this regard was pending decision before the appropriate authority under the order passed by the Hon'ble High Court in a writ petition filed by him earlier.

4. The Prescribed Authority framed the following issues in the case :

(1) Whether the nomination paper of Shamiuddin was illegally accepted as a consequence of which the result of the election was materially affected?

(2) Whether Shamiuddin was a member of backward class eligible to contest the election? and

(3) To what relief, if any, was the election petitioner entitled?

5. The parties led oral and documentary evidence in support of their respective pleas. The Prescribed Authority, vide its judgment and order dated 24.1.1997, allowed the election petition and declared the election of the petitioner to the office of Pradhan invalid and sent a copy of the judgment to the District Panchayat Raj Officer for holding fresh election in accordance with law. The petitioner then filed revision against the said Judgment which met with the fate of dismissal vide judgment and order dated 15.4.1997 of the 1st Additional District Judge, Mathura. Aggrieved the petitioner has filed the instant writ petition.

6. I have heard Sri P. C. Srivastava for the petitioner, standing counsel for opposite parties No. 1 and 2 and Sri Manjoorul Islam for the opposite party No. 3.

7. The only ground on which the election of petitioner was sought to be set aside by means of the election petition was that his nomination paper was illegally accepted in that he did not belong to the backward class and was, therefore, not eligible to contest the election as a backward class candidate. This is evident from the allegations made in the election petition, a copy of which has been annexed as Annexure 1 to the writ petition. The office of Pradhan of the concerned Gram Panchayat was admittedly reserved for backward class (male) under Section 11A (2) of the U. P. Panchayat Raj Act. The case of the petitioner as set up in the written statement, a copy of which has been annexed as Annexure 2 to the writ petition, was that he being 'Momin Ansar' by caste was entitled to contest the election being a member of Muslim backward class. Indisputedly 'Momin Ansar' finds place in the notified list of backward class in the State of U. P. In the election petition, no specific allegation was made as to what caste did the petitioner belong. A general allegation was made that the petitioner did not belong to backward class and his nomination paper was illegally accepted despite objection being raised to that effect that he was not eligible to contest the election being not a member of backward class. The burden of proof of issue No. 1 as to whether the nomination paper of the petitioner was illegally accepted and consequently the

result of election was materially affected, as provided in Section 12C (1) (b) of the Act, was upon the election-petitioner and since the only ground of the alleged improper acceptance of nomination paper of the petitioner was that he did not belong to backward class, it was for the election-petitioner to plead and prove that the successful candidate belonged to a caste other than those constituting the backward class in the State of Uttar Pradesh. The onus of proof of issue No. 2 was no doubt on the petitioner but the question as to proof of issue No. 2 could arise only if evidence was led by the election-petitioner on the issue No. 1.

8. A perusal of the impugned judgment given by the prescribed authority would indicate that it allowed the election petition and set aside the election of the petitioner mainly on the grounds that the caste certificate was obtained by the petitioner from Tehsildar, Mathura by misrepresentation and that the caste of his ancestors was recorded as 'Sheikh' and not 'Momin Ansar' in the revenue records. Specific plea raised by the petitioner in his written statement that 'Sheikh' did not denote a Muslim caste, was not examined by the prescribed authority nor was it gone into by the revisional court which in its judgment dated 15.4.1997, has recorded self-contradictory findings on the main issue as to whether the petitioner happened to be 'Momin Ansar' by caste. The conclusion arrived at in paragraph 21 of the impugned judgment that the petitioner belonged to 'Sheikh' by caste proceeds on assumption that 'Sheikh' denotes a Muslim caste which fact was specifically disputed by the petitioner in paragraph 15 of his written statement and, therefore, it was incumbent upon the opposite parties No. 1 and 2 to have gone into the question whether 'Sheikh' denotes a Muslim caste before reaching the conclusion that the petitioner was 'Sheikh' by caste and for that reason, he failed to prove that he belonged to backward class. That apart, the conclusion is incongruous with the conclusion that 'Sheikh Ansari' caste is also known as 'Momin Ansar' reached in paragraphs 16 and 20 of the judgment of revisional court. If 'Sheikh' is not found to be a caste, there would be no escape from the conclusion that the petitioner belongs to backward caste : 'Momin Ansar.'

9. It would be quite apt to observe that while it is not open to the Court/Tribunal to say that notified backward caste 'Momin Ansar' includes 'Sheikh' if at all the latter denotes a caste, for that is within the exclusive power of the State Government.

The Court/Tribunal can certainly say that 'Momin Ansar' in any particular area, is also called as 'Sheikh' -(see Paras Ram v. Shiv Chand, AIR 1969 SC 597). It may also be observed that mere cancellation of the caste certificate which was issued in favour of the petitioner would be no ground to hold that he does not belong to backward class and therefore his nomination paper was improperly accepted. The certificate out-lived its utility after the declaration of the result and it was for the Tribunal/Court to decide independently whether the petitioner belonged to backward class.

10. Meaning of the word 'Sheikh' as given in Encyclopedia Britannica-1968 Edition Vol. 20 may aptly be quoted here as under :

'Sheikh (SHEIKH OR SHAYKH), an Arabic title of respect dating from Pre-Islamic authority, strictly means a venerable man, of more than 50 years of age. It is specifically borne by heads of religious orders, heads of Colleges (e.g. Al Azhar in Cairo), Chiefs of tribes and headman of villages and of separate quarters of town. It is also applied to learned men, especially members of the class of 'ulama' (q.u.) and has been applied to any one who had memorized the whole Koran, however young he might be.

Combined with other terms the word is used in various titles ; Sheikh-al-balad, mayor of a town : Shaikh-al-jabal ('the mountain chief'). a popular term for the head of the Assassins mistranslated by the crusaders as 'the Old Man of the Mountain' (see Assassin). By far the most important of these is the title Shaikh-al-Islam, which by the 11th century A.D. was being given to eminent 'ulama' and mystics and by the 15th century could be claimed by any outstanding mufti (q.v.). In the Ottoman Empire this title was restricted by Suleman I (1520-66) to the mufti of Istanbul, who was equal in rank to the grand vizier and was head of the religious institutions which controlled law, justice and religion, and education. Because of his right to issue legally binding 'fatwas (opinions), this official came to wield great power. In 1924 under the Turkish Republic, the last vestiges of the institution were abolished.'

11. According to Webster's Third New International Dictionary Volume III, 'Sheikh' means 'head of an Arabic family, clan, tribe or village. An Arab Chief, a Governor,

a Prince among Peoples of Arabian or Muslim decent. According to Oxford Dictionary, 'Sheikh' means Chief head of Arab tribe, family or village, title of eminent Muslim ; and according to Collins Dictionary, 'Sheikh' means the head of an Arab tribe, village etc. The New Lexicon Webster's Dictionary defines 'Sheikh' as 'a title of respect used by Arabs, an Arab Chief, head of family, or a head man of a village.'

12. It is thus evident that 'Sheikh' is a title of respect. Such title, it cannot be gainsaid, is not the exclusive privilege of a member of Upper/Forward class. A person belonging to Muslim backward class may also be given such a title of respect by the people of his community. At the risk of repetition, it may be stated that the petitioner has specifically pleaded in his written statement that 'Sheikh' did not denote any particular caste in Muslim community, but this question was not gone into either by the prescribed authority or the revisional court and a perusal of the revisional order would indicate that the learned Ist Additional District Judge, Mathura proceeded to decide the controversy involved in the case on an assumption that 'Sheikh' denotes a caste in the Muslim Community. It cannot be gainsaid that a decision rendered by a court sans proper self-direction to the relevant question involved in the case suffers from the vice of manifest illegality which may warrant interference under Article 226/227 of the Constitution. It is a matter of common knowledge that even in Hindu Community a person with the surname 'Singh' may or may not be a member of backward class. Similarly, a person with the surname 'Pandey' or 'Mishra' cannot necessarily be said to be a member of Brahman Community. No authority was cited at the Bar on the caste hierarchy of Muslims to support that 'Sheikh' stands for a caste amongst Mohammedans. The fact that the petitioner's ancestors were described as 'Sheikh' in the revenue records does not necessarily lead to the conclusion that the petitioner did not belong to 'Momin Ansar' by caste. This title might be due to the reason of respect which his ancestors had been commanding in the area of their influence among the people of his community by virtue of their vintage position on account of power and influence in the society as Zamindars which admittedly they were. The controversy in my opinion has not been decided in correct perspective. The judgments and orders under challenge suffer from manifest illegality and therefore, cannot be sustained.

13. In the result the petition succeeds and is allowed. The impugned judgments and orders dated 24.1.1997 and 15.4.1997 (Annexures 7 and 10 respectively) are quashed. The petitioner shall stand restored to the office of the Pradhan. The prescribed authority may proceed to decide the election petition afresh in accordance with law and in the light of the observations made in this judgment.

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