

Jitendra Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-02-2009

Reported in : 2009(4)AWC3556

Judge : Arun Tandon, J.

Appellant : Jitendra

Respondent : State of U.P. and ors.

Judgement :

Arun Tandon, J.

1. This writ petition is directed against the order passed by the Prescribed Authority (S.D.M.) Sadar, Mau dated 7.9.2007 whereby the Election Petition filed by the present writ petitioner was dismissed as also against the order of the Revisional Authority namely the District Judge, Mau dated 5.3.2008 whereby the revision filed against the order dated 7.9.2007 has been dismissed.

2. Facts giving rise to the present writ petition are as follows:

Elections for the office of Pradhan of Gram Panchayat Bhela Bandh, Block Kopaganj, district Mau took place in the month of August, 2005. The writ petitioner Jitendra as well as respondent No. 5 contested the aforesaid alongwith other candidates. It is not in dispute that the office of the Pradhan was reserved for

Scheduled Caste candidate. The result of the elections was declared on 24.12.2005 and the respondent No. 5 namely Santosh was declared elected. Petitioner not being satisfied filed an election petition basically on the ground that Santosh is not a member of the Scheduled Caste and, therefore, he is ineligible to contest the election against the reserved seat. The Election Petition filed by the writ petitioner was dismissed under the order dated 7.9.2007 by the prescribed authority relying upon the decision of the State Backward Commission which declared 'Kamkar' to be a sub-caste of 'Kharwar' which is included at Serial No. 46 in the list of Scheduled Castes referable to Article 341 of the Constitution of India. The revision filed against the said order under Section 12C(6) of the Panchayat Raj Act was also similarly dismissed by the District Judge after referring to the same Circular of the Backward Commissioner which declared Kamkar as the sub-caste of the Kharwar. It is against these two orders that the present writ petition has been filed.

3. On behalf of the writ petitioner it is contended that the prescribed authority as well as the District Judge have clearly misdirected themselves in relying upon the circular/clarification issued by the Backward Commissioner to the effect that the caste Kamkar is the sub-caste of Kharwar which was included in the list of Scheduled Caste at Item No. 48. He submits that Backward Commission has no such authority of law to direct a caste to be created as sub caste of one included in the list of Scheduled Caste referable to Article 341 of the Constitution of India. Nor any such circular will have the sub caste to be treated as within the Scheduled Castes. It is, therefore, contended that the impugned orders are patently illegal and are liable to be set aside.

4. The contention so raised is opposed by the Counsel for the respondent No. 5 and it is submitted that Kharwar is admittedly a Scheduled Caste and Kamkar being its sub caste has rightly been treated as Scheduled Caste. Reference has been made to the judgment of this Court dated 7.3.2008 passed in Writ Petition No. 56055 of 2007, Munni Devi v. State of U.P. and Ors. It is lastly contended that since the caste certificate issued in favour of the petitioner has not been cancelled, the Election Tribunal as well as the District Judge were justified in dismissing the election petition.

5. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.
6. Before advertng to the merits of the dispute raised it would be worthwhile to examine the legal position with regards to declaration of a caste being treated as a Scheduled Caste. The Hon'ble Supreme Court in the case of *Sudhakar Vithal Kumbhare v. State of Maharashtra and Ors.* : 2004 (9) SCC 481 and in the case of *State of U.P. v. Sanjay Kumar Singh* : JT 2003 (8) SC 79, has held that neither the State Government nor the Hon'ble High Court has any authority of law to declare any caste to be a sub caste of a Caste notified in the list referable to Articles 341/342 of the Constitution of India. It has been explained that any amendment in the list including that pertaining to inclusion of sub-caste, can be made only under an Act of Parliament.
7. In view of the aforesaid legal position what is to be seen by this Court is as to whether the caste to which the petitioner belongs is included in the list referable to Article 341 of the Constitution of India or not. This Court may record that the Counsel for the petitioner could not/refer to any list referable to Article 341 of the Constitution of India, notified under an Act of Parliament whereunder Kamkar has been included within the said list. He could only refer to a list which contains the caste 'Kharwar' at Serial No. 46 in the list of Scheduled Caste. The entire case pleaded by the respondents before me is based upon a circular issued by the Backward Commission certifying that the caste Kamkar is a sub caste of Kharwar and, therefore, is a Scheduled Caste.
8. In view of the law laid down by the Hon'ble Supreme Court referred to above, Backward Commission has no authority of law to declare any caste as a sub caste so as to be referable to the list under Article 342 and therefore to be treated a Scheduled Caste. It is the Parliament alone which can issue amendments/clarification/notification by an Act, in respect of a list under Article 342 of the Constitution of India.
9. In view of the aforesaid it is held that the petitioner cannot fall back upon the letter of the Backward Commission for the purposes of claiming that since the Backward Commission has declared the Kamkar to be sub caste of Kharwar, the

said Kamkar be also treated as within the list of Scheduled Caste. The writ petition is therefore, allowed. The order dated 7.9.2007 and 5.3.2008 are hereby quashed. This Court holds that respondent No. 5 does not belong to the Scheduled Caste, therefore, he was disqualified from contesting the elections against the reserved seat. His election is also declared as null and void. Authorities to take appropriate action accordingly.

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