

Jamiruddin Vs. District Magistrate and ors.

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Court : Allahabad

Decided On : Oct-28-2002

Reported in : 2003(1)AWC59

Judge : M. Katju and ;Rakesh Tiwari, JJ.

Appeal No. : C.M.W.P. Nos. 49156 of 2000 and 38719 of 2001

Appellant : Jamiruddin

Respondent : District Magistrate and ors.

Advocate for Def. : Sanjay Misra, Adv. and ;S.C.

Advocate for Pet/Ap. : M.D. Singh 'Shekhar', ;P.N. Singh, ;V.C. Mishra, ;V.P. Mathur, ;K.N. Mishra, ;S.S. Upadhyay and ;Sadhana Upadhyay, Advs.

Disposition : Petition dismissed

Judgement :

M. Katju, J.

1. Heard learned counsel for the parties.

2. This Writ Petition No. 49156 of 2000 and Writ Petition No. 38719 of 2001 are being disposed of by a common judgment.

3. The petitioner in Writ Petition No. 49156 of 2000 has challenged the order of the District Magistrate, Siddharthnagar, dated 19.10.2000 Annexure-11 to the writ petition by which it has been declared that the petitioner Jamiruddin belongs to the general category and not to the Gaddi caste which belongs to the backward category.

4. The petitioner fought election for the post of Member of Zila Panchayat, Siddharthnagar and he was elected as a Member. Annexure-1 to the writ petition is the certificate dated 27.6.2000, electing him as a member of the Zila Panchayat. The petitioner claimed to be Gaddi by caste which belongs to the category of backward caste. The post of Member of Zila Panchayat against which the petitioner was declared elected was reserved for the backward caste category. Annexure-2 to the writ petition is the caste certificate issued by the Tahsildar, Siddharthnagar showing the petitioner to be Gaddi by caste. It appears that respondent No. 5 Ajai Kumar who had also contested for the post of Member of the Zila Panchayat, Siddharthnagar, filed an application before the District Magistrate alleging that the petitioner did not belong to the backward caste. A notice dated 29.7.2000 was issued by the District Magistrate to the petitioner in which it was stated that there is allegation that the petitioner does not belong to the backward caste but is a Pathan by caste. True copy of the show cause notice is Annexure-3 to the writ petition. The reply of the petitioner is Annexure-4. The petitioner appeared before the Tahsildar in the enquiry and filed various documents, reference of which has been given in para 10 of the writ petition. The Tahsildar held an enquiry and found that the petitioner was Pathan by caste and not Gaddi. On the basis of the said report of the Tahsildar, the District Magistrate passed the impugned order dated 19.10.2000, Annexure-11 to the writ petition cancelling the caste certificate issued by the Tahsildar earlier. The Tahsildar has subsequently passed an order dated 24.10.2000, cancelling the caste certificate dated 1.6.2000, issued in favour of the petitioner vide Annexure-12. Aggrieved, this writ petition has been filed.

5. A counter-affidavit has been filed by the Tahsildar in which he has annexed his report dated 19.7.2000, which is a detailed report given after hearing the parties. The Tahsildar has recorded a finding of fact that the petitioner Jamiruddin is

Pathan by caste and not Gaddi. This finding was given after considering relevant material.

6. The finding of the Tahsildar that the petitioner is Pathan by caste is a finding of fact with which we cannot interfere in writ jurisdiction. Hence in view of the above finding this writ petition is dismissed.

7. Since it is held that the petitioner does not belong to the backward caste obviously his election to the post reserved for backward caste category was also illegal. Hence Writ Petition No. 38719 of 2001 is also dismissed. Interim order if any in both the writ petitions, are vacated.

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