

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2756/2022
CM No. 7661/2022

Amrit Bhushan

....Petitioner(s)/Appellant(s)

Through :- Ms. Surinder Kour, Senior Advocate with
Mr. Michael Singh Dogra, Advocate.

V/s

U T of J&K and others

....Respondent(s)

Through :- Ms. Monika Kohli, Sr. AAG with
Ms. Priyanka Bhat, Advocate.

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

ORDER

28.04.2023

01. The writ petition is admitted for hearing and with the consent of the learned counsel for the parties, the same is taken up for final disposal.

02. In this petition, the petitioner inter alia has prayed for the following reliefs:

“(i) To quash order dated 01.07.2022 passed by respondent no.02 (Deputy Commissioner, Collector Kathua) in file no.DCK/Reader/627 entitled Amrit Bhushan v. Union Territory of J&K through Tehsildar Hiranagar by which the respondent no. 02 had dismissed the appeal filed by the petitioner and rejected the case for issuance of international border certificate in favour of son of the petitioner namely Aditya Sharma and also quash the order no.544/NTC dated 04.12.2021 passed by Tehsildar (respondent no.03) and Naib-Tehsildar (respondent no.04), by issuance of writ of certiorari;

(ii) To issue direction to the respondents to issue international border certificate in favour of Aditya Sharma son of the petitioner

under the provisions of Reservation Act and Rules, by issuance of writ of mandamus; and

(iii) To declare the order dated 01.07.2022 passed by respondent no.02 (Deputy Commissioner, Collector Kathua) in file No. DCK/Reader/627 entitled Amrit Bhushan v. Union Territory of J&K through Tehsildar Hiranagar by which the respondent no.02 has dismissed the appeal filed by the petitioner and rejected the case for issuance of international border certificate in favour of son of petitioner namely Aditya Sharma and order no.544/NTC dated 04.12.2021 passed by Tehsildar (respondent no.03) and Naib Tehsildar (respondent no.04) as ultra vires, illegal, unconstitutional and contrary to the provisions of Principle of Natural Justice by issuance of writ of Mandamus.”

03. Facts giving rise to the filing of the present writ petition briefly stated are that the petitioner is the resident of International border area who is residing at Village Pada, Tehsil Hiranagar and District Kathua and had applied for the issuance of International Border Certificate in favour of his son namely Aditya Sharma before the office of learned Tehsildar Hiranagar, who had forwarded the said application to Patwari Halqa/GQ for report and subsequently a report by Patwari Halqa Hore and Girdawar Circle I/C Chak Devo was submitted before Naib Tehsildar Chadwal.

04. It is averred in the petition that for the purpose of obtaining of international border certificate, the petitioner had submitted all the requisite formalities along with certificate issued by school of the ward of the petitioner to the concerned issuance authority. The Naib Tehsildar Chadwal vide Order No.544/NTC dated 04.12.2021 forwarded the application to the Tehsildar Hiranagar with a finding that the annual income of the family of the applicant exceeds 08 lakhs and recommended for not issuing IB certificate in favour of the petitioner as such the Tehsildar Hiranagar rejected the said application on the

ground that the applicant is not able to fulfill the criteria for issuance of Border Certificate in his favour as the family income of the applicant exceeds prescribed limit as per reservation rules with further finding that the schooling of the ward of the applicant is not from border area, which is totally against the facts and without any merits thereby causing irreparable loss and injustice to the petitioner.

05. Aggrieved of the order dated 04.12.2021 passed by the Naib Tehsildar Chadwal and Tehsildar Hiranagar rejecting the application for issuance of International Border Certificate in favour of the son of the petitioner, the petitioner filed an appeal before the Deputy Commissioner (Collector) Kathua on 25.02.2022. The Deputy Commissioner (Collector), Kathua on 01.07.2022 dismissed the appeal filed by the petitioner with the remarks (i) that the income of the appellant family exceeds the prescribed limit, (ii) the entire schooling of the appellant children is not from the border villages; and (iii) that the applications filed by the appellant were not signed and does not fulfill the conditions for obtaining the Border Area Certificate under SRO 294 of 2005 and the plea given by counsel for the appellant that applicant has left the local schooling for obtaining the CBSE education cannot be considered as per Reservation Act 2004 for obtaining issuance of the Border Area Certificate. Dissatisfied of the order dated 01.07.2022 passed by Deputy Commissioner (Collector), Kathua, the petitioner has filed the present writ petition seeking inter alia quashing of the above order.

06. The petitioner has challenged the impugned order on the ground that case of the petitioner is rejected only for the reason that the income of the petitioner family exceeds the prescribed limit and the entire schooling of the petitioner's children is not from the border villages but the fact of the matter is

that in terms of proviso attached to Section (2) (o) (iii) of the Jammu and Kashmir Reservation Act, 2004, the income ceiling shall not apply to a person who has lived and completed entire school education from an area identified as Backward or [Actual Line of Control or International Border], as the case may be, and in case such schooling is not available in such area, from the nearest adjoining area.

07. It is the further submission of the learned senior counsel for the petitioner that since there was no CBSE affiliated school in his village Padal, he had to admit his son to Delhi Public School Rajbagh which is allegedly the adjoining area to the petitioner's village. Lastly, learned senior counsel submits that the Deputy Commissioner, Kathua has not appreciated at all the provisions of the J&K Reservation Act, 2004 *vis-a-vis* proviso attached to Section (2) (o) (iii) of the Jammu and Kashmir Reservation Act, 2004 and thus, the order impugned is bad in the eye of law and deserves to be set-aside.

08. I have considered the submissions made by learned counsel for the parties and perused the impugned order as well as annexures attached with the writ petition.

09. Relevant proviso to Section 2(o)(iii) of the J&K Reservation Act, 2004 reads thus:

“Provided that the income ceiling shall not apply to a person who has lived and completed entire school education from an area identified as Backward or [Actual Line of Control or International Border], as the case may be, and in case such schooling is not available in such area, from the nearest adjoining area.”

10. On a reading of the aforesaid proviso to Section 2(o)(iii) of the Act, it is thus, clear that the income ceiling shall also not apply to a person who has completed his schooling from the nearest adjoining area in case such schooling is

not available from an area identified as Backward or [Actual Line of Control or International Border].

11. In view of the preceding analysis, I am of the opinion that the order impugned deserves to be set aside and is accordingly set aside. A direction is issued to the respondent no.2 -Deputy Commissioner, Kathua to enquire into the fact that the schooling of the son of the petitioner is from the area which is an adjoining area in terms of proviso to Section 2(o)(iii) of the J&K Reservation Act, 2004 and on the basis of the outcome of the enquiry shall consider for grant of international border certificate in favour of son of the petitioner strictly in terms of the admissible provisions of law by passing a speaking order.

12. Let the aforesaid exercise be completed with a period of four weeks from the date copy of this order along with complete paper book is supplied to the respondent no.2.

13. With the aforesaid directions, the writ petition is disposed of.

(Tashi Rabstan)
Judge

Jammu:
28.04.2023.
Raj Kumar

Whether the order is speaking?:	Yes
Whether the order is reportable?:	Yes