

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 29th May, 2017

Judgment delivered on: 07th July, 2017

+ **W.P.(C) 879/2017**

AMITA GIRI

..... Petitioner

versus

LT. GOVERNOR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ankur Chibber, Amicus Curiae with petitioner in person.

For the Respondents : Ms. Jyoti Taneja and Mr. Hammad Khan for GNCTD.
Mr. Rajesh Gogna

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

W.P.(C) No.879 /2017

1. The petitioner, seeks a direction to the respondents to issue the Caste Certificate to the daughter of the petitioner.
2. Petitioner claims to be a member of the Nomadic Tribe "*Gosavi*" and is residing in Delhi.
3. The petitioner approached the respondents for issuance of a Caste Certificate for her daughter Ms. Agamy Khantwal Giri.

Petitioner applied for issuance of a Nomadic Tribe Certificate, however, the same has not been issued.

4. In support of her application, the petitioner had produced a Caste Certificate issued by the Deputy Collector, Nagpur in the name of the daughter of the petitioner confirming that she belongs to the *Gosavi* Caste/Tribe, which has been recognized as Nomadic Tribe at Serial No.1 under Government Resolution No.CBC-1361/M dated 21.11.1961. The petitioner has also produced a certificate in the name of her husband Agam Sheshgiri Giri issued by the Deputy Collector Nagpur.

5. The Nomadic Tribe *Gosavi* has been listed in the category of Central List of Other Backward Classes at Serial No. 188 for the State of Maharashtra by virtue of Resolution No. 12011/68/93-BCC(C) dated 10.09.1993.

6. The petition is opposed by the respondents. The respondents, in their short-reply, have admitted that the petitioner already has a Certificate from the District/Division Nagpur confirming that the petitioner belongs to the *Gosavi* Caste/Tribe, which is recognized as a Nomadic Tribe. The said Caste, i.e. *Gosavi* is listed in the Central List of Other Backward Classes at Serial No.188 for the State of Maharashtra.

7. It is contended that the basic criteria for issuance of Schedule Caste Certificate for Delhi is that the applicant must belong to a Caste,

which has been listed as a Scheduled Caste in the Presidential Order of 1951 for the Union Territory of Delhi and the family of the applicant is an original inhabitant resident of Delhi since prior to the issuance of the Presidential Order.

8. Further, it is contended that eligibility criteria for issuance of Other Backward Class Certificate for Delhi is that the applicant must belong to a Caste/Class, which has been listed as OBC and the family of the applicant has been staying in Delhi since prior to the issuance of the Notification of 1993. Further, the applicant for an OBC Certificate must also belong to non-creamy layer of the Society.

9. It is contended that the Caste *Gosavi* is not listed in the Central List or State List for Union Territory of Delhi in any category (OBC, SC & ST). Further, it is contended that there is no separate Nomadic Tribe category for Delhi. It is thus contended that Caste Certificate under OBC or Nomadic Tribe category for Delhi cannot be issued.

10. Admittedly, the petitioner belongs to the Tribe *Gosavi*. The tribe *Gosavi* has been recognized as a Nomadic Tribe at Serial No.1 under Government Resolution No.CBC-1361/M dated 21.11.1961.

11. The Nomadic Tribe *Gosavi* has been listed in the category of Central List of Other Backward Classes at Serial No. 188 for the State of Maharashtra by virtue of Resolution No. 12011/68/93-BCC(C) dated 10.09.1993.

12. For the State of Delhi, the Tribe *Gosavi* is not notified either in the category of Caste or Tribe or OBC. There are no Notified Nomadic Tribes in Delhi.

13. Caste Certificate has been issued by the Deputy Collector, Nagpur in the name of the daughter of the petitioner as well as her husband confirming that they belongs to the *Gosavi* Caste/Tribe, which has been recognized as Nomadic Tribe at Serial No.1 under Government Resolution No.CBC-1361/M dated 21.11.1961.

14. The Office of the Divisional Commissioner has issued Office Order laying down the procedure for issuance of various kinds of Certificates by the Revenue Department.

15. Office Order dated 26.11.2015 on the subject “Simplified Procedure for Issuance of Various Kinds of Certificate by Revenue Department” reads as under:-

“In supersession of all previous orders on the subject-mentioned above and in pursuance of Cabinet Decision No.2255 dated 16.11.2015 following simplified procedure for the issuance of various certificates in Revenue Department is prescribed for implementation by all revenue authorities for all applications received from 01st December, 2015 onwards.”

3. *“OBC Certificate of Other State” can now be on the basis of OBC Certificate issued to siblings and real*

uncles (paternal side only) instead of issuance on the basis of father's certificate only."

16. The Office Order shows that the simplified procedure has been issued pursuant to a Cabinet Decision. Further, it lays down that the "OBC Certificate of Other State" can even be issued based on the OBC Certificate issued to siblings and real uncles (paternal side only).

17. The Standard Operating Procedure for issuance of SC/ST and OBC Certificate has been specified as under:-

SIMPLIFIED APPLICATION AND DOCUMENTS FOR ISSUANCE OF VARIOUS CERTIFICATES				
ISSUANCE OF SC/ST CERTIFICATES				
S. No.	CATEGORY	APPLICANT'S BACKGROUND	PROPOSED DOCUMENTS	SDP
1.	Original Delhi with certificate	Cases of those SC/ST applicants – i) Whose family has been staying in Delhi since prior to 1951; AND ii) Where a caste certificate has been issued to any of his/her relatives from paternal side	1. Completed application form. 2. Copy of Caste Certificate of any relative from paternal side. 3. Proof of relationship of the applicant with caste certificate holder. 4. One photo ID proof and 5. One residential proof [Eligible for Delhi SC / ST]	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration. 4. No Field verification. 5. Table top disposal after verification of documents
2.	Migrated and Settled in Delhi with certificate	Cases of those SC/ST applicants – i) Whose family has migrated to Delhi after 1951 and domiciled here and belongs to A Caste which is notified as SC/ST in the State of origin <u>as well as in Delhi</u> AND Where a caste certificate has already been issued to any of his/her relatives from paternal side.	Sr. No.1 to 5 – Same as above ii 6. Any one of the following documents: i) Birth certificate for applicants born in Delhi. ii) Matriculation certificate/marks-sheet for applicants who have studied in Delhi. iii) Proof of residence for the last 5 years [Eligible for Delhi SC / ST]	6. Publicity of name of beneficiary on the website of the District.

3.	Migrated and settled in Delhi with other State certificate but caste not listed in Delhi	Cases of those SC/ST applicants – i) whose family migrated to Delhi after 1951 and settled/domiciled in Delhi and belongs to a Caste which is notified as SC/ST in the State of origin <u>but not in Delhi</u> AND ii) Where a Caste Certificate has been issued to these SC/ST applicants from original State	1. Completed application form 2. Copy of the Caste Certificate of the relative from paternal side issued from State of origin of the applicant. 3. Proof of relationship of the applicant with caste certificate holder. 4. One photo ID proof and 5. One residential proof (Eligible for other State SC / ST certificate)	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration 4. No Field verification. 5. Table top disposal after verification of documents 6. Publicity of name of beneficiary on the website of the District
4.	Original resident of Delhi but without any caste certificate for a paternal relative	Cases of those SC/ST applicants – i) Whose family has been staying in Delhi since prior to 1951 AND ii) Where no caste certificate has ever been issued to any of his/her relatives from paternal side; AND	1. Completed application form 2. Proof of residence in Delhi since prior to 1951 3. One photo ID proof; and 4. One residential proof (Eligible for Delhi SC certificate)	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration. 4. Field verification mandatory; to be conducted by an officer not below the rank of Naib Tehsildar 5. Publicity of name of beneficiary on the website of the District.

5.	Migrated and settled in Delhi but without any caste certificate issued to paternal relative	Cases of those SC/ST applicants – i) Whose family has migrated and settled in Delhi after 1951; AND ii) Where no caste certificate has ever been issued to any of his/her relatives from paternal side; AND iii) Caste is notified in Delhi list as well as the list of State of origin	Sr. No.1 to 4 - Same as above & 5. Any one of the following documents: i) Birth certificate for applicants born in Delhi. ii) Matriculation certificate/marks-sheet for applicants who have studied in Delhi. iii) Proof of residence for the last 5 years 6. Any documentary evidence for stay in the State of origin since prior to 1951 (Eligible for Delhi SC / ST certificate)	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration. 4. Field verification mandatory; to be conducted by an officer not below the rank of Tehsildar 5. Publicity of name of beneficiary on the website of the District.
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FOR ISSUANCE OF OBC CERTIFICATES

S. No.	CATEGORY OF CERTIFICATE	PROPOSED DOCUMENTS	SOP
1.	Cases of those OBC applicants i) whose family has been residing in Delhi since prior to 1993; AND ii) Where an OBC Certificate has been issued to brother/sister/ father or any other relative from paternal side	1. Completed application form alongwith self declaration of the claim for Non-Creamy Layer in the prescribed format. 2. Copy of the Caste Certificate of any relative from paternal side 3. Proof of relationship of the applicant with caste certificate holder. 4. One photo ID proof and one residential proof (Eligible for Delhi OBC)	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration. 4. No Field verification. 5. Table top disposal after verification of documents 6. Details of beneficiary to be put on the website of the District.
2.	Cases of those OBC applicants i) whose family has migrated to Delhi after 1993; AND ii) Where an OBC Certificate has already been issued to father of the applicant from the State of Origin of the applicant's family	1. Completed application form along with Self declaration of the claim for Non-Creamy Layer in the prescribed format. 2. Copy of the Caste Certificate of father of the applicant 3. One photo ID proof and one residential proof (Eligible for Other State OBC)	

3.	Cases of those OBC applicants i) whose family has been residing in Delhi since prior to 1993; AND ii) Where No OBC Certificate has been issued to any relative from paternal side	1. Completed application form along with Self declaration of the claim for Non-Creamy Layer in the prescribed format. 2. Proof of residence in Delhi since prior to 1993 3. One photo ID proof and one residential proof (Eligible for Delhi OBC)	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration. 4. Field verification mandatory; to be conducted by an officer not below the rank of Naib Tehsildar 5. Details of beneficiary to be put on the website of the District.
4.	OBC (Central) Where an OBC Certificate has already been issued to the applicant from Delhi/Other State	1. Completed application form along with Self declaration of the claim for Non-Creamy Layer in the prescribed format 2. Copy of OBC Certificate of the applicant 3. One photo ID proof and one residential proof (Eligible for Central OBC)	1. No Attestation from any Gazetted Officer or MP/MLA. 2. No Affidavit. 3. Only Self Declaration. 4. No Field verification. 5. Table top disposal after verification of documents 6. Details of beneficiary to be put on the website of the District.

18. The Standard Operating Procedure specifies that an SC/ST Certificate can be issued to an applicant in the following categories:

- (i) to the applicants whose family has been staying in Delhi since prior to 1951 where a caste Certificate has been issued to any of his/her relative from paternal side (*eligible for Delhi SC/ST certificate*);
- (ii) to an applicant whose family has migrated to Delhi after 1951 and domiciled here and belongs to a caste which is notified as SC/ST in the state of origin as well as in Delhi and where a caste certificate has already been issued to any of his/her relative from paternal side (*eligible for Delhi SC/ST certificate*);
- (iii) to an applicant whose family has migrated to Delhi after 1951 and settled/domiciled in Delhi and belongs to a caste which is notified as SC/ST in the state of origin but not in Delhi and where a caste certificate has already been to these SC/ST applicants from original State (*eligible for other State SC/ST certificate*);
- (iv) to an applicant whose family has been staying in Delhi since prior to 1951 but no caste certificate has been issued to any of his/her relatives from paternal side (*eligible for Delhi SC certificate*) and
- (v) to an applicant whose family has migrated and settled in Delhi after 1951 and where no caste certificate has ever been issued to any of his/her relative from paternal side and belongs to a caste which is notified in Delhi list as well as the list of state of origin (*eligible for Delhi SC/ST certificate*).

19. The Standard Operating Procedure specifies that an OBC Certificate can be issued to an applicant in the following categories:

- (i) to the applicants whose family has been residing in Delhi since prior to 1993 and an OBC Certificate has been issued to brother, sister, father or any other relative from paternal side (*eligible for Delhi OBC certificate*);
- (ii) to an applicant whose family has migrated to Delhi after 1993 and an OBC Certificate has already been issued to the father of the applicant from the State of Origin of the applicant's family (*eligible for other state OBC certificate*);
- (iii) to an applicant whose family has been residing in Delhi since prior to 1993 but no OBC Certificate has been issued to any relative from paternal side (*eligible for Delhi OBC certificate*) and
- (iv) to an applicant to whom the OBC Certificate has already been issued to the applicant from Delhi/Other State (*eligible for Central OBC certificate*).

20. Though the Tribe *Gosavi* has been notified as a nomadic Tribe but the said nomadic tribe has been listed in the category of “*Central List of Other Backward Classes*” at Serial No. 188 for the State of Maharashtra.

21. The daughter of the petitioner belongs to the Nomadic Tribe *Gosavi*, which has been notified as an “OBC” in the Central List for the State of Maharashtra.

22. Caste Certificates have been issued by the Deputy Collector Nagpur, certifying that the daughter of the petitioner and her husband belong to the Gosavi Caste/Tribe, which has been recognized as a Nomadic Tribe.

23. Clearly, the petitioner satisfies the requirement, as stipulated in the Office Order dated 26.11.2015 for issuance of an “other State OBC Certificate”.

24. The fact that the *Gosavi* Caste is not notified as a Nomadic Tribe or as a Scheduled Castes/Scheduled Tribe for the State of Delhi may disentitle the petitioner for and SC/ST/OBC certificate for the State of Delhi but as the petitioner satisfies the requirement of the Office Order dated 26.11.2015, the petitioner is entitled to “other State OBC Certificate” from the respondents.

25. Reference may also be had to the Notification dated 08.04.1994 issued by Government of India, Ministry of Welfare. The Notification dated 08.04.1994 reads as under:-

“VERY IMPORTANT CIRCULAR
Govt. of India, Ministry of Welfare
Letter No.12011/11/94-BCC(C) New Delhi dated 8 April 1994

To,
The Chief Secretaries
All State Governments and
UT Administrations.

Subject: Issuing of Other Backward Class Certificates to
migrants from other States/UTs

Sir,

In continuation of the DOPT's letter of 36012/22/93-Estt. (SCT) dated 15 November, 1993, I am directed to say that it has been represented to this Department that persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste certificates from the State from which they have migrated. In order to remove this difficulty, it has been decided that the prescribed authority of a State/U.T. Administration in terms of the DOPT letter No.36012/22/93-Estt.(SCT) dated 15th November, 1993 may issue the OBC Certificate to a person who has migrated from another State on the production of a genuine certificate issued to his father by the prescribed authority of the State of his father's origin except where the prescribed authority feels that a detailed enquiry is necessary through the State of origin before the issue of the Certificate.

2. The Certificate will be issued irrespective of whether the OBC candidate in question is included in the list of OBC pertaining to the State/U.T. to which the person has migrated. The facility does not alter the OBC status of the person in relation to the one or the other State/U.T. The OBC person on migration from the State/U.T. of his origin to another State/U.T. where his caste is not in the OBC list is entitled to the concessions/benefits admissible to the OBCs from the State of his origin and Union Government but not from the State where he has migrated.

3. It is requested that all competent authorities may be advised to issue the OBC Certificate after satisfying themselves of the correctness of the Certificate. The Lists of the Competent Authorities empowered as per DOPT's circular of 15 November 1993 may be followed strictly. No other authorities may be allowed to issue the OBC Certificates.

Yours faithfully,

Sd/...

(M.S. Pandit)

Joint Secretary to the Govt. of India."

26. The Notification dated 08.04.1994 lays down that the prescribed Authority of a State/Union Territory may issue the OBC Certificate to a person, who has migrated from another State on production of a genuine Certificate issued to the father of the applicant. The Certificate is to be issued irrespective of whether the OBC candidate in question is included in the List of OBC pertaining to the State/Union Territory to which the person has migrated. The facility does not alter the OBC status of a person in relation to one or the other State/Union Territory.

27. The Office Order dated 26.11.2015 when read in the light of the Notification dated 08.04.1994 of the Government of India, Ministry of Welfare clearly establishes that the petitioner is entitled to the issuance of an “other State OBC Certificate” from the respondents.

28. In view of the above, the Writ Petition is allowed. The respondents are directed to issue an “other State OBC Certificate” to the daughter of the petitioner, i.e. Ms Agamya Khantwal Giri daughter of Shri Agam Sheshgiri Giri. There shall be no order as to costs.

29. I would also like to put on record a word of appreciation for the able assistance rendered by Mr. Ankur Chibber, learned Amicus Curiae.

July 07, 2017
‘§n’

SANJEEV SACHDEVA, J