

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

274

CWP-22590-2023 (O&M).
Date of Decision: 02.04.2024.

ANANYA SINGH

... Petitioner(s)

Versus

UNION TERRITORY, CHANDIGARH AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Nikhil Sabharwal, Advocate,
(Through video Conference)
for the petitioner.

Mr. Baljinder Singh, Additional Standing Counsel,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer made in the present writ petition is for seeking issuance of directions to respondent No.2-the Deputy Commissioner, Chandigarh, to expeditiously decide the appeal dated 25.01.2023 (Annexure P-6) registered vide Diary No.823226 dated 22.02.2023 passed by the Sub Divisional Magistrate (Central), U.T. Chandigarh, dismissing the application filed by the petitioner for issuance of OBC Certificate which had been pending for more than 07 months, however, neither any notice has been received by the petitioner nor any date has been fixed for hearing in the appeal.

2 Learned counsel for the petitioner contends that the petitioner belongs to the Gold Smith/Sunar/Sunara/Swarankar Community. An OBC Certificate dated 01.07.1978 was issued in favour of the father of the petitioner by the Chandigarh Administration. The said certificate was issued after a thorough verification process undertaken by the Tehsildar Chandigarh vide his Memo No.410/WBN/RDR/TEH/77 dated 01.07.1978. On the basis of the said verification, it was specifically mentioned that the father of the petitioner Shri Paramjeet Singh belongs to a 'Gold Smith' Community which has been declared as Backward Class by the Government. He thus contends that the Gold Smith Community, being an undisputed Backward Class stood, certificate ought to have been issued. An application was hence moved by the petitioner on 04.04.2022 before the respondent No.3 for issuance of the OBC Certificate, in accordance with the existing Rules and Regulations. It was specifically mentioned in the application that the father of the petitioner was holding an OBC Certificate dated 01.07.1978 issued by the Chandigarh Administration. Additionally, an undertaking was also given by the petitioner on 04.04.2022 verifying and attesting all the details provided in the application. The said application remained pending before the respondent No.3-Sub Divisional Magistrate for a period of 9 months and no opportunity of hearing, for making any submission, was afforded to the petitioner. Despite several requests made by the petitioner to the respondent No.3 for issuance of the OBC Certificate, the same was declined by respondent No.3 by primarily observing that no caste by the name of "Gold Smith" or any synonymous expression, has been included/notified in the list for OBC meant for U.T. Chandigarh.

3 Aggrieved of the said order dated 11.01.2023, an appeal was preferred by the petitioner before the respondent No.2-Deputy Commissioner, Chandigarh on 25.01.2023 for issuance of OBC Certificate. It was specifically mentioned that the category has been specifically included in the Central List of OBCs for the U.T. of Chandigarh at Entry No.59 wherein the expression “Soni, Sunar/Swarnkar, Daula, Soni Barderi” has been mentioned. It is contended that the ‘Sunar/Swarnkar’ is ‘Goldsmith’ in the regional language. Resultantly, the petitioner fell within the OBC list and merely because of the use of an English expression, the OBC Certificate cannot be denied. It is further submitted by the counsel for the petitioner that the said appeal was duly registered vide Diary No.823226 dated 22.02.2023, however, despite passing of a period of seven months (as on the date of filing of the petition), neither any notice has been issued nor any opportunity of hearing has been granted to the petitioner. It is submitted that the petitioner is an aspiring Candidate planning to appear for the upcoming UPSC Exam. Non-issuance of the OBC Certificate prevented the petitioner from availing the benefit of reservation available to her as per law. Reference is also placed upon notification dated 08.03.2022 which prescribes the Appellate Authority.

4 A short reply/written statement was filed on behalf of respondents through Sanyam Garg, Sub Divisional Magistrate (Central) U.T. Chandigarh, wherein it has been averred that for filing an application for issuance of OBC certificate for Goldsmith Community/Caste, various documents are required to be appended along with the application. The same were furnished by the petitioner. However, the petitioner did not

disclose the occupation/status of his father. Later on, the father of the petitioner had submitted an undertaking on 05.05.2022 stating therein that, he is a retired person and his rental income is Rs. 2,06,050/- per annum. However, the other details were not furnished. An OBC certificate of 'Gold Smith' was issued in the name of the father of the petitioner Paramjeet Singh. It is submitted that the said caste 'Goldsmith' does not exist in the list issued by Chandigarh Administration as of now and they had obtained a certified copy of the State list of OBCs from the Department of Social Welfare, U.T. Chandigarh Administration on this issue as to whether the word "Gold-Smith" is written or has been mentioned in the State List of OBCs. A response was received from the Department of Social Welfare, U.T. Chandigarh on 05.07.2022 providing certified copies of notifications dated 27.06.1995, 03.09.2001, 05.02.2004 and 26.03.2015 issued by the Social Welfare Department, Chandigarh Administration, wherein 'Gold Smith' caste/community has not been mentioned. As per the said letter received, the caste/community 'Sunar/Swarnkar' was notified vide notification dated 03.09.2001 and later on, 'Swarnakar' was also notified by the Chandigarh Administration vide notification dated 26.03.2015. The English expression of some of the castes, such as Weavers (Jullaha) is expressly mentioned in the notification dated 27.06.1995, however, an English expression of the term 'Sunaria/Swarnkar' has not been mentioned, hence, the OBC Certificate cannot be issued. It is not disputed that the petitioner has preferred an appeal, however, it is submitted that there is no provision to file an appeal to challenge an order passed by the respondent

No.3-Sub Divisional Magistrate. The application of the Notification dated 08.03.2022, however, has not been disputed.

5 Learned counsel for the respondents contends that in the absence of any synonymous expression provided in the list notified by the Government, the OBC certificate could not be issued. He, however, submits that they are ready and willing to decide the appeal in a time bound manner in case it is so directed.

6 I have heard learned counsel appearing on behalf of the respective parties and have also gone through the documents appended along with the present petition as also along with the reply filed by the respondents.

7 The sole question which arises for consideration before this Court is as to whether the OBC certificate could have been issued in favour of the petitioner on the basis of the documents submitted by him and by making the reference of the expression “Goldsmith.” While the stand of the respondent-State is that the notification contained the expression “Sunar/Swarnkar” and the expression “Goldsmith” has not been used in the notification. They have, however, not disputed that the earlier certificate of OBC was issued in favour of the father of the petitioner on 01.07.1978 by a specific reference to the caste as “Goldsmith.”

8 I find that the response adopted by the respondents is hyper-technical inasmuch as the above said dispute is a creation of the respondents themselves as an earlier certificate was issued in favour of the father of the petitioner by the respondent-Department as “Goldsmith” which required the

petitioner to apply under the same category in which the respondent-department had itself issued the earlier OBC certificate.

9 Even otherwise, when the counsel for the respondents was confronted as to whether the “Goldsmith” is any caste or community separate from “Swarnkar/Sunar” as notified in the Central List for U.T. Chandigarh, counsel for the respondent-State fairly conceded that there is no such distinction and that the word “Goldsmith” is synonymous with the “Swarnkar/Sunar.” The only limitation which has stood before the authorities concerned is that the above said expression does not find mention in the list as notified.

10 I find that the above said stand of the respondent is absurd and is not based on reasoning and rationality. Any such ministerial conduct on the part of the respondents in reflecting application for grant/issuance of certificates to which a particular person is entitled to, is not only compounding the harassment and humiliation of the persons but also forcing them to undergo un-required litigation thus, burdening the system of administration of justice.

11 While the respondents do not deny execution of the earlier certificate issued in the name of father of the petitioner as “Goldsmith”, the respondents have also made a reference in their reply that there was no documentation furnished as regards the income proof and/or the documents in support of the said requirement, however, there is no reference to any communication sent by the respondents to the petitioner herein seeking any documents at any stage/time. Seemingly, an excuse is being devised by the respondents to justify their acts.

12 An authority is required to examine a claim of a person rationally and satisfying the basic test of rationality, reasoning and common sense as well.

13 An approach which defies reasoning and common-sense is required to be discarded by the officials and one which reflects and displays application of these tests in furtherance of objective of reservation, needs to be adopted.

14 It is undisputed that “Goldsmith” is the English translation of “Sunar/Swarankar.” Earlier said certificate as Goldsmith had been issued in favour of father of the petitioner. Hence, there is legally no impediment as to why the OBC Certificate could not be issued to the petitioner.

15 The present writ petition is accordingly disposed of with a direction to the respondents to decide the appeal filed by the petitioner, which is pending before the Deputy Commissioner, within a time bound manner and preferably within a period of 30 days of the receipt of the certified copy of this order. The respondent U.T. Chandigarh is further burdened with a costs of Rs.1,00,000/- (Rupees One Lakh) for taking a stand which is wholly irrational, illogical and sans objectivity. The above said costs of Rs.1,00,000/- is to be deposited with the PGIMER Poor Patients’ Welfare Fund within a period of 04 weeks.

16 However, before the order could be signed, after correction, the Senior Standing Counsel for the Union Territory of Chandigarh, appeared before this Court with the Deputy Commissioner U.T. Chandigarh and stated that the needful shall be done shortly and the OBC certificate, to

which the petitioner is entitled, shall be issued. The same has also been issued in favour of the petitioner.

17 In view of the subsequent development learned counsel for the petitioner submits that he does not press the instant petition any further and the cost imposed may be waived off. The present petition is accordingly disposed of as having been rendered infructuous. Imposition of cost is waived.

April 02, 2024.
raj arora

Whether speaking/reasoned
Whether reportable

(VINOD S. BHARDWAJ
JUDGE

: Yes/No
: Yes/No