

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6858 of 2014

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Dhirendra Kumar, Son of Rajeshwar Ram, Resident of Village- Belaon, P.S.-
Belaon, P.O.- Kharenda, District- Kaimur, Bhabhua

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration,
Government of Bihar, Patna
2. District Magistrate, Kaimur at Bhabhua
3. Security Committee through its Chairman Additional Collector, Kaimur at
Bhabhua
4. District Welfare Officer, Kaimur at Bhabhua
5. Anchal Adhikari, Rampur Block, District- Kaimur at Bhabhua

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate.

For the Respondent/s : Mr. J.P.Kishore, AC to SC-13

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-11-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to the decision of the Caste Scrutiny Committee as contained in Memo No. 26 dated 23.12.2013, by which the claim of the petitioner, for issuance of caste certificate of *Kharwar* caste, has been rejected.

3. Learned counsel for the petitioner submitted that in all the revenue records, right from the Cadestral Survey of the year 1910, the title of his forefather has been shown as *Kharwar*, but only in the consolidation proceeding, an error was committed where the title was shown as *Kahar*, which also has to be subsequently corrected.

4. It was further submitted that on the basis of the report of



Anchaladhikari, which is also vague and passed on conjecture and surmises, the Caste Scrutiny Committee has decided that the petitioner belongs to *Kahar* caste and not *Kharwar*. Learned counsel submitted that earlier also, based on such report of the Anchaladhikari, the issuance of caste certificate was refused by order dated 02.07.2010 passed by the Block Development Officer, Rampur Block, Kaimur, Bhabua, against which the petitioner had moved this Court in CWJC No. 13233 of 2010, in which the Court, by order dated 09.05.2011, has set aside the order passed by the Block Development Officer, Rampur Block, Kaimur, Bhabua dated 02.07.2010 cancelling the caste certificate of the petitioner and his entire ancestors/family members.

5. The petitioner, being aggrieved by non-consideration of his case, again moved this Court in CWJC No. 17308 of 2011, which was disposed off by order dated 21.02.2013, in view of the fact that a Caste Scrutiny Committee had been constituted and the direction was to consider the matter within three months in terms of the parameters laid down by the Hon'ble Supreme Court in the case of *Anand v. Committee for Scrutiny and Verification of Tribe Claims and Ors.* reported as *(2012) 1 SCC 113*. Learned counsel submitted that thereafter, as per Resolution of the Caste Scrutiny Committee dated 16.05.2013, the claim of the petitioner was rejected, which he



challenged in CWJC No. 12587 of 2013, in which, by order dated 22.08.2013, it was noticed by the Court that the report of the Circle Officer weighed with the Caste Scrutiny Committee to reject his claim and a direction was given to the Additional Collector, Kaimur at Bhabua to fix a firm date, convene a meeting of the Caste Scrutiny Committee and after giving personal hearing, reconsider its earlier Resolution dated 16.05.2013. However, pursuant to the same, the Caste Scrutiny Committee has once again rejected the claim.

6. Learned counsel submitted that, as per the said guidelines of the Hon'ble Supreme Court, the Caste Scrutiny Committee has again committed mistake by relying on the same report of the Anchaladhikari, which had earlier led to cancellation of his caste certificate and has rejected the claim by the order impugned.

7. Learned counsel for the State submitted that the documents having been considered by the Caste Scrutiny Committee, the decision is in accordance with law.

8. Having considered the rival contentions, this Court finds that the order impugned cannot be sustained. The mandate of the Caste Scrutiny Committee was to verify the claim of the petitioner in terms of the documents supplied by him. The parameters set by the Hon'ble Supreme Court have been elaborated at paragraphs 22 and 23 in the case of *Anand* (supra), which is quoted hereinbelow:



“22. It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, it si veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not



essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

23. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the applicant. In case the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

9. In the present case, the report of the Anchaladihikari, besides being extraneous, no basis has been assigned or disclosed as to how such conclusion has been arrived that the caste of the petitioner and his forefather/ancestor was *Kahar* and not *Kharwar*. On the other hand, the Caste Scrutiny Committee has also not considered as to how, in view of entry in the cadestral survey showing the ancestor of the petitioner as *Kharwar*, the same has not been relied

upon when the Hon'ble Supreme Court had made it clear that pre-Independence documents have a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents.

10. For the reasons aforesaid, the writ application stands allowed. The order impugned dated 23.12.2013, contained in Memo No. 26, refusing issuance of Caste Certificate of *Kharwar* to the petitioner, is set aside. The matter is remanded to the Caste Scrutiny Committee for fresh consideration in accordance with law. The matter shall be decided within three months from the date of production of a copy of this order before the District Magistrate, Kaimur in the aforementioned terms, after giving full opportunity of hearing to the petitioner.

11. The Court would like to indicate that the Caste Scrutiny Committee has to consider the case strictly in terms of the parameters laid down by the Hon'ble Supreme Court in the case of *Anand* (supra), which, in the present case, has not been done. The Court expects that the Caste Scrutiny Committee would be careful not to commit the same mistake again, and if there is occasion for the Court to consider the matter in future and it is found that the parameters framed by the Hon'ble Supreme Court have not been adhered to by the Caste Scrutiny Committee, the Court may be

constrained to take judicial notice for such non-compliance by the
Caste Scrutiny Committee.

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	
CAV DATE	
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