

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No.1207 of 2004

State of Chhattisgarh, through the Secretary (wrongly mentioned as Chief Secretary in the impugned order), Department of Revenue, D.K.S. Bhawan, Mantralay, Raipur (CG)

---- Appellant/
(Defendant)

Versus

Gurmukh Singh Hora, S/o Shri Amrik Singh Hora, R/o A-1, Sayee Nagar, Raipur (CG)

---- Respondent/
(Plaintiff)

For Appellant:	Mr. Arun Sao, Deputy Advocate General.
For Respondent:	Mr. Maneesh Sharma and Mr. Pragalbha Sharma, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/07/2017

1. Invoking the appellate jurisdiction of this Court under Order 43 Rule 1 (r) of the CPC, the State of Chhattisgarh – appellant/defendant herein, has impugned legality, validity and correctness of the order passed by the trial Court granting temporary injunction in favour of the respondent/plaintiff herein restraining the State from interfering with the benefits available to him as a member of Other Backward Classes (OBC) on the basis of the order dated 19-11-2004 passed by the Tahsildar, Kurud.
2. Essential facts needed to judge the correctness of the plea raised at the Bar are as under: -

2.1) The respondent / plaintiff instituted a suit for declaration and permanent injunction stating inter alia that he belongs to Sikh religion, he was born in the area falling in the territorial jurisdiction of the State of Chhattisgarh, he was granted the certificate of Other Backward Classes (hereinafter called as 'OBC') dated 25-9-2004 which has been cancelled by the Naib Tahsildar, Kurud by order dated 19-11-2004 and he prayed that it be declared that he is member of OBC and is entitled to all the benefits and rights available to a member of OBC and the State be restrained from interfering with such a right. Along with the suit, the respondent also preferred an application for temporary injunction that during the pendency of the suit, the State be restrained from interfering with his right flowing from the member of OBC by way of temporary injunction. The trial Court without notice to the appellant/defendant granted permission to institute suit under Section 80 (1) of the CPC and thereafter, finding that the respondent plaintiff has a prima facie case in his favour and balance of convenience also lies in his favour and further finding that if temporary injunction is not granted, he will suffer irreparable loss and injury which cannot be compensated in terms of money, restrained the appellant State from interfering with the right of the respondent plaintiff as a member of OBC and other facilities which he is entitled as a member of OBC. Feeling aggrieved by that order, this miscellaneous appeal has been preferred by the appellant/State.

2.2) In this appeal preferred under Order 43 Rule 1 (r) of the CPC, the principal ground of challenge is that the cancellation of certificate by the Naib Tahsildar, Kurud is bad as it falls in the territorial jurisdiction of Dhamtari Civil Court and the suit filed seeking declaration of caste status of the respondent plaintiff is barred by law in view of the law declared by the Supreme Court in the matter of **Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development and others**¹ and further on the ground that any member of Sikh religion is not covered in the list of OBC, the only entry of Sikh community "Sikh Harijan" has already been deleted from the OBC and as such, since the Court had no jurisdiction, therefore, the trial Court is absolutely unjustified in granting temporary injunction in favour of the plaintiff.

3. Mr. Arun Sao, learned Deputy Advocate General, would submit that the trial Court before granting temporary injunction is required to consider existence of prima facie case which implies prima facie consideration of its jurisdiction to entertain the suit. Therefore, the suit filed by the respondent plaintiff seeking declaration of his caste status is expressly barred by law declared by the Supreme Court in **Kumari Madhuri Patil** (supra), therefore, the Court had no jurisdiction to entertain the suit holding prima facie case and consequently grant for application for temporary injunction and as such, the impugned

¹ AIR 1995 SC 94

order is liable to be set aside.

4. On the other hand, Mr. Maneesh Sharma and Mr. Pragalbha Sharma, learned counsel appearing for the respondent/plaintiff, would oppose the submission and submit that the trial Court is absolutely justified in entertaining the suit.
5. I have heard learned counsel for the parties and also considered their rival submissions and gone through the records critically and minutely as well.
6. This is an appeal preferred under Order 43 Rule 1 (r) of the CPC. Before proceeding further, it would be appropriate to notice the scope of appeal and the scope of interference in the appeal by the appellate Court while hearing an appeal under Order 43 Rule 1 (r) of the CPC.
7. The Supreme Court in the matter of **Wander Ltd. v. Antox India (P) Ltd.**², has held that in an appeal against granting or refusing temporary injunction that is appeal against the exercise of discretion by the trial Court, the appellate Court should not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely and observed as under: -

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of

first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles, Gajendragadkar, J. in *Printers (Mysore) (P) Ltd. v. Pothan Joseph*³ held: (AIR p. 1159, para 9)

'9. ... These principles are well established; but, as has been observed by Viscount Simon in *Osenton (Charles) & Co. v. Johnston*⁴: (AC p. 138)

“... The law as to the reversal by a Court of Appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.”

The appellate judgment does not seem to defer to this principle.”

8. The law laid down in **Wander Ltd.** (supra) has been followed by the Supreme Court with approval in the matters of **Purshottam Vishandas Raheja and another v. Shrichand Vishandas Raheja (Dead) Through LRs and others**⁵ and **Mohd. Mehtab**

3 AIR 1960 SC 1156 : (1960) 3 SCR 713

4 1942 AC 130 : (1941) 2 All ER 245 (HL)

5 (2011) 6 SCC 73

Khan and others v. Khushnuma Ibrahim Khan and others⁶.

9. Now, the question is whether the learned trial Court is justified in granting temporary injunction in favour of the plaintiff finding prima facie case in his favour and two other factors necessary for grant of temporary injunction.
10. It is well settled law that in a suit for temporary injunction, if trial Court is satisfied that the plaintiff has a prima facie case in his favour and balance of convenience is also in his favour and if temporary injunction is not granted, he will suffer irreparable loss, can proceed to grant temporary injunction restraining the defendant from interfering with the right of the plaintiff, but it is equally well settled that the court before granting injunction is required to consider the existence of a prima facie case which also implies prima facie consideration of the jurisdiction of that Court to entertain a suit and to seek its prima facie satisfaction that it has jurisdiction to entertain suit, Court has to prima facie opine about its jurisdiction necessarily, if it is raised. There would not be a prima facie case if the court considering has apparently no jurisdiction to entertain the suit.
11. A Division Bench of the M.P. High Court in the matter of **Vindhya Telelinks Ltd. v. State of India, Rewa and others**⁷ has unequivocally and authoritatively held that the trial Court considering the application for temporary injunction is

6 (2013) 9 SCC 221

7 1995 M.P.L.J. 575

necessarily required to consider and reach to a prima facie satisfaction that it has jurisdiction to entertain the suit. The M.P. High Court observed as under: -

“Before granting injunction, the Court is required to consider the existence of a prima facie case which also implies prima facie consideration of the jurisdiction of that Court. There would not be a prima facie case if the court considering has apparently no jurisdiction to entertain the suit. Every Court must bear this aspect in mind and seek prima facie satisfaction that it has jurisdiction to entertain the suit before it proceeds to pass an order injuncting the defendant. If the Court is of the opinion that the question of jurisdiction is prima facie question of law, then certainly it can be decided as a preliminary issue. However, if the Court is of the opinion that the question of jurisdiction of the Court is a question depending on the facts or is a mixed question of law and facts, then certainly it cannot be decided as a preliminary issue.”

12. Therefore, now, whether in this case, prima facie, the Court has jurisdiction to entertain the suit or not has to be seen.
13. The respondent / plaintiff had filed suit for declaration that he is the member of Other Backward Classes being Badhai in the State of Chhattisgarh and is entitled for all the rights and privileges which are being extended to the member of OBC and that the order of cancellation of his caste status by the Naib Tahsildar dated 19-11-2004, is bad in law. In sum and substance, he is seeking a declaration that he is a member of OBC and that the cancellation of his caste status is unsustainable and in law.
14. Their Lordships of the Supreme Court in **Kumari Madhuri Patil**

(supra) to streamline the procedure for the issuance of a social status certificate, their scrutiny and their approval, issued fifteen directions relevant portions of which we are concerned are as follows: -

“1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts of groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare / Tribal Welfare / Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of

residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

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11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under [Article 226](#) of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition / Miscellaneous Petition / matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under [Article 136](#)."

15. Thus, in **Kumari Madhuri Patil** (supra) (direction No.12), the Supreme Court has clearly held that no suit or other proceedings before any other authority should lie in respect of matters covered by that decision the suit is held to be barred. Directions issued by the Supreme Court in exercise of power conferred under Article 141 of the Constitution of India is binding. Their Lordships also expected from all the State Governments to make

endeavour to give effect to it and see that constitutional objectives intended for the benefit and advancement of genuine SC/ST or backward classes, as the case may be, are not defeated by unscrupulous persons.

16. Later on, in the matter of **Dayaram v. Sudhir Batham and others**⁸ the Supreme Court has considered the question whether Directions 1 to 15 in **Kumari Madhuri Patil** (supra) are impermissible, being legislative in nature. Their Lordships while answering the said issue clearly and unequivocally held that Directions 1 to 15 issued in exercise of power conferred under Articles 142 and 32 of the Constitution are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine Scheduled Caste and Scheduled Tribe candidates secured the benefits of reservation and the bogus candidates were kept out. It was further held that by issuing such directions, the Court had not taken over the functions of the legislature but merely filling up the vacuum till the legislature chose to make an appropriate law. Thereafter, the Supreme Court also considered the question, whether Directions 11 and 12 in **Kumari Madhuri Patil** (supra) which exclude the jurisdiction of the civil court to entertain suits challenging the decision of the Caste Scrutiny Committees, violate Section 9 of the Code of Civil Procedure and the argument was that the right to file a civil suit cannot be taken

⁸ (2012) 1 SCC 333

away by a judicial order and a suit could be barred only by a statute, either expressly or impliedly. The Supreme Court considered the question and clearly held that permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this Court wanted to eradicate. Their Lordships observed in paragraphs 35 and 36 of their Report as under: -

“35. The Scrutiny Committee is not an adjudicating authority like a court or tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the Scrutiny Committee are also open to challenge in proceedings under [Article 226](#) of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this Court wanted to eradicate. As this Court found that a large number of seats or posts reserved for Scheduled Castes and Scheduled Tribes were being taken away by bogus candidates claiming to belong to Scheduled Castes and Scheduled Tribes, this Court directed the constitution of such Scrutiny Committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil will only continue till the legislature concerned makes an appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates.

36. Having regard to the scheme for verification formulated by this Court in Madhuri Patil the Scrutiny Committees carry out verification of caste certificates issued without prior enquiry, as for example the caste certificates issued by Tahsildars or other officers of

the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self-affidavits about caste. If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Madhuri Patil provides for verification only to avoid false and bogus claims. The said scheme and the directions therein have been satisfactorily functioning for the last one-and-a-half decades. If there are any shortcomings, the Government can always come up with an appropriate legislation to substitute the said scheme. We see no reason why the procedure laid down in Madhuri Patil should not continue in the absence of any legislation governing the matter.”

17. The Supreme Court further held that the right to file a writ appeal under the State Act is a “vested right”, to any person filing a writ petition. That right can be taken away only by an express amendment to the Act or by repeal of that Act, or by necessary intendment, that is, where a clear inference could be drawn from some legislation that the legislature intended to take away the said right. The right of appeal to a Division Bench, made available to a party to a writ petition, either under a statute or Letters Patent, cannot be taken away by a judicial order and such a right of writ appeal will be available. The Supreme Court concluded in paragraph 44 as under: -

“44. In view of the above, we hold that the second sentence of Direction 13 of Madhuri Patil providing that where the writ petition is disposed of by a Single Judge, no further appeal would lie against the order of the Division Bench (even when there is a vested right to file such intra-court appeal) and will only be subject to a special leave under [Article 136](#), is not legally proper and therefore, to that extent, is held to be not a good law. The second sentence of Direction 13 stands overruled. As a consequence, wherever

the writ petitions against the orders of the Scrutiny Committee are heard by a Single Judge and the State law or Letters Patent permits an intra-court appeal, the same will be available.”

18. Reverting back to the facts of the case in light of the principles of law laid down in **Kumari Madhuri Patil** (supra), it would be apparent that the respondent/plaintiff has instituted the present suit seeking a declaration that the order of the Naib Tahsildar cancelling his caste certificate of OBC is without jurisdiction and without authority of law, as the Naib Tahsildar could have referred the matter to High Level Caste Scrutiny Committee for verification of his caste certificate as OBC, therefore, a decree for declaration be granted that he is member of OBC and entitled for all rights and privileges attached to OBC. In sum and substance, the respondent/plaintiff is challenging the cancellation of his caste certificate and/or seeking verification of his caste certificate of OBC, which as per the judgment of the Supreme Court in **Kumari Madhuri Patil** (supra) only High Level Caste Scrutiny Committee has jurisdiction to inquire and the decision of the said Committee will be final subject to writ jurisdiction under Article 226/227 of the Constitution of India. The learned trial Court ought to have seen whether it has prima facie jurisdiction to entertain the suit or not which the trial Court did not see and straightway held that the plaintiff has prima facie case. In holding prima facie case, the trial Court is obliged to look into the fact whether it has prima facie jurisdiction to hear the suit, if it

has no prima facie jurisdiction, no prima facie case can be held to be there in favour of the plaintiff in view of the judgment of the M.P. High Court in **Vindhya Telelinks Ltd.** (supra). The trial Court in this case failed to notice and consider the important aspect of jurisdiction while considering and granting temporary injunction in favour of the plaintiff. Thus, in granting temporary injunction the trial Court has exercised the discretion not only arbitrarily but also perversely rendering the order granting temporary injunction exceptionable.

19. As a fallout and consequence of aforesaid discussion, the order granting temporary injunction is liable to be set aside and it is accordingly set aside. However, the trial Court will decide the suit expeditiously without being influenced by any observations made herein-above, as it is only for the purpose of deciding the legality or otherwise of the order granting temporary injunction and the instant miscellaneous appeal.

20. With the aforesaid observation, the writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge