

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2442 of 2007

Ashok Kumar Uke S/o Shri Ramdayal Mahar, aged about 35 years, R/o village Kodka, Tahsil Chhuikhadan, District Rajnandgaon (C.G.).

---Petitioner

**Versus**

1. Dwarika Das S/o Shri Sadharam Satnami, aged about 35 years, Kotwar village Kodka, T.C.No.25, Revenue and Tahsil Chhuikhadan, District Rajnandgaon (C.G.).
2. Board of Revenue, Chhattisgarh, Bilaspur (C.G.) acting through Registrar.

---Respondents

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|---------------------|---|--------------------------------|
| For petitioner      | : | Shri V.G.Tamaskar, Advocate.   |
| For respondent No.1 | : | Shri R.K.Pali, Advocate.       |
| For State           | : | Shri Lav Sharma, Panel Lawyer. |

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Hon'ble Shri Justice P. Sam Koshy

C.A.V. Order

Delievered on 11/07/2018.

1. The present Writ Petition has been filed challenging the order dated 10/01/2009 passed by the Board of Revenue.
2. The facts of the case in brief is that the father of the petitioner was a village Kotwar of village Kodka, Tahsil Chhuikhadan, District Rajnandgaon from 17/03/2004. The grandfather of the petitioner also was a Kotwar of village. On the death of the father of the petitioner, the Tahsildar issued a notice inviting application for the post of Kotwar from eligible candidates and in the process, the authorities received two applications, one that of the petitioner and the other being that of the respondent No.1 – Dwarkadas and

after due verification of the records, the Tahsildar rejecting the application of the petitioner appointed the respondent No.1 as a Kotwar of village Kodka vide order dated 28/06/2004.

3. The petitioner preferred an appeal against the order of Tahsildar before the Sub Divisional Officer, Raigarh. The appeal stood rejected on 23/11/2004. The petitioner thereafter preferred a second appeal before the Collector. The Collector vide his order dated 06/02/2006 allowing the appeal had set-aside the order of Tahsildar as well as the Sub Divisional Officer and directed the petitioner to be appointed as the Kotwar and accordingly the petitioner was appointed as a Kotwar of village Kodka on 10/03/2006. The respondent No.1 in turn preferred a representation against the order of Collector before the Chhattisgarh Board of Revenue. The revisional court thereafter found that the order of Collector was not proper and allowing the revision had set-aside the order of Collector dated 06/02/2006 restoring the order passed by the Tahsildar as also that of the Sub Divisional Officer dated 28/06/2004 and 23/11/2004 respectively. In the process, the respondent No.1 was ordered to be appointed as a Kotwar. It is this order of the Board of Revenue which is under challenge in the present Writ Petition.

4. The contention of the counsel for the petitioner is that, the authorities concerned have not properly appreciated the entire facts of the case and have with malafied intention passed an order in favour of the respondent No.1. It was further contended that the petitioner has been falsely implicated in some criminal case and that there was no adverse order against the petitioner from any court of law with which it could be said that the past

antecedent of the petitioner was bad. It was also the contention of the counsel for the petitioner that, the authorities concerned also have not appreciated the fact that there was no substantial material or legal basis with which it could be said that the character of the petitioner was not up to the mark or the petitioner was a person with tainted character. He further submits that, the petitioner also had a resolution in his favour of the Gram Panchayat. He further submits that, the authorities concerned have also wrongly relied upon the witnesses and their statement recorded on behalf of the respondent No.1 in spite of the fact that they were not the credible witnesses and in order to settle personal score, these witnesses had made false allegations against the petitioner with a motive of denying him the post of Kotwar. He submits that, the petitioner was the more suitable candidate as compared to the respondent No.1 in all respect. In addition, the petitioner also was entitled for the professional treatment as his father as well as grandfather both were Kotwars of the same village and therefore the petitioner had a better chance for being appointed. He further submits that, during the period when the petitioner's father was the Kotwar and was unwell for a considerable period of time, it was the petitioner who was discharging the duties of the Kotwar and in the process has also gain much experience and for all these, the counsel for the petitioner prayed for setting-aside the order of Board of Revenue and sought restoration of the order of the Collector.

5. Per contra, Shri R.K.Pali, Advocate appearing for the respondent No.1 submitted that, the order under challenge i.e. the order of Board of Revenue

does not warrant any interference as the same is passed on the actual findings of facts and with substantial material on record available with the authorities. According to him, the authorities concerned had got the verification of the character of each of the candidates verified both from the police authorities as well as from the Gram Panchayat and in the process, there were serious allegations of the petitioner being the person of immoral character and that he also was a unscrupulous person. He further contended that, during the course of verification of the candidature it was found that the petitioner had a illicit relationship with a village girl and in the course of having a physical relationship, the said girl got conceived and which the petitioner has later on got aborted and the said fact was brought to the village panchayat by way of an affidavit filed by a large number of villagers. He further submits that, it is well within the domain of the Tahsildar under the Land Revenue Code to verify the antecedent/character of a candidate before appointment of Kotwar and if in the course of enquiry certain complaints have been received by the Tahsildar, the same cannot be ignored by the Tahsildar and as compared between the two candidates, a person with no complaint or less complaints if is granted appointment, the same cannot be held to be bad in law or arbitrary in any manner. He further submits that, in addition to the petitioner being of immoral character in as much as of his having illicit relationship with the other women, the petitioner also is in a habit of consuming liquor and after consumption of liquor, he is also in a habit of creating ruckus in the village.

6. In support of its contention, the counsel for the respondent No.1 also referred to a few affidavits which have been filed by the villagers which have been enclosed along with the reply.

7. Having heard the contentions put forth on either side and on perusal of record, some of the undisputed facts of the case is that, the father of the petitioner was earlier the Kotwar of village Kodka and who died serving as a Kotwar on 17/03/2004. After the death of the father of the petitioner, the Tahsildar of village Chhuikhadan initiated the selection process for appointment of Kotwar and issued an advertisement in which the petitioner Ashok Kumar Uke and one Dwarkadas son of Sadhuram – the respondent No.1 had applied. After scrutiny of documents and on verification of the records and the past antecedents, the Tahsildar vide its order dated 28/06/2004 had ordered for appointment of Dwarkadas as the Kotwar for village Kodka. The said order of appointment stood affirmed/confirmed by the order of Sub Divisional Officer on 23/11/2004 wherein an appeal preferred by the petitioner herein got rejected.

8. Subsequently, the petitioner preferred another appeal before the Additional Collector under Section 44(2) of the Chhattisgarh Land Revenue Code, 1959 and the Additional Collector setting aside the order of the Tahsildar reached to the conclusion that since both the applicants were found eligible for the post of Kotwar, but on account of the fact that the father of the petitioner was a Kotwar of the same village, he was entitled for preferential treatment and therefore ordered for appointment of the petitioner as the Kotwar of the village Kodka and so far as the finding of the

Tahsildar and the Sub Divisional Officer as regards the character of the petitioner is concerned, the finding of the Additional Collector was that there is no substantial evidence available on record to prove the same except for the oral averment made by some interested persons which by itself may not be sufficient to castigate a person. It is this order of the Additional Collector which is subsequently set aside by the Board of Revenue vide the impugned order – Annexure-P/3 dated 10/01/2017 restoring the appointment of the respondent No.1 as the Kotwar for village Kodka.

9. Now, what has to be seen from the impugned order – Annexure-P/3 is whether the findings arrived at is proper, legal and justified or not?

10. If we look into the findings of the Board of Revenue what clearly reflect is that, before the authorities concerned, the Gram Panchayat had initially passed a resolution in favour of both the candidates i.e. the petitioner as well as the respondent No.1.

11. Therefore, certain complaints were received against the petitioner so far as his character is concerned as also his behavior is concerned. In addition, there is also an affidavit filed by one Gopiram – the father of the prosecutrix namely Chaitibai who in his affidavit has stated that the petitioner along with someone else in the village had ravished his daughter – Chaitibai and in the process, his daughter had also got conceived and ultimately had to be subjected to abortion. It was also informed that there was village meeting held in this regard. In addition, a complaint had also been sent by a large number of villagers which was also produced before the authorities concerned. At the same time, the petitioner also produced

before the authorities a resolution dated 07/06/2000 from the Gram Panchayat, but the subsequent resolution in favour of the petitioner did not bare the signature of any of the Panchas.

12. Now, we may see the requirement under Section 230 of the Land Revenue Code for appointment on the post of Kotwar.

13. Under the aforesaid Section of the Code rules have been framed with modification from time to time. Under the Rules framed under Section 230, Rule 2 describes the persons who shall not be appointed as a Kotwar. It has been held under Rule 2 that no person shall be eligible for the post of Kotwar who in the opinion of the appointing authority is not of good character who in the opinion of the appointing authority is unfit through infirmity of body or mind to perform the duties of the post. Rule 4(2) also envisages a clause that, if other things being equal preference may be given to the near relative of the Ex-Kotwar in making appointment.

14. From the aforesaid rule provisions what is culled out is that, it is for the Tahsildar who happens to be the appointing authority to verify the antecedent and the character of the applicants who have applied for the post of Kotwar. That on verification of the facts pertaining to the past antecedents and the character of the candidates, the Tahsildar has to form an opinion and thereafter on the basis of the opinion formed, the Kotwar has to be appointed. For the purpose of forming an opinion, the Tahsildar concerned can call upon the Gram Panchayat and also the permanent residence of Gram Panchayat to give their opinion. The Tahsildar also can

call for a complaint if any against the persons who have applied for the post of Kotwar from the general public of the Gram Panchayat.

15. Thus, what is required is that, the Tahsildar who may call for a report from the Gram Panchayat or the villagers and elders in the village may form a general opinion as regards a candidate so far as his reputation in the society is concerned. There need not be a fact finding enquiry conducted with evidences collected in accordance with the provisions of the Evidence Act, but is a general opinion so far as the reputation of a person is concerned which is required.

16. So far as the instant case, undisputedly, the Gram Panchayat had issued a resolution dated 30/04/2004 in favour of both the candidates, but at the same time in the course it reflects that, there were infact certain complaints made enmass with signatures of the villagers. In addition, an affidavit also had been filed by one Gopiram pertaining to his daughter being ravished by the present petitioner, though there is no criminal case against him in this regard, yet there is a complaint by the father of the girl.

17. Coupled with the fact that so far as the resolution in favour of the petitioner is concerned, the same was not signed by any of the Panchas of the Gram Panchayat reduces its authenticity and credibility.

18. In the said circumstances, even if as per the resolution of the Gram Panchayat both the candidates are found eligible, but taking into consideration the complaint of the villagers and the affidavit filed by Gopiram – the father of the prosecutrix, it generates a great element of doubt so far as the antecedent and the character of the petitioner is

concerned and if under the said circumstances the Tahsildar reached to the opinion that the respondent No.1 was a more suitable candidate from among the two, the same cannot be said to be either bad in law, nor can it be said to be arbitrary, illegal or contrary to the provision of Section 230 and the rules framed thereunder.

19. Given the materials available in the record, the findings of the Board of Revenue so also the findings of the Tahsildar and the Sub Divisional Officer, it cannot be said that they have in any manner acted with malafides against the petitioner or have victimized the petitioner for any reason, but on the contrary it reflects that though the two candidates were found suitable and eligible, but it was the character of the respondent No.1 who was unblemished with no complaint either on his conduct or on his character and this weighed more in the mind of the authorities while granting him the order of appointment on the post of Kotwar.

20. For all the aforesaid discussion this Court is of the opinion that, the finding of the Board of Revenue is proper, legal and justified and with strong reasons for reaching to the said conclusion and the same is not in any manner either erroneous or contrary to the provisions of the Land Revenue Code.

21. The Writ Petition thus being devoid of merits deserve to be and is accordingly dismissed.

Sd/-

**(P. Sam Koshy)**  
**JUDGE**

Sumit

