

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 3136 of 2007**

Anand Masih S/o Shri I. P. Masih, aged about 42 years, R/o Deputy Commissioner (Land Record), Bilaspur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of General Administration, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh
2. Ucha Stariya Chhanbin Samiti (In the matter of SC/ST Caste Certificate) through its Secretary, Pt. Ravi Shankar Vishwavidyalaya Parisar, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Sunil Otwani, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****24/07/2018**

Challenge in the present writ petition is to Annexure P-1 dated 05.02.2007 passed by respondent no.2, the High Power Caste Scrutiny Committee constituted by the State of Chhattisgarh.

2. Facts leading to the present writ petition are that the petitioner who is a resident of State of Chhattisgarh participated in the selection process conducted by the State Public Service Commission and was appointed as a Deputy Collector in the year 05.08.1983. Subsequently, by virtue of creation of the State of Chhattisgarh, the services of the petitioner stood allocated to the State of Chhattisgarh and he was discharging the duties of a Deputy Commissioner (Land Record), Bilaspur. There appears to be

some anonymous complaint so far as the caste status of the petitioner is concerned which was filed before respondent no.2 and that respondent no.2 Committee initiated an enquiry in respect of the caste status of the petitioner.

3. It is relevant at this juncture to refer to Annexure P-7 which is a caste certificate issued as early as on 22.01.1981 by the competent authority under the State Government and in the said certificate the petitioner has been shown as Scheduled Tribe category belonging to "Uraon" community. Pursuant to the enquiry initiated by respondent no.2, a final order has been passed which is under challenge in the present writ petition wherein the finding of respondent no.2 Committee is that the caste certificate on the basis of which the petitioner has obtained employment with the State Govt. is not proper and has ordered for cancellation of the said caste certificate. Moreover, the Committee further proceeded to issue appropriate direction to the State Govt. for cancelling the appointment given to the petitioner and also to initiate appropriate action against the authority who had issued the caste certificate to the petitioner.

4. Contention of the counsel for the petitioner is that respondent no.2 Committee is totally ignored the procedure as is laid down by the Supreme Court in the case of **Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others** reported in **(1994) 6 SCC 241** while conducting the enquiry. He submits that the authority concerned also has in a mechanical manner passed the impugned order without conducting an enquiry or without there being any report from the vigilance cell so far as the caste status of the petitioner is concerned. In the absence of any evidence on the part of the State Govt. to disprove the

fact that the petitioner belongs to “Uraon” community, the impugned order could not have been passed. He submits that the finding given by the Committee also is not sustainable for the reason that the same again is in contravention to the law which has been laid down by the Supreme Court in this regard time and again. Moreover the respondent no.2 Committee ought to have first got a vigilance enquiry conducted and thereafter the report of the vigilance cell should have been made available to the petitioner for rebuttal and only thereafter, could the respondent no.2 have proceeded further with the investigation and passed a final order. It is the further contention of the counsel for the petitioner that neither the impugned order Annexure P-1 nor any other document in possession of the State Govt. reflect the fact that the petitioner does not belong to “Uraon” community or belong to a different community. For this reason also the impugned order is bad. Lastly it was contended that the authorities concerned should have first conducted a detail enquiry as has been laid down by the Supreme Court time and again starting from the case of Kumari Madhuri Patil (supra) and the subsequent judgments and which has also been relied upon by the respondents while conducting enquiry and only thereafter could have passed the impugned order. For all these reasons, the impugned order is not sustainable and prayed for quashment of the same.

5. State counsel, per contra, opposing the petition submits that the impugned order by itself is self explanatory to the extent that the petitioner was called upon by respondent no.2 Committee on various dates in as much as the petitioner was granted 9 different dates to appear and prove the fact that he in fact belonged to “Uraon” community and the petitioner

having chosen not to participate before the enquiry Commission and also did not render full cooperation in the enquiry, he cannot now claim for the order of the authority to be bad in any manner. It is also the contention of the State counsel that in spite of repeated opportunity, the petitioner himself failed to establish before respondent no.2 Committee as to how according to him he belongs to "Uraon" community. He submits that once when the petitioner himself is not in a position to establish his case, the finding of the Committee cannot be held to be either perverse or contrary to the evidence on record.

6. Given the aforesaid contentions put forth on either side, the only consideration which is left to be considered by this Court is as to whether the finding arrived at by the respondent no.2 Committee is in accordance with the principles of law and ratio laid down by the Supreme Court in a series of judgments starting from the judgment of Kumari Madhuri Patil (supra).

7. At this juncture, it would be relevant to refer to the judgment of the Supreme Court in the case of Kumari Madhuri Patil (supra) which is the leading case on the issue involved in the present case. After considering the entire factual matrix of the case while streamlining the procedure for issuance of social status certificate, the Supreme Court in very categorical term has laid down certain procedure which should be adopted by the State Govt. after consideration of the High Power Caste Scrutiny Committee. Relevant portion of the said judgment is reproduced hereunder:

"5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all 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 should also 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 pro forma, 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.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof."

8. The same analogy has further been reiterated by the Supreme Court in the case of **Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and another** reported in (1995) 4 SCC 32 wherein the Supreme Court has reproduced the entire paragraph-13 of the said judgment holding it to

be taken as guidelines for the purpose of an enquiry to be conducted by the High Power Committee in each of the States.

9. In furtherance to the aforesaid principle of law laid down by the Supreme Court so far as the procedural aspect is concerned, it would be relevant to refer to a judgment of the Supreme Court in the case of **Collector, Bilaspur Vs. Ajit P.K. Jogi and others** reported in (2011) 10 SCC 357 wherein paragraph-18 it has been held as under:

“This Court thus formulated a scheme for verification of tribal status and held that any application for verification of tribal status as a Scheduled Tribe should be carried out by such Committees. The verification of the validity of caste certificates and determination of the caste status should therefore be done by the Scrutiny Committees constituted as per the directions in Madhuri Patil or in terms of any statute made by the appropriate Government in that behalf.”

10. Now taking into consideration the aforesaid legal position as it stands in the light of the judgments of the Supreme Court if we peruse the impugned order under challenge Annexure P-1 what clearly reflects is that the impugned order Annexure P-1 has been issued on the basis of a report submitted by the Deputy Superintendent of Police, District Janjgir-Champa to the Superintendent of Police Janjgir-Champa who in turn had forwarded communication to respondent no.2 Committee. If we read the said report of the Deputy Superintendent of Police dated 29.05.2004, it clearly reflects that all that the Deputy Superintendent of Police has mentioned in his report is that the forefathers of the petitioner do not seem to be the resident of District Janjgir-Champa but were resident of Bhatapara. Apart from the said observation, the Deputy Superintendent of Police has not stated anything so far as the caste status of the petitioner is concerned or whether the father of the petitioner or forefather of the petitioner were not belonging to “Uraon” community. It further reflects from the said report that

except for the fact that the petitioner and his forefathers were not resident of District Janjgir-Champa, there does not appear to be any further enquiry conducted either by the Superintendent of Police, Janjgir-Champa or by the concerned Superintendent of Police under whom Bhatapara comes. Moreover, there also does not appear to be any document in possession of the respondents which would reflect that the petitioner does not in fact belong to "Uraon" community or that he belongs to a different community. In the absence of a finding by the Caste Scrutiny Committee to the extent that the petitioner does not belong to a different community in stead of "Uraon" community which the petitioner claims, the impugned order Annexure P-1 itself may not be sustainable.

11. Moreover, what further reflects is that the directives which have been given by the Supreme Court in the case of Kumari Madhuri Patil (supra) and which further stands reiterated in the case of Laveti Giri (supra), there does not appear to be any enquiry so far as the anthropological and ethnological traits are concerned. If we read the directives given in the case of Kumari Madhuri Patil (supra), it would reflect that there was a specific direction given to the State Authorities as to how the enquiry and investigation has to be conducted. From a plain reading of the impugned order, there does not appear to be any such enquiry instituted or conducted by respondent no.2 except for the issuance of repeated letters to the petitioner for appearing before the Tribunal and for proving that he belongs to "Uraon" community. The very fact that the State Authorities particularly respondent no.2 has not been able to reach to a conclusion as to which community or caste the petitioner belongs which itself is a sufficient proof that the petitioner has not played any fraud with the authority while

obtaining the caste certificate as early as on 22.01.1981. What also cannot be brushed aside is the fact that the certificate was issued in favour of the petitioner when the petitioner was too young an age to have played mischief or fraud for the purpose of obtaining employment.

12. For all the aforesaid reasons, this Court is of the opinion that the impugned order Annexure P-1 has been passed in a clear violation and total non compliance of the specific directives which were issued by the Supreme Court so far as the method of enquiry to be adopted by the Caste Scrutiny Committee is concerned. Therefore, the impugned order Annexure P-1 is not sustainable and deserves to be and is accordingly set aside with consequences to follow.

**Sd/-
(P. Sam Koshy)
JUDGE**