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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 21/11/2017****Judgment Delivered on : .30/01/2018****Writ Petition (C) No. 2104 of 2017**

Ajit Pramod Kumar Jogi S/o Late Shri K.P.Jogi, Aged about 71 years, R/o Anugrah, Sagaun Bunglow, Civil Lines, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. High Power Certification Scrutiny Committee (Through its Member Secretary) Pandit Deendayal Upadhyay Nagar, Sector-4, Raipur, Chhattigarh.
2. State of Chhattisgarh, Through its Chief Secretary, Mahanadi Bhawan, Naya Raipur, Mantralaya, Naya Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Brian Da Silva, Senior Advocate with Shri Rahul Tyagi, Shri Shailendra Shukla, Shri Abhinav Dang, Shri Ishan Soni, Ms. Priya Mishra and Ms. Samhisti Saloman, Advocates.
For Respondents/State	: Shri J.K.Gilda, Advocate General with Shri D.R.Minj, Deputy Government Advocate
For Intervenors	: Shri U.N.Awasthy, Senior Advocate with Ms.Raksha Awasthy, Shri Sudeip Shrivastava and Shri Alok Bakshi, Advocates.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Order

Per Thottathil B. Radhakrishnan, Chief Justice

1. The captioned writ petition is filed challenging the decision rendered by the first Respondent holding that the Petitioner had obtained certificates as to tribal status, to which he was not entitled. The first Respondent issued the impugned decision as per the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013, which came into force as per Notification published in the Gazette of 29.06.2013; hereinafter referred to as 'Act'; for short. Though, declaration was sought that Section 7 of the Act is unconstitutional and void, that relief is not pressed.

2. Different grounds are raised by the Writ Petitioner, impeaching the impugned order. They include criticism of the procedure adopted in issuing the impugned decision; non-adherence of due procedure in terms of the Act and the rules framed thereunder, namely the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013; the 'Rules' for short; the manner in which the first Respondent acted upon the Vigilance Report and the alleged failure to accord opportunity to impeach that report of the Vigilance Team which is criticized as having violated the requirements of the Rules and the Act in collecting data. Institutional

malice is also attributed by pleading that the Committee was so reconstituted that it was tailor-made to ensure that the decision making was exclusively in the hands of one person.

3. The learned counsel appearing for the Petitioner canvassed the different grounds which are raised in the writ petition and argued that the impugned order clearly shows that there is no concluded finding to the effect that the petitioner had wrongfully or fraudulently obtained any social status certificate. It is argued that no due opportunity in accordance with law was extended to the Petitioner to present his case. The impugned order is also criticized as one actuated by bias. It is argued on the basis of materials that there was a complete shift in the identity of officers who were manning the High Power Committee and there was a selective exclusion of officers and hand-picked inclusion of persons which ensured that the decision making got controlled by a single individual, though what is provided for by the Act is the collective decision of a Committee constituted and notified for the purpose of the Act. On the basis of the records, it was also argued that the reconstitution of the Committee was not notified or published in the Gazette as required by the Act and therefore the impugned order is one issued without jurisdiction.

4. Before proceeding further, we may herein now record that no person is impleaded in individual capacity as respondent, to meet any personal allegation of having been actuated by bias or *mala fides*, which require to be answered by any such person individually.

We would therefore desist from considering any aspect in that regard though, during the course of arguments, much was attempted to be made out on behalf of the Petitioner in that regard; leading also to rebuttal submissions by those who argued in support of the impugned order.

5. The learned Advocate General presented the files of the Committee and the requisite back files to assist this Court with the official materials which were with the Committee. He, as well as the learned Advocates for the Intervenors argued that the constitution of the High Power Committee is beyond challenge and the fact that the reconstitution was not notified in the Gazette is not a plea taken in the writ petition and therefore such question would not arise. It was also argued that the status of the Vigilance Committee and its report are such that they do not warrant interference at the hands of this Court, more particularly, having regard to the quality of the contents thereof. It is argued that there is no ground for the Petitioner to demonstrate real apprehension of bias and that the Petitioner had approached this Court with unclean hands and cannot therefore plead for the discretionary relief of the issuance of a writ. Copious reference was made to the Vigilance Committee's report and the materials and facts referred to therein, to argue that the case in hand clearly discloses that the impugned order does not warrant interference on the scales of justice.

6. There are certain issues which have been raised by the Petitioner as well as the learned Advocate General and the learned

Advocates for the Intervenors. They include questions relating to adherence or violation of Rule 20 and FORM 6-B of the Rules. Submissions were made on the effect of the statements given by the different persons whose versions have been taken by the Vigilance Committee; the evidentiary value of the documentary evidence and the nature of materials on the basis of which conclusions have been arrived at by the Vigilance Committee and the first Respondent against the Writ Petitioner. Certain submissions were also made on the issue as to whether the Petitioner, his parents and his relatives; being the followers of Christianity; would be entitled to claim the status as members of the Scheduled Tribe; as also, whether the Petitioner had been able to show that the only conclusion could have been that he belonged to the Scheduled Tribe "Kanwar", as claimed by him.

7. Apart from relying on the provisions of the Act and the Rules, the procedure for verification of caste status as evolved from and through the decisions of the Hon'ble Supreme Court in *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development*, (1994) 6 SCC 241; *Director of Tribal Welfare, Government of Andhra Pradesh v. Laveti Giri*; AIR 1995 SC 1506 and *Dayaram v. Sudhir Batham*; (2012)1 SCC 333, was copiously referred to by the learned counsel on all sides. The parameters of judicial review and limits and scope of judicial review in such matters, including those noticed by Their Lordships in *Ku. Madhuri Patil* (*supra*) were also emphasized. It is apposite to refer to the decision of the Hon'ble

Supreme Court in *Food Corporation of India v. Jagdish Balram Bahira*; (2017) 8 SCC 670 which among other things traces the evolution of the scrutiny process of caste certificates commencing from *Madhuri Patil (supra)* and laying down the conclusions which are delineated in paragraph 69 of that judgment as reported in the SCC.

8. Inasmuch as the Petitioner's case is concerned, it needs to be noticed that in 2001, the National Commission for Scheduled Castes and Scheduled Tribes called upon the State Government to conduct the verification of genuineness of the Scheduled Tribe certificate obtained by the Petitioner and to take urgent necessary action for cancellation of that certificate. That led to the verdict of the Hon'ble Supreme Court in *Collector, Bilaspur v. Ajit P.K. Jogi* (2011) 10 SCC 357. Setting aside the High Court's decision which was challenged in those appeals, directions were issued by the Apex Court to the State of Chhattisgarh as follows:

"28. We therefore allow these appeals in part as under:

xxx xxx xxx

(iv) In terms of the directions of the Commission, the State Government through a duly-constituted Scrutiny Committee shall now undertake the verification/scrutiny of the social status (tribal) certificates issued to the first respondent showing him as belonging to "Kanwar" Scheduled Tribe and decide the matter after giving due opportunity to the first respondent, uninfluenced by any

observations by the Commission, the High Court or this Court. The State Government/authorities concerned shall be entitled to take consequential action on the basis of the order/report of the Scrutiny Committee."

9. The Apex Court issued the aforesaid directions on 13.10.2011. It appears from the records that the High Power Committee which was constituted following the directions in *Madhuri Patil (supra)* was reconstituted as per Annexure R-49 on 30.03.2013. It was thereafter that the Act came into force on 29.04.2013. Thereafter Annexure R-64 Notification was issued on 22.08.2013 constituting the Committee with specific reference to sub-section (1) of Section 7 of the Act. That Notification was published in the Gazette on 30.08.2013. It notified the Committee consisting of the following officers:

No	Nominated Officers of the Committee	Chairperson/Members
(1)	(2)	(3)
1	Principal Secretary / Secretary, Government of Chhattisgarh, Tribal & Scheduled Caste Development Department	Chairperson
2	Commissioner / Director, Tribal Research and Training Institute, Chhattisgarh, Raipur	Vice-Chairperson
3	Commissioner / Director, Tribal and Scheduled Caste Development Department, Chhattisgarh, Bilaspur	Member Secretary
4	Commissioner / Director, Two officers nominated out of Joint Director,	Members

	Assistant Director, Research Officer, Assistant Research Officer posted in Tribal Research and Training Institute, Raipur.	
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10. However, the impugned Annexure P/1 order is issued under authority of order No. F-13-23/2012/1-3 dated 17.03.2017, which is not a statutory notification of a Committee under the Act. Nor was that “order” of 17.03.2017 published in the Gazette. The nomination of officers made through that “order” dated 17.03.2017 is as follows:

S.No.	Nominated Officers of the Committee	Chairman/Member
(1)	(2)	(3)
1	Secretary In-Charge, State of Chhattisgarh, Department of Scheduled Caste and Scheduled Tribe Development.	Chairman
2	Commissioner, Department of Scheduled Caste and Scheduled Tribe	Vice-Chairman
3	Director, Scheduled Caste and Scheduled Tribe Development	Member
4	Director, Scheduled Caste Research and Training Institute	Member Secretary
5	Commissioner, Two Officers nominated by Scheduled Caste and Scheduled Tribe Development	Member

11. The fact that the “order” dated 17.03.2017 is not a statutory Notification and it stands on the face of Annexure R-64, a statutory

Notification issued under sub-section (1) of Section 7 of the Act and published in the Gazette on 30.08.2013, are matters of record. There is also no dispute of the fact that the “order” of 17.03.2017 was not published in the Gazette. While it is true that the Petitioner has not pleaded in the writ petition that the “order” dated 17.03.2017 is not published in the Gazette, it cannot be ignored that it is not even issued with reference to the statutory power to constitute such a Committee; more so when Gazette Notification dated 22.08.2013 (Annexure R-64) is already governing the field.

12. Learned Advocate General made reference to the judgment of the Apex Court in *Chandra Prakash Tiwari v. Shakuntala Shukla*; (2002) 6 SCC 127, to argue for the position that non-publication in the official Gazette does not invalidate an administrative order when the power to issue such order is otherwise referable. He also argued that the doctrine of estoppel would operate because the Petitioner was represented before the Committee following “order” dated 17.03.2017 as well. For one thing, by the issuance of Annexure R-64 order, statutory authority to constitute a Committee in terms of sub-section (1) of Section 7 of the Act was exercised by the Government. That was done in supersession of all the previous decisions that govern the field, which followed the verdict in *Madhuri Patil (supra)*. The Act having come into force and the statutory power to appoint a Committee in terms of sub-section (1) of Section 7 of the Act having been exercised, there is no question of continuing administrative authority that could be traced as

segregable and exercisable on the face of sub-section (1) of Section 7 of the Act. When the legislation authorises the executive to constitute a Committee for a particular purpose in a particular manner, that Committee ought to be constituted in the manner in which it is prescribed to be done. A string of judicial precedents, which are binding, can be referred to in affirmation of this view. Over and above, that is the fact that the Committee that is constituted under the Act could not have been dissolved by a non-statutory executive order. When the constitution of a Committee has to be made through a notification which is to be published in the Gazette, the said legislative command would carry with it the necessary corollary that such Committee cannot be undone or superseded otherwise, unless the statute sanctions such plain and simple executive exercise *de hors* the statute.

13. In the aforesaid context, the learned counsel appearing for the Respondents and the Intervenors referred to Section 18 of the Act to say that the provision of the Act shall be in addition to, and not in derogation of any other law for the time being in force. The attempt was to say that in terms of the ratio and directions contained in *Madhuri Patil (supra)* and the subsequent judgments in that line from the Hon'ble Supreme Court including the inter-parties: *Collector, Bilaspur (supra)*, the scrutiny proceedings including constitution of a Committee could be done and carried forward even without specific reference to the provisions of the Act. *Food Corporation of India (supra)*, rendered encapsulating the principles

and precedents that govern the field is also to be taken as authority for the position that when legislation is made providing the frame work in a statutory form, the course that is to be followed is as to what emanates from the statutory provisions in that enactment. Annexure R-64 is a statutory Notification issued and is made superseding even the immediately prior Committee which was constituted as per Annexure R-49 on 30.03.2013. To permit the State, the first Respondent or the Intervenors to contend that compliance of procedure could be left to be in a fluid state so as to permit one to choose one way through the Act and another way through what prevailed before that would definitely lead to gross irregularity, impropriety and illegality in the matter of conduct of proceedings which could result in deprivation of the caste status claimed by a person and trigger different consequences. Certainty is an indefeasible corner stone of the bedrock of justice.

14. Whatever we have deliberated upon and stated in the previous paragraphs lead us to the further fact pleaded by the Writ Petitioner regarding the manner in which Annexure P/1 was issued by one person acting in three different capacities, whereby manifest injustice came to permeate vividly. Reverting to the directions in *Madhuri Patil (supra)*, the clear direction in paragraph 13.4 to the State Governments was to constitute a Committee of three officers. This was quoted and followed in *Laveti Giri (supra)* and treated them as guidelines to be followed. In the inter-parties judgment: *Collector, Bilaspur (supra)*, the procedure detailed in *Madhuri Patil (supra)* was

quoted and it was then stated that what was formulated in *Madhuri Patil (supra)* is a scheme for verification of tribal status. It was held that any application for verification has to be carried out by such Committees constituted as per the directions in *Madhuri Patil (supra)*. We see a clear ray of judicial wisdom in insisting the formation of Scrutiny Committees with three members, thereby ensuring that the decision-making is carried by a body of persons. While the Act does not prescribe any particular number of persons to be in the High Power Certification Scrutiny Committee to be constituted under Section 7, the District Level Certificates Verification Committees to be constituted under Section 6 of the Act are to have six members of which one would be Chairman and the another would be the Member Secretary. The absence of such statutory guideline regarding the constitution of High Power Certification Scrutiny Committee under Section 7 of the Act, cannot lead to a reasonable conclusion that High Power Certification Scrutiny Committee could be constituted otherwise than by having justifiably requisite number of members. This would, obviously, be the reason why four officers are included in the Committee that was constituted in terms of Section 7(1) of the Act as per Annexure R-64 Notification issued on 22.08.2013.

15. The arguments raised on behalf of the Respondents that the aforesaid question may not be adjudicated for want of pleadings regarding non-publication of Notification in the Gazette, we are of the view that when such indisputable fact has arisen from the

records and when clear breach of statutory provision, in particular, procedure for constituting a Committee in terms of Section 7(1) of the Act is apparent on the face of the record in proceedings seeking issuance of writs, directions or orders, including a writ in the nature of certiorari, such adjudication is within the realm of Article 226 of the Constitution.

16. Learned counsel for the Petitioner is contextually justified in referring to the decisions in *ITC Bhadrachalam Paperboards v. Mandal Revenue Officer*; (1996) 6 SCC 634 and *Rajendra Agricultural University v. Ashok Kumar Prasad*; (2010) 1 SCC 730. We are of the view that the ratio of those decisions would more aptly apply to the situation in hand rather than *Chandra Prakash Tiwari* (*supra*) cited on behalf of the Respondents.

17. 'Committee' is understood as a group of people. It cannot be understood as a bunch of offices which are manned by a single person. We say this in the context of the fact that a particular individual held the office of Special Secretary to the Tribal and Scheduled Tribe Development; Commissioner, Tribal and Scheduled Tribe Development; and, Director, Tribal Research and Training Institute. Keeping aside the plea of the Petitioner that the three persons who were holding those offices were transferred out and a single person was brought to be in charge of all the three offices, with the extraneous and oblique motive of denying fairness to the Petitioner, we may say that the constitution of the persons who are shown to have issued the impugned Annexure P/1 order as a

Committee; that too, in place of a statutory Committee, does not behove the tenets of real and true justice. It smacks institutional arbitrariness which could be brimming on to the different allegations that are raised in the writ petition.

18. In the aforesaid view of the matter, we do not see it necessary to adjudicate on the question whether the person who had signed Annexure P/1 order as Chairperson is a Special Secretary or Secretary incharge and whether the said person was entitled to hold any such post. Such question does not call for determination to answer the plea raised in this writ petition.

19. We would record that the learned counsel for the Petitioner as well as the learned Advocate General and the learned counsel appearing for the Respondents and the Intervenors referred to the contents of the Vigilance Report and the materials stated to have been noted by the Vigilance Committee. The attempt on behalf of the Respondents and the State was to point out that the materials on record in the form of the Vigilance Report and the statements and documents therewith, clinchingly disclose that the Petitioner had not proved, as required by law, that he is eligible to have the social status certification as a Tribal, sustained. The statements of different persons, including the version of some of the local people, as recorded by the Vigilance Committee were referred to, apart from the documents which were available to the Vigilance Committee. It was argued on behalf of the Petitioner that even if those materials are treated as legally brought on record, they do not disclose any

incriminating fact, factor or circumstance against the Petitioner continuing to enjoy the benefit of certification as to the tribal status of “Kanwar”, as claimed by him. As already found by us, we are not satisfied, in writ jurisdiction, that the maker or makers of the impugned Annexure P/1 order had the authority to act as High Power Certification Scrutiny Committee in terms of Section 7(1) of the Act. We have also held that it is in breach of the basic doctrines of justice that one person had acted from three officials seats put together; and, that the said action is irreconcilable with the legislative requirement to have a Committee. Therefore, if we were to sit in judgment on the contents of the Vigilance Report and the materials which were with the Vigilance Committee, we would be, essentially, taking onto ourselves the statutory authority of a duly constituted committee in terms of the Act, to decide on record a finding and to recommend either further action, or otherwise. This is something which we would excuse ourselves from doing so for reasons more than one. Firstly, the Act as well as the judicial precedents which could be treated as its forerunners provide a scheme of decision-making by a Scrutiny Committee. Secondly, the Scrutiny Committee does not act as if it is a Civil Court adjudicating a claim of a civil nature which may otherwise fall within the trappings of Section 9 of the Code of Civil Procedure. Thirdly, and more importantly, having found that the first Respondent was not duly constituted, we ought not to examine the correctness of the impugned decision by sitting on judgment as to whether such a decision could have been made by the duly authorised statutory

authority; namely, a properly constituted Committee under Section 7 of the Act. Most importantly, we would recall the well-settled principles of law and reiterated in *Madhuri Patil (supra)*, *inter alia*, to the effect that the High Court is not a Court of appeal to appreciate the evidence. When a finding of fact is rendered by the Scrutiny Committee which is empowered to evaluate the evidence placed before it, judicial review by the High Court will be subject to limitations of interference with the findings of fact. The High Court, in such matters, ought not to assume the jurisdiction of a court of appeal, or authority of a court of first instance, and decide on the basis of materials on record, as if it is a first appellate court of the type which could be classified as available within the broad regular civil appellate jurisdiction dealing with first appeals under Section 96 of the Code of Civil Procedure. The jurisdiction of the High Court under Article 226 of the Constitution, in such cases, will be to see whether the Committee has considered all the relevant materials placed before it or has not applied its mind which led the Committee ultimately to record the finding. Each case must be considered in the backdrop of its own facts. Bearing in mind these sound principles reiterated in *Madhuri Patil (supra)*, we cannot but dissuade ourselves from adjudicating on the facts and materials which would have led to the Vigilance Committee's report, after we have held that the first Respondent was not duly constituted.

20. For the aforesaid reasons, this writ petition is allowed quashing the impugned Annexure P/1 order and directing that

proceedings shall be carried from the stage at which it had reached before nomination of the officers of the Committee as per “order” dated 17.03.2017. It is further declared that the said “order” dated 17.03.2017 does not supersede Annexure R-64 Notification issued on 22.08.2013 and would continue to hold good unless modified in accordance with law. Following the directions issued by the Hon'ble Supreme Court in *Collector, Bilaspur (supra)*, it is further ordered that the State Government shall give effect to the directions contained in paragraph 28(iv) of that judgment in conformity with the provisions of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 and the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013. It is clarified that no proceedings prior to 17.03.2017 is interfered with through this judgment and further proceedings may go on from that stage, with liberty to the Petitioner or any person aggrieved to contest such prior proceedings as and when the proceedings by the duly constituted statutory Scrutiny Committee concludes.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(Sharad Kumar Gupta)
JUDGE