

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 7354 of 2007

Premal Das Baghel, aged about 54 years, S/o Panje Das Baghel, Deputy Director, Chhattisgarh Khadi Tatha Gramodyog Board Raipur (CG)

---- Petitioner

Versus

1. Anusuchit Jan Jati Praman Patra Uchcha Stariya Chhanbin Samiti, Through Its Member, Secretary/Commissioner, Department of Tribal Welfare, Pandit Ravishankar Shukla Vishvavidyalaya Parisar, Raipur (Chhattisgarh)
2. State Of Chhattisgarh Through The Secretary Gramodyog Department Raipur CG
3. Chhattisgarh Khadi Tatha Gramodyog Board Through Its Managing Director New Shanti Nagar Raipur CG

---- Respondents

For Petitioner	:	Mr. Amrito Das, Advocate
For Respondent/State	:	Mr. Ramakant Mishra, Dy. A.G.
For Respondent No.3	:	Mr. Sunil Kumar Soni, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

09/05/2018

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner calls in question correctness and validity of orders dated 26.02.2007, 20.04.2007 & 29.11.2007 passed by the respondents No.1 & 2 respectively in the matter of determination of caste status of the petitioner.
2. The factual matrix obtaining on record of the case and relevant for decision of the controversy involved in the case is that the petitioner had secured employment under respondent No.3/Chhattisgarh Khadi Tatha Gramodyog Board in the year 1978 as a reserved category candidate claiming to be belonging to scheduled tribe 'Panika' on the strength of caste certificate issued in his favour by Divisional Organizer Adim Jati Tatha Harijan Kalyan, Sohagpur, District Shahdol in the year 1977.
3. While the petitioner was continuing in service, there were various complaints made raising an issue that the petitioner did not belong to scheduled tribe 'Panika' which led to series of enquiry and various reports, observations and findings were

recorded by different authorities at different point of time. According to petitioner's pleadings, there were enquiry report dated 18.05.94 of the Additional Collector, Shahdol (Annexure P/7), Departmental Enquiry report dated 31.12.94 (Annexure P/8), order of Managing Director dated 08.10.96 (Annexure P/10), memo of Deputy Director dated 23.12.96 (Annexure P/11), covering memo dated 25.02.04 of the Secretary of the Government information dated 17.02.2006 given by Managing Director Chhattisgarh Khadi Tatha Gramodyog Board, Raipur information dated 16.01.2006 given by Deputy Director of the Board, which all were in favour of the petitioner that the caste certificate was rightly issued to the petitioner and there was no material to show that the petitioner did not belong to scheduled tribe Panika.

4. The events took a turn unfavourable to the petitioner when a new notice was again issued on 03.10.2006 by the State Level Caste Scrutiny Committee requiring petitioner to submit his reply and also produce documents in support of his claim that he belonged to scheduled tribe Panika. The petitioner in reply submitted that earlier enquiry has been made and therefore, he may be supplied a copy of complaint on the basis of which the new enquiry has been initiated. This was eventually followed by detailed representation dated 30.10.2006 and another reply dated 22.01.2007, wherein the petitioner, referring to various enquiry reports in the past, which have been referred to herein above, asserted that the petitioner's status as scheduled tribe 'Panika' attained finality and the matter, therefore, requires to be closed by recording a finding in his favour.

5. The Committee, however, proceeded to pass the impugned order on 26.02.2007 by which it was held that the petitioner was not entitled to the status of scheduled tribe Panika. A direction was issued for cancellation of the caste certificate and also for termination from service. The Collector was also directed to take necessary steps. Thereafter, the Caste Scrutiny Committee issued a letter to the Government to take necessary steps vide memo dated 15.10.2007 and then impugned memo dated 29.11.2007 was issued to the petitioner, requiring him to show cause as to why services be not terminated. The petitioner then filed this petition before this Court challenging the aforesaid orders.

6. Assailing legality of the order passed by the State Level Caste Scrutiny Committee and all subsequent actions, learned counsel for the petitioner would submit that the Caste Scrutiny Committee acted in utter violation of principles of natural justice, inasmuch as, the report of vigilance cell which was obtained by it in the matter of petitioner's case was never supplied to the petitioner. He would submit that in addition to that, the Committee took into consideration an extremely adverse material against the petitioner, a report dated 22.07.99 of Tahsildar Dindori which was never disclosed to the petitioner during enquiry and the petitioner came to

know for the first time from the impugned order that some report of the year 1999 was relied upon and used against him. Further submission of learned counsel for the petitioner is that the petitioner had brought to the notice of the Caste Scrutiny Committee that in the past, number of enquires were made and factual report obtained by different authorities which were in his favour and therefore, constituted relevant material in the matter of decision relating to petitioner's caste status by the Committee. But none of those documents were taken into consideration before arriving at the finding against the petitioner. According to learned counsel for the petitioner, the consequence of such a declaration being serious, the Caste Scrutiny Committee was under a bounden duty to hold the enquiry in a just and fair manner, not only disclosing all the adverse material but also to take into consideration the document submitted by the petitioner in support of his case. Therefore, the impugned order is illegal and may be set aside.

7. On the other hand, learned counsel for the State would submit that the Committee had given full opportunity to the petitioner. A show cause notice was issued by which the petitioner was required to submit proof of he belonging to scheduled tribe 'Panika'. According to him, in the case of **Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and Others, 1994 (6) SCC 241**, it has been held that the burden of proof is on the person claiming the caste status, therefore, it was for the petitioner to prove that he belongs to scheduled tribe 'Panika'. He would further submit that during the proceeding before the Committee, the petitioner never raised any demand for supply of the copy of vigilance report, therefore, at this stage, the petitioner is not legitimate in raising ground on that count.

8. Learned counsel for the State further added that the report of Tahsildar which has been referred to in the impugned order, is only one of the relevant material and even if that is excluded from consideration, the petitioner was not absolved of his burden to prove by leading a positive evidence that he belong to scheduled tribe.

9. Learned counsel for respondent No.3 supports the stand taken by the State Government and submits that the petitioner is not entitled to the status of 'Panika' Tribe because the petitioner was not born in Shahdol district but in Dindori district. He would submit that from the report of Tahsildar, referred to in the impugned order, it is clear that the petitioner was resident of Dindori and not Shahdol. The burden was on the petitioner to prove that he belonged to Panika tribe, therefore, there is no illegality in the order.

10. A Perusal of the impugned order dated 26.02.2007 would show that in order to record a finding that the petitioner was born and brought up in Dindori district at

Village Barbaspur, District-Dindori and not at Shahdol, heavy reliance was placed upon a report of Tahsildar referred to in memo dated 22.07.99 and letter dated 15.07.93 of the Additional Collector, Dindori and Deputy Collector Dindori forwarded to Managing Director Madhya Pradesh Khadi Gramodyog Board. The order also refers to same vigilance report.

11. Learned counsel for respondent could not dispute that these two documents were not supplied to the petitioner but the defence is that the petitioner did not demand these documents. This cannot be accepted. Enquire into caste status of a person is a serious matter. Seeking benefit as a reserved category by a person, whether it being a matter of employment or admission to educational institution, is under the constitutional scheme. Where a person claims to be belonging to a particular caste, a dispute with regard to his caste status requires serious consideration. Either way, consequence are very serious. If a person is denuded of a caste status to which he may be legally entitled to, he may not only lose a job, but his children and all other members of the family may lose benefit which the constitution intended to confer upon them on the ground that they belong to a reserved category. On the other hand, if benefit is taken by a person who does not belong to reserved category, it is equally serious because it results in depriving one person belonging to that category who could have been given admission or employment. Either way, the consequence being serious an onerous duty is cast on the Caste Scrutiny Committee to hold enquiry not only consistent with the principles of natural justice but by due application of its mind to the material on record as also by making all enquiry to find the truth.

12. It is to be noted that in view of the authoritative pronouncement of the Supreme Court in the case of *Kumari Madhuri Patil (supra)*, the issue with regard to the caste status cannot be examined by any authority or the Court except the Caste Scrutiny Committee as per the direction of the Supreme Court. Moreover in the aforesaid decision, it has been held that the suit with regard to such disputes relating to caste status would not lie. That would mean that a person cannot approach the civil Court. The only body which can enquire into the caste status of a person is the Caste Scrutiny Committee. Moreover, in a subsequent decision in the case of **State of Maharastra Vs. Milind and others, 2001(1) SCC 4**, the Supreme Court has held that against the order passed by the Caste Scrutiny Committee, a petition under Article 227 of the Constitution of India may lie before the High Court. Therefore, it is clear that the Caste Scrutiny Committee is the final authority on facts in the matter of enquiry into caste status of a person.

13. In the case of **State of Maharashtra and others Vs. Ravi Prakash Babulalsing Parmar and another, 2007(1) SSC 80**, their lordships in the Supreme

Court, while examining the role and functions required to be discharged by the Caste Scrutiny Committee, held in no uncertain words that the nature of duties and functions discharged by the Caste Scrutiny Committee are quasi judicial in nature.

14. For aforesaid reasons, the Caste Scrutiny Committee has to function as a quasi-judicial body which necessitated not only following an orderly procedure consistent with the principal of natural justice requiring it to disclose each and every material collected by it to the person against whom the enquiry is being held but also to duly apply its mind and assess oral and documentary evidence led before it by the person concerned.

15. It has to be noted that as per the Supreme Court decision in the case of *Kumari Madhuri Patil (supra)*, the burden is on the person who claims the caste status. An opportunity, therefore, to discharge this burden has to be granted which would mean not only to lead oral and documentary evidence in support of the claim but also to offer comments and rebuttal to any adverse material collected, by the Caste Scrutiny Committee. In the case of *Kumari Madhuri (supra)*, the Supreme Court clearly ordered that the vigilance report shall be supplied to the person against whom the enquiry is being made. But that is not exhaustive. In a case where Caste Scrutiny Committee collects any other material, the principal of natural justice demand that all such material, other than vigilance report, should also be disclosed to the person against whom the enquiry is being made so that he may get an opportunity to rebut the same by leading oral or documentary evidence.

16. The Caste Scrutiny Committee is, therefore, obliged at the very initiation of the proceeding to disclose all the material in its hand to the person proceeded against and thereafter allow him to lead oral as well as documentary evidence. In the case of *Ravi Prakash Babulalsing Parmar (supra)*, the Supreme Court clearly held that in appropriate cases, the person claiming caste status may also lead oral evidence in support of his claim. Once a person comes out with certain material in support of his claim, the caste scrutiny committee is under a duty not only to apply its mind to those oral and documentary evidence placed before it but also to consider entire material on record and then to arrive at a conclusion of fact upon complete assessment of the material collected by it as well as placed before it by the concerned person. The requirement of application of mind must be reflected from the order itself because it is a quasi judicial exercise of power and not merely an administrative function to say that the conclusions arrived at and mentioned in the order could be supported from material on records and files. One of the essential requirement of quasi judicial function is to record reasons upon assessment of available material in support of conclusion.

17. If the impugned order is examined from the aforesaid legal perspective, the same is found to be unsustainable in law not only because the vigilance report and so called report of the Tahsildar was not supplied to the petitioner but whatever material was supplied by the petitioner in support of his claim was also not taken into consideration. No reasons have been assigned in the order as to why various report filed by the petitioner were liable to be disbelieved.

18. The order passed by the Caste Scrutiny Committee, therefore, suffers from violation of principle of natural justice and serious jurisdictional flaw that it illegally exercised its jurisdiction in passing the impugned order against the petitioner without supplying the relevant adverse material and without considering the document submitted by the petitioner in his defence.

19. Though learned counsel for the respondent No.3 sought to take the Court through the facts of the case based on certain documents, this Court would not enter into factual dispute in this petition as this is not permissible in these proceeding. It is decision making process illegally, which alone has been examined by this Court and conclusion arrived at that order is unsustainable in law.

20. In the result, the impugned order and all consequential proceedings referred to in the petition and this order are set at naught. It will, however, be open for the Committee to hold enquiry in accordance with law and various observations which have been made by this Court in this order by supplying to the petitioner, a copy of vigilance report, so called report of Tahsildar and thereafter, if demanded by the petitioner, to allow him to lead any other oral or documentary evidence in support of his claim.

21. Considering that during the pendency of this petition, State of Chhattisgarh has enacted the Act of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013 which lays down legal regime in the matter of grant of caste certificate as also enquiry into complaints, the Committee shall act in accordance with the legal requirement as well.

22. The petition is accordingly allowed. No costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge