

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No.3156 of 2005**

1. Vishnu Priya, D/o Gopinath (dead)

1.1 Ramlal, S/o Dhanpati, Aged about 45 years, R/o Village Saraipali, District Mahasamund (CG)

2. Saraswati, W/o Laxman, Aged about 40 years, R/o Village Saraipali, District Mahasamund (CG) **---- Petitioners****Versus**

1. State Of Chhattisgarh, Through Collector Mahasamund, District Mahasamund (CG)

2. SDO (Revenue), Saraipali, District Mahasamund (CG)

3. Niranjana Mahapatra, Aged about 47 years, S/o Purnachand Mahapatra, R/o Village Paterapali, Tahsil Saraipali, District Mahasamund (CG)

---- Respondents

For Petitioners	:	Mr. Manoj Paranjpe with Mr. Vivek Mishra, Advocate
For Respondent/State	:	Mr. Anmol Sharma, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/10/2019**

Heard.

1. This petition, under Article 226/227 of the Constitution of India, is preferred against order dated 31.03.2005 passed by the Board of Revenue in revision arising out of order dated 19.04.2001 passed by the Additional Commissioner Raipur, Division Raipur arising out of proceedings in the matter of appointment of *Sarvarakar* (trustee) of Mahadev temple Paterapali, District Mahasamund.

2. The petitioner as also respondent No.3 and one Gunnidhi Mahapatra moved an application before the Sub-Divisional Officer, Saraipali for passing appropriate orders appointing the petitioner as *Sarvarakar* of the temple stating that the father of the petitioner was the *Sarvarakar* and performing pooja and managing affairs of the temple. After his death, objections were invited. After enquiry made by the Sub-

Divisional Officer in exercise of his powers conferred under administrative instruction dated 10.02.1987, the Sub-Divisional Officer found that the petitioner Vishnu Priya being the elder daughter of earlier Sarvarakar Gopinath is entitled to be appointed as Sarvarakar as other two appellants, Gunnidhi Mahapatra resides in Orrisa and Niranjana Mahapatra resides in Village Kutela and he is the husband of third daughter of Gopinath.

3. This order was, however, challenged before the Additional Collector by respondent No.3 stating that as he was performing Pooja and not Vishnu Priya and further that the villagers are also supporting for his appointment as Pujari and Sarvarakar, the order of the Sub-Divisional Officer is required to be set aside. The appeal was, however, dismissed by the Additional Collector. A revision was preferred before the Additional Commissioner and the Additional Commissioner recorded a finding that according to the wishes of the villagers and those who got the temple constructed and on the basis of the fact that respondent No.3 was performing Pooja, held that respondent No.3, has preferential right of being appointed as Sarvarakar (trustee) and Pujari (priest) of the temple. It also held that the office of trustee and priest could not be filled up applying the law of succession. On such findings, the orders passed by the Collector as well as the Sub-Divisional Officer were set aside. This gave rise to an occasion for the petitioner to challenge this order before the State Government by way of revision. The State Government affirmed the order passed by the Commissioner on similar considerations. The revision having been dismissed, present petition has been filed.

4. Learned counsel for the petitioner would make pointed submission that the Commissioner and the State Government, while recording finding in favour of respondent No.3, relied upon certain evidence which was not disclosed to the petitioner. According to learned counsel for the petitioner, the findings that respondent No.3 is offering worship in the temple and that villagers and founder member of the temple have expressed and authorized respondent No.3 to perform Pooja is based on some evidence which was not produced before Tahsildar during enquiry. Therefore, the order passed by the Commissioner as well as the State Government are unsustainable in law. In substance, the challenge is to the aforesaid orders on the basis that the orders suffer from procedural impropriety in not disclosing certain material adverse to the petitioner and taking into consideration those materials to reverse the order passed by the Sub-Divisional Officer and the Collector.

5. The return filed by the State is to the effect that as the State authorities have exercised judicial power in deciding the *lis* between the petitioner and respondent

No.3, they are not required to justify the judicial orders passed by them and as such no specific reply is required to be submitted on merits of the case.

6. Respondent No.3, though served, has not appeared in this case nor filed any reply on affidavit.

7. Amongst others, following specific ground raised by the petitioner in the petition as contained in para 5.6 :

5.6. The Board of Revenue, while passing the impugned order ought to have considered the inquiry conducted by the Tahsildar and the statements and opinions of the villagers, which was recorded during inquiry. The Board of Revenue as well as the Commissioner grossly erred in holding that the respondent No.3 is offering the worship in the Mahadev Temple though there is no material or evidence on record to that effect, even the letter of the villagers and the founder members of the temple has not been proved, even the same was not produced before the Tahsildar during inquiry or along with the application for appointment of Sarvarakar and the Commissioner as well as the Board of Revenue has passed the order on relying on the said letter. It is submitted that the post of the Sarvarakar is not equivalent with the Pujari of the temple, but it is some sought of right with regard to the management of the temple. Even the villagers had requested the SDO to appoint some of the persons from the family of the Gopinath, who was the earlier Sarvarakar. So far as the respondent No.3 is concerned, he is the husband of the eldest daughter of Gopinath.

8. Specific ground thus has been taken by the petitioner that certain material evidence which were relied upon by the Commissioner and the State Government were never placed before the lower authorities by respondent No.3 and those very material were made a basis to reverse the orders earlier passed in favour of the petitioner.

9. There is no denial to the aforesaid factual statement made in the petition filed by the petitioner. Respondent No.3 having not disputed the aforesaid specific ground raised by the petitioner in this petition, this becomes an admitted position that the Commissioner and the State Government, while deciding the issue before them, adverted to certain new material placed on record before them which were not earlier placed before the authorities who passed orders in favour of the petitioner. Therefore, undisclosed material placed for the first time before the higher authority was essentially made a basis to reverse the earlier orders. Order apparently suffers from defect in decision making process and is, therefore, liable to be set aside only on the ground of this material illegality and defect in exercise of jurisdiction.

10. In this case, earlier this Court had obtained a report with regard to present

state of affairs and return (in addition to earlier return) filed on 08.07.2019 which contains certain factual aspects. The report shows that at present, respondent No.3 is working as Sarvarakar and Pujari of the temple. This report, however, being a report showing present scenario, it will not come in the way of the petitioner because the State Government is required to decide the appeal taking into consideration all the factual aspects which were existing on the date when the application was filed by the petitioner, respondent No.3 and one Gunnidhi Mahapatra.

11. In the result, impugned order is set aside. The order of the Commissioner will also be of no effect and the case is remanded to the Commissioner to reconsider after disclosing to the petitioner each and every documentary evidence or oral evidence, if any, collected behind his back.

Sd/-
(Manindra Mohan Shrivastava)
Judge