

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6310 of 2007**

Avinash Sendur, S/o. Shri J.M. Sendur, Aged about 43 years, Technical Assistant, National Institute of Technology, (Formally known as Government Engineering College), Raipur, R/o. Sendur Bhawan, Nayi Basti, Noorani Chowk, Raja Talab, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Schedule Tribe & Schedule Caste Development Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Chhattisgarh State Schedule Tribe Commission, through: its Secretary, Jalvihar Colony, Raipur, District Raipur, Chhattisgarh
3. High Level Caste Scrutiny Certificate Scrutiny Committee, Through: its Secretary, Tribal Research & Training Institute, Pt. Ravishanker Shukla University, Raipur, District Raipur, Chhattisgarh
4. The Collector, Raipur, District Raipur Chhattisgarh
5. The Director, National Institute of Technology, (Formally known as Government Engineering College), Raipur, District Raipur Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sachidanand Yadav, Advocate on behalf of Mr. Kashif Sakeel, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
For Respondent No.5	:	Mr. Sachin Singh Rajput, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/01/2019**

1. The challenge in the present writ petition is to the order Annexure P/23 dated 10.09.2007 passed by the respondent No.3 and the order Annexure P/24 dated 17.09.2007, whereby the respondent No.3-Committee had instructed the employer of the petitioner to take appropriate action on the basis of the office report dated 10.09.2007. Vide the said order, the respondent No.3 has held that the caste certificate, which the petitioner has produced was a false

certificate and that there is no proof available to establish that the petitioner belongs to the Binjhar tribe, which is a schedule tribe declaring in the State of Chhattisgarh.

2. The brief facts of the case relevant for the adjudication of the present dispute is that;

According to the petitioner, his parents and his ancestors were residents of district Dhamtari and belonged to the Binjhar community, which is a scheduled tribe as per the part-XX of the IVth Schedule of the M.P. Reorganization Act, 2000. The petitioner also was born in Bhilai, district Durg on 18.11.1963, which again is part of the erstwhile State of Madhya Pradesh, which now falls within the territories of the State of Chhattisgarh. After completing his studies at Bhilai and Raipur, the petitioner got a certificate so far as his caste status is concerned, issued from the office of the respondent No.4 on 06.02.1985. Subsequently, the petitioner got an appointment as a Technical Assistant in the Government Engineering College, Raipur, which since has been converted into the National Institute of Technology (NIT) Raipur and is at present also working in the same establishment as a Technical Assistant.

The dispute arose when the respondents received a complaint against the petitioner while he was working as a Technical Assistant with the respondent No.5. The complaint was that he has obtained employment on the basis of false caste certificate and that the petitioner does not belong to the Binjhar community or for that matter, the petitioner is not a scheduled tribe candidate.

According to the petitioner, there was initially a complaint lodged in the year 1993 before the respondent No.4 and the District Organizer (Schedule Tribe Development) summoned the petitioner and conducted a preliminary enquiry and did not find any merit on the said complaint. Later on, another complaint was lodged in the year 1999 doubting the caste status of the petitioner. The said complaint was also second time investigated by the CID Department of Home, Government of Madhya Pradesh (as it then was) and finally on 21.12.1999, the CID also found the complaint against the petitioner to be false.

3. What is also relevant at this juncture to mention is that the CID in the course of investigation has given a report Annexure P/7 dated 21.12.1999, wherein they have categorically held that the petitioner in fact belonged to the Binjhwari community.
4. Later on, subsequently another complaint was lodged by some anonymous person and this time the respondent No.3 took cognizance of the complaint and issued notice to the petitioner in respect of inquiry which the respondent No.3 intended to conduct. The respondent No.3 thereafter got the matter inquired/investigated from the Additional Superintendent of Police, Raipur, who, in turn, got the matter investigated from the police officials posted at the Saraswati Nagar Police Station, Raipur. Based on the report of the Police Station Saraswati Nagar, Raipur, the Superintendent of Police submitted his report to the respondent No.3 based upon which the impugned order has been passed on 10.09.2007 holding that the petitioner has not produced sufficient cogent proof before

the committee to establish that she in fact belonged to the Binjhar community. The respondent No.2 while passing the said order also instructed for cancellation of the appointment which was given to the petitioner on the basis of the caste certificate that she had from the office of the Collector, Raipur. It is this order which is under challenge in the present writ petition.

5. The petitioner had an interim protection in her favour. From the pleadings, which the petitioner had made, prima facie it appears that the contention of petitioner appears to be that the committee has not properly conducted an investigation to ascertain the actual caste status of the petitioner. It is the further contention of the petitioner that the authorities also have totally ignored the directives/guidelines laid down by the Hon'ble Supreme Court in the case of "***Kumari Madhuri Patil & Another v. Additional Commissioner, Tribal Development & Others***" reported in (1994) **6 SCC 241** which was the primary judgment in this field and where the Hon'ble Supreme Court had in very categorical term laid down the guidelines as to how the High Power Caste Scrutiny Committee should conduct itself and the manner in which the committee should conduct an investigation.
6. It is the further contention of the petitioner that no such exercise has been done by the committee while issuance of the impugned order disbelieving the caste certificate which the petitioner has. The petitioner further submits that in fact the certificate which the petitioner had in her possession was issued by the Collector was

after a due inquiry, which they had conducted, as was required under the then prevailing procedure.

7. Lastly, it was contended by the petitioner that the committee has failed to reach to the conclusion that the petitioner in fact belonged to a different community and not to the Binjwar community and in the absence of such findings by the committee, the impugned order is not sustainable and the same deserves to be set-aside/quashed.
8. The State counsel on the contrary opposing the petition submits that the plain reading of the impugned order Annexure P/14 is by itself self explanatory, in as much as the petitioner's case was duly inquired upon by the Superintendent of Police, Raipur. The State counsel submits that on verification, it was found that the petitioner has failed to produce sufficient documents to establish the fact that the petitioner is a member of the Binjwar community, which is a scheduled tribe. The Superintendent of Police submitted the findings to the committee, based upon which the impugned order has been passed.
9. It was the further contention of the State counsel that the committee before passing the order had also called upon the petitioner on repeated occasion for producing cogent material which she had to establish the fact that she in fact belonged to the Binjwar community and the petitioner miserably failed in producing sufficient materials in this regard, which has led to the issuance of the impugned order which therefore is not in any manner bad in law, nor does it warrant any interference and prayed for the dismissal of the writ petition.

10. Having heard the contentions put forth on either side and on perusal of record, particularly the impugned order, what is revealed from the findings arrived at by the respondent No.2-committee is that the committee instructed the Superintendent of Police, Raipur to submit a report. The Superintendent of Police has submitted a report that the petitioner has failed to produce cogent documents and evidence to establish that the petitioner in fact belonged to the Binjhar community.
11. 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 verification of the 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 paragraph No.13 of the said judgment is reproduced hereinunder:

“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.”

12. 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.
13. 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 the 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.”

14. In the light of the aforesaid legal position as it stands, 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).
15. What is surprisingly at this juncture is that in spite of the fact that the Committee has on its own not conducted an inquiry, as was required or expected from the Committee in the light of the judgment of “***Kumari Madhuri Patil***” (supra), the Committee has also at the same time failed to appreciate the earlier report of the CID (Annexure P/7) dated 21.12.1999 as also the report of the Station House Officer of the Police Station Saraswati Nagar, Raipur, who had submitted his report to the Superintendent of Police, Raipur, which in turn was to be placed before the Committee and the Station House Officer, Saraswati Nagar, Raipur has also given a report based on the finding of the CID dated 21.12.1999. All these facts have not been discussed or touched by the Committee while passing the impugned order.
16. Taking into consideration the entire factual matrix, as it stands and also on due perusal of the impugned order, if we peruse the findings of the respondent No.2 in the impugned order, it clearly reflects that the entire findings of the committee is based on the

report of the Superintendent of Police, Raipur. The report of the Senior Superintendent of Police, Bilaspur has given a finding only based on the earlier report of the CID with no specific enquiry or investigation. The impugned order of the committee does not show any form of an investigation by the committee going into the 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. In the absence of any such clear investigation and finding by the committee, the impugned order is hard to sustain and the same deserves to be and is accordingly set-aside.

17. At this juncture, the counsel for the State submits that in the year 2013, the State Government has in compliance to the directives given in the judgment of the Hon'ble Supreme Court in the case of "***Kumari Madhu Patil***" (supra) has enacted a special law, which is known as "***Chhattisgarh Schedule Castes, Schedule Tribe and Other Backward Classes (Regulation of Social Status Certification) Act, 2013***", and where the State Government itself has framed the rules and guidelines, as to how the caste status of a particular person has to be verified or investigated upon.
18. Given the said facts and the new law that has come into force, the impugned order being set-aside. The right of the respondents stands reserved, if they feel so to hold a fresh inquiry in accordance with the new Act that has been enacted in the year 2013 and pass a fresh order.

19. The writ petition accordingly stands allowed. The impugned orders dated 10.09.2007 (Annexure P/23) & 17.09.2007 (Annexure P/24) stand set-aside/quashed, with consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

Ved