

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 6205 OF 2007

Tulsiram Dhankar, S/o Dukharam Dhankar, aged about 36 years, presently posted and working as Assistant Teacher, Government Pre-Middle School, Baroda, Tahsil Rajim, District Raipur (CG)

... Petitioner

versus

1. State of Chhattisgarh, through Secretary, Department of School Education, D.K.S. Building, Mantralaya, Raipur (CG)
2. Secretary, High Level Scheduled Tribe Caste Certificate Scrutiny Committee, Pt. Ravi Shankar Shukla University Campus, Raipur (CG)
3. Director, Public Instructions, Raipur (CG)

... Respondents

and

WRIT PETITION (S) NO. 6206 OF 2007

Smt. Vimla Dhankar, D/o Khuman Singh, aged about 39 years, presently posted and working as Assistant Teacher, Government Pre-Middle School, Baroda, Tahsil Rajim, District Raipur (CG)

... Petitioner

versus

1. State of Chhattisgarh, through Secretary, Department of School Education, D.K.S. Building, Mantralaya, Raipur (CG)
2. Secretary, High Level Scheduled Tribe Caste Certificate Scrutiny Committee, Pt. Ravi Shankar Shukla University Campus, Raipur (CG)
3. Director, Public Instructions, Raipur (CG)

... Respondents

For Petitioners	:	Mr. Shashank Thakur, Advocate.
For Respondents	:	Ms. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/07/2019

1. These are two writ petitions where a common grievance has been agitated. The two petitioners are husband and wife. WPS No. 6205/2007 is one which has been filed by the husband and WPS No. 6206/2007 is the one which has been filed by the wife.
2. The challenge in both these two writ petitions is the order dated 27.8.2007 passed by the respondent no.2 i.e. High-powered Caste Scrutiny Committee constituted by the State of Chhattisgarh.

3. Since the issue involved in both these two writ petitions is common and the grounds raised by the two petitioners and also the relief sought for are same, this Court proceeds to decide both these writ petitions by this common order.

4. The facts relevant for the adjudication of the matter are that the two petitioners got the appointment in the then Tribal Welfare Department of the State Government in the year 1984 and 1988 respectively, on the post of Assistant Teacher. From the records it appears that the husband, Tulsiram Dhankar, obtained the social status certificate, dated 7.1.1983 (Annexure P-2A) issued by the Area Organizer, Raipur. The other petitioner Smt. Vimla Dhankar got her social status certificate (Annexure P-3), dated 26.7.1988, issued by the Tehsildar, Rajim, District Raipur. In the social status certificate issued in favour of the two petitioners, the caste has been reflected as 'Dhangarh', which is a community shown as Scheduled Tribes in the Constitution (Scheduled Tribes) Order, 1950 wherein 'Dhangarh' community has been placed along with 'Dhanka' and 'Oraon' community all of which has been notified in the Presidential Order as Scheduled Tribes. On account of the State Reorganization that took place in the year 2000, the services of the petitioners got allocated to the State of Chhattisgarh and thereafter the two petitioners became the employees of the State of Chhattisgarh. While serving with the respondent-State in the State of Chhattisgarh, on some anonymous complaint, an enquiry was initiated ascertaining the caste status of the petitioners. The matter was seized for hearing by the respondent no.2 committee which was constituted by the State of Chhattisgarh in the light of the directives given by the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil v. Additional Commissioner, 1994 (6) SCC 241**. The said committee is said to have

conducted a vigilance enquiry through the Superintendent of Police, Raipur and also from its Vigilance Cell. Thereafter, it is said that the petitioners were called upon for hearing before the committee and a show cause was issued calling upon the petitioners to produce records/documents which are in their position to prove the caste status of their ancestors on the basis of the entries made in the revenue records as also from the school certificate or records which were available with the petitioners. That, finally the committee vide the impugned order dated 27.8.2007 by the two orders passed separately in the case of the two petitioners herein, held that the caste certificate issued by the Area Organizer so far as the petitioner Tulsiram Dhankar is concerned and the certificate issued by the Tehsildar, Rajim, dated 26.7.1988 so far as Smt. Vimla Dhankar is concerned, is to be treated as cancelled and further instructed the employer to take appropriate steps against the petitioners in the light of their caste certificate getting cancelled. The finding of the committee is based upon the enquiry report conducted by the Vigilance Cell and the Superintendent of Police, Raipur who have given a report of the petitioners belonging to the 'Gadariya' community and not 'Dhangarh' community and the 'Gadariya' community is one which falls under the Other Backward Classes category and not 'Dhangarh' community which comes under the Scheduled Tribes category.

5. It is these two orders passed by the respondent no.2 committee which are under challenge in the present writ petition.

6. The contention of the petitioners is that upon being issued with a notice by the respondent no.2 committee, the petitioners entered appearance and submitted a whole lot of documents totalling around 22 in number in support of their contentions and justifying their social status or

the caste reflected in the social status certificate. According to the petitioners, the respondent no.2 committee however totally ignored these documents which included the statements of the villagers and also other relatives of the petitioners who had specifically given details of the caste, culture and tradition of the petitioners' ancestors which with it could be established that the petitioners in fact fall within 'Dhangarh' community under Scheduled Tribes category. The further contention of the petitioners is that the respondent no.2 committee also did not provided the petitioners with the enquiry report or the vigilance report which was submitted by the Superintendent of Police, Raipur as well as the Vigilance Cell of the respondent no.2 committee. According to the petitioners, in the absence of two reports of the Superintendent of Police and the Vigilance Cell being not provided to the petitioners, coupled with the fact that the impugned orders do not reflect of the respondent no.2 committee having considered the documents which the petitioners had produced before the committee, the petitioners were not able to take proper defence and neither were they in a position to contradict the findings of the Superintendent of Police as well as the Vigilance Cell which further amounts to violation of the principle of natural justice. According to the petitioners, if the two documents referred would had been furnished or made available to them, they could have produced more documents and evidence to establish the fact that they in fact fall within 'Dhangarh' community which falls under the Scheduled Tribes category and thus prayed for the quashment of the impugned orders and for remitting the matter back for a fresh adjudication.

7. Learned State Counsel on the contrary referring to the two impugned orders submits that the order passed by the respondent no.2 committee is by itself self-explanatory inasmuch as it would reveal that the

petitioners have been granted sufficient opportunity of hearing by the committee before passing an order. The State Counsel further contended that the order would further reflect that the petitioners were also issued with a show cause notice to produce whatever documents that they intended to produce to establish the fact that they belong to 'Dhangarh' community. Further, the State Counsel also refers to the fact that in addition to the opportunity being given to the petitioners, the committee also got the matter enquired by the Vigilance Cell as well as the Superintendent of Police, Raipur and taking all these facts into consideration, it cannot be said that the findings are either perverse or bad in law. The State Counsel further submitted that the impugned orders also show that the finding was based on the caste which is reflected in the school records of the two petitioners and which has not been disputed by the petitioners and therefore the finding cannot be said to be bad and thus prayed for the dismissal of the writ petitions.

8. Having heard the contentions put forth on either side and on perusal of records, what is an admitted position is the fact that the two petitioners were appointed under the State Government in the year, 1984 and 1988 respectively. Both the petitioners were allocated to the State of Chhattisgarh on its creation in the year, 2000. An enquiry was initiated ascertaining the caste status of the petitioners. In the course of enquiry, the respondent no.2 committee had sent the matter to be inquired by the Superintendent of Police, Raipur as well as by the Vigilance Cell of the respondent no.2 committee. It is thereafter that the dispute arose as to whether the enquiry report prepared by the Superintendent of Police, Raipur as well as by the Vigilance Cell of the respondent no.2 committee having not been provided to the petitioners and the respondent no.2

committee, at the same time, calling upon the petitioners to prove the fact that they belong to 'Dhangarh' community.

9. So far as the contention of the petitioners that the report of the Vigilance Cell as well as the Superintendent of Police, Raipur is concerned, there is no dispute that the same has not been given to the petitioners. It is also not in dispute that the petitioners in response to the show cause notice had submitted a detailed list of documents to the committee to prove their case. What further is reflected from a plain reading of the impugned orders is that, both the Vigilance Cell as well as the Superintendent of Police, Raipur have given a report based upon the entry of the caste of the petitioners in their respective school records. There does not appear to be any further enquiry or investigation conducted by the Vigilance Cell as well as by the Superintendent of Police, Raipur.

10. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil and Another Vs. Additional Commissioner, Tribal Development & Others, 1994 (6) SCC 241**, 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 Hon'ble Supreme Court in a very categorical term has laid down certain procedure which should be adopted by the State Government after consideration of the High-powered Caste Scrutiny Committee. Relevant portion of the said judgment is reproduced herein under:

“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."

11. The same analogy has further been reiterated by the Hon'ble Supreme Court in the case of **Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and another, 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-powered Committee in each of the States.

12. In furtherance to the aforesaid principle of law laid down by the Hon'ble 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, 2011 (10) SCC 357**, wherein in paragraph-18 it has been held as under:

“18. 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.”

13. A similar view has also been taken by the Hon'ble Supreme Court in the case of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and Others, 2012 (1)SCC 113**, wherein reiterating the directives which the Supreme Court has laid down in case of **Kumari Madhuri Patil** (*supra*), had prescribed the procedure as to how the Vigilance Cell of the committee should conduct verification or enquiry. Paragraphs 20 and 22 of the said judgment read as under :

“20. The rules further stipulate that the Vigilance Officer shall personally verify and collect all the facts about the social status claimed by the applicant or his parents or guardians, as the case may be. He is also required to examine the parents or the guardians or the applicant for the purpose of verification of their tribe. It is evident that the scope of enquiry by the Vigilance Officer is broad-based and is not confined only to the verification of documents filed by the applicant with the application or the disclosures made therein. Obviously, the enquiry, supposed to be conducted by the Vigilance Officer, would include the affinity test of the applicant to a particular tribe to which he claims to belong. In other words, an enquiry into the kinship and affinity of the applicant to a particular Scheduled Tribe is not alien to the scheme of

the Act and the Rules. In fact, it is relevant and germane to the determination of social status of an applicant.

22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

14. In the light of the aforesaid legal position as it stands and the undisputed fact that the petitioners having not been issued with the report of the enquiry conducted by the Superintendent of Police, Raipur as well as by the Vigilance Cell of the respondent no.2 committee, moreover there being no other finding by the Vigilance Cell as well as by the Superintendent of Police, Raipur other than the verification of the school records of the two petitioners and that there being no enquiry made so far as the ancestors and forefathers of the petitioners are concerned, the enquiry so conducted cannot be said to be proper, legal and justified.

15. In addition, non granting of the vigilance report as well as the report of the enquiry conducted by the Superintendent of Police, Raipur to the petitioners also is not proper and legal in the light of the judgment of the Hon'ble Supreme Court in case of **Kumari Madhuri Patil** (*supra*), wherein it has been specifically ordered that in the event of an enquiry being conducted by the Vigilance Cell, while issuing show cause notice to the concerned, the enquiry report so collected should be provided to the concerned person. The procedure adopted by the respondent no.2 committee gets vitiated on this ground also.

16. For all the aforesaid reasons, the impugned order dated 27.08.2007, Annexure P-1, in both the writ petitions and the consequential orders, if any, initiated by the employer thereafter, i.e., Annexure P-6, dated 23.10.2007 in WPS No.6206 of 2007 being bad in law deserve to be and are accordingly set aside.

17. It is made clear that since this Court is setting aside the order of the respondent no.2 committee and the consequential orders only on the technical ground of the enquiry not being properly conducted, the respondents would have the liberty to hold a fresh enquiry, if they so

warrant, after giving due opportunity of hearing to the petitioners and also after providing them report of the Vigilance Cell as well as the report submitted by the Superintendent of Police, Raipur in this regard.

18. It is expected that in the event if the respondents proceed for a fresh enquiry, the petitioners shall render full cooperation in the enquiry so conducted.

19. Accordingly, both the writ petitions stand allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

/sharad/