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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 6048 of 2007

Rajendra Kumar Sonkusale, aged about 36 years, S/o Shri Sukhdev Sonkusale, Occupation – Service, working as Assistant Grade-I, General Administration Department, D.K.S. Bhawan, R/o Senior MIG – 108, Vijeta Complex, New Rajendra Nagar, District – Raipur.

---- Petitioner(s)

Versus

1. Union of India Through the Secretary, Department of Personnel and Training, Ministry of Home, New Delhi.
2. State of Chhattisgarh Through the Secretary, Scheduled Castes and Scheduled Tribes Development Department, D.K.S. Bhawan, Mantralaya, District – Raipur (CG).
3. The Secretary, Government of Chhattisgarh, General Administration Department, D.K.S. Bhawan, Mantralaya, District – Raipur (CG).
4. Caste Certificate High Level Scrutiny Committee through its Member Secretary Cum Commissioner, Tribal and Scheduled Castes and Scheduled Tribes Development, Pandit Ravishankar Shukla University Campus, District – Raipur (CG).
5. The Collector, Rajnandgaon District – Rajnandgaon (CG).

---Respondents

For Petitioner	:	Shri R.S. Marhas and Shri Aman Tamboli, Advocates.
For Respondent No.1	:	Shri Raj Kumar Gupta, Advocate.
For State	:	Shri Chandresh Shrivastava, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.07.2019

1. Challenge in this petition is to the order dated 27.09.2007 (Annexure P/1).
Vide the said order, the respondent No.4 has issued a direction to the respondent No.3 to take appropriate decision against the petitioner in the light of the order passed by the respondent No.4-committee on 27.09.2007 holding that the respondent No.4 have ordered treating the caste certificate that is in his possession as cancelled and it was also ordered for

taking steps for cancellation of his appointment that was granted against the post of A.G. III reserved for Scheduled Caste candidate.

- 2.** Challenge primarily is on the ground that the respondents have not properly conducted the enquiry as is envisaged by the Supreme Court in the case of Kumari Madhuri Patil & Another Vs. Addl. Commissioner, Tribal Development and Others, 1994(6)SCC 241. The challenge also is on the ground that the petitioner has not been taken into confidence while the respondents had got the vigilance enquiry conducted. It was also the contention that the findings and the action of the respondents are bad for the purpose of Article 366(25) of the Constitution of India, the word "State" referred to in the Presidential order dated 06.09.1950 would mean the state as it existed on the date of the said order. According to the petitioner, the area to which the petitioner belongs originally fell within the same state in the year, 1950. Therefore, the respondents should have properly appreciated this aspect before passing the order firstly on 27.08.2007 by the respondent No.4 and then as a consequence issuing Annexure P/1 to the State Govt. for taking appropriate steps.
- 3.** Perusal of record would show that the petitioner has an interim protection in his favour so far as the effect and operation of the impugned order is concerned vide order dated 10.10.2007. By virtue of the interim protection dated 10.10.2007, the respondents have till date not taken any steps pursuant to Annexure P/1, dated 27.09.2007.
- 4.** Without entering into the merits of the dispute whether the caste to which the petitioner belongs or the certificate which the petitioner has, is genuine or not, this court at first instance would like to deal with the manner in which the respondent No.4-committee had passed the order dated 27.08.2007 declaring cancellation of the caste certificate which the petitioner has.

5. Plain reading of the impugned order would show that the committee in paragraphs 5 & 6 have dealt with the issue that the petitioner had been called upon by the committee to furnish the details establishing the caste to which he belongs and also to produce the records to justify the same. The finding also of the committee is that the petitioner has inspite of sufficient notice not produced any record in this regard before the committee nor did he produce any proof of the same to establish that he infact belongs to "Halba" caste which falls within the category of Scheduled Tribe. The order also reflects that the findings given by the committee is only based upon the fact that the petitioner has not produced any evidence to prove his caste status nor has he produced any record to establish the caste of his ancestors.
6. 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 issuance of 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 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.”

7. 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.
8. 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 a 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.”

9. Taking into consideration the aforesaid legal position as it stands and if we go into the procedure that has been adopted by the respondent No.4-committee, it appears that though there is a reference of the case having been inquired by the Superintendent of Police, Rajnandgaon (SP), but the findings arrived at by the respondent No.4 does not seem to be based on the said report submitted by the SP, Rajnandgaon.
10. Apart from above, it is also relevant to take note of the fact is that, though the committee has passed an order for cancellation of the caste certificate

of “Halba” that the petitioner has, but the committee as such nor is there any record to show that there is a finding to the effect that the petitioner does not belong to “Halba” caste or he belongs to any other specific caste.

- 11.** All the aforesaid facts compel this court to reach to the conclusion that the order dated 27.08.2007 passed by the respondent No.4 is not as per the directives that has been given by the Supreme Court in case of Madhuri Patil (Supra) and also which has been further re-iterated in case of Laveti Giri (Supra).
- 12.** In view of the same, the impugned order dated 27.08.2007 being unsustainable deserves to be and is accordingly set aside/quashed, so also Annexure P/1 dated 27.09.2007 issued by the respondent No.4 to the respondent No.3 directing to take appropriate steps against the petitioner.
- 13.** However, the right of the respondent No.4 stands reserved, if they wish, to proceed further with the matter ordering an enquiry in the light of the procedure as has been envisaged in the judgment of Supreme Court in case of Madhuri Patil (Supra).
- 14.** Another fact which now needs to be considered is that, in the year, 2013 the State of Chhattisgarh has enacted a statutory law in this regard so far as determination of the caste status which is known as Chhattisgarh Scheduled Caste, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 (in short, the Act, 2013) which specifically provide for the manner in which the enquiry is to be conducted. The respondents would also be free to adopt the procedure as provided in the said Act, 2013.

15. In view of the same, the writ petition stands allowed. The impugned order dated 27.09.2007 (Annexure P/1) as also the order dated 27.08.2007 stands set aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

inder