

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 289 of 2017

Ferudas S/o Sukhdas Manikpuri, Aged About 57 Years, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Revenue Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. The Collector, District Mungeli, Chhattisgarh.
3. The Sub Divisional Officer Revenue, Mungeli, District Mungeli, Chhattisgarh.
4. The Tahsildar, Mungeli, District Mungeli, Chhattisgarh.
5. Jugraj Satnami S/o Shriram Satnami, Kotewar, Village Karesara, R/o Village Chhuiha, Tahsil And District Mungeli, Chhattisgarh.
6. Laxmikant Banjare S/o Kashiram Banjare, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
7. Umed Kumar Yadav S/o Shri Santuram Yadav, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
8. Lala Ram Yadav S/o Shri Maruram Yadav, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
9. Parasram Kurre S/o Luludas Kurre, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
10. Dukhiram, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
11. Inder Bareth S/o Manrakhan Bareth, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
12. Radha Bareth D/o Baliram Bareth, R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
13. Shnivkumar Bareth R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.
14. Ramdayal Sahu R/o Village Karesara, Tahsil And District Mungeli, Chhattisgarh.

---Respondents

For petitioner : Shri Anand Shukla along with Shri Aditya Tiwari,
Advocate.
For resp.No.5 : Shri Shalvik Tiwari, Advocate.
For resp.Nos.1, 2: Ms. Sunita Jain, Government Advocate.
3 & 4.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

21/01/2019.

1. The challenge in the instant Writ Petition is to the order of the Board of Revenue, Bilaspur passed in Revision Case No. R.N./25/R/A-56/688/2015. Vide the said impugned order, the Board of Revenue has reversed the order of the Commissioner, Bilaspur dated 26/08/2015 – Annexure-P/5.
2. The brief facts relevant for adjudication of the instant Writ Petition is that, the respondent No.5 had been appointed as 'Kotwar' for the village Karesara, Tahsil and District Mungeli vide order dated 28/06/2011.
3. Aggrieved by the appointment of the respondent No.5, the petitioner who had also applied for the said post filed an objection before the Sub Divisional Magistrate who on scrutiny of the record rejected the objection vide order dated 27/03/2012.
4. The order of the Sub Divisional Magistrate was later on challenged by the petitioner before the Court of Divisional Commissioner, Bilaspur and the Divisional Commissioner vide order Annexure-P/7 dated 26/08/2015 had allowed the appeal reversed the order of Sub Divisional Magistrate and had set-aside the appointment of the respondent No.5 and ordered for fresh proceedings to be drawn.

5. This order of the learned Commissioner was later on challenged by the respondent No.5 before the Board of Revenue by way of a revision. The Board of Revenue finally vide the impugned order dated 04/10/2016 – Annexure-P/1 has allowed the revision and reversed the order of the Commissioner dated 26/08/2015. The Board of Revenue has reached to the conclusion that, the appointment of the respondent No.5 was proper and legal and the Board of Revenue further reached to the conclusion that, the petitioner as such was rightly not considered for the reason that the petitioner on an earlier occasion had been prosecuted under the provision of Sections 107, 116 (3) of Cr.P.C. It is this order which is under challenge in the instant Writ Petition.

6. The contention of the counsel for the petitioner is that, the finding of the Board of Revenue is perverse and bad in law for the reason that, the Board of Revenue failed to appreciate the fact that, the petitioner was entitled for a preferential treatment for the post of 'Kotwar' on the ground that, the petitioner's father was an 'Ex-Kotwar' of the said village. He further contended that, the authorities concerned have not properly appreciated the fact that there was no conviction in any criminal case against the petitioner with which he could have been denied the post of 'Kotwar'. He further submits that, it was his name which was recommended by the Gram Panchayat for the said post and therefore the authorities could not have ignored the recommendation of the Gram Panchayat and therefore the appointment of the respondent No.5 was bad in law.

7. The counsel for the respondents however opposing the petition submits that, it is a case where the claim of the petitioner has been rightly rejected by the authorities for the reason that, the petitioner was not eligible to become a 'Kotwar' and he had many disqualifications one of which he being prosecuted under Sections 107, 116 (3) of Cr.P.C. It was further the contention of the counsel for the respondents that, the petitioner was prosecuted for the proceedings under Section 107, 116 (3) of Cr.P.C. itself is sufficient to show that, the petitioner's character was not that sound for being considered for the post of 'Kotwar' and thus prayed for rejection of the Writ Petition.

8. Having heard the contentions put forth on either side and on perusal of record, the fact that the proceedings was drawn against he petitioner under the provision of Sections 107, 116 (3) of Cr.P.C. is not in dispute by the petitioner. There is also no dispute to the fact that, Istgasa was also filed against him for the said offence.

9. Given the aforesaid admitted factual position what now remains to be considered is that, in the given factual matrix, could the petitioner have claimed for appointment as 'Kotwar' of village Karesara based upon the preferential treatment which the petitioner would be entitled for under the Rules pertaining to the appointment of 'Kotwar' being a relative/son of an 'Ex-Kotwar'.

10. This Court on an earlier occasion had the occasion of dealing with the similar issue i.e. **WP No. 176/2006 d/on 22/10/2013 [Bholaram**

Mahar (Wadekar) v. State of Chhattisgarh & Ors.]. It would be relevant at this juncture to reproduce the relevant provision of the said judgment for proper appreciation of the issue involved in the instant case as under:-

“5. Indisputably, the petitioner was earlier proceeded under Section 107 and 116 (3) of the Cr.P.C. and Istgasa was filed against him on 29.10.1986.

6. The nature of proceeding drawn by the Magistrate under Sections 107 and 116 (3) of the Cr.P.C. has been dealt with by the Hon'ble Supreme Court in the matter of Madhu Limary v. Sub-Divisional Magistrate, Monghyr and others [1970 3 SCC 746]. It has been observed in paras-32 & 33 thus:-

“32. The gist of Section 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of

the peace of disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.

33. The section is aimed at persons who cause a reasonable apprehension of conduct likely to a breach of the peace or disturbance of the public tranquility. This is an instance of preventive justice which the courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquility. For this purpose Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences.”

7. Thus, even if in a substantive term, a person is not convicted for any offence a proceeding drawn under Sections 170 and 116 (3) of the Cr.P.C. has a bearing on the character of a person,

therefore, while assessing the suitability of a candidate under the Rules framed under Section 230 of the Code, it is an important and relevant aspect of the matter. Proceeding under Sections 107 and 116 (3) Cr.P.C. is drawn when the Magistrate receives an information and believes after forming an opinion that there is substantial ground for proceeding against a person. Therefore, the said proceeding is indicative of the fact that at some point of time in the past the petitioner was involved in causing breach of peace or disturbing public tranquility. Appointment of such person as Kotwar is not in public interest, therefore, the Board of Revenue has not committed any illegality in allowing the appeal preferred by respondent No.4.”

11. Recently again, this Court had the occasion of dealing with another issue under Section 230 of the Chhattisgarh Land Revenue Code in **WPS No. 3564/2010 d/on 14/12/2018 [Babudas v. State of Chhattisgarh & Ors.]**. The said proceedings also was pertaining to the appointment of 'Kotwar'. The petitioner therein also was prosecuted in a criminal case though the offence there was under Sections 342 & 376 of IPC. For ready reference, paragraphs 14 to 18 are reproduced herein under:-

“14. If we read the aforementioned Rule provision it would clearly reflect that, the power of appointment has been vested upon with the appointing authority i.e. the Tahsildar and while making so the appointing authority has to affirm the opinion in respect of the candidates who have applied for the said post and thereafter pass an appropriate order.

15. Similarly, clause 2 of Rule 4 further empowers the appointing authority to give preference to a person who is the near relative of Ex-Kotwar when other things being equal.

16. The plain reading of the order of the Collector would reveal that, many persons had applied and all were eligible. It is at this juncture when the Tahsildar had to form an opinion while issuing an appointment order. It is at this juncture that the Tahsildar has been empowered to take his own opinion in respect of different candidates who have put up their candidature and in the process if the Tahsildar has given a preference to the petitioner accepting him to be the near relative of Ex-Kotwar, unless otherwise proved which the respondent No.6 apparently has not been able to establish, the finding of the Tahsildar cannot be held to be bad.

17. Secondly, we cannot loose site of that the respondent No.6 at one point of time was prosecuted for a criminal case for the offence punishable under Section 342 & 376 of IPC which again gives an indication of his criminal antecedent though he may have been acquitted of the said case at a later stage.

18. What is important is whether the opinion formed by the Tahsildar in the aforesaid factual matrix of the case can be held to be bad in law in any manner? There is no specific guidelines or parameters which have been given or laid down to assess the suitability. Thus, it is the general assessment which has to be made by the Tahsildar and in the course of general assessment with the available materials, if the Tahsildar forms an opinion, the said opinion cannot be said to be in any manner perverse.”

12. In view of the aforesaid legal position as it stand and if we take the facts of the present case into consideration, there is no dispute on part of the petitioner in respect of his being prosecuted under Sections 107, 116 (3) of Cr.P.C. It is also not in dispute that, on due consideration, the respondent No.5 was at the first instance appointed on 28/06/2011. The order of appointment has also been affirmed by the Sub Divisional Magistrate vide order dated 27/03/201.

13. In the light of the aforesaid factual matrix, it could not be said that the finding of the Board of Revenue is in any manner perverse to the evidence which have come on record or is contrary to the Act or Rules governing the field.

14. So far as the Rules governing the field what is relevant to be taken note of is that, the Tahsildar while considering the case for appointment of 'Kotwar' has to form an opinion and that while forming an opinion, the authority has to take into consideration the good character and the past antecedent of the candidate. While forming an opinion, the authorities would also have to take into consideration the report which has brought before the Tahsildar in respect of each of the candidate.

15. In the present facts, the report which was placed before the Tahsildar show that, the petitioner in the past had been prosecuted under the provision of Sections 107, 116 (3) of Cr.P.C. This proceedings itself is sufficient to reach to the conclusion so far as the petitioner's conduct and character is considered.

16. As has been discussed earlier, this Court in the case of Bholaram Mahar (Wadekar) (Supra) has already held that, the proceedings drawn under Sections 107, 116 (3) of Cr.P.C. has a bearing on the character of a person. In the said judgment, this Court had also held that, the fact that at some point of time in the past, the petitioner was involved in breach of peace or disturbing the public tranquility, under such circumstances the appointment of the petitioner on the post of 'Kotwar' would not had been in the public interest.

17. In view of the same, this Court does not find any strong grounds made out by the counsel for the petitioner calling for an interference with the order of Board of Revenue – Annexure-P/1 dated 04/10/2016.

18. The Writ Petition thus being devoid of merits deserve to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit