

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1573 of 2019

Ajit Pramod Kumar Jogi S/o Late Shri K.P. Jogi Aged About 67
Years R/o Anugrah, Sagaun Bunglow Civil Lines, Raipur District :
Raipur, Chhattisgarh **--- Petitioner**

Versus

1. High Power Certification Scrutiny Committee (Through its Member Secretary) Pandit Deen Dayal Upadhyay Nagar Sector - 4, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State of Chhattisgarh through its Chief Secretary, Mahanadi Bhavan, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
---- Respondents

Presence :

Mr. Rahul Tyagi and Mr. Ajay Lakra, counsel for the petitioner.

Mrs. Fouzia Mirza, counsel for the respondents.

Mr. Sandeep Dubey, counsel for the intervener Sant Kumar Netam.

Mr. Ravi Bhagat, Advocate, appears for the State S.T. Commission on advance copy.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

02.05.2019

1. Heard.
2. The challenge in this petition is to the show cause notice 23.3.2019 Annexure P-1 issued by respondent No.1 High Power Certification Scrutiny Committee.
3. Learned counsel for the petitioner submits that the show cause notice contains a fact that Vigilance Cell Report has been obtained by the petitioner by playing fraud and

wrongful means, therefore, the notice of show cause has been issued. It is contended that the report of Vigilance Cell dated 29.11.2014 no such finding is recorded and even after the formation of Committee no meeting was held before issuance of show cause so there was no application of mind. Learned counsel went through the various events and would submit that on 13.10.2011, the Supreme Court in Civil Appeal No.4069 of 2008 had directed the respondent no.2 i.e., the State through a Committee to undertake the verification/scrutiny of social status (tribal) certificate issued to the petitioner and others and directed to decide the matter after giving due opportunity of hearing to the petitioner. Subsequently after issuance of such directions the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013 (henceforth called as "Rules of 2013") came into force and in order to invoke the jurisdiction, under Rule 21 & 22 of Rules 2013 the Scrutiny committee can only get jurisdiction when the Vigilance Cell Report says so as per rule 21. Reliance was placed in ***(2011) 10 SCC 357*** and would submit that the ratio of law which guides situation would show that in order to get the jurisdiction to issue show cause in the form of Rule 6-B of Rule, 2013, the finding of obtaining certificate by false and fraudulent means should exist and if the vigilance cell report is silent of such fraudulent and false obtaining certificate, the Committee would not get any jurisdiction to issue such notice as the exercise of jurisdiction was depending on

existence of particular fact as has been claimed in the notice. It is stated that by wrong assumption existence of such fact cannot be inferred and it can be questioned by writ, therefore, he prays that the the notice Annexure P-1 may be stayed.

4. Learned counsel for the petitioner would further submit after reconstitution of the Committee, there is no application of mind and further before issuance of notice, they have not afforded opportunity of hearing to the petitioner. It is further submitted that there is no mention in the notice that they are not satisfied with the claim of petitioner.
5. Per contra, Mrs. Fouzia Mirza learned counsel appearing for the State of Chhattisgarh and the High Power Committee would submit that the enquiry to the caste of petitioner is pending since 2001. It is stated that in the year 2011, the Supreme Court has directed to make enquiry about the caste certificate of the petitioner. Thereafter the notices were issued and the High Power Committee has passed its judgment which was subject of challenge before the Division Bench. The Division Bench of this Court has passed an order on 30.01.2018 in W.P(C) No.2104/2017 wherein at Para 19 & 20, it is clarified that post 17.03.2017, the enquiry has to be carried out in accordance with the Act and prior to that the Vigilance Cell Report existed. Therefore, the order of the Division Bench will govern the field. It is further stated that Rule 22 of Rule 2013 gives power to the Scrutiny Committee that if it is not satisfied with the social status of the applicant then

it can go in for enquiry and accordingly a show cause notice in form 6-B has been issued wherein the petitioners have been given opportunity to place his facts before the Committee.

6. Learned counsel placed reliance in *(2017) 14 SCC 491* (paras 16 to 19) and *2007 (9) SCC 286* (Para 9) and would submit that the show cause notice was neither premeditated nor without jurisdiction as per Rule 22, therefore, this petition is premature and would not lie.
7. Heard learned counsel for the parties and perused the documents/orders of the Courts.
8. The order of the Supreme Court passed on 13.10.2011 in Civil Appeal No.4069 of 2008 and other connected appeal – Collector Bilaspur vs. Ajit P.K. Jogi is on record (reported in *AIR 2012 SC 44 : (2011) 10 SCC 357*) wherein the Supreme Court has concluded as under :

“Conclusion :

18. We therefore allow these appeals in part as under:

(i) The order of the High Court dated 15.12.2006 to the extent it quashes the order dated 16.10.2001 of the Commission, is upheld.

(ii) The adverse observations by the High Court about the complaint by the sixth Respondent, the inquiry by the Commission and the stand of the state Government and the Collector before the High Court, being politically motivated, are set aside.

(iii) The direction to the State Government and the Commission to calculate the actual cost incurred in prosecuting the writ petition and directing the sixth Respondent to pay the actual costs plus Rs.10,000/- is set aside.

(iv) In terms of the direction of the Commission, the State Government through a duly constituted Scrutiny Committee shall now undertake the verification/scrutiny of the social status (tribal) certificates issued to the first Respondent showing him as belonging to 'Kanwar' Scheduled Tribe and decide the matter thereafter giving due opportunity to the first Respondent, uninfluenced by any observations by the Commission, High Court or this Court."

9. Thereafter, the High Power Committee issued the order which was subject of challenge before the Division Bench of this Court in W.P(C).No.2104 of 2017 wherein the Division Bench has passed the order dated 30.01.2018. Para 20 of the said order is relevant and quoted hereinbelow:

"For the aforesaid reasons, this writ petition is allowed quashing the impugned Annexure P-1 order and directing that proceedings shall be carried from the stage at which it had reached before nomination of the officers of the Committee as per "order" dated 17.03.2017. It is further declared that the said "order" dated 17.03.2017 does not supersede Annexure R-64 Notification issued on 22.08.2013 and would continue to hold good unless modified in accordance with law. Following the directions issued by the Hon'ble Supreme Court in Collector, Bilaspur (Supra), it is further ordered that the State Government shall give effect to the directions contained in paragraph 28(iv) of that judgment in conformity with the provisions of the Chhattisgarh Scheduled Castes, Scheduled Tribes and other Backward Classes (Regulation of Social Status Certification) Act, 2013 and the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013. It is clarified that no proceedings prior to 17.03.2017 is interfered with through this judgment and further proceedings may go on from that stage, with liberty to the petitioner or any person aggrieved to contest such prior proceedings as and when the proceedings by

the duly constituted statutory Scrutiny Committee concludes.”

10. A perusal of the order dated 30.01.2018 would show that the Division Bench has made clear that no proceeding prior to 17.03.2017 is interfered with through this judgment and further proceedings may go on from that stage. Admittedly, the Vigilance Cell report was dated 29.11.2014 which was prior to 17.03.2017. At this juncture, when Rule 22 of Rule, 2013 is perused, it is couched with the words “where the Scrutiny Committee is not satisfied with the social status claim of the Applicant”, then it can proceed with enquiry and may issue the notice. The format of notice is prescribed in Form-6 of Rule 2013. the relevant part of Rule 22 is reproduced herein below :

“22. Inquiry by High Power Certification Scrutiny Committee.- (1) Where the Scrutiny Committee is not satisfied with the social status claim of the Applicant, according to the inquiry Report of the Vigilance Cell the committee the committee may through registered post shall issue a show-cause notice to Applicant in prescribed FORM-6b along with report of the Vigilance Cell and the copy of such notice shall also be given to the Non-applicant (if any) also.”

11. Rule 22 though do not say so about the issuance of notice if the certificate is fraudulently obtained but it is in the format of Notice. No condition has been stipulated/engrafted in rule 22. This Court at this juncture do not want to go into the reasons of finding which has been given by the Vigilance Cell Committee. The word “satisfaction” used in Rule 22 cannot therefore be

confined only to the format of notice which shows that only on the ground that certificate is obtained by false and fraudulent means, therefore, it can enquire into. If it is held that rule 22 can be invoked only on false and frivolous grounds then it would amount to legislate into Rule 22 and narrowing down the Rule as on plain interpretation words used therein has to be given its meaning and nothing can be added there too. The words “if not satisfied” cannot be fenced to the notice format of 6-B of Rules of 2013.

12. The show cause notice though engrafts the word that the caste certificate was obtained by fraud, the same even can be replied by the petitioner as the facts in such case would be covered by the ratio laid down in **(2017) 14 SCC 491 – L. Usha Devi v. Union of India** at paras 16, 17, 18 & 19 which reads as under:

16. It is, therefore, not a case where the appellants herein were outside the purview of the Act. The Appellants are residents of the State of Kerala. It is difficult to comprehend as to how they obtained caste community certificate from the authorities of the State of Tamilnadu.

17. The jurisdiction of a Scrutiny Committee under the Act is of wide amplitude.

18. When a competent statutory authority invokes its jurisdiction, we fail to understand as to why the appellants could not submit themselves to the said jurisdiction.

19. In *Siemens Ltd. v. State of Maharashtra* (2006) 12 SCC 33 it is stated : (SCC p.36, paras 8-9)

8. *The question as to whether jurisdictional fact existed for issuance of the said notice the order passed by the respondent was in*

question in the said writ petition.

9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma, (1987) 2 SCC 179; Special Director v. Mohd. Ghulam Ghouse (2004) 3 SCC 440 ; and Union of India v. Kunisetty Satyanarayana (2006) 12 SCC 28, but the question herein has to be considered from a different angle viz., when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India (1987) 4 SCC 431). It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice”.

13. In view of the above facts situation and position of law, it is for the petitioner to appear before the Committee and raise all the grounds available to him. No bias at this stage can be inferred and it can be held that the notice could have been issued when finding of fraud exists. The petition is therefore premature and is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE