

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.3433 of 2010**

Dr.Manish Kumar Rai, S/o Shri Dayal Kujur, Aged about 42 years, R/o House No.665/02, Masjid Road, Kota, Ravi Shanker Shukla University, Raipur (CG)

----- Petitioner**Versus**

- 1.State of Chhattisgarh, through Secretary, Department of Higher Education, Mantralaya, D.K.S. Bhawan, Raipur (CG)
- 2.Uccha Stariya Chhanbin Samiti (In the matter of SC/ST Caste Certificate) through its Secretary, Pt.Ravi Shankar Vishwavidyalaya Parisar, Raipur (CG)
- 3.Pt.Ravi Shanker Shukla University, Through its Registrar, Raipur (CG)

----- Respondents

For Petitioner : Mr.Manoj Paranjape, Advocate
 For Respondent No.1/State : Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****27.7.2021**

- 1.Proceedings of this matter have been taken-up through video conferencing.
- 2.This writ petition is directed against the order dated 6.7.2010 (Annexure P-1) passed by the High Power Caste Scrutiny Committee (hereinafter called as "Caste Scrutiny Committee"), whereby the petitioner has been declared as a person not belonging to a member of Uraon caste (Scheduled Tribe).
- 3.Mr.Manoj Paranjape, learned counsel for the petitioner, would submit that in first round of litigation this Court already remanded the matter at the instance of respondents No.1 and 2 to review its order dated

29.3.2010 after giving an opportunity of cross-examining the respondents' five witnesses, but only one witness namely Santosh Kumar was allowed to be cross-examined and rest witnesses were not cross-examined, yet the impugned order has been passed on 6.7.2010 (Annexure P-1) declaring that the petitioner does not belong to Uraon caste (Scheduled Tribe category), which is in violation of principles of natural justice as well as the law declared by the Supreme Court in the matter of Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others¹, followed by this Court in Premal Das Baghel v. Anusuchit Jan Jati Praman Patra Uchcha Stariya Chhanbin Samiti, Raipur (Chhattisgarh) and others².

4. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate for respondent No.1/State, would support the impugned order.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. The petitioner was firstly appointed on the post of Assistant Professor by the Department of Higher Education on 16.12.1996 against ST category and later on, again he was appointed on the post of Reader on 30.9.2003 against ST category and his caste status/ST

1 (2013) 4 SCC 465

2 ILR 2018 Chhattisgarh 1951

category was subject-matter of Caste Scrutiny Committee and ultimately, the Caste Scrutiny Committee by order dated 29.3.2010 (Annexure P-13) declared him to be a person not belonging to Uraon Caste (ST category), which was called in question by the petitioner in Writ Petition (S) No.1749 of 2010, which was remanded by this Court by order dated 3.5.2010 and allowed the State to review its order, but when the matter was taken-up before the Caste Scrutiny Committee, out of five witnesses only Santosh Kumar was examined on 5.7.2010 and remaining four witnesses namely Gyan Singh, Anwar Bhargav, Parmeshwar and Vishram Prasad though they appeared, but this or that reason they could not be examined and the Caste Scrutiny Committee passed an order on 6.7.2010 (Annexure P-1) again declaring him not belonging to a member of ST category, which has been called in question by the petitioner in this writ petition.

7. It is not in dispute that in first round of writ petition this Court has allowed the State to review its order dated 29.3.2010 principally on the ground that the petitioner has not been afforded fullest opportunity of hearing and he has not been allowed to cross-examine the statements of the witnesses examined by the Vigilance Cell of Caste Scrutiny Committee, but when the matter was taken-up only witness Santosh Kumar was examined and

rest of the witnesses could not be examined.

8. The Supreme Court in the matter of Ayaaubkhan Noorkhan Pathan (supra) emphasized that cross-examination is one of the facet of principle of natural justice and held as under:-

"24. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Waishampayan³ held that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice.

25. In Lakshman Exports Ltd. v. CCE⁴, this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the assessee had specifically asked to be allowed to cross-examine the representatives of the firms concern, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.

26. In New India Assurance Company Ltd., v. Nusli Neville Wadia⁵ this Court considered a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows: SCC p. 295, para 45)

"45. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the right to cross-examine the witness.

3 AIR 1961 SC 1623

4 (2005) 10 SCC 634

5 AIR 2008 SC 876

This may not be provided by under the statute, but it being a part of the principle of natural justice should be held to be indefeasible right." (Emphasis added)

In view of the above, we are of the considered opinion that the right of cross-examination is an integral part of the principles of natural justice.

27. In *K.L. Tripathi v. SBI*⁶, this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also *Union of India v. P.K. Roy*⁷ and *Channabasappa Basappa Happali v. State of Mysore*⁸). In *Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill*⁹, this Court held: (SCC p.80, para 9)

"9. In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the Appellate Authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official".

6 AIR 1984 SC 273

7 AIR 1968 SC 850

8 AIR 1972 SC 32

9 AIR 2006 SC 1445

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In *Rajiv Arora v. Union of India*¹⁰ this Court held: (SCC p. 310, paras 13-14)

"13...Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Indian Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation....

14. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review."

9. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in

Ayaaubkhan Noorkhan Pathan (supra), it is quite vivid that the Caste Scrutiny Committee ought to have permitted the cross-examination of the aforesaid four witnesses by the petitioner, which was not done despite the liberty granted by this Court in earlier round of writ petition and despite the principle of law laid down by the Supreme Court in Ayaaubkhan Noorkhan Pathan (supra), as such, cross-examination is one of the facet of principles of natural justice and in order to annul the caste certificate of the person, which has the effect of drastic civil consequence against his status, opportunity of cross-examination is absolutely necessary.

10. In that view of the matter, since the petitioner has been deprived of particularly more, the statements of those four witnesses have been heavily relied upon by the Caste Scrutiny Committee to declare the petitioner as not belonging to a member of ST category, the order of the Caste Scrutiny Committee is contrary to the decision rendered by this Court in Writ Petition (S) No.1749 of 2010 as well as in teeth of the judgment rendered by the Supreme Court in Ayaaubkhan Noorkhan Pathan (supra).

11. Consequently, the impugned order dated 6.7.2010 (Annexure P-1) passed by the Caste Scrutiny Committee is hereby set-aside. The matter is remitted to the Caste

Scrutiny Committee to examine four witnesses namely Gyan Singh, Anwar Bhargav, Parmeshwar and Vishram Prasad and along with the petitioner to cross-examine them and thereafter pass a fresh order after hearing the petitioner in accordance with law within three months from the date of receipt of a copy of this order.

12. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-