

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.3100 of 2012**

Devnarayan S/o Rambaxh, aged about 42 years, presently working as Support Maison Category 5, Kumda 7/8 Mines Bishrampur, District-Surguja (Chhattisgarh)

-----Petitioner

Versus

1. The Chief General Manager, South Eastern Coalfields Limited, Kumda 7/8 Mines Bishrampur, District-Surguja (Chhattisgarh)
2. The Senior Manager (Kha)/Colliery Manager, South Eastern Coalfields Limited, Kumda 7/8 Mines Bishrampur, District Surguja (Chhattisgarh)
3. The Chief Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur (Chhattisgarh)

----- Respondents

For Petitioner	: Mr.Ashish Surana, Advocate
For Respondents	: Mr.Shailendra Shukla, Advocate

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

15/9/2021

1. The petitioner herein calls in question the order dated 28/31.7.2012 (Annexure P-1) by which the respondent SECL has taken a decision to hold departmental enquiry and issued charge-sheet against the petitioner as per para 26.1 and 26.9 of the Certified Standing Orders applicable for the SECL finding that he has obtained employment in SECL by submitting forged adoption deed and forged caste certificate.
2. The land of Smt.Baspatiya was acquired by the respondent SECL and as per rehabilitation policy, which was applicable at the time of acquisition, the petitioner claimed appointment on the basis of being adopted son of

Smt.Baspatiya, which he was granted by order dated 6.1.1997 (Annexure P-2) on the post of General Mazdoor Category 1 and he continued. Later on, complaint was made by one Smt.Karmen Bai claiming to be daughter of Baspatiya to the Chhattisgarh Rajya Janjati Aayog, who by its memo dated 22.6.2012 (Annexure R-4) made recommendation that the petitioner has obtained employment in the SECL on the basis of forged adoption deed and caste certificate of ST category issued by the Naib-Tahsildar, Surajpur on 30.1.1996 is also forged and recommended that services of the petitioner be terminated and Heeradhan/Biphal Singh S/o Karmen be granted service in the SECL. Acting upon the recommendation of the Chhattisgarh State Scheduled Tribe Commission Commission, on 28/31.7.2012 (Annexure P-1) the respondent SECL has issued charge-sheet to the petitioner that he has obtained appointment on the basis of forged adoption deed and caste certificate issued is forged and he has placed under suspension, which the petitioner has called in question stating that initiating departmental enquiry to enquire into the validity of adoption deed is beyond the province of the SECL, it cannot be subject-matter of departmental enquiry and even caste certificate can be enquired into by the Caste Scrutiny Committee pursuant to the judgment of the Supreme Court in the matter of Kumari Madhuri Patil and another v. Addl.Commissioner, Tribal Development and others¹.

3. Return has been filed by the respondents stating inter-

1 (1994) 6 SCC 241

alia that on the basis of recommendation of the Chhattisgarh Rajya Janjati Aayog, charge-sheet has been issued to the petitioner, which is strictly in accordance with law and as such, the writ petition deserves to be dismissed.

4. Mr. Ashish Surana, learned counsel for the petitioner, would submit that initiation of departmental proceedings on the basis of recommendation of the Chhattisgarh Rajya Janjati Aayog is wholly unsustainable, without jurisdiction and without authority of law. Even otherwise, the correctness of adoption deed, if any, can be inquired by the jurisdictional Civil Court and it is beyond the province of the SECL that too in a departmental enquiry. Even otherwise, the petitioner is adopted son of Baspatiya, who is a member of Scheduled Tribe and certificate has rightly been issued by the Naib-Tahsildar, Surajpur and even service has not been obtained on the basis of caste certificate and it has only been obtained on the basis of his mother's land has been acquired by the respondent-SECL and therefore, the impugned order is liable to be set-aside.

5. On the other hand, Mr. Shailendra Shukla, learned counsel for the respondents, would submit that on the basis of recommendation of the Chhattisgarh Rajya Janjati Aayog, charge-sheet has been issued against the petitioner, which is strictly in accordance with law and no interference is called for in exercise of jurisdiction under Article 226

of the Constitution of India that too at the stage of issuance of charge-sheet, as such, the writ petition deserves to be dismissed. He would rely upon the judgments of the Supreme Court in the matter of Bank of India and Anr v. Avinash D. Mandivikar and Ors² and Ex.Sig.Man Kanhaiya Kumar v. Union of India and Ors.³.

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

7. The petitioner has been issued with the charge-sheet for obtaining employment on the basis of forged adoption deed as well as forged caste certificate, which is based on the recommendation of the Chhattisgarh Rajya Janjati Aayog dated 22.6.2012. The petitioner at this stage has questioned the initiation of charge-sheet and order placing him under suspension alleging issuance of charge-sheet and order of suspension is bad and unsustainable in law.

8. It is well settled law that ordinarily, no writ lies against charge-sheet/show-cause notice, but writ petition can be maintained in very rare and exceptional cases and charge-sheet can be quashed if it is found to be wholly without jurisdiction or for some other reason it is wholly illegal. (See Union of India and others v. Upendra Singh⁴ and State of Orissa and another v.

2 2005 AIR SCW 4477

3 AIR 2018 SC 2378

4 (1994) 3 SCC 357

Sangram Keshari Misra and another.⁵⁾, as such, the scope of judicial review in a writ petition challenging initiation of charge-sheet or institution of departmental enquiry is extremely limited and does not extend beyond examining the question of jurisdiction with the authority issuing charge-sheet to SECL employee and in case of patent lack of jurisdiction, writ of prohibition can be issued.

9. The question is whether the charge-sheet issued to the petitioner is without jurisdiction/wholly illegal.

10. In the matter of **Kondamuri Vijay Ambedkar v. State of A.P.**⁶, the Andhra Pradesh High Court has held that correctness and validity of adoption deed can be gone into by the jurisdiction civil Court as it involves the pleading and evidence to decide the correctness of adoption deed. It was observed as under:-

“13. In addition, sections 6 to 11 deal with other requisites for a valid adoption. In the opinion of this Court, since an adoption, has the effect of disrupting the natural succession and has the effect of conferring a certain status on the petitioner, it is a matter of pleading and proof. The petitioner, whose claim has been rejected on the ground that there is no valid adoption has to necessarily establish his rights by adequate pleading and proof that there was a valid adoption confirming to the legal and factual requisites mentioned above and that there were actual giving and taking of the child in adoption. These are matters of pleading and evidence which will determine the status of the individual and as such it is only a declaratory suit that can be filed in a civil Court of competent jurisdiction and not a writ, in the

5 (2010) 13 SCC 311

6 2021 SCC OnLine AP 1675

opinion of this Court, a writ petition is not a proper proceeding for the relief sought."

- 11.** Similarly, in the matter of Pankaj v. State of Rajasthan & Ors.⁷, the Rajasthan High Court has held as under:-

"6. After hearing learned counsel for the parties, I am of the firm opinion that no executive or administrative authority like the District Education Officer can exercise the jurisdiction to adjudicate or to give opinion with regard to legality of the document. The authority can assess the genuineness of the document if it appears to be forged; but, in this case, the District Education Officer (Secondary), Bikaner exceeded his jurisdiction to assess the validity of adoption-deed which is not permissible in law. For this reason alone, the communication dated 12.7.2007 deserves to be quashed.

7. In addition to the above reason, the other reason is also there with regard to assertion made by the said authority to deny appointment. In the impugned communication, it is observed by the District Education Officer (Secondary), Bikaner that the petitioner is only son of his natural parents but this fact is not correct. As per the reply filed by the respondents itself, in which, they accepted that the natural parents of the petitioner are having two issues - daughter Kavita and petitioner Pankaj. Therefore, on this ground also denial by the respondents cannot be sustained. With regard to registration of the adoption-deed, it is very strange that no such provision is there in the Act of 1956 that adoption-deed must be registered one for its being a valid adoption-deed. Adoption can be made under customs, therefore, the adoption-deed filed by the petitioner cannot be treated to be unregistered document for the purpose of denial of appointment on compassionate ground. Wife of late Shiv Prakash Swami herself deposed in the affidavit that during the life-time of her husband late Shiv Prakash Swami they adopted the petitioner as their son."

- 12.** In the matter of Tularam Pooransingh v. State of

Madhya Pradesh and others⁸, the High Court of Madhya Pradesh has held that the competent authority under M.P. Ceiling on Agricultural Holdings Act has no jurisdiction to go into the validity of adoption deed. It was observed as under:-

"10. The section 4(1) confers only limited jurisdiction on the Competent Authority, viz., power to find out whether the transfer or the partition in question has been made in anticipation of or to defeat the provisions of the Act. The Competent Authority cannot travel beyond limits of its jurisdiction carved out by the law creating it. Appeal under section 4(3) is continuation of the proceedings under section 4(1) of the Act. Accordingly, it was beyond competence of the Competent Authority as well as the Board of Revenue to pronounce upon the validity of the adoption while dealing with the question of validity of the transfer *under the sub-section (1) of section 4*.

11. The Tribunal acted illegally in refusing to go into the question of inherent lack of jurisdiction to pronounce upon the validity of adoption in proceedings under the section 4(1). It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and in collateral proceedings. A void order is in legal effect no order at all. It is *non est*. By it no rights are divested. From it no rights can be obtained. It neither binds nor bars anyone. Therefore, the petitioners were entitled to re-agitate the question.

12. The section 4(1) is placed in Chapter II dealing with exemptions and restrictions of transfers of land. At the stage of proceedings under the Act when the Competent Authority and/or Tribunal is dealing with the question of validity of transfer or partition, as the case may be, under section 4(1) of the Act, the questions relating to fixation of ceiling area, determination of surplus land and acquisition

thereof are not germane. It is only when the Competent Authority functions under sections placed in Chapter III that the question as to who are the members of the holder's family can be gone into. At the stage of passing an order under the sub-section (1) of section 4 the Competent Authority and/or Tribunal had no jurisdiction to examine the question whether Abhay Singh was member of the family of the holder or had been transplanted in the adoptive family. For this reason also the finding regarding invalidity of adoption recorded in orders of the Competent Authority in Annexures I & III and that of the Tribunal in Annexures II and IV are without jurisdiction."

13. Reverting to the facts of the present case in light of the aforesaid judgments of three High Courts, rather the judgment of the Madhya Pradesh High Court which is binding to this Court as rendered prior to 1.11.2000, it is quite vivid that the question of validity of adoption deed, if any, cannot be gone into in a departmental enquiry. The correctness/validity of adoption deed, if any, can be gone into in accordance with the provisions of the Hindu Adoption and Maintenance Act, 1956 which requires pleading and proof before the jurisdictional civil Court. A quasi-judicial authority/disciplinary authority of the respondent SECL has no authority and jurisdiction to determine the correctness of adoption deed. Consequently, the respondent SECL lacks jurisdiction to determine the correctness and validity of adoption deed in the disciplinary proceeding.

14. Similarly, it is admitted position on record that Smt.Baspatiya's land was acquired by the SECL and in

accordance with rehabilitation policy, the petitioner who claimed to be adopted son of Smt.Baspatiya was granted employment by the respondent SECL, which he continued for a fairly long time and it is not the case that he being a member of ST category, employment was granted to the petitioner, yet merely on the basis of recommendation of the Chhattisgarh Rajya Janjati Aayog that his caste certificate issued to ST category is forged, the SECL could not have proceeded departmentally straightway and if it has any grievance and it requires to be verified, it could have been verified as per the judgment of the Supreme Court in Kumari Madhuri Patil (supra) followed in the matter of Collector, Bilaspur v. Ajit P.K. Jogi and others⁹, in which the Supreme Court has held that the verification of the validity of caste certificates and determination of the caste status should therefore be done only by the Scrutiny Committees constituted as per the directions in Kumari Madhuri Patil's (supra) case or in terms of any statute made by the appropriate Government in that behalf.

- 15.** In the matter of Sudhakar Vithal Kumbhare v. State of Maharashtra and others¹⁰ their Lordships of the Supreme Court have held that issue of caste status cannot be gone into in a departmental enquiry and this can be examined only by the Caste Scrutiny Committee

9 (2011) 10 SCC 357

10 (2004) 9 SCC 481

constituted under the direction of the Supreme Court in the matter of Kumari Madhuri Patil (supra).

16. In view of the crystallized legal position, as on date, the respondent SECL cannot be allowed to hold departmental enquiry on the allegation that adoption of the petitioner by Smt.Baspatiya (original land holder) is forged and the petitioner does not belong to ST category. The respondent SECL is at liberty to consider the recommendation of the Chhattisgarh Rajya Janjati Aayog in accordance with law. The respondent SECL is also at liberty to proceed in accordance with law qua the fact of adoption and caste status of the petitioner including reference of caste certificate to the concerned Caste Scrutiny Committee in accordance with the judgment of the Supreme Court in the matter of Kumari Madhuri Patil (supra), if occasion so arises after due consideration of facts and circumstances of the case. However, this should not be considered as mandate of this Court to inquire into the matter and it will be considered by the competent authority strictly in accordance with law.

17. As a fallout and consequence of the above-stated discussion, departmental enquiry initiated against the petitioner vide order dated 28/31.7.2012 (Anneuxre P-1) is hereby quashed. However, it is open to the respondent SECL to proceed in accordance with law.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-