

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 7421 of 2020 (O&M)

Date of Decision: 05.01.2021

Harchand Singh and Others

... Petitioner(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Jagdish Manchanda, Advocate
for the petitioners.

Mr. T.P.S.Chawla, Deputy Advocate
General, Punjab for respondents No. 1 to 5 and 7.

Mr. H.C.Arora, Advocate
for respondent No.6.

Anil Kshetarpal, J.

Six petitioners have filed this writ petition, seeking issuance of a writ in the nature of certiorari, quashing the communications dated 23.03.2020 and 04.05.2020. The controversy which requires adjudication is as to whether the petitioners have made out a case for interference, in the reports submitted by the 2 committees (tribunals), declaring that they were wrongly/incorrectly issued Social status(Schedule caste) certificates.

In this regard, it may be noted that in absence of any statutory provision, the Supreme Court in *Kumari Madhuri Patil and Another v. Additional Commissioner, Tribal Development and Others (1994) 6 SCC 241*, held that before cancelling the caste certificate, it would be incumbent to hold inquiry/investigations, at two different levels. In the judgment, certain guidelines were laid down, the relevant part whereof, reads as under:-

“4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

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 acknowledgment 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. *In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.*

8. *Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.*

9. *The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or*

spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution”.

In the present case, the petitioners, on the strength of the Scheduled Caste Certificates issued by the authorities, contested the elections and became Sarpanch or Panches of the Gram Panchayat. On a complaint made, an inquiry was held at two different stages. The first inquiry was held by a committee, known as Vigilance Cell, with the following members:-

1	Director, Department of Welfare of Scheduled Castes and Backward Classes (now Social Justice Empowerment and Minorities), Punjab.	Incharge of Vigilance Cell
2	Joint Director, Department of Welfare of Scheduled Castes and Backward Classes (now Social Justice Empowerment and Minorities), Punjab.	Member
3	District Welfare Officer, (now District Social Justice Officer) of the concerned District.	Member

The Vigilance Cell, after examining the petitioners as well as the complainant and various other officials including Headman, Anganwari workers and the school record, came to a conclusion that the petitioners belong to Rajput community and not Sirkiband. Thereafter, the matter was put up before the State Level Scrutiny Committee, consisting of the following officers:

1	Special/Additional/Joint Secretary to Government of Punjab, Department of Welfare of Scheduled Castes and Backward Classes, Punjab (now Social Justice Empowerment and Minorities)	Chairperson
2	Deputy Secretary/Under Secretary/ Superintendent (Reservation Cell), Department of Welfare of Scheduled Castes and Backward Classes, Punjab (now Social Justice Empowerment and Minorities)	Convener Member
3	An IAS/PCS Officer of the Revenue Department (now below the rank of Joint Secretary to Govt. Punjab.	Member

The Scrutiny Committee, once again, after giving an opportunity to both the parties to produce their evidence, also came to a

scheduled caste, rather they belong to rajput caste. Thus, the Scrutiny Committee recommended that the scheduled caste certificates, issued to the petitioners, be revoked and forfeited.

On the basis of the recommendations made by the Scrutiny Committee, the Government of Punjab has written to the Deputy Commissioner, Patiala, to cancel and seize the certificates issued to the petitioners. The petitioners have also challenged the order by which the government has written to the Deputy Commissioner, Patiala, that Sarpanch-Harchand Singh, who has been elected on the basis of the scheduled caste certificate, against the office, exclusively reserved for the candidates belonging to the scheduled caste, should be removed/suspended.

Pursuant to the notice, respondent No.1 as well as respondent No.6, have filed their written statements along with the copies of the inquiry reports, submitted by the Vigilance Cell as well as the State Level Scrutiny Committee.

On 05.08.2020, learned counsel, appearing for the State, was directed to place on record the revenue record to prove that the petitioners are recorded as Rajputs. Pursuant to the aforesaid directions, Joint Secretary, Department of Social Justice, Empowerment and Minorities, Punjab, has filed an affidavit dated 28.09.2020, along with Genealogy Table of each of the four petitioners, whereas, with respect to petitioners, namely Harchand Singh and Hoshiar Singh, it has been reported that they do not own any land/property.

Learned counsel, for the petitioners as well as respondent No.6, have also filed respective synopsis with gist of arguments. Learned counsel,

for the parties, have also been heard at length and with their able assistance, Court has perused the paper-book.

On the one hand, learned counsel, for the petitioners, contends that the petitioners belong to Sirkiband caste and therefore, the certificates, issued in their favour, are correct. The petitioners have relied upon certain documents. The first document is Annexure P-1, which is copy of an application dated 05.08.1981, submitted by petitioner No.1's father, for getting Swatantarta Sainik Sanman Pension, wherein he made declaration that he belongs to Sirkiband, which has been declared as Backward Class, by the Punjab Government. Apart therefrom, the petitioners have attached the notification, issued by the Government of India, to show that Sirkiband is enlisted as a Scheduled Caste. The petitioners have also annexed the scheduled caste certificates issued to them, by the authorities, in 1998, 2000, 2003 and 2006. The petitioners have also relied upon some literature which explains the word "Sirkiband". It has been explained that this caste is made of two words "Sirak" and "Band". Wherein "Sirak" means to prepare mats. It is claimed that the people, belonging to Sirkiband, used to prepare mats with the grass which were used for preparing roofs and curtains. It has further been written that the people belonging to the surname, Rathore Rajput, in the State of Rajasthan, were also treated as "Sirkiband".

The petitioners have also relied upon an order, passed by the Election Tribunal-cum-Collector, dated 12.01.2011 in a different case. The aforesaid election petition was dismissed by the Tribunal as no evidence has been produced to prove that any objections were submitted, by any of the candidate, before the returning officer.

On the other hand, the respondents have relied upon two inquiry reports, as noticed above. On careful perusal of the report, submitted by Vigilance Cell, it becomes apparent that both the parties were granted an opportunity to produce evidence. From the complainant side, the statements of Balbir Singh, Harpal Singh & Udham Singh, along with the report of the Tehsildar, were produced. On the other hand, the petitioners examined, Hoshiar Singh, Harchand Singh, Sahib Singh and Bhajan Singh. The Vigilance Cell, on its own, examined Mrs. Baljit Kaur & Mrs. Shinder Kaur, Anganwari Workers, Headmaster of the Government Elementary School, in the village, Sukhdev Singh son of Charan Dass and Gurdev Singh son of Hardeep Singh Nambardar. Bhajan Singh, one of the petitioner, stated before the Vigilance Cell that his caste is Sirkiband and creed is Rajput. The Vigilance Cell concluded that the petitioners could not produce reliable evidence to prove that they belong to Sirkiband caste.

Thereafter, the matter was referred to the State Level Scrutiny Committee, which once again, granted opportunities. Before the Scrutiny Committee, at one stage, Sahib Singh and Bhajan Singh, the petitioners, made a statement that they had obtained the scheduled caste certificates of Sikriband caste by mistake as they did not know that Rajput and Sirkiband castes, are separate. However, thereafter, they resiled from their statements by sending affidavits through registered post. On 04.03.2020, the Scrutiny Committee examined the report submitted by the Tehsildar of the Revenue Department, Patiala, wherein pedigree tables of the petitioners were also attached. Certain record from the revenue consolidation of the year 1963-64, was perused. The Scrutiny Committee also examined the verification of the

pedigree by the Headman of the village, dated 16.03.2020, according to which, Harchand Singh and Bhajan Singh, petitioners and Bahal Singh belong to Rajput caste. The complainant also produced a copy of the challan (The police report), in a criminal case, arising from FIR No. 380, dated 30.11.1998, registered under Sections 324, 343, 148 and 149 IPC, at Police Station Sadar, Patiala, wherein the caste of Harchand Singh, petitioner No.1, has been described as “Rajput”. As per the pedigree table, Harbans Singh, Jaswant Singh, Gurmez Singh and Angrez Singh are the brothers of Harchand Singh and in column No. 4 of the challan, their caste has also been described as “Rajput”.

On the basis of the aforesaid material, the Scrutiny Committee also came to the conclusion that the social status/scheduled caste certificates, issued to the petitioners, are wrong.

Learned counsel, appearing for the petitioners, has submitted that the petitioners have not been given proper opportunity and the Committees have not appreciated the documents filed by the petitioners. He further submitted that the certificate has been cancelled at the behest of Balbir Singh who had unsuccessfully contested the election for the office of Sarpanch of the Gram Panchayat against Harchand Singh. He further relied upon the judgments passed in *Kumari Madhuri Patil (supra)* and *Collector, Bilaspur v. Ajit P.K. Jogi and Others (2011) 10 SCC 357* and *Gulzar Singh v. Sub Divisional Magistrate and Another AIR 1999 (Supreme Court) 3803*.

Per contra, learned counsels, appearing for the State of Punjab and respondent No.6, have jointly submitted that thorough investigation has

already been carried out by two different Committees while granting sufficient opportunity to the petitioners but they failed to produce any material having probative value, either before the committees or before this court, to prove that they actually belong to Sikriband caste.

This Court, under Article 226 of the Constitution of India, exercises jurisdiction of judicial review. The scope of jurisdiction while hearing petitions seeking issuance of writs certiorari, has been explained by 5 judges bench of the Supreme Court in ***T.C. Basappa Vs. T. Nagappa & Anr. AIR 1954 Supreme Court 440***, in the following manner:-

“6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

7. *One of the fundamental principles in regard to the issuing of a writ of certiorari, is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression “judicial acts” includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. Atkin, L.J. thus summed up the law on this point in Rex v. Electricity Commissioners:*

“Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King’s Bench Division exercised in these writs.”

The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order

or proceeding so to say is put out of the way as one which should not be used to the detriment of any person.

8. *The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In fact there is little difficulty in the enunciation of the principles; the difficulty really arises in applying the principles to the facts of a particular case.*

9. *Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess.*

10. *A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is*

prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal. The Lord Justice says:

“It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown.”

11. *In dealing with the powers of the High Court under Article 226 of the Constitution, this Court has expressed itself in almost similar terms and said:*

“Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or

bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.”

These passages indicate with sufficient fullness the general principles that govern the exercise of jurisdiction in the matter of granting writs of certiorari under Article 226 of the Constitution.

In the present case, although learned counsel, for the petitioners, has contended that the petitioners were not granted an opportunity, however, failed to substantiate the same. From the reading of both the reports of the Vigilance Cell and the Scrutiny Committee, it is apparent that the statements of the petitioners have been recorded and they were given opportunities on various occasions.

Still further, the documents relied upon by the petitioners before this Court does not prove that the conclusion arrived at by the Vigilance Cell as well as the Scrutiny Committee, is patently erroneous or perverse.. In the present case, the first document relied upon by the petitioners is an

application submitted by the father of petitioner No.1. He declared that he belongs to Sirkiband which has been declared as Backward Class by the Punjab Government. Apart from that, the petitioners have produced an extract from a book written by Sh K.S.Singh. stating that the persons belonging to “Sirkiband” caste are also Rathore Rajput, who were from the State of Rajasthan and have settled in that area. The probative value, of the aforesaid book, has not been established. Still further, in the present case, it has come on record that before the elections, there was a criminal case wherein the caste of petitioner No.1 and his brothers was described as “Rajput”. Further, the Vigilance Cell as well as the Scrutiny Committee, have already examined various witnesses who have deposed that the petitioners are Rajputs and do not belong to sirkiband. In these circumstances, this Court does not find that the petitioners have not been granted an opportunity or the material placed was not considered by the Vigilance Cell as well as the Scrutiny Committee. The Vigilance Cell was constituted under the officer of the level of Director in the Social Justice, Empowerment and Minorities Department, whereas the State Level Scrutiny Committee held the proceedings under the Chairmanship of the Joint Secretary. The Scrutiny Committee consisted of Joint Secretary, Deputy Secretary, Revenue and Rehabilitation Department, Joint Director from the Directorate of Social Justice, Empowerment and Minorities and the Superintendent (Reservation Cell)-cum-Convener Member. They have also reached at the same conclusion. This Court does not find that such conclusion arrived at is perverse. Still further, the petitioners have not produced enough material even before this court to prove that the

conclusions arrived at, by the Vigilance Cell as well as the Scrutiny Committee, could not be arrived at or are perverse

It may be noted here that the judgment passed by the Supreme Court, in ***Kumari Madhuri Patil*** (*supra*), was later modified with regard to the constituents of the Committee, reported in ***(1997) 5 SCC 437***. The judgment was further affirmed by a Larger Bench in ***Daya Ram v. Sudhir Batham*** ***(2012) 11 SCC 333***.

Now let us examine the other judgments relied upon by learned counsel for the petitioners. Learned counsel for the petitioners has drawn the attention of the Court to the case of ***Collector, Bilaspur*** (*supra*) wherein, it was held that the Scheduled Caste Commission had no jurisdiction to inquire into the matter. The Supreme Court, however, held that the State Government, through a duly constituted Scrutiny Committee, should now undertake the verification/scrutiny of the social status certificates issued. The aforesaid judgment does not help the case of the petitioners. Learned counsel has further relied upon the judgment of the Supreme Court in the case of ***Gulzar Singh*** (*supra*). In the aforesaid case, the Supreme Court found that the certificate was cancelled without issuing any show cause notice. The Court found that in the absence of show cause notice, the cancellation of scheduled caste certificate was against the principles of natural justice. However, in this case, enough opportunities have already, been granted to the petitioners.

In view of the aforesaid discussion, this Court, in absence of sufficient material, does not find it appropriate to interfere with the reports of the Vigilance Cell and the Scrutiny Committee. Hence, the petition is

dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of.

January 05, 2021

“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No