

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.5318 OF 2009

*An application under Articles 226 & 227 of
the Constitution of India.*

Roshanlal Kori

: Petitioner

-Versus-

Collector, Jharsuguda & ors.

: Opposite Parties

For Petitioner

: M/s.S.Mohanty, P.K.Mohanty
& L.N.Patel

For O.Ps.1 & 2

: Mr.S.Ghosh, AGA

For O.P.3

: Ms.G.Majhi, Adv.

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of Hearing & Judgment : 13.12.2022

1. The Writ Petition involves a challenge to the appellate order under Annexure-3 passed in exercise of power under the Orissa Caste Certificate (for Scheduled Caste and Scheduled Tribes) Rules, 1980 (in short, “the Rules, 1980”).

2. Background involving the case is, the Petitioner was undisputedly a domicile in Madhya Pradesh. The Petitioner was living in the State of

Odisha for quite number of years. In an attempt to be a land owner in the State of Odisha, the Petitioner was engaged with the private O.Ps. for purchasing their land by entering into a Registered Sale Deed in 2004. The Sale Deed depicts both sides being Scheduled Castes with clear recording of the same. It is after four years of the purchase of the land, it appears, the Petitioner applied for a caste certificate under the provision of the Rules, 1980. Further fact disclosed, the decision having been taken on the request of the Petitioner after involvement of the R.I.report, the Petitioner was provided with a caste certificate, vide Annexure-2. An Appeal was brought in 2008. About three months after the private O.Ps., the Vendors involving the sale deed herein brought Appeal No.1/2008 under the provision of Rule 9 of the Rules, 1980. This Appeal was disposed of, vide Annexure-3 by taking out the Caste Certificate standing in favour of the Petitioner, vide Annexure-2.

3. Mr.Mohanty, learned counsel for the Petitioner taking this Court to the involvement of detailed exercise attempted to submit that there has already been compliance of the provision at Rules 5 and 7 of the Rules, 1980. Taking this Court to the disclosures in Annexure-2 and the inquiry report, vide Annexure-5, Mr.Mohanty attempted to support his such claim and in the process, contended that there has been wrong consideration of the issue involving the Appeal.

4. Ms.G.Majhi, learned counsel for O.P.3 in her attempt to challenge the grounds raised by the Petitioner and taking this Court to the observations of the Appellate Authority in Paragraph-3 of Page-28 of the Brief and reading together with the provision at Rule 7 of the Rules, 1980 attempted to satisfy that for there is no involvement of a recommendation by the Chairman of the Municipality, there is no compliance of the provision at Rule 7 of the Rules, 1980. Ms.Majhi, learned counsel also attempted to submit that on the utilization of the previous caste certificate being a resident of Madhya Pradesh originally by taking support of the decision of the Hon'ble apex Court in *Action Committee vrs. Union of India* reported in 1994 SCC (5) 244. It is in the circumstance, Ms.Majhi claimed dismissal of the Writ Petition.

5. This Court finds, the present dispute commenced on an attempt of the Vendor already involved in a sale transaction with the Vendee, the present Petitioner. This Court also records, there is clear material and the Caste (Kori) the Petitioner held is declared as Scheduled Caste in the Notification of President meant for both States, Odisha and Madhya Pradesh as well. Looking to the nature of dispute involved herein having the foundation in grant of caste certificate, vide Annexure-2 involving the Application of the Petitioner and involving an exercise under the Rules, 1980, it is while also keeping in view the question raised by both Parties,

this Court finds, there is no room for considering the Petitioner's caste in other State. In purchase of the land by Registered Sale Deed, there should not be any doubt that the Petitioner is not a permanent resident at least in 2008. Caste aspect however can be gone into by undertaking the exercise required under the Rules, 1980. Rule 4 of the Rules, 1980 prescribes for verification of caste. Rule 5 prescribes issuing such certificate after proper verification based primarily on revenue records and if need be, through reliable enquiries is made before issue of certificates. For availability of R.I. report, this Court finds, there has been already met with the provision at Rules 4 & 5. It is in the circumstance, this Court finds, the observation of the Collector, Jharsuguda for non-compliance of Rule 5 is contrary to the materials available on Record.

6. In the circumstance this Court finds, the only question remains to be considered here as to whether there has been compliance of Rule 7 of the Rules, 1980. While also keeping in view the objection of Ms.Majhi, learned counsel for O.P.3 that there has been no compliance of this provision, this Court here looking to the report taken note in the grant of caste certificate, vide Annexure-5, finds for the submission of the R.I. report, there has been attachment of statement of the Councilor of the Municipality. This Court takes note the Rule 7 of the Rules, 1980, which reads as follows :-

“7. Recommendatory Authority- the following authorities for the purposes of these Rules may recommend of the competent authority for issue of caste certificates to the persons belonging to Scheduled Castes and Scheduled Tribes in the State of Odisha.

(1) The Sarpanch of the Grama Panchayat in respect of persons residing within the jurisdiction of the Grama Panchayat concerned.

(1-a) Chairman of the Municipality/Notified Area Council and Mayor of Municipal Corporation.

(2) Members of the Odisha Legislative Assembly in respect of persons belonging to their constituencies.

(3) Members of Parliament from Odisha in respect of their constituencies;

Provided that the competent authority may issue caste certificates on the basis of the recommendation to the recommendatory authority. He may, however, cause such verification or enquiries as may be necessary for the purpose of his own satisfaction.”

Reading the aforesaid provision, this Court finds, the Rule requires involvement of a recommendation of the Chairman of the Municipality considering the Petitioner is a resident in a municipal area.

7. It is in this view of the matter and for an attachment of a statement of the Councilor, this Court finds, there is no compliance of the provision at Rule 7 taken note herein. In the circumstance, this Court finds, there is no proper grant of caste certificate, vide Annexure-2 and the Collector, Jharsuguda is justified in so far as non-compliance of Rule 7 involved herein.

8. In the circumstance, this Court interfering with that part of the order of the Collector, Jharsuguda suggesting non-compliance of Rule 7

of the Rules, 1980 remits the matter to the Tahasildar, Jharsuguda and the order of the R.I. and/or any Competent Authority deals with such certificate to reopen the proceeding involving Caste Certificate of the Petitioner and disposes of the same after taking resort to the provision at Rule 7 and pass fresh order in grant of caste certificate by providing fresh opportunity to both sides. This Court here likes to observe, the Proceeding is re-opened only to be disposed of after compliance of Rule 7 by calling for a recommendation from the Council of particular Ward and the Councilor, if finds the Petitioner is already a resident of particular Ward for nearly two decades should not create any hurdles in the grant of recommendation within reasonable time. The further proceeding is directed to be concluded within a period of two months from the date of communication of this order. Both the Parties are directed to appear before the R.I. concerned on 26.12.2022 along with copy of this judgment. Till a decision is taken, status of the Petitioner as on date shall be maintained.

9. The Writ Petition succeeds. Parties to bear their own cost.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 13th December, 2022/M.K.Rout, A.R.-cum-Sr.Secy.