

**IN THE HIGH COURT OF ORISSA AT CUTTACK****WP(C) No.11807 of 2012**

(Through Hybrid mode)

***Asit Kumar Nayak***

....

***Petitioner***

Mr. Susanta Kumar Mishra, Advocate

*-versus-****State of Odisha and others***

....

***Opposite Parties***

Mr. Y.S.P. Babu, AGA

Mr. Prasanna Kumar Parhi, DSG

Mr. Debabrata Rath, CGC

**CORAM: JUSTICE ARINDAM SINHA****JUDGMENT****18.11.2022**

1. Mr. Mishra, learned advocate appears on behalf of petitioner and submits, his client belongs to scheduled tribe 'Gondo'. He has challenged final order dated 20<sup>th</sup> June, 2012, of the State Level Scrutiny Committee, passed in fake caste certificate case (FCC no.21 of 2011). He submits, the Investigating Officer (IO) did not afford his client opportunity in the purported investigation conducted. His client had earlier moved a Division Bench of this Court by W.P.(C) no.2003 of 2012, which was disposed of on order dated 8<sup>th</sup> February, 2012.

There was direction for his client to have fair and reasonable opportunity of hearing and allow him to furnish the documents, if any.

2. He draws attention to report dated 11<sup>th</sup> November, 2011 of the IO, on the investigation made without participation of his client. He points out from findings in impugned final order that when his client produced photocopy of the admission register relating to, inter alia, his father, the committee said they had perused the original admission register and found that caste entry on admission of his father had been tampered with by overwriting and made 'Gondo'. Hence, the document could not be relied upon and was not taken into consideration. He submits, there is no mention in report of the IO that school admission record regarding his client's father had been tampered. He relies on judgment of the Supreme Court in **Sayanna vs. State of Maharashtra**, reported in (2009) 10 SCC 268, paragraph 14. He submits, impugned final order be quashed.

3. Mr. Babu, learned advocate, Additional Government Advocate appears on behalf of State and relies on paragraphs 10, 11 and 12 in the counter. He submits, it will appear therefrom that

petitioner was given opportunity to appear in the investigation but, he did not. The committee complied with directions made in aforesaid order of the Division Bench, by supplying copies of documents attached to the report of the IO, to petitioner. His show-cause was perused and he was given personal hearing. Steps were duly taken in the matter as per observations of the Supreme Court in **Madhuri Patil v. Addl. Commr., Tribal Development**, reported in **AIR 1995 SC 94**. Impugned final order was made. It has clear findings. In the circumstances, there should not be interference by judicial review.

4. Court has perused report of the IO, made before aforesaid direction of the Division Bench, to allow, inter alia, fair opportunity to petitioner. It appears from the report that admission record of elder brother of petitioner, admitted to the school on 16<sup>th</sup> July, 1970, was verified by the IO and on requisition made, the Head Master had opined that the caste of petitioner's said brother is 'Guna' in general category. Several khatas in the RoR were also verified by the IO. Of them, except khata no.796, all were joint. Khata no.796 stands in name of father of petitioner, where the caste is written as 'Gondo'. Relevant paragraph from the report is reproduced below.

*“On verification Khata No.796 of G. Udayagiri mouza stand in the name of Sridhar Nayak, S/o. Surendra Nayak of G. Udayagiri in which the caste is written as “Ganda”.”*

The IO remarked that such was proof of the record having been managed by any means.

5. Impugned final order says that the committee gave opportunity to petitioner and he appeared before it on three days. As aforesaid, petitioner produced photocopy of the school admission register in respect of his father's admission. Mr. Mishra hands up the photocopy, as obtained on requisition dated 2<sup>nd</sup> March, 2012 under Right to Information Act, 2005. The photocopy of the admission register page, showing some admissions made in June and July, 1944, was forwarded under cover of letter dated 3<sup>rd</sup> March, 2012 by the Head Master, Hubback High School, G. Udayagiri, Kandhamal. This was noted in impugned final order. It appears, the committee itself called for the original register and on perusal thereof found tampering, as aforesaid. Such tampering is not obvious in the photocopy. Also, there is no reference to admission of petitioner himself, as verified in the investigation or in impugned final order. Furthermore, khata no.796, referred to by the IO in his report, was

neither mentioned and therefore not dealt with in impugned final order. All this was pointed out to Mr. Babu.

6. Further query was made to Mr. Babu regarding restrictions regarding transfer of land, placed on owners belonging to scheduled tribes. Section 22 in Odisha Land Reforms Act, 1960 bars transfer to a person not belonging, except when made with prior written permission of the Revenue Officer. The witnesses were examined in the investigation behind the back of petitioner, causing interference by the Division Bench, as aforesaid. Hence, where the relative of petitioner had dealt with his land, in describing himself to belong to a caste in general category, the testimony of such and the purchaser witnesses, in absence of petitioner having had opportunity to confront them, becomes unreliable.

7. Mr. Parhi, learned advocate, Deputy Solicitor General and Mr. Rath, learned advocate, Central Government Counsel appear on behalf of Union of India.

8. In **Madhuri Patil** (supra) the Supreme Court streamlined procedure for issuance of social status certificates. The guidelines are

given in paragraph 12 of the judgment. Guideline (5) is in respect of verification and collection of all the facts of social status claimed by the candidate or the parent or guardian, as the case may be. A passage from the guideline is extracted and reproduced below.

*“He also should 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 concerned castes or tribes or tribal communities etc.”*

(emphasis supplied)

Guideline (6) is on contingency of report from the Vigilance Officer finding the claim for social status to be ‘not genuine’ or ‘doubtful’ or spurious or falsely or wrongly claimed. Guideline (7) says, incase, inter alia, particulars given are procured or found to be false or fraudulently obtained, procedure envisaged in guideline (6), is to be followed.

9. Regarding Court's appreciation in respect of the investigation report and findings in impugned final order, as stated in paragraphs 4 to 6 above, State has no answer. Photocopy, of the document made in year 1944, was supplied in year 2012, upon requisition made under the Act of 2005. The photocopy is, therefore, accepted to be a true copy of the original. The committee felt necessity for looking at the original. It was not said in impugned final order, to have been shown to petitioner. It is not understood, why this document was missed by the IO in his investigation, when verifying the school admission register, to find only, admission particulars of petitioner's elder brother.

10. Paragraph 14 from **Sayanna** (supra) is reproduced below.

*"It is difficult for this Court to understand as to on which basis the Scrutiny Committee came to the conclusion that the word "lu" was interpolated in the register of the school more particularly when it was not so opined by the Police Inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the Scrutiny Committee had never attempted to get an*

*expert's opinion nor itself had compared the disputed letters with admitted one of the appellant.”*

The committee formed opinion, by itself, on simply perusing original admission register of year 1944. There ought to have been an allegation before the committee, for it to evaluate the evidence in relation to the allegation.

11. Section 7(1) in Odisha Scheduled Castes, Scheduled Tribes and Backward Classes (Regulation of Issuance and Verification of Caste Certificates) Act, 2011 says, when it comes to notice that a person not belonging to any of the reserved category has obtained a false caste certificate, the committee may suo motu or otherwise, call for the record and enquire into the correctness of such certificate. There is no mention in impugned final report that this document was initially also produced by petitioner and erroneously relied upon, for issuance of the certificate. Where the law requires inquiry, to establish that a caste certificate obtained is fake, there should not have been pronouncement by the committee, without inquiry, that a document made in year 1944 and not part of the record, had been tampered with, to say it cannot be relied upon and disregard it.

12. Reason (5) from impugned order is reproduced below.

*“5. It is found from the statements of the alleged before the SLSC on 28.2.12 that the alleged has no idea about the Gonda caste and has no knowledge about the tribal language of the Gond people. He is also unable to speak about the profession and festival etc. of the Gond people. From the said statement of the alleged it is ascertained that the alleged does not belong to Gond caste as he is unaware of the socio cultural life styles and traits of the Gond people.”*

This reason is not based on guideline (5) in **Madhuri Patil** (supra). In said guideline, as appears from passage therefrom reproduced above, there is requirement for examination of such other persons, who have knowledge of the social status of the candidate. Impugned final order does not say any such person was examined. As such, Court is unable to fathom basis for said reason that petitioner has no idea about ‘Gondo’ caste or has no knowledge about the tribal language of the ‘Gondo’ people etc.

13. Paragraph 14 from **Madhuri Patil** (supra) is reproduced below.

*“14. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. **The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts.**”*

(emphasis supplied)

A much later document is the RoR khata no.796, verified by the IO but overlooked by the committee. Therein, father of petitioner had asserted his identity as belonging to scheduled tribe ‘Gondo’, in having had got the land so recorded. The bar on transfer became applicable. Position taken regarding father of petitioner, in year 1944 on him getting admission and thereafter by himself in recording his caste ‘Gondo’ in the RoR khata, is consistent. These were good direct

evidence before the committee. The otherwise finding, therefore, is perverse.

14. Mr. Mishra submits, though his client had obtained interim order dated 18<sup>th</sup> July, 2012 but, by reason of long pendency of the writ petition and direction of the Supreme Court in **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**, reported in (2018) 16 SCC 299, same was deemed vacated. His client's employer proceeded and passed order dated 12<sup>th</sup> August, 2020, removing his client from railway service with immediate effect saying, service thus far rendered, was infructuous. He submits further, the writ petition was thereafter amended at his client's instance, bringing additional prayer. Mr. Babu submits, consolidated writ petition is not available in the record, nor copy was served. To prevent exactly this, the Supreme Court also in **Madhuri Patil** (supra) said in guidelines (11), (12) and (13) as reproduced below.

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

*12. No suit or other proceedings before any other authority should lie.*

13. *The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.”*

15. Impugned final order is set aside and quashed. Since, the termination was solely on basis of impugned final order, herein quashed, petitioner will approach his employer with this order, for immediate reinstatement on continuity of service. Union of India (Railways) is obliged to expeditiously deal with the approach.

16. The writ petition is disposed of.

**(Arindam Sinha)**  
**Judge**

*Prasant*