

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.10017 of 2016
(Through hybrid mode)**

Alika Kanhar

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

Advocates appeared in this case:

For petitioner:

Mr. S.K. Mishra, Advocate

Mr. S.K. Joshi, Advocate

For Opposite Parties:

Ms. Suman Patnayak, AGA

CORAM: JUSTICE ARINDAM SINHA

JUDGMENT

21.12.2022

1. Mr. Mishra, learned advocate appears on behalf of petitioner and submits, impugned is final order dated 29th March, 2016 passed by State Level Scrutiny Committee, wherein it was erroneously held that his client is 'Pano' by birth, inherited from his forefathers, living in Pano basti, separate from Kandha basti of the village and consequential directions. He submits, inquiry report submitted by IIC, Tikabali PS relied on statements of persons named as witnesses. Those persons subsequently affirmed affidavits stating contrary to what the report says

they said. Those affidavits were not considered by the Committee. He draws attention to second reason in impugned order, reproduced below.

“2. It is found from the statement of the witnesses attached to the IO’s report where they have signed and given LTI that the alleged belongs to Pano Hindu community. But the committee could not take into consideration of the photo copies of the affidavits submitted by the alleged in his show cause reply where the witnesses retreated from their statements which shows that they might have been influenced by the alleged to change their versions.”

2. He submits further, his client did not have his name recorded in the RoR. It is no matter that someone else had his name is recorded. That could not be relevant evidence since the recorded person’s subsequent affidavit evidence was among those not considered by the Committee. He submits, his client’s caste certificate is dated 21st June, 1976. It was duly issued by the then Member of Legislative Assembly (MLA). He relies on the resolution by notification no.8481-Estt.(R),1968 T.R.W. The resolution is reproduced below.

“SUB: Issue of Caste Certificate to candidates belonging to Scheduled Castes and Scheduled Tribes, for the purpose of appointment under Government.

The question of determining the competency of authorities to issue Caste Certificates to candidates

*belonging to Scheduled Castes and Scheduled Tribes for the purpose of public appointment was under the consideration of Government for sometime past. At present there are general instructions regarding the authority who should issue Caste and Tribe Certificates for the purpose of public appointment. After careful consideration of the question, **Government have been pleased to decide that District Magistrates/Sub-divisional Officers/MLAs/Members of Parliament and District Welfare Officers shall be competent to issue Caste and Tribe certificate to candidates seeking employment under the State Governments and public undertakings. The Sub-caste and Sub-tribe to which the Candidates belongs shall also be mentioned in the certificates. Certificates produced from any other authority shall not be treated as valid.***

(emphasis supplied)

3. Ms. Patnayak, learned advocate, Additional Government Advocate appears on behalf of State and submits, petitioner is third son of Tambara Digal. Petitioner held out his father's name as Tambara Konhar and thereby appropriated name 'Konhar'. All his relatives are Pano. Two of his brothers converted to Christianity. Verification of caste certificate obtained is possible on law declared by the Supreme Court in **Madhuri Patil v. Addl. Commissioner, Tribal Development** reported in **AIR 1995 SC 94**.

4. Challenge mounted against impugned final order bears substance inasmuch as, where the Committee relied on inquiry report referring to witnesses statements, even though thereafter the witnesses swore affidavits to the contrary, they ought to have been examined. Purpose of the Committee is to verify and ascertain the truth. Manner of obtaining evidence by examination of witnesses is for purpose of ascertaining the truth. The Committee appears to have presumed, the witnesses in the inquiry had been subsequently influenced by petitioner. Even if that is so, there was no embargo on the Committee to put questions to those witnesses, as can be put in cross-examination, to elicit the truth.

5. What emerges from the inquiry report, subsequent affidavits of the witnesses and impugned order is that where initially the witnesses had said that Tambara Digal had four sons, third son being petitioner, inter alia, one of the brothers (an inquiry witness) later referred to petitioner as belonging to caste 'Kandha' under his forefather. Such statement gives rise to obvious question as to who was referred as forefather of petitioner. It is for petitioner to establish the positive that his father is a person different from Tambara Digal.

6. Impugned final order is set aside and quashed. The verification by Fake Caste Certificate Case no.483 of 2010 is restored to the

Committee. The Committee will take cognizance of the subsequent affidavits of inquiry witnesses furnished by petitioner, call those witnesses and examine them. The Committee will also examine petitioner. It is expected the Committee will arrive at the truth. The case should be dealt with and disposed of within three months from date of communication.

7. The writ petition is disposed of.

Sks

