

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.334 of 2017

Michael Nayak

....

Appellant

Mr. P.K. Mohanty, Sr. Advocate

-versus-

State of Odisha and others

....

Respondents

Mr. D.K. Mohanty, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE CHITTARANJAN DASH

ORDER

17.10.2022

Order No.

Dr. S. Muralidhar, CJ.

04.

1. The present appeal is directed against the judgment dated 4th September, 2017 of the learned Single Judge dismissing the W.P.(C) No.15421 of 2014 filed by the Petitioner questioning the order dated 28th June 2014 passed by the State Level Scrutiny Committee (SLSC) in FCC No.32 of 2012 holding that the Appellant belonged to the 'Pana Cristian' community and therefore the caste certificate issued in his favour declaring him as belonging as Scheduled Caste (SC) was illegal and obtained fraudulently.

2. This is an second round of litigation on the issue of the caste certificate issued in favour of the present Appellant. Earlier the Appellant had filed W.P.(C) No.17655 of 2009 which was disposed of by this Court on 2nd August, 2011 remanding the matter to the SLSC for the proceeding to be started de-novo by giving an opportunity to the Appellant "only after supplying copies of those disputed documents be confronted with on the basis of which the report has been submitted by the Vigilance Officer and the same be

placed on record of course provide the Appellant to produce his rebuttal evidence.”

3. While issuing notice in the present appeal on 10th October, 2017 this Court passed an interim order that no coercive action shall be taken against the Appellant pursuant to report of the SLSC and the impugned order of the learned Single Judge. That interim order has continued since.

4. The background facts are that the Appellant is working as Sikhya Sahayak and is a resident of village Lengumaha P.S. Raikia, District Kandhamal. Pursuant to the decision of the Supreme Court in ***Kumari Madhuri Patil v. Additional Commissioner, Tribal Development AIR 1995 SC 94***, an enquiry was commenced against the Appellant. The Investigating Officer (IO) submitted a report through the District Vigilance Cell, Kandhamal along with a letter dated 24th November, 2008. A copy of the said report was sent to the Appellant asking him to show cause why his caste certificate should not be cancelled. The Appellant submitted his reply on 28th January, 2009 and on 7th February, 2009 appeared before the SLSC. On that basis the SLSC passed an order declaring that the Appellant did not belong to the Pana Hindu community.

5. This regard the first round of litigation which has been referred to herein before with this Court remanding the matter to the SLSC. Thereafter copies of the documents gathered by the SLSC were supplied to the Appellant. It must be noted that the Tahasildar, Raikia had published a notice in the locality on 27th October, 2013

inviting objections. Since no objection was received within the stipulated period, the SLSC proceeded further in the matter. It appears that four persons had deposed before the IO that the Appellant belonged to the Pana Christian community. In response to the show cause notice, the Appellant submitted that the said witnesses had deposed as above against him only because he had filed a case against them for destroying his house in a riot that took place in Kandhamal district. When the four witnesses appeared before the SLSC on 21st March, 2012 they asserted that both the Appellant and his father belonged to the Pana Hindu community. In other words, the said witnesses turned hostile and did not support the case of the State that the Appellant belonged to the Pana Christian community. However, it appears from the impugned order dated 28th June, 2014 of the SLSC that its members did not accept the statements made by the four witnesses to the SLSC that the Appellant and his father belonged to the Pana Hindu community. The SLSC concluded that the Appellant had managed to win over the said witnesses and they accordingly changed their versions to support him.

6. The SLSC then fell back on the report of the IO to the effect that the Appellant and his father had married into the Pana Christian community. However, in the same breath the IO noted in his report that the Appellant's mother and wife still followed Hindu rituals. The SLSC then proceeded to surmise that since the Appellant was named 'Michael' he must be a Christian. In doing so the SLSC overlooked the entry in the school register which clearly showed that the Appellant was a Pana Hindu. The RORs of certain lands stood recorded in the name of grandfather of the Appellant and the

relevant column therein mentioned their caste as 'Pana'. Nevertheless, the SLSC chose to reject all the above evidence. Again, proceeding on a conjecture that the parents of the Appellant "might have changed the caste as 'Pana' with an ulterior motive in order to grab the benefits meant for SC", the SLSC held that the Appellant was a Pana Christian. Thus the SLSC rejected the oral evidence of the four persons who by turning hostile actually supported the case of the Appellant.

7. As far as the documentary evidence is concerned, the school register showed the Appellant to be a 'Pana Hindu'. In this context, it may be noted that in ***Kumari Madhuri Patil v. Additional Commissioner (supra)***, the Supreme Court observed as under:

"The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records. What would, therefore, depict the caste status of the people inclusive of the school or college records, as they then census rules insisted upon."

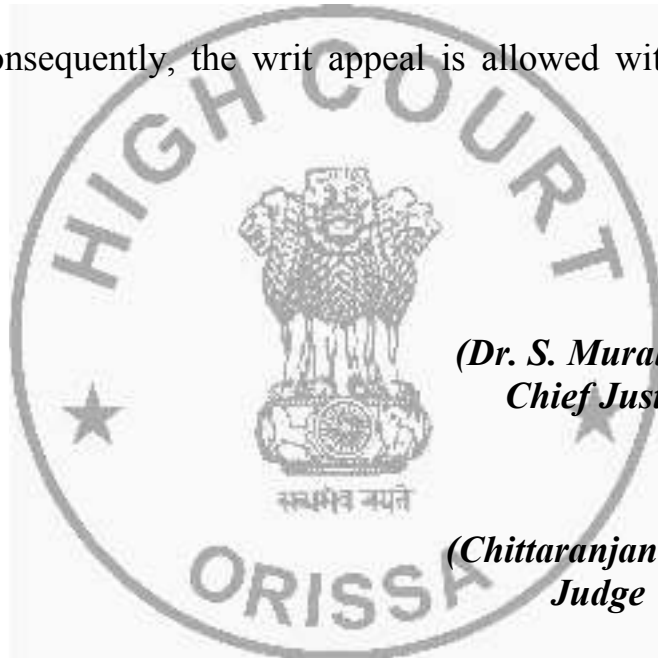
8. There appears to be no credible evidence either oral or documentary to show that the Appellant was not in fact a 'Pana Hindu' but a 'Pana Christian'. However, the impugned order of the SLSC throughout proceeds on conjectures and surmises to come to such a conclusion.

9. For the aforesaid reasons, the Court finds the impugned order dated 28th June, 2014 of the SLSC in FCC No.32 of 2012 to be unsustainable in law and is hereby set aside. The corresponding

impugned order of the learned Single Judge is also set aside. Consequential order under Annexure-3 is also set aside.

10. Learned AGA then submitted that the matter should once again remanded to the SLSC for a third round of enquiry. Considering the fact that this exercise has gone for more than a decade now, it will be harassment of the Appellant if a third time enquiry is commenced against him regarding the genuineness of his caste certificate. Consequently, the Court declines this prayer.

11. Consequently, the writ appeal is allowed with no order as to costs.



(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge