

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9312 of 2022

Pramod Kumar Bindhani .. Petitioner

-versus-

State of Odisha & others .. Opp. Parties

For Petitioner Ms. Pami Rath, J. Mohanty and
S. Gumansingh.

For Opposite Parties : Mr. Y.S.P. Babu,
Addl. Government Advocate,
Mr. P.K. Nanda, Advocate for
O.P. No.4

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 27.04.2022 | Date of Judgment: 20.05.2022

A.K. Mohapatra, J. :

1. The present writ petition has been filed by the petitioner challenging the letter dated 21.10.2021 of A.D.M., Mayurbhanj under Annexure-8, letter dated 07.10.2021 of the Tahasildar, Badasahi under Annexure-7 and letter dated 19.09.2021 of R.I. Kuradiha, Badasahi under Badasahi Tahasildar under Annexure-12 and letter dated 06.12.2021 issued by the RDC, Cuttack under Annexure-13 and finally letter dated 20.05.2021 under Annexure-6 issued by the Sub-collector, Kaptipada, Udala. The petitioner further prays for quashing of letter under Annexures-6, 7, 8, 12

and 13. It has also been prayed for in the writ petition to declare that A.D.M., Mayurbhanj cannot act as a member of the State Level Scrutiny Committee.

2. Heard Ms. Pami Rath, learned counsel for the petitioner, Mr. Y.S.P. Babu, learned Additional Government Advocate and Mr. P.K. Nanda, learned counsel appearing for the Paradeep Port Trust-Opposite Party No.4

3. The case of the petitioner, bereft of all unnecessary details and as culled out from the pleadings in writ petition, is that the petitioner joined in Paradeep Port Trust (hereinafter referred to 'PPT') Opposite Party No.4 on 16.06.1991 in the post of Assistant Engineer (Civil). The petitioner joined before the Opposite Party No.4 as S.T. candidates by availing the reservation for the S.T. Category candidates. Thereafter, the petitioner was promoted to the post of Executive Engineer (Civil) in the year 2002 under the reserved category man for S.T. candidate. Thereafter again on 30.10.2007, the petitioner was promoted to the post of Superintendent Engineer. However, without availing benefit of reservation as the law of reservation is not applicable to the said post. At the moment the petitioner is discharging his duties as Superintendent Engineer (Civil).

4. Initially, a caste certificate was issued by the Tahasildar, Udala on 05.11.1985 in favour of the petitioner in the district of Mayurbhanj by following provisions under Orissa Caste Certificate for Schedule Caste and Schedule Tribe Rules, 1980. Thereafter, again another caste certificate was issued by the Tahasildar, Udala on 16.11.1998 on the request of the petitioner. The necessity to apply for another caste certificate arose as the petitioner had misplaced the original caste certificate issued in the year 1985. However, both the caste certificates reflected identical details. While the matter stood thus, in the school admission register of the children of the petitioner, the school authorities insisted upon a caste certificate from the office of the Sub-Collector, Kaptipada, Udala. Accordingly, a fresh caste certificate was issued by the Sub-Collector, Kaptipada, Udala vide Certificate No.1 of 2000 dated 25.03.2000. It is needless to mention here that the certificate was issued in the year 1985-1998 are the basis of appointment of the petitioner in PPT under the S.T. category.

5. While the petitioner was discharging his duties as Superintendent Engineer (Civil) in PPT, the Opposite Party No.4 issued a show-cause notice dated 29.10.2020 alleging that the

petitioner belongs to “Kamara” caste, which falls under SEBC category and as such the same belongs to OBC category and that the petitioner does not belong to “Kollahars”, which comes under the S.T. category. The show-cause notice that was issued to the petitioner reveals that some materials were collected behind the back of the petitioner and further some strangers, who had hostility towards the petitioner, had raised objection with regard to caste certificate of the petitioner before the National Commission for the Schedule Tribe (hereinafter referred to as ‘NCST’). The NCST had forwarded the said complaint vide letter dated 25.03.2021 to the PPT to enquire into the matter and to submit a report in the matter. On examination on records, it appears that the PPT communicated the letter of NCST to the petitioner and had requested the District Magistrate, Mayurbhanj vide its letter dated 23.04.2021 to enquire into the caste certificate of the petitioner pertaining to the year 1985 and 1998. Further, the show-cause letter reveals that the A.D.M., Mayurbhanj on 10.05.2021 had instructed the Tahasildar, Khunta to conduct a filed enquiry. Moreover, the documents appended to the show cause dated 29.10.2020 reveals that the report dated 20.05.2021 had been submitted by the Sub-Collector, Kaptipada, Udala.

6. The report dated 20.05.2021 reflects that the Tahasildar, Udala in his report clearly indicated that the caste certificate in the year 1998 issued to the petitioner indicating his caste as “Kolloharas”. The RoR published reflecting the name of the petitioner as a tenant under the State also reveals that the caste of the petitioner to be “Kolloharas”. The report of the Tahasildar, Khunta reveals that the petitioner left the village ‘Andiatikira’ since 35 to 40 years ago, which fact was corroborated by the villagers and as such, the birth caste of the petitioner could not be ascertained. The report of the Sub-collector reveals that the petitioner’s parental residence may be somewhere under Badasahi or Betanati Tahasil jurisdiction. The show cause notice further reveals that an enquiry was ordered by the A.D.M., Mayurbhanj without any knowledge of the present petitioner and without any notice to the petitioner.

7. From the report of the Tahasildar, Badasahi dated 07.10.2021, it was ascertained that in the settlement RoR, the name of the father of the petitioner has been recorded against a patch of land wherein the caste has been shown to be “Kamara”. The report of the Tahasildar, Badasahi was communicated to PPT by the A.D.M., Mayurbhanj on 21.10.2021. It is also stated in the

writ petition that the report of the Tahasildar, Khunta was prepared relying upon the report of the R.I. Bhalagadia dated 15.10.2020 whereas the PPT has asked the District Magistrate, Mayurbhanj to enquire only on 23.04.2021. Thus, enquiry conducted by the Tahasildar, Khunta was much prior to the enquiry initiated at the behest of the NCST. It is further stated in the writ petition that the entire dispute/mischief has been created at the behest of a stranger, namely, Rama Chandra Hansda of village Gohira in the district of Mayurbhanj.

8. It is further stated in the writ petition that this caste dispute was created through a stranger at the instance of some Junior Officers of PPT as the petitioner had initiated criminal proceeding against the aforesaid Junior Officers of the PPT under the S.C. & S.T. (PoA) Act, 1989. Since some of the Junior Officers are involved in the present mischief, the enquiry was conducted behind the back of the petitioner without giving him any intimation whatsoever.

9. After receiving the show-cause notice, the petitioner had earlier approached this Court by filing writ petition bearing No. W.P.(C) No.34695 of 2021, which was disposed of vide order dated 28.03.2022 by this Court. While disposing of the said writ

petition, this Court directed the petitioner to submit his reply to the show-cause notice within a period of four weeks and further a direction was given to the PPT(Opposite Party No.4) to consider the reply of the petitioner in accordance with law. Further, this Court directed that no coercive action shall be taken against the petitioner without final adjudication with regard to the caste of the petitioner by the State Level Caste Scrutiny Committee duly constituted by the State Government for adjudication of caste issue. It was also directed in the earlier round of litigation that the State Caste Scrutiny Committee shall decide the issue finally after hearing the parties and such decision shall attain finality subject to the appeal and revision under the relevant statute.

10. After receiving show-cause notice, the petitioner enquired into the matter and came to learn that two strangers, namely, Rama Chandra Hansda and Biswajeet Pradhan, who have lodged the complaint petition against the petitioner before the NCST and NCST on such complaint, had initiated some enquiry behind the back of the petitioner.

11. Learned counsel for the petitioner further contends that on 06.12.2021, another enquiry has been initiated by the office of the R.D.C, Cuttack on the allegation that the petitioner had submitted

a fake caste certificate. Such enquiry was also initiated at the behest of another stranger Biswajeet Pradhan.

12. Ms. Rath, learned counsel for the petitioner submits that some Junior Officer of the PPT, who are hostile towards the petitioner have made vague and baseless allegations against the petitioner and eventually, their objective was to harass and humiliate the petitioner. In their such attempt to harass the petitioner, multiple proceedings involving the enquiries were initiated against the petitioner.

13. It is further contended by learned counsel for the petitioner that Caste Certificate issue of Odisha are presently governed by Odisha Scheduled Castes, Scheduled Tribes and Backward Classes (Regulation of issuance and Verification of Caste Certificates) Act, 2011 (hereinafter referred to 'Act, 2011'). She further submits that the law relating to caste certificate is guided by the judgment of the Hon'ble Supreme Court of India in the matter of *Madhuri Patil and another vs. Addl. Commissioner Tribal Development and another* : reported in (1994) 4 SCC 241.

14. The officers of the PPT, who are hostile towards the petitioner, have been successful, to some extent, to create several

reports by misleading and suppressing real facts and such reports, which were prepared behind the back of the petitioner and further reliance on such reports by the authorities would definitely affect the petitioner adversely. She further submits that various Government authorities, who have no jurisdiction have been influenced, approached and gained over by the above named two strangers to prepare misleading reports without even providing any opportunity of hearing to the petitioner or to file his show-cause reply. She further submits that since such reports have been prepared by the authorities who have no jurisdiction in the matter or such reports have been prepared in violation of the Act, 2011, therefore, the reports so prepared are nonest in the eye of law. Therefore, she submits that such report should be discarded in the interest of justice.

15. It is further submitted by learned counsel for the petitioner that the subject matter of dispute in the present case is the applicability of the provisions of the Act, 2011 as well as the judgment of Hon'ble Supreme Court in the case of *Madhuri Patil and another vrs. Addl. Commissioner Tribal Development and another* (supra). She further submits that the investigation report dated 06.12.2021 at the instance of the R.D.C. has also been

prepared without giving any notice to the petitioner. Thus, the report is in violation of principle of natural justice and the same can never be used against the petitioner.

16. Ms. Rath, learned counsel for the petitioner further submits that the Act, 2011 is self-contained code and the same provides for the procedure to be followed in cases relating to caste of a person. Under the aforesaid Act, the State Government has already constituted a Caste Scrutiny Committee consisting of certain designated officers. Therefore, the entire issue should have been referred to the Caste Scrutiny Committee of Government constituted under the Act, 2011. It is further submitted by her that no other manner or mode of verification / scrutiny of the caste certificate of the petitioner is recognized under the law and therefore, the procedure adopted in the case of the petitioner is illegal, arbitrary and perverse. Furthermore, the outcome of the enquiries as has been done in the present case, are absolutely illegal and non-est in the eye of law.

17. Learned counsel for the petitioner further submits that Caste Scrutiny Committee of the State Government is to be assisted by a Vigilance Cell, which shall verify and collect facts with regard to social status of any person or his parents and

family and in regard to the Vigilance Cell, she further submits that the Vigilance Cell is under a legal obligation to conduct independent enquiry without relying upon the reports prepared by various authorities having no jurisdiction over the issue in question. She further submits that when statute provides for a thing to be done in a particular manner, the same has to be done in the manner as has been provided in a statute or not at all. In such view of the matter, learned counsel for the petitioner emphasized the fact that the Caste Scrutiny Committee, which is a statutory committee bestowed with the responsibility of scrutiny and verification of caste certificate is required to act independently and by following the statutory provisions. Further in the event any local enquiry or verification is required, the same has to be done by the vigilance cell of the Caste Scrutiny Committee of the State Government or otherwise.

18. On a scrutiny of the provisions of the Act, 2011, it is revealed that under Section 6 of the said Act, a Caste Scrutiny Committee is to be constituted by the concerned State Government for verification of caste certificate and in terms of Section 6 of the Act, 2011, the Government of Odisha by its notification dated 28.08.2019 has formed the Caste Scrutiny

Committee consisting of Revenue Divisional Commissioner/Collector/ADM of the district, representative of Director, Scheduled Caste and Scheduled Tribe Research and Training Institute not below the rank of Research Officer and Director, Scheduled Tribe / Director of Scheduled Caste or his representative not below the rank of Deputy Director.

19. In view of the facts and circumstances narrated hereinabove, if at all a complaint was received by the PPT or R.D.C. or complaint was forwarded from the N.C.S.T. to the PPT, the law mandates that the same has to be presented in an appropriate form and manner to the scrutiny committee of the State Government under Section 6 of the Act, 2011. Therefore, the Government officers like the R.D.C., District Magistrate, A.D.M., Sub-collector, Tahasildar or even the R.I. have no jurisdiction and authority to entertain any complaint and launch an enquiry on the said complaint, which would be dehors the provisions of the Act, 2011. In other words, it is only the Caste Scrutiny Committee constituted by the State government under the Act, 2011 has the authority and the jurisdiction to decide any issue consisting of the caste certificate of a person.

20. Mr. P.K. Nanda, learned counsel appearing for the PPT(Opposite Party No.4) submits that the Opposite Party No.4 has not committed any illegality in the matter at all. It is further stated by him that the complaint was lodged by some persons before the N.C.S.T.. N.C.S.T. forwarded the complaint to the PPT to enquire into the matter. Accordingly, the PPT requested the local authorities and the District Administration to enquire into the matter. Pursuant to such request, the District Magistrate, Mayurbhanj as well as Tahasildars have conducted enquiries and provided information to the PPT. On the basis of such information, the PPT has issued show-cause notice to the petitioner. He further submits that the petitioner without submitting his reply to the show-cause notice, on earlier occasion rushed to this Court against the show-cause notice. This Court in the previous round of litigation had directed the petitioner to file his reply to the show-cause. The reply submitted by the petitioner, is now under the consideration of PPT. The PPT has not yet arrived at any final decision and that the matter with regard to the genuineness of the allegations made against the present petitioner has not yet come to any final conclusion. Therefore, learned counsel for the PPT submits that the present writ petition is premature and based on the mere apprehension of the petitioner.

Mr. Nanda, learned counsel for the PPT further submits that whatever decision will be taken in the matter, the same will be taken by the following provisions of law scrupulously and by providing an opportunity of show-cause to the petitioner.

21. It is further submitted by learned counsel for the Opposite Party No.4 that PPT is only acting on the basis of the report forwarded by the N.C.S.T. It is further submitted by Mr. Nanda that the petitioner by approaching the Court at a premature stage is trying to prevent the authorities from enquiring into the matter and to find out the truth with regard to the caste certificate of the petitioner. He further submits that if the petitioner and his caste certificate is genuine, then he has nothing to worry about and he should cooperate with the inquiry, which would be conducted by following the provisions of law. In such view of the matter, learned counsel for the Opposite Party No.4 urges that since the writ petition is premature, the same is not maintainable and as such the same is liable to be dismissed.

22. Ms. Rath, learned counsel for the petitioner, on the other hand, submits that the petitioner is ready and willing to participate in the enquiry, however, the same has to be conducted in a manner as prescribed in the Act, 2011. She further submits that a

direction may be given to the State Level Caste Scrutiny Committee constituted by the Government of Odisha under the Act, 2011 to enquire into the matter independently without being influenced by any of the reports, which were prepared by the above referred officers without providing an opportunity to the petitioner and behind back the petitioner.

23. In such eventuality, the petitioner is ready and willing to participate in the enquiry. She further submits that a direction be issued to the SLSC to conduct the enquiry independently through Vigilance Cell of the SLSC without being influenced by any of the reports submitted by different Government Officers, which are without jurisdiction and authority.

24. Considering the rival contentions raised by learned counsel appearing for the respective parties and taking into consideration the facts and circumstances of the present case, this Court is of the considered view that the entire dispute involved in the present case could be resolved by a competent authority like SLSC constituted under the Act, 2011, keeping in view the law laid down by the Hon'ble Apex Court in *Madhuri Patil and another vrs. Addl. Commissioner Tribal Development and another* (supra) and further by providing an opportunity to the

petitioner to explain his case and to submit the documents and judgments in support of his stand, this Court directs the PPT- Opposite Party No.4 to forward the complaint to the State Level Scrutiny Committee constituted under the Act, 2011 forthwith and further upon receipt of said complaint, the State Level Scrutiny Committee shall do well to examine and finally adjudicate the issue in accordance with law and by providing an opportunity of hearing to the affected parties including the present petitioner within a period of three months from the date of production of certified copy of this order. The PPT-Opposite Party No.4 is further directed not to take any coercive action against the petitioner till the matter is finally adjudicated by the SLSC. The parties are further directed to cooperate in early conclusion of the proceeding by the SLSC.

25. With the aforesaid observation/direction, the writ petition stands disposed of. However, there shall be no order as to cost.

(A.K. Mohapatra)
Judge

Jagabandhu Behera, P.A.