
(2010) 06 CHH CK 0015
In the Chhattisgarh High Court

Geeta Ray (Mrs.)	Vs	APPELLANT
Nagendra Chandra Das and Others		RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Constitution of India, 1950 — Article 338(5), 338(6), 338(7)

Citation : (2010) 4 MPHT 29

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner impugns the order dated 31-3-2001 (Annexure P-1) passed by the Additional Collector, Ambikapur, Sarguja, in exercise of his revisional power u/s 50 of the Chhattisgarh Land Revenue Code, 1959 (for short "the CGLRC").

2. Case of the petitioner, in brief, is that the petitioner was granted a valid caste certificate by the Tehsildar, Ambikapur, on 8-9-1997 (Annexure P-2). Thereafter, the Additional Collector, exercising his revisional jurisdiction under the provisions of Section 50 of the CGLRC, set aside the caste certificate issued by the Competent Officer, i.e., Tehsildar, Ambikapur. It was further directed to cancel the appointment of the petitioner, which was obtained on the basis of caste certificate issued by the Tehsildar on 8-9-1997.

3. Ms. Siddiqui, learned Counsel appearing for the petitioner, submits that there is no provision under the CGLRC empowering the Sub Divisional Officer or the Tehsildar to issue a caste certificate. The Sub Divisional Officer/Tehsildar have been conferred the power to examine and issue the caste certificate under executive instruction dated 1-8-1996. Thus, the impugned order dated 31-3-2001 is without any jurisdiction and void ab initio. Learned Counsel in support of her contention, placed reliance upon the decisions of the Supreme Court rendered in Kumari Madhuri Patila and another Vs. Addl. Commissioner,

Tribal Development and others, , GM, Indian Bank v. R. Rani and Anr. (2008) 2 SCC (L&S) 956.

4. On the other hand, Shri Mishra, learned Counsel appearing for the respondent No. 1/complainant, submits that there is no dispute that the Additional Collector has no power u/s 50 of the CGLRC to take up the matter suo motu and quash the caste certificate issued by the Tehsildar. However, having regard to the facts situation of the case, the matter may be referred to the High Power Caste Scrutiny Committee for verification of the social status of the petitioner.

5. Shri Thakur, learned Panel Lawyer appearing for the State, also does not dispute the proposition, as urged by the learned Counsel appearing for the petitioner.

6. I have heard learned Counsel appearing for the parties, perused the pleadings and the documents appended thereto. It is evident that on the basis of some complaint, the Additional Collector set aside the caste certificate of the petitioner without having jurisdiction.

7. On scrutiny of the provisions of the CGLRC it is found that no provision makes a prescription for issue of caste certificate. The power to issue caste certificate was conferred by circular dated 1-8-1996, which is taken on record.

8. Direction No. 1 of the circular dated 1-8-1996 reads as under:

vuqlwfpr tkfr] tutkfr ds lnL;ksa dks LFkk;h izek.k&i= ftyk/;{k@vij ftyk/; {k@miftyk/;{k@vuqfoHkkxh; vf/kdkjh ?jktLo? }kjk tkjh fd;s tk;saxs A izkf/kd`r vf/kdkjh 6 ekg ds vUnj vko;"d :i ls izek.k&i= tkjh djsaxs A tgka ij dk;ZHkkj vf/kd gks ogka lacaf/kr ftyk/;{k ml {ks= ds vfufoHkkxh; vf/kdkjh ds vfrfjDr vU; fdLh vf/kdkjh dks Hkh tkfr izek.k&i= tkjh djus ds fy, vf/kd`r dj ldrk gS] ftky/;{k }kjk {ks=kf/kdkj dk Li"V :Ik ls mYys[k fd;k tk;sxA

9. There is no dispute with regard to competence of the Tehsildar to issue the caste certificate. Section 50 of the CGLRC provides for revision. The Board or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may at any time on its/his motion or on the application made by any party for the purpose of satisfying itself/himself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to him. Under the provisions of CGLRC the caste certificate was not issued and, as such, the Additional Collector has no jurisdiction u/s 50 of the CGLRC to examine the legality or propriety of the caste certificate issued by the Tehsildar. Thus, the impugned action taken by the Additional Collector is not sustainable in the eye of law.

10. In Kumari Madhuri Patil (supra), the Supreme Court observed as under:

15. 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 as 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 record the finding. Each case must be considered in the backdrop of its own facts.

11. The Supreme Court in *Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others*, , reiterated the view taken in *Kumari Madhuri Patil* (supra).

12. In *State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another*, , the Supreme Court observed as under:

31. Reliance has also been placed in *Gayatrilaxmi Bapurao Nagpure v. State of Maharashtra*, wherein this Court referring to *Madhuri Patil* on the fact situation obtaining therein opined:

17. Applying the above test to the facts of the present case, we are satisfied that the Committee failed to consider all the relevant materials placed before it and did not apply its mind to an important document "S1. No. 9" which led the Committee ultimately to record a finding against the appellant. By a wrongful denial of the caste certificate to the genuine candidate, he/she will be deprived of the privileges conferred upon him/her by the Constitution. Therefore, greater care must be taken before granting or rejecting any claim for caste certificate.

18. The High Court without appreciating the probative value of the documents placed before it has dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the second respondent Committee. Undoubtedly, in cases of this type, the burden heavily lies on the applicant who seeks such a certificate. That does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. We are of the view that the authorities concerned must also play a role in assisting the Committee to arrive at a correct decision. In this case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion.

32. The said decision, therefore, is also an authority for the proposition that the Committee can go into the question as to whether a caste certificate has rightly been issued or not. The authorities concerned were also found to have some role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate.

13. The Supreme Court in *GM, Indian Bank* (supra), observed as under:

7. The directions given in *Madhuri Patil* have been reiterated in the case of

Director of Tribal Welfare, Government of A.P. v. Laveti Giri, in which while reiterating it was observed that the Government of India should have the matter examined in greater detail and bring about a uniform Legislation in relation to these matters. In Baswant v. State of Maharashtra, this Court held that the constitution of the Committee was not in accordance with the decision rendered by this Court in Madhuri Patil, as such the appeal was allowed and it was directed to constitute the Committee in terms of the decision of this Court in Madhuri Patil, and decide the matter afresh. The said directions of this Court in Madhuri Patil, regarding constitution of Committee have been approved by a 3-Judge Bench of this Court in Sudhakar Vithal Kumbhare v. State of Maharashtra, in which the matter was not referred to appropriate Committee in terms of directions given in Madhuri Patil, the appeal was allowed and it was directed that the properly constituted Committee shall decide the matter. In view of the foregoing discussions it cannot be said that the directions given in Madhuri Patil were simply guidelines. In our view, the law laid down in the case of Madhuri Patil has been reiterated times without number not only by 2-Judge Benches but even by a 3-Judge Bench of this Court.

14. The Division Bench of this Court in Ajit P.K. Jogi v. National Commission for Scheduled Castes and Scheduled Tribes and Ors. 2007 (1) CGLJ 146, while considering the power of the National Commission for Scheduled Castes and Scheduled Tribes, observed as under:

20. We do not think that the provisions of Article 338(5) (a), (b) of the Constitution would come to the aid of the Commission to claim that it has jurisdiction to decide caste/social status of an individual like the petitioner. By no stretch of imagination, even liberally interpreting as suggested by Shri Ravi Shankar Prasad, the Commission could claim to have jurisdiction to enquire into the caste or tribal status of an individual like the petitioner. The Commission cannot claim aid of the provisions of Article 338 (5) (a), (b) for arrogating to itself the jurisdiction to make enquiry into the truthfulness or otherwise of an individual's caste or social status. Having regard to the language employed in the provisions of Article 338 (5) of the Constitution, the power of investigation into the complaints with regard to the deprivation of safeguards, by necessary implications, only means deprivation of safeguards vis-a-vis the State which has to guarantee the safeguards under various provisions of the Constitution and other related laws. Thus, the Commission can at the most investigate into the complaints pertaining to deprivation of the safeguards in relation to the State and not an individual like the petitioner. The provisions contained in Article 338 (6) and (7) clearly spell out in unequivocal terms the aforesaid intendment of the Constitution.

15. Applying the well settled principles of law, for the reasons stated hereinabove and without expressing any opinion about the social status of the petitioner, the impugned order dated 31-3-2001 (Annexure P-1) passed by the Additional Collector, Ambikapur, Sarguja, is quashed.

16. In the result, the writ petition is allowed. No order as to costs.