
(1998) 02 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 4251 of 1992

Prasanna Kumar Naik

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Orissa Caste Certificate (for Scheduled Castes and Scheduled Tribes) Rules, 1980 — Rule 6

Citation : (1999) 87 CLT 237 : (1999) 3 LLJ 1131

Hon'ble Judges : S.N. Phukan, C.J.; P.K. Tripathy, J

Bench : Division Bench

Advocate : C.M.K. Murthy and S.K. Rath, for the Appellant; Bijan Ray, C. Choudhury, B. Mohanty and S.K. Dwibedy, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, C.J.—The petitioner passed High School Certificate Examination in 1976 from Government High School, Tikabali, district Phulbani. He obtained M.A. Degree from Government College, Phulbani in the year 1981. Thereafter, he joined the State Bank of India, opposite party No. 1, as a cashier-cum-clerk with effect from March 6, 1982 after being selected on merit in written as well as viva vice test. He was selected in the quota assigned to Schedule Caste candidates as he produced a certificate issued to him by the Sub-Divisional Officer, Baliguda on September 7, 1981 vide Annexure-1. While he was serving as cashier-cum-clerk, a departmental proceeding was drawn up against him. The charge- sheet dated March 18, 1987 is at Annexure-2. He was charged of, committing gross misconduct in terms of" paragraph 521(4)(j) of the Sastry Award, read with paragraph 18.28 of the Desai Award by producing a false certificate showing that he belongs to Scheduled Caste (Pano) community, though he was actually a Christian. Show-cause was submitted by the petitioner vide Annexure-3 in which he took the stand that the caste certificate was issued to him by the Sub-Divisional Officer, Baliguda, after proper inquiry. According to him, another caste certificate had also been issued by the District Welfare Officer, Phubani, in the

year 1979 after due inquiry in R.M.C. Case No. 2492 dated June 27, 1979. His explanation was not, accepted and a proper departmental proceeding was started. He was informed that he would not be allowed to engage a lawyer and would not be permitted to be represented by more than one officer. His personal prayer to the Enquiry Officer for engaging a lawyer was rejected. The inquiry was held in which no witness was examined on behalf of the Bank. The Enquiry Officer relied on the certificate issued by the Principal of the Government College, Phulbani, vide Annexure-5 and also the certificate issued by the Headmaster of the Government High School, Tikabali, vide Annexure-6. The confidential letter issued by the Tahasildar, G. Udayagiri, to the Sub-Divisional Officer, Baliguda dated August 3, 1988 (Annexure-7) and the confidential latter of the Sub-Divisional Officer, Baliguda dated August 11, 1988 (Annexure-8) was also relied on by the Enquiry Officer. The above documents were shown to the petitioner at the time of inquiry, but he was not allowed copies of the same. According to the petitioner, he had no knowledge of the certificates vide Annexure-5 and 6 before he attended the inquiry. He has also alleged that the above certificates and letters were issued without proper inquiry. The petitioner also produced a certificate granted to his father on September 8, 1988 by the Headmaster, U.G.M.E. School, Baliguda, Phulbani, as at Annexure- 9. Two Pattas pertaining to land owned by the petitioner's family were also produced vide Annexure-9(i) and 9(ii). The first Patta shows that the father of the petitioner, Parichha Digal, belongs to Pano community, and, in the second Patta, the father's brother of the petitioner has been described as a member of the Scheduled Caste "Pano" community. In the departmental proceeding, the petitioner examined five witnesses to prove that he is a Hindu. The grievance of the petitioner is that the Enquiry Officer did not take into consideration the evidence adduced/produced by him. Another allegation of the petitioner is that he was actually cross-examined during the inquiry and no reasonable opportunity was given to him to show or prove that he belongs to Scheduled Caste "Pano" community.

2. The Enquiry Officer found the petitioner guilty of the charge, which was accepted by the disciplinary authority and punishment of dismissal from service was awarded to him, which was confirmed by the appellate authority. Hence the present petition.

3. Counter-affidavit has been filed on behalf of the Bank wherein it has been stated that the punishment of dismissal was passed in accordance with the stipulations contained in the Sastry Award after careful consideration of all the materials on record by the disciplinary authority. The plea of the petitioner that he had made an oral prayer to engage a lawyer has been denied. It has been stated that neither the petitioner gave it in writing nor did he make an oral request to this effect. Reference has been made to the documents annexed to the writ petition and it has been stated that these documents prove that the petitioner does not" belong to Scheduled Caste "Panno" community and he is a Christian by religion. The writ petition and the annexure would go to show that the petitioner is a Christian by religion even before entering into school and

college, and, therefore, there is no dispute that he cannot get the advantage of Scheduled Caste quota. It has been stated that the District Magistrate, Phulbani, cancelled the earlier certificate with the knowledge of the petitioner and this cancellation order was supplied to the petitioner after issuing the show-cause notice to him. Reference has been made to the letters of the District Magistrate, Phulbani dated November 9, 1990 and March 22, 1991 vide Annexure-B and C.

4. The only point to be decided in this case is whether the finding of the Enquiry Officer which has been accepted by the Disciplinary Authority, that petitioner does not belong to "Panno" community as he is a Christian by religion is legally tenable or not. This Court is not sitting in appeal against the order of the Disciplinary Authority and the limited scope is whether the Disciplinary Authority has acted in violation of any provision of law or the enquiry conducted in this regard is against the principles of natural justice.

5. The finding of the Enquiry Officer is at Annexure-10. On perusal of the same, we find that the Enquiry Officer put reliance on the certificate issued by the Principal, Government College, Phulbani in the year 1981, verification made by the Tahasildar and confidential enquiry Ext.2. It is not disputed that person who issued the certificate was not examined by the department and petitioner was not given opportunity to test the veracity of the certificate. On this ground we hold that there was violation of the principle of natural justice. The Enquiry Officer also relied on the evidence of some witnesses which is not acceptable in case of issuing caste certificate as laid down by the apex Court and as per the Rules framed by the Government which we shall refer shortly.

6. The State of Orissa framed the Orissa Caste Certificate (For Schedule Castes and Scheduled Tribes) Rules, 1980 (in short "the Rules"). In Rule 6 the authorities who can issue such certificate have been mentioned. The authorities mentioned in Rule 7 can recommend to the competent authority for issuance of such certificate. Sub-rule (2) of Rule 8 empowers competent authority to cancel the certificate if no subsequent verification it reveals that the claim was false. Rule 9 provides for appeal. An appeal can be made before the District Magistrate/Collector, if the competent authority is subordinate to him and to the Revenue Divisional Commissioner, if the order has been passed by the District Magistrate/Collector.

7. These rules were framed in 1980 and have become outdated in view of the decision of the apex Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . The Apex Court laid down in paragraph 12 of the judgment as many as 15 conditions to streamline the procedure for issuance of social status certificates, their scrutiny and approval. These conditions are as follows: -

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the Certificate shall be issued by such Officer rather than at the Officer, Taluk

or Mandal level.

2. The parent, guardian or the candidate as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the racial status claimed by the candidate or the parent or guardian, as the case may be. 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 castes 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 proforma, 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 communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the

candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the Committee and the Joint/Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the receipt is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The enquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

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.

14. In case, the certificate obtained or social status claimed is found to be false,

the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it should be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union of elections to any local body, legislature or the Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.

8. In view of the above law laid down by the apex Court, the State Government was to take immediate steps to amend the Rules and issue suitable executive instructions in the light of the above law to all concerned to strictly abide by the decision of the apex Court while issuing caste certificates.

9. In the present case, the caste certificates was issued prior to the aforesaid decision of the apex Court. Even if we go by the Rules, we are of opinion that the Enquiry Officer erred in law in placing reliance on the certificates, etc. issued by the College and school authorities. He has to confine himself to the certificate issued by the Revenue Authority as mentioned in Rule 6 of the Rules.

10. Reference has been made to a decision of the Kerala High Court in *T. Chinnamma v. Kerala State*, 1990 (1) SLR 749, wherein the learned single Judge held that the petitioner, a born Christian, converted to Hinduism, will not become a member of Scheduled Caste community. This decision is not relevant for the present purpose.

11. The stand of the opposite party-Bank is that the original caste certificate issued by the Sub-Divisional Officer, Ealiguda (Annexure-2) to the effect that the petitioner belongs to Scheduled Caste, being a member of "Pano" caste was subsequently cancelled by the District Magistrate. The petitioner has alleged that his cancellation order was passed without affording a chance to him. It is true that in Sub-rule (2) of Rule 8 the competent authority who issued the certificate has right to cancel the same if he found that the claim was false. Therefore, before passing final orders in exercise of powers conferred by Sub-rule (2) of Rule 8, a person must be heard and he must be given an opportunity of placing further materials. He has also to be informed about the result of the proceeding. We say so because against the said order, an appeal can be preferred under Rule 9 as stated above. Though a statement was made on behalf of the Bank that the petitioner was informed about the cancellation of the caste certificate, we are unable to accept it in absence of any materials on record.

12. For the reasons stated above, we hold that the enquiry is vitiated inasmuch as the Enquiry Officer took into consideration irrelevant facts such as school certificate, college certificate and oral evidence. The Disciplinary Authority further erred in law in not accepting the contention of the petitioner that before caste certificate was cancelled, no opportunity was given to him by the competent authority. We therefore, allow this writ petition and quash the impugned orders. If the authorities want to proceed, they must ensure that the Revenue Authority mentioned in Rule 6 strictly followed the law laid down by the apex Court in the case of Kumari Madhuri Patil (supra). Further, we direct the Chief Secretary to Government to pass appropriate administrative instruction and take steps to amend the Rules in the light of the law laid down by the apex Court in Madhuri Patil (supra). A copy of this judgment be sent to the Chief Secretary. No costs.

P.K. Tripathy, J.

13. I agree.