

**(2012) 03 CHH CK 0046**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (S) No. 7348 of 2009**

Rajesh Livingstone

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

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**Date of Decision :** 21-03-2012

**Acts Referred:**

**Citation :** (2012) 3 MPJR 6

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Prateek Sharma, for the Appellant; P.K. Bhaduri, Panel Lawyer for State, for the Respondent

**Final Decision :** Allowed

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## Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 16.11.2009 (Annexure P/1) issued by the respondent No. 3 whereby the caste certificate issued to the petitioner was cancelled and it has further been directed to register an offence against the petitioner. The petitioner further assails the order dated 11.12.2009 (Annexure P/11) passed by the respondent No. 1 whereby the petitioner has been removed from service with immediate effect, and the order dated 08.03.2010 (Annexure P/12) passed by the Director, Estate & Prescribed. Authority under the provisions of Public Premises Eviction Act, whereby the petitioner has been ordered to vacate the official accommodation allotted to him. Shri Sharma, learned counsel appearing for the petitioner submits that the petitioner belongs to Gond community, a scheduled Tribe. A show cause notice was issued to the petitioner on 29.04.2009 by the respondent No. 3/High Power Caste Scrutiny Committee on the basis of a compliant wherein it was alleged that he does not belong to scheduled tribe category. The petitioner filed his reply alongwith all the documents in support of his contention. Thereafter, according to learned counsel appearing for the petitioner, enquiry was done at the back of the petitioner and no vigilance report was supplied to the petitioner and the impugned order dated 16.11.2009 (Annexure P/1) was

passed. Being aggrieved, the petitioner has preferred this petition. This Court, vide order dated 14.12.2009, stayed the effect and operation of the order dated 16.11.2009, on 14.12.2009. Subsequently, services of the petitioner was terminated on 11.12.2009 (Annexure P/11) The Director, Estate & Prescribed Authority under the provisions of Public Premises Eviction Act, directed the petitioner to vacate the official accommodation allotted to him, on 08.03.2010 (Annexure P/12).

2. Shri Sharma next submits that the mandatory condition of supplying a copy of the vigilance report to the applicant, if the report is adverse, was not complied with, as the vigilance report was not supplied to the petitioner. If the report of the vigilance officer is adverse to the claim of the petitioner, at least a show cause notice ought to have been issued to the petitioner, appropriate steps ought to have been taken in the light of judgment passed in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . This has not been done in the instant case, when according to the State counsel, the report dated 16.03.2009 is against the claim of the petitioner.

3. On the other hand, Shri Bhaduri, learned Panel Lawyer appearing for the State/ respondents submits cancellation of the caste certificate of the petitioner by the High Power Caste Scrutiny Committee, and as a sequel, termination of the petitioner from service and the order of eviction from the official accommodation, is strictly in accordance with law, as the petitioner could not prove himself to be a member of the scheduled tribe category.

4. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

5. It is a trite law that a person against whom an enquiry is done, is entitled to a copy of the report which is adverse to the claim of that employee. In the instant case, the petitioner claims himself to be member of scheduled tribe category and the Vigilance Officer, in his report dated 16.03.2009 has opined that the petitioner does not appear to be a candidate of the scheduled tribe community. The petitioner ought to have been supplied a copy of this report to enable him to controvert the report of vigilance officer or could have produced further documents, evidence in support of his claim, which, admittedly has not been done by the respondent authorities. Thus, impugned order dated 16.11.2009 is perverse and accordingly set aside.

6. In Kumari Madhuri Patil (supra) the Supreme Court, in para 13(6) observed as under:

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 acknowledgement due or through the head of the educational institution concerned 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/Additional 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-?-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. Admittedly, in the case on hand when the claim of the petitioner was found doubtful in respect of his social status, the above stated direction contained in para 13 (6) was not complied with. Thus, the proceeding is vitiated.

8. In view of the above, the High Power Caste Scrutiny committee is directed to initiate a fresh enquiry from the stage of supply of a copy of the report of the vigilance officer to the petitioner, and thereafter, enquiry be concluded, in accordance with law, as early as possible, preferably within a period of four months.

9. Consequently, the impugned order dated 16.11.2009) (Annexure P/1) and the consequential Orders dated 11.12.2009 (Annexure P/11) and 08.03.2010 (Annexure P/12) are quashed. The petitioner is entitled to consequential benefits flowing from this order, till final decision is taken by the High Power Caste Scrutiny Committee, as aforesaid. The writ petition is allowed to the extent indicated above with no order as to cost.