
(1991) 10 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 58 of 1987 (R)

Sekh Hamid and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 71(A)

Citation : (1994) 1 PLJR 30

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : P.C. Roy, for the Appellant; Sunil Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ application is directed against the order dated 1.10.81 passed by the Respondent No. 4 as contained in Annexure-9; the order dated 7.10.85 passed by the Respondent No. 3 as contained in Annexure-10 as also the order dated 26.8.86 passed by the Respondent No. 2 and as contained in Annexure 11 to the writ application.

2. The fact of the matter lies in a very marrow compass.

3. The father of Respondent No. 5 Jaleshwar Lohar executed various deeds of sale in favour of the Petitioners which are contained in Annexures-1 to 7 to the writ application. In the said deeds of sale Jaleshwar Lohar described himself as Lohar by caste.

4. Admittedly Jaleshwar Lohar is alive. However, he did not file an application for restoration before the Respondent No. 4 u/s 71(A) of the C.N.T. Act. His son Talkeshwar Lohar (Respondent No. 5) filed such an application contending inter alia therein that his father is Lohar by caste and thus a member of the Scheduled Tribe.

5. Before Respondent No. 4, Petitioner filed the show cause contending inter alia

therein that father and uncle of Respondent No. 5 executed various deeds of sale wherein they described themselves as Lohar by caste.

6. In the aforementioned deeds of sale according to the Petitioners the father and uncle of the Respondent No. 5 did not claim them selves to be members of the Scheduled Tribe.

7. Before the Respondent No. 4 the Petitioners examined four witnesses whereas Respondent No. 5 examined three witnesses including himself.

8. From a perusal of the impugned order, particularly the orders passed by the Respondent Nos. 4 and 3 which are contained in Annexures-9 and 10 respectively it appears that the statements of the witnesses examined on behalf of the Petitioner were discarded only on the ground that they are Muslims.

9. From a perusal of the impugned order as contained in Annexure-9 to the writ application, it further appears that Respondent Nos. 2 to 4 relied upon a certificate granted by the Block Development Officer wherein it was alleged that Respondent No. 5 was a member of the Scheduled Tribe; although Block Development Officer was himself not examined.

10. In *Chand Mahato and Ors. v. the State of Bihar* reported in 1986 BBCJ 246 it has been held by a Division Bench that the question as to whether a person is Lohar by caste and thus a member of the backward class or Lohar by caste so as to belonging to a member of Scheduled Tribe is essentially a question of fact. Such a question of fact was, therefore, required to be considered on the basis of materials brought on records of the case, by the parties. In this case the Respondent Nos. 4, 3 and 2 in their impugned orders as contained in Annexure 9, 10 and 11 did not rely upon the evidence adduced on behalf of the Petitioners simply on the ground that the witness examined on their behalf are Muslims by religion. Failure to consider a legal evidence on the ground that the witnesses belong to a particular religion is no consideration of relevant fact in the eye of law.

11. Similarly reliance placed by the Respondent Nos. 2,3 and 4 upon report of the Block Development Officer was wholly illegal its the Block Development Officer himself was not examined.

12. Reference in this connection may be made to *Lillo Sao v. State of Bihar and Ors.* reported in 1988 BLT 4 and in *Deo Narain Singh v. State of Bihar* reported in 1988 BLT 17.

13. it is now well known that a statutory tribunal misdirects himself in law if he fails to pose unto himself the correct question and does not make an attempt to acquaint himself with the relevant facts or based his decisions upon irrelevant matters or irrelevant consideration. An Authority refusing to consider the relevant materials and basing his decision on irrelevant materials commits an error of law apparent on the face of the record, which vitiates the order.

14. In this view of the matter, the impugned order as contained in Annexures-9 to 11 cannot be sustained.

15. This application is, therefore, allowed, the impugned order as contained in Annexure 9 to 11 are set aside and the Respondent No. 4 is hereby directed to consider the matter afresh after giving an opportunity to the parties to adduce further evidence including examination of Block Development Officer concerned to prove the certificate granted by him.

16. Before parting with the case it may be observed that the Respondent No. 4 shall issue a notice upon Respondent No. 5 so that he may adduce further evidence before him in the aforementioned proceeding in the light of the observation made hereinbefore.

17. However, in the facts and circumstances of the case, there will be no order as to costs.