

(2023) 02 OHC CK 0027
In the Orissa High Court
Case No : Writ Petition (C) No.19763 Of 2017

Sridhar Ku. Dalai

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Constitution of India, 1950 — Article 32, 142
Orissa Caste Certificate (for Scheduled Caste and Scheduled Tribes) Rules, 1980 —
Rule 6, 6(5), 8, 8(3), 8(5), 9

Citation : (2023) 02 OHC CK 0027

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Budhadev Routray, Y.S.P. Babu, S. K. Dalai

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

W.P.(C) No.19763 of 2017 and I.A. no.569 of 2023

1. Mr. Routray, learned senior advocate appears on behalf of petitioner. He begins with drawing attention to order dated 12th January, 2023 to point out record therein, inter alia, of his submission that his client was given appointment in Un-Reserved (UR) category. There is no dispute in regard thereto is his further submission. He also points out from said order that there has been dismissal of his client from service, in spite of interim order obtained in the writ petition. His client has filed application for amendment of the writ petition, to include in the challenge, the dismissal order.

2. He draws attention to Orissa Caste Certificate (for Scheduled Caste and Scheduled Tribes) Rules, 1980. He relies on rules 6, 8 and 9. He points out from sub-rule (5) in rule 6 that the Tahsildar is a competent authority for purpose of issuance of caste certificate. His client's caste certificate was issued by the Tahsildar. Next he draws attention to sub rules (3) and (5) in rule 8, regarding

provision for termination of service on basis of false claim regarding caste certificate and liability of the authority to have issued such a certificate.

3. Regarding rule 9 he submits, any person aggrieved by an order passed by competent authority sub-ordinate to that of District Magistrate/Collector may appeal to the latter and to concerned Revenue Divisional Commissioner. Cancellation of his client's caste certificate by the State Level Scrutiny Committee on declaration that his client's caste certificate is fake was in proceeding initiated on complaint made by opposite party no.11. Against issuance of the caste certificate, said opposite party had preferred appeal, registered and numbered as Caste Appeal no.1 of 2013. Annexure-9 in the petition is copy of petition filed by said opposite party/complainant, for withdrawing the appeal. He lays emphasis on paragraph 4 of the petition, extracted and reproduced below.

"4. That now the present appellant has confessed his guilty and intends to keep peace and tranquility in the vicinity for which wants not to proceed/continue the aforesaid case which has been designed at an evil intention and want to withdraw his power from Caste Appeal Case No.3 of 2013."

He submits, procedure provided by the rules, therefore, was resorted to and stands exhausted on the appeal having had not been prosecuted.

4. Mr. Routray then relies on judgment of the Supreme Court in Dayaram v. Sudhir Batham, reported in (2012) 1 SCC 333. He draws attention to paragraph 5 and 14 (Manupatra print). He submits, in paragraph 5 three question were framed for adjudication. Question no.1 is relevant for adjudication of the writ petition. Question no.1 is reproduced below.

"5.(i) Whether directions 1 to 15 in Madhuri Patil are impermissible, being legislative in nature? xxx xxx xxx "

Paragraph 14 (Manupatra print) is also reproduced below:

"14. Therefore we are of the view that directions 1 to 15 issued in exercise of power under Articles 142 and 32 of the Constitution, are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine scheduled caste and scheduled tribe candidates secured the benefits of reservation and the bogus candidates were kept out. By issuing such directions, this Court was not taking over the functions of the legislature but merely filling up the vacuum till legislature chose to make an appropriate law."

(emphasis supplied)

He submits, above referred earlier judgment of the Supreme Court in Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development, reported in AIR 1995 SC 94 was delivered in exercise of power under article 142 in the Constitution of India as clarified by Dayaram (supra). Hence, it is applicable to those States, wherein there has not been legislation on the issue. In Odisha, the 1980 rules prevail. Sub-ordinate legislation of rules also is legislation. In the circumstances,

the State Level Scrutiny Committee did not have jurisdiction to make enquiry nor to adjudicate on genuineness of his client's caste certificate.

5. Mr. Dalai, learned advocate appears on behalf of opposite party no.11. On query from Court he confirms his client has not prosecuted the caste appeal filed by him.

6. Mr. Babu, learned advocate, Additional Government Advocate appears on behalf of State and submits, the Committee acted in accordance with directions in Kumari Madhuri Patil (supra). There was information had, requiring enquiry to be made and thereupon the finding that petitioner's caste certificate is fake, should be cancelled and was so directed.

7. Recently this Bench had dealt with this question by judgment dated 4th January, 2023 in WP(C) no.15048 of 2022 (Kunalata Nayak v. State of Odisha and others). There is no room for doubt, pursuant to clarification by the Supreme Court in Dayaram (supra) that Kumari Madhuri Patil (supra) was judgment delivered in exercise of power under article 142 in the Constitution. It was for purpose of filling the vacuum in absence of legislation in those States, where the directions were made to operate. Here, in Odisha, the rules prevail, as was found by this Bench in Kunalata Nayak (supra).

8. In facts and circumstances aforesaid, the State Level Scrutiny Committee did not have jurisdiction to enter into the question of genuineness of petitioner's caste certificate. As such, impugned order is set aside and quashed. The amendment application is allowed and the dismissal order dated 1st September, 2017 is also set aside and quashed.

9. The writ petition and the application are allowed and disposed.

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