
(2015) 12 CHH CK 0007

In the Chhattisgarh High Court

Case No : Writ Petition (S) Nos. 5491 and 5938 of 2011

Virodhan Ram and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 165(6)

Citation : (2016) LabIC 235

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Ashish Surana, Advocate, for the Appellant; Dheeraj Kumar Wankhede, G.A. and Ajit Singh, P.L., for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.—Principal question that falls for consideration is whether the respondent SECL is having the jurisdiction to enquire into the caste of the petitioners by issuance of charge-sheet by instituting departmental enquiry.

2. The lands of Virodhan Ram, petitioner in W.P. (S) No. 5491/2011, and Jeetu Ram, petitioner in W.P. (S) No. 5938/2011, were subjected to acquisition by the competent authority under the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, and against the said acquisition, compensation was paid and in accordance with the rehabilitation policy, the petitioners were also granted appointment in the Category of General Mazdoor Category-1 by orders dated 28-5-1997 and 6-5-1997 and since then the petitioners were allowed to work in South Eastern Coalfields Limited (SECL). After 14 years of their service in the SECL, on 25-8-2011, the respondent SECL issued charge-sheet to the petitioners holding that they are not tribes and they have purchased the subject land from a tribe without permission of the Collector under Section 165(6) of the Chhattisgarh Land Revenue Code, 1959 in order to obtain service from the SECL and thereby, they have committed misconduct punishable under Standing Order 26.1 and 26.9 of the SECL and thereafter, by the impugned orders, the

petitioners were also placed under suspension by the SECL.

3. The petitioners have filed the writ petitions challenging the very initiation and institution of departmental enquiry on the ground that the issue with regard to caste status can be decided only by the High Power Caste Scrutiny Committee constituted under the direction of the Supreme Court in the matter of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and, therefore, the respondent SECL had no authority to examine as to whether under departmental enquiry or otherwise, the petitioners belong to a particular tribe as claimed by them or to other caste.

4. Return has been filed by the respondent SECL that the petitioners are not belonging to Scheduled Tribe and they have purchased the land of non-aboriginal tribes without the permission of the Collector under Section 165(6) of the Chhattisgarh Land Revenue Code, 1959. It is further pleaded that the respondents are only making enquiry into the charges and it is open to the petitioners to satisfy the respondent authority that they belong to Gond tribe as claimed by them and as such, the departmental enquiry initiated and instituted cannot be said to be without jurisdiction and, therefore, the writ petitions deserve to be dismissed.

5. Mr. Ashish Surana, learned counsel appearing for the petitioners, would submit that the departmental enquiry initiated by the respondent SECL holding that the petitioners do not belong to tribe and they are non-tribes is per se illegal and it is beyond the jurisdiction of the SECL to make enquiry regarding their caste, it is only the High Power Caste Scrutiny Committee, which has been constituted pursuant to the direction of the Supreme Court, competent to enquire into the caste of the petitioners. Therefore, the departmental enquiry followed by suspension of the petitioners deserve to be quashed.

6. Mr. Vinod Deshmukh, learned counsel appearing for the respondent SECL, would submit that the scope of judicial review by this Court while examining the correctness of charge-sheet at the stage of issuance of charge-sheet is very limited and the writ of prohibition can be issued only when there is patent lack of jurisdiction. He would rely upon the decisions of the Supreme Court in the matters of Union of India (UOI) and Others Vs. Upendra Singh, , Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, and State of Orissa and Another Vs. Sangram Keshari Misra and Another, .

7. I have heard learned counsel for the parties and gone through the records with utmost circumspection.

8. Since common question of law and fact is involved in both the writ petitions, they are being disposed of by this common order.

9. It is well settled law that ordinarily, no writ lies against charge-sheet of show cause notice, but writ petition can be maintained in very rare and exceptional cases and charge-sheet can be quashed if it is found to be wholly without

jurisdiction or for some other reason it is wholly illegal. {See Upendra Singh's case (supra) and Sangram Keshari's case (supra).} Mr. Vinod Deshmukh, learned counsel for the respondent SECL, is right in his submission that the scope of judicial review in a writ petition challenging initiation of charge-sheet and institution of departmental enquiry is extremely limited and does not extend beyond examining the question of jurisdiction with the authority issuing charge-sheet to SECL employee and in case of patent lack of jurisdiction, writ of prohibition can be issued.

10. The Supreme Court in the matter of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, formulated scheme for verification of tribal status and held that any application for verification of her tribal status as a scheduled tribe should be carried out by such committee and issued direction for issuance of social caste certificate, their scrutiny. The directions issued are as under:--

"13. ... (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.

* * *

(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 Department concerned, (ii) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, 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 social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste, 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 pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deities, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. by the castes or tribes or tribal communities concerned, 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 a 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 educational institution concerned in which the candidate is studying or employed. ...

(9) The inquiry 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."

11. Quite recently following the principles laid down in *Madhuri Patil (supra)*, in the matter of *Collector, Bilaspur Vs. Ajit P.K. Jogi and Others*, , the Supreme Court has held that the verification of validity of the caste certificate and the determination of the caste status should therefore be done only by scrutiny committee constituted as per direction in *Madhuri Patil (supra)* or in terms of any statute made by appropriate Government in that behalf.

12. In the matter of *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*, , Their Lordships of the Supreme Court have held that issue of caste status cannot be gone into in a departmental enquiry and this matter can be examined only by the Caste Scrutiny Committee constituted under the direction of the Supreme Court in the case of *Kumari Madhuri Patil (supra)*.

13. In view of the crystallized legal position, as on date, the respondent SECL cannot be allowed to hold departmental enquiry on the allegation that the petitioners do not belong to ST category as claimed by them. Proper course of action would have been to refer the case of the petitioners to the Caste Scrutiny Committee and thereafter, to proceed in accordance with law after the result of the report submitted by the Caste Scrutiny Committee as such, charge-sheet issued by the respondent SECL is without jurisdiction and without authority of law. Such a jurisdiction exclusively vests with the Caste Scrutiny Committee as held by Their Lordships of the Supreme Court in *Kumari Madhuri Patil (supra)* and *Ajit P.K. Jogi's case (supra)*.

14. In the result, both the writ petitions are allowed. Departmental enquiry initiated against the petitioners by order Annexure P-1 is hereby quashed. The petitioners are entitled for reinstatement along with consequential benefits. The respondents are directed to reinstate the petitioners along with consequential back-wages.

15. It is open to the respondent SECL to proceed in accordance with law including to refer the matter of caste of the two petitioners to the Caste Scrutiny Committee and the respondent SECL will be at liberty to take appropriate action against the petitioners depending upon the result of the said Committee, if any.

16. No order as to costs.