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HIGH COURT OF MADHYA PRADESH JABALPUR

SINGLE BENCH:

Hon'ble Shri Justice A.K. Shrivastava

W.P. No. 9798/2010

...**PETITIONER:** Smt. Parvati Kunwar w/o Shri Vimal Kunwar, Aged 40 years, R/o 12, C Sector, SONAGIRI, B.H.E.L., Bhopal (M.P.)

Versus

...**RESPONDENTS:** 1. State of Madhya Pradesh
Through: Secretary, Department of Home, Vallabh Bhawan, Mantralaya, Bhopal (M.P.)

2. Inspector General of Police, Police Headquarters, M.P., Bhopal (M.P.)

3. Superintendent of Police, Police Headquarters, M.P., Bhopal

4. M.P. State Level Committee for Verification of Caste Certificate/Director, Scheduled Caste Development, Madhya Pradesh, Rajeev Gandhi Bhawan, 35, Shyamala Hills, Bhopal (M.P.)

Petitioner : Smt. Shobha Menon, Senior Advocate with Shri C.A. Thomas, Advocate

Respondents-State : Shri Sudesh Verma, Government Advocate

ORDER
(19/01/2011)

By this petition under Article 226 of the Constitution of India the petitioner is seeking following reliefs:

“(i) to requisition the original record on the basis whereof, respondent no.4, have drawn a conclusion that the Caste Certificate submitted by petitioner is fraudulent;

(ii) to annul/set aside the adverse findings made by respondent no.4 and hold it as malafide, illegal and

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unjustified, contrary to the procedure adumbrated by the Apex Court in the case of Madhuri Patil, reported in AIR 1995 SC 94, and pass such other appropriate order/direction to the respondents, under the facts and circumstances of the case;

II-A. Therefore, under the facts and circumstances of the case, Annexure P-16, dated 21.6.2010 as also further action intended to be taken as detailed in the letter dated 16.7.2010 deserves and liable to be set aside by this Hon'ble Court.

III. To restrain respondents 1 to 3 by issuance of appropriate writ/order not to act upon the findings/report made by respondent no.4;

IV. to grant any other relief/reliefs which this Hon'ble Court deems fit and proper, under the facts and circumstances of the case, in favour of petitioner and against the respondents;

IV. to award compensation and cost for the mental agony suffered by petitioner and her family members."

2. The core question which has been put forth by learned senior counsel is that without hearing the petitioner it was held by respondent No.4 on 21.6.2010 (Annexure P-16) that she does not belong to scheduled tribe community. Learned counsel submits that date of hearing i.e. 21.6.2010 although was communicated on 16.6.2010, but, the petitioner submitted an application on 17.6.2010 (Annexure P-14) praying to adjourn the matter for the simple reason that she had to go to Delhi and reservation in that regard had already been made on 7.6.2010. She further submits that no order was passed by the respondent No.4 on the adjournment application which was sent on 17.6.2010 (Annexure P-14), however, an *ex-parte* order Annexure P-16 dated 21.6.2010 has been passed. Learned

senior counsel has invited my attention to the adjournment application dated 17.6.2010 (Annexure P-14).

3. However, Shri Sudesh Verma, learned Government Advocate submits that in view of the decision of the Supreme Court, ***Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94***, the candidature of petitioner was not found to be fit and as a result of which she was not held to be a member of the scheduled tribe community and therefore, this petition be dismissed.

4. On bare perusal of para-12 of the decision of ***Ku. Madhuri Patil (supra)*** this Court finds that hearing is necessary and according to me, hearing would also include personal hearing of the petitioner. Since on account of unavoidable circumstances, as put forth by the learned senior counsel, which cannot be doubted as the petitioner was unable to appear before respondent No.4 and therefore, according to me the hearing which was made in absence of the petitioner is in violation of principles of natural justice. No prudent man would digest this fact that in order to avoid the date of hearing the petitioner managed to go to Delhi, for the simple reason that the reservation was already made much prior to the intimation of the date of hearing as the railway reservation was made on 7.6.2010 and copy of which was also annexed with the adjournment application dated 17.6.2010 (Annexure P-14).

Hence, according to me, the impugned order has been passed without hearing the petitioner, therefore, the same is set aside.

5. Resultantly, this petition is allowed and the impugned order dated 21.6.2010 (Annexure P-16) is hereby set aside and respondent No.4 is hereby directed to dispose of the proceedings after hearing the petitioner on the touchstone and anvil of the dictum laid down by the Supreme Court in ***Ku. Madhuri Patil (supra)***. The petitioner is hereby directed to furnish certified copy of this order to respondent No.4 who shall, thereafter, intimate the date of hearing to the petitioner. No order as to costs.

(A.K. SHRIVASTAVA)
JUDGE

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