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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 7013 of 2011

Order reserved on : 18/06/2024

Order delivered on : 02/07/2024

- Divya Gautam Aged about 25 years, D/o- Late Shri S.P. Gautam, R/o- Aganpur, Chitrakot Road, Infront of Pollution Control Board, Post Office Dharampura, Jagdalpur, District Bastar (C.G.)

---- **Petitioner**

Versus

1. State of Chhattisgarh Through Secretary, Tribal Welfare Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. High Power Caste Scrutiny Committee, Through its President Cum Secretary, Scheduled Caste & Scheduled Tribe Development Department, Tribal Research & Training Institute, Pt. Deendayal Upadhayay Nagar, Sector-4, Raipur (C.G.)
3. Commissioner Cum Member Secretary High Power Caste Scrutiny Committee Scheduled Caste & Scheduled Tribe Development Department, Tribal Research & Training Institute, Pt. Deendayal Upadhayay Nagar, Sector-4, Raipur (C.G.)
4. Secretary, Department of Forest D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
5. Principal Chief Conservator of Forest Department of Forest, Aranya Bhawan, Medical College Road Raipur (C.G.)
6. Divisional Forest Officer South Forest Division, Kondagoan, District Bastar (C.G.)

---- **Respondents**

For Petitioner : Mr. Kishore Shrivastava, Senior Advocate
along with Mr. Kunal Thakre and Mr. Anumeh
Shrivastava, Advocates

For Respondents/State : Mr. Satish Gupta, Government Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

C.A.V. Order

1. The petitioner has filed this petition seeking the following relief(s):-

“**10.1** To kindly quash the impugned order issued vide order issued vide No. Chas/Ja.Sa/ S.C./09/2011, Dated 20/09/2011 by the respondent High Power



Caste Scrutiny Committee, State of Chhattisgarh.
Copy of which is annexed as ANNEXURE P/1.

10.2 To kindly direct respondent High Power Caste Scrutiny Committee to reconsider the case of the petitioner and verify the petitioner's caste certificate, without insisting on the records prior to the year 1950.

10.3 To kindly direct respondents No. 4 to 6 not to take any action against the petitioner till final decision of reconsideration of the candidature by the High Power Caste Scrutiny Committee.

10.4 To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner.”

2. The facts of the case, in a nutshell, are as follows:-



A) The father of the petitioner, who belongs to the Scheduled Caste, joined his services in the post of Lower Division Clerk (LDC) in the Department of Panchayat and Social Welfare in the year 1972 at Jagdalpur, CG. The date of the birth of the petitioner is 13.12.1983. She was born and brought up in Jagdalpur. She passed Class-8th in the year 1997, Class-10th in the year 1999 and Class-12th in the year 2001 from Nirmal Higher Secondary School, Jagdalpur (Bastar), CG. She completed her Graduation in the year 2004 and Post Graduation in the year 2007 from Pt. Ravishankar Shukla University, Raipur, CG.

B) The petitioner had applied for issuance of social status certificate and the same was issued by the competent authority i.e. Sub-Divisional Officer (Revenue), Jagdalpur, C.G. 15.07.2004 showing her caste 'Chamar' which is notified Scheduled Caste within the State of Chhattisgarh as per the Presidential Order, 1950.

C) An advertisement was issued for the post of Assistant Conservator of Forest on 29.11.2007. The petitioner



applied as a member of Scheduled Caste, she appeared in the examination and she was duly selected as she secured 11th rank in the merit list. The petitioner was informed with regard to her selection by the Chhattisgarh Public Service Commission vide letter dated 18.05.2009. An appointment order was issued by the Forest Department, State of Chhattisgarh on 04.07.2009 and thereafter the petitioner joined the services.

- D)** The petitioner belongs to the Scheduled Caste category, therefore, the petitioner was asked by the department to get the certificate verified within a period of 03 months.
- E)** The petitioner moved an application before respondent No. 2 for verification of her social status certificate which was received on 24.06.2009.
- F)** On 21.07.2009, the Committee directed the petitioner to produce the necessary record prior to the year 1950.
- G)** On 09.12.2009, the Committee observed in its order sheet that pursuant to the order dated 21.07.2009, the petitioner could not produce any document, whereas the burden lies on the petitioner to prove her social status and again time was granted.
- H)** On 11.12.2009 and 16.08.2010 again time was granted to the petitioner to produce the record prior to the year 1950. On 18.03.2011, the Committee directed the Vigilance Cell to submit its report pursuant to the judgment passed by the Hon'ble Supreme Court in the matter of ***Kumari Madhuri Patil and Another Vs. Addl. Commissioner, Tribal Development and Others, (1994) 6 SCC 241***. The Vigilance Cell submitted its report on 02.08.2011 and it was considered by the Committee on 03.08.2011. On that date, notice was issued to the petitioner to afford her the





opportunity of hearing. On 20.09.2011, the order impugned was passed by the Committee and the social status certificate issued in favour of the petitioner was cancelled.

3. Mr. Kishore Shrivastava, learned Senior Counsel appearing for the petitioner argued that:-

I) The petitioner belongs to Scheduled Caste and her caste is “Chamar” which is duly recognized by the State of Chhattisgarh. The caste certificate of the petitioner was not verified by the Committee within a reasonable time, therefore, WP(C) No. 477 of 2010 was filed, which was disposed of with the direction to verify the caste certificate within a period of four weeks vide order dated 27.07.2010. A contempt petition was also filed when the order passed in WP(C) No. 477 of 2010 was not complied with and the same was disposed of vide order dated 10.10.2011 on the ground that the final order had already been passed on 20.09.2011.

II) The petitioner submitted her educational qualification documents, various mark sheets, caste certificate issued by the Tehsildar, Jagdalpur and also by the Sub-Divisional Officer (Revenue), Jagdalpur, but all the documents are post Presidential Notification dated 10.08.1950. The father of the petitioner was a resident of the geographical limits of the State of Chhattisgarh prior to the bifurcation of the State of Madhya





Pradesh and the reorganization of the State of Chhattisgarh.

III) The Committee adopted the procedure for verification of the social status certificate of the petitioner contrary to the judgment passed by the Hon'ble Supreme Court in the matter of *Kumari Madhuri Patil (supra)*. He referred to paras 5, 6 and 7 of the judgment and submitted that the Vigilance Cell has to submit its report after investigating various factors like school records, birth registration, the caste of parents, and guardians, anthropological and ethnological traits of a particular tribe or caste, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies and the Committee should also examine such other persons who have knowledge of social status of the candidates.

IV) If the Committee after receipt of a report from the Vigilance Officer finds the social status to be "not genuine" or 'doubtful' or 'spurious' or 'falsely or wrongly claimed', notice has to be issued for supplying a copy of the report. If the report is in favour of the candidate and found to be genuine and true, no further action need be taken. It is argued that in the present case, the Committee directed the petitioner to produce the record prior to the year 1950 and such direction was contrary to the ratio laid down by the Hon'ble Supreme Court in the matter of *Kumari Madhuri Patil (supra)*. The report from Vigilance Cell was called thereafter.





V) Though the notice was issued to the petitioner on 03.08.2011 after receipt of the report of Vigilance Cell, no opportunity of hearing was afforded to the petitioner and on 20.09.2011, the order impugned was passed.

VI) The father of the petitioner has been a government servant since 1972; therefore, he attained the status of a permanent resident of the State of Chhattisgarh. He contended that since the petitioner was born and brought up within the territory of the State of Chhattisgarh, she was entitled to get the social status certificate. He submits that though the father of the petitioner migrated from Village Shivapar, Tehsil and District Jaunpur, Uttar Pradesh, his caste is mentioned as “Chamar”, a member of Scheduled Caste in the school admission register as well as in the revenue records of the State of Uttar Pradesh.

VII) It is further contended that it is not a case of the Committee that the petitioner is not a member of the Scheduled Caste category. Learned Senior Counsel stated that the father of the petitioner passed the intermediate examination in the year 1975 from the Board of Secondary Education, Bhopal and B.A. Final Year Examination in the year 1983 from Pt. Ravishankar University, Raipur.

VIII) He further referred to the circular issued by the State of Chhattisgarh dated 17.06.2003 which defines the domicile of Chhattisgarh, Circular dated 18.07.2004 and 17.06.2007 which





says that persons who are born in the State of Chhattisgarh although their father/guardian may have their origin in some other State, yet such persons are deemed to be permanent residents of the State of Chhattisgarh. He also contended that the Committee failed to consider various orders issued by the High Court of Chhattisgarh; and Circulars issued by the State from time to time and thus cancelled the social status certificate of the petitioner.

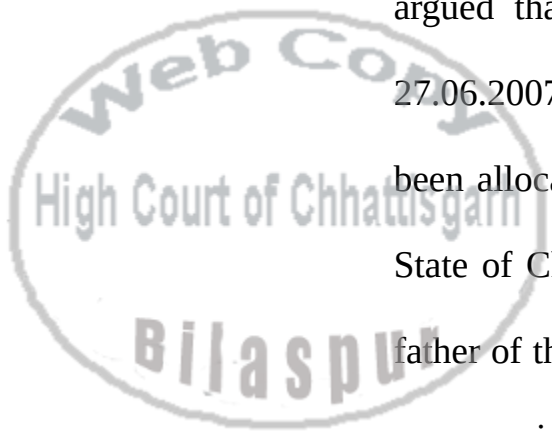
IX) Mr. Kishore Shrivastava, learned Senior Counsel has placed reliance on the judgments passed by the Hon'ble Supreme Court in the matter of *Kumari Madhuri Patil* (supra); orders passed by the High Court of Chhattisgarh in *Writ Petition (C) No. 5070 of 2007, Narendra Dehariya vs. State of Chhattisgarh & Others*; *Writ Petition (C) No. 5314 of 2007*, parties being *Ku. Bharti Banpuriya vs. State of Chhattisgarh & Others*; orders passed by the High Court of Madhya Pradesh in the matter of *Grace Marry Minj vs. State of M.P. & Others* in *Writ Petition No. 2215 of 2008*; the matter of *Ajeeta Khedle (Smt.) vs. State of M.P. and another, 2010 (1) M.P.H.T. 177 (DB)* and the matter of *Vandana Dhakad vs. State of M.P. and another, 2014(3) M.P.L.J. 79*.

4. On the other hand, Mr. Satish Gupta, the learned Government Advocate appearing for the State opposes the submissions made by Mr. Kishore Shrivastava, Senior Advocate. Mr. Satish Gupta argued that though the





father of the petitioner belongs to the “Chamar” caste which is a notified Schedule Caste within the State of Uttar Pradesh as well as the State of Chhattisgarh, he is a permanent resident of the State of Uttar Pradesh, therefore, his daughter would not be entitled to get the benefit of reservation in the State of Chhattisgarh. He further argued that in the year 1972, the father of the petitioner came to Jagdalpur, CG. and he was appointed as LDC in the Department of Panchayat and Social Welfare, Jagdalpur, C.G., but his migration from the State of Uttar Pradesh to the State of Chhattisgarh cannot be said involuntary. He also argued that the circulars issued by the State of Chhattisgarh dated 27.06.2007 and 18.07.2004 deal with the status of employees who have been allocated to the State of Chhattisgarh or who are surviving in the State of Chhattisgarh on account to transfer or allocation, whereas the father of the petitioner himself came to the State of Chhattisgarh and he was appointed, therefore, the migration of the petitioner cannot be said compulsive or involuntary. He further contended that the petitioner in the form submitted for verification of her social status certificate has concealed certain facts. In Clause 2.6 the petitioner has shown her father as a permanent resident of Jagdalpur, whereas in the year 1972, he came from Uttar Pradesh. In Clause 2.7.1 it is declared by the petitioner that her father has stayed in the State of Chhattisgarh since birth, whereas her father was born in the District Jaunpur, Uttar Pradesh. He also contended that in Clause 3.2.3, it is declared by the petitioner that her father completed his primary education at Bhagat Singh Primary



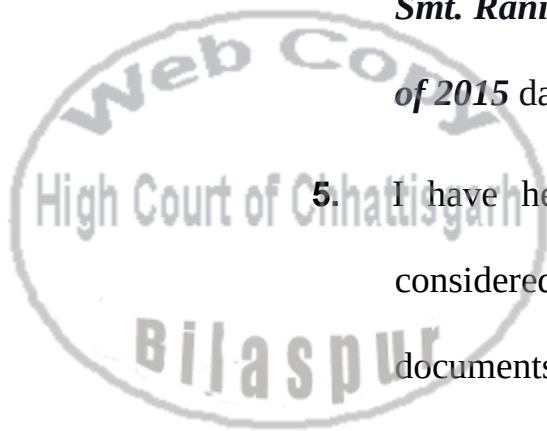


School, Jagdalpur, whereas her father had completed his primary education in the State of Uttar Pradesh. In Clause 4.1, the petitioner has shown her father as landless, but in the report of Vigilance Cell, it has come that in Village Shivapar, District Jaunpur, agricultural land is recorded in the name of her father. He further stated that sufficient opportunity was afforded to the petitioner and after a due scrutiny of the entire material; the decision was taken by the Committee. Mr. Satish Gupta, the learned Government Advocate, placed reliance on the judgment passed by the coordinate bench of this Court in the matter of ***Smt. Ranikori Vs. State of Chhattisgarh in Writ Petition (227) No. 307 of 2015*** dated 21.09.2017.

5. I have heard learned counsel appearing for the parties at length, considered their rival submissions made hereinabove and perused the documents placed on record with utmost circumspection.

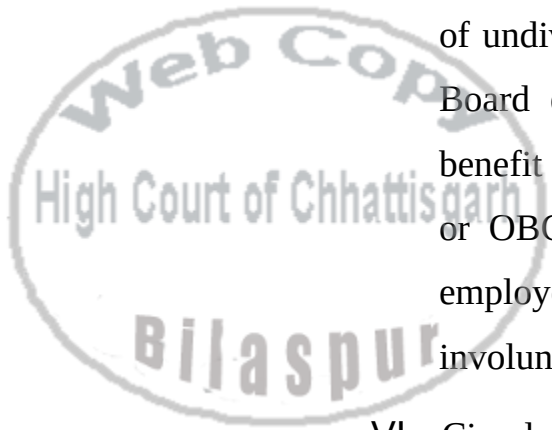
6. Along with the application for verification of the social status certificate, the petitioner had annexed various documents such as:-

- I. Domicile Certificate issued by the Tehsildar on 28.09.2002 which shows that the petitioner was born in the State of Chhattisgarh, her father or parents have been staying in the State of Chhattisgarh since last 15 years, her father is a government servant, she has studied in the State of Chhattisgarh for more than 03 years and she has passed Class-VIIIth and High Secondary from the State of Chhattisgarh.
- II. Social status certificate issued by the Sub-Divisional Officer (Revenue), Jagdalpur dated 15.07.2004 which reflects that the petitioner belongs to the "Chamar" caste which is a notified Scheduled Caste in the State of Chhattisgarh.





- III. Mark-sheet of Class-VIIIth passed in the year 1997 from Nirmal Higher Secondary School, Jagdalpur (Bastar); Class-10th passed in the year 1999 and Class XIIth passed in the year 2001 from Nirmal High Secondary School, Jagdalpur (Bastar), Chhattisgarh; B.SC. Part III/Final passed in the year 2004 and M.SC. passed in the year 2007, both from Pt. Ravishankar Shukla University, Raipur, C.G.
- IV. Certificate of Intermediate Examination of the Year 1975 issued to the father of the petitioner and passed from the Board of Secondary Education, Madhya Pradesh, Bhopal; Mark-sheet of B.A. Final of her father of the Year 1983 passed from Pt. Ravishankar University, Raipur.
- V. The Circular issued on 18.07.2004 says that the government servants of undivided Madhya Pradesh and employees of other Commission, Board etc. and family members of such servants would get the benefit of reservations if their caste is included in the list of SC, ST or OBC issued for the State of Chhattisgarh. The cases of such employees/government servants would fall within the category of involuntary migration.
- VI. Circular dated 27.06.2007 defines bonafide residents of Chhattisgarh and includes:-
- (i) Persons belonging to the central services posted at Chhattisgarh, their spouses or children;
 - (ii) All the employees of the State of Chhattisgarh, their spouses or children;
 - (iii) Persons appointed on Constitutional or Statutory posts by the President of India, their spouses or children; and
 - (iv) Corporations, Agencies, Commissions, Boards, Officials/ Officers/employees, their spouses or children.
- VII. Circular issued on 17.06.2003 defines permanent residents. According to the Circular, such a person would be treated as a permanent resident of Chhattisgarh, if he fulfills any of the 04

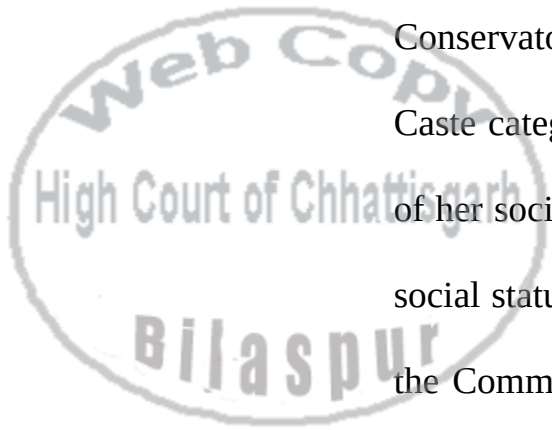




conditions:-

1. If he was born in the State of Chhattisgarh.
2. He and his or her parents are staying in the State of Chhattisgarh at least for 15 years.
3. His or her parents are government servants of the State or servants of the Central Government in the State of Chhattisgarh.
4. He himself or his parents are pursuing any business, or immovable property in the territory of the State of Chhattisgarh.

7. Admittedly, the petitioner was appointed to the post of Assistant Conservator of Forest on 04.07.2009 as a member of the Scheduled Caste category and she was directed by the Department for verification of her social status certificate. She moved an application along with her social status certificate before respondent No. 2, which was received by the Committee on 24.06.2009. The Committee after taking cognizance directed the petitioner to produce records prior to the year 1950, but the petitioner could not produce such documents and thereafter the report of Vigilance Cell was called which was submitted on 02.08.2011. The report of the Vigilance Cell would show that the Vigilance Inspector recorded statements of Mithlesh Kumar Yadav, resident of Village Shivapar, District Jaunpur; Shyamlal Gautam, resident of Village Shivapar, District Jaunpur and Baliram, resident of Village Shivapar, District Jaunpur. The Vigilance Inspector recorded the finding that various information given in the form for verification is incorrect as the petitioner is a permanent resident of Village Shivapar, District Jaunpur,

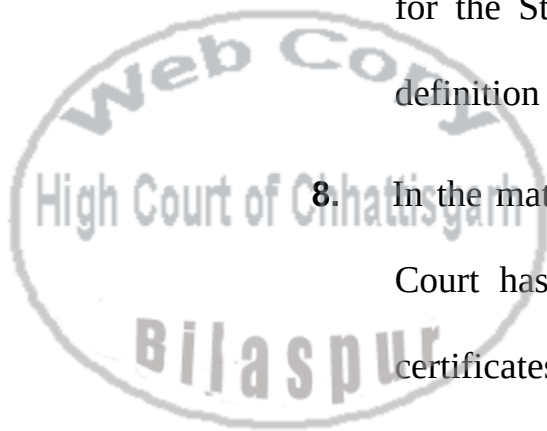




Uttar Pradesh. The father of the petitioner is also a permanent resident of the same place. The father of the petitioner has pursued his primary education at Government Primary School Shivapar, District Jaunpur. The uncle and aunt of the petitioner are staying in the State of Uttar Pradesh, whereas no information has been given in this regard in the verification form. The petitioner has shown her father as a landless person, whereas the name of her grandfather is recorded in the revenue records at Village Shivapar, District Jaunpur. The Vigilance Inspector further recorded a finding that the father of the petitioner himself opted for the State of Chhattisgarh; therefore, it would not fall within the definition of involuntary migration.

8. In the matter of **Kumari Madhuri Patil (supra)**, the Hon'ble Supreme Court has laid down the procedure for verification of social status certificates. Para – 13, 13.1 to 7 which are relevant for the decision of this case are reproduced herein below:-

“13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on the that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for





the issuance of social status certificates, their scrutiny and their approval, which may be the following:

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 certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

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 over-all 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, deity, 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 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. 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-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.*

7. *In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.”*

The Hon'ble Supreme Court has laid down the procedure according to which the application for the grant of the social status certificate has to be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner describing particulars of castes and sub-castes, tribe, tribal community, parts or groups along with an affidavit. Application for verification should be made at least six





months in advance before seeking admission into an educational institution or an appointment to a post. The State government has to constitute/frame a Committee of three Officers, namely- (I) Additional or Joint Secretary; (II) The Director, Social Welfare/Tribal Welfare/Backward Class Welfare and (III) Officer who has intimate knowledge of the verification and issuance of the social status certificates concerning Scheduled Tribes and Scheduled Castes. The Directorate has to constitute a vigilance cell consisting of a Senior Deputy Superintendent of Police who will submit a report after examining various aspects like peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies and such officer shall also record the statements of such persons who have knowledge of the social status of the candidate. If the Director after receipt of the report finds the social status to be “not genuine”, he should issue a show-cause notice along with the report and if it is found genuine and true, no further action need be taken.

9. In the matter of *Narendra Dehariya (supra)* and *Ku. Bharti Banpuriya (supra)*, the Hon'ble Division Bench of this Court while dealing with the issue with regard to the social status of students who were denied the certificates whereas they were born and brought up in the State of Chhattisgarh considered the arguments advanced by the learned Advocate General appearing for the State that the State Government has issued the order dated 27.06.2007 wherein the definition of bonafide





residents of Chhattisgarh has been defined and explained, and observed thus:-

“Learned Advocate General appearing for the respondents / State informs that the judgment of the learned Single Judge was wrongly interpreted and in compliance of the judgment in Writ Petition No. 2510/2004 dated 04-02-2005, the Government by an order dated 02.02.2006 had kept its notification dated 08.07.2004 in abeyance. Thereafter the Government has issued another order dated 27-06-2007 wherein definition of bonafide residents of Chhattisgarh has been defined and explained which includes (i) persons belonging to the central services posted at Chhattisgarh, their spouses or children; (ii) all the employees of State of Chhattisgarh, their spouses or children; (iii) Persons appointed on Constitutional or Statutory posts by President of India, their spouses or children; (iv) Corporation, Agencies, Commissions, Board's, Officials/Officers/employees, their spouses or children. This Government order is to benefit the petitioners-students with respect to bonafide residents of Chhattisgarh.”

The above-cited judgment passed by the Hon'ble Division Bench of this Court makes it amply clear that all the employees of the State of Chhattisgarh, their spouses or children fall within the definition of bonafide residents of the State of Chhattisgarh and they would be entitled to get the benefit of social status if their caste is included in Presidential Order.

10. In the matter of ***Grace Marry Minj (supra)***, the High Court of Madhya Pradesh while dealing with a similar issue held that the parents of the petitioner migrated to the State of Madhya Pradesh at Bhopal prior to the birth of the petitioner in the year 1985, they are from Scheduled Tribes Community, her caste is declared as Schedule Caste in both the States and she had her entire education and career in the State of





Madhya Pradesh, therefore, she cannot be denied benefit of caste certificate. The relevant part of the said judgment is reproduced herein below:-

“That apart, in the case of **Kamal Kishore Barapatre (Supra)**, this Court had considered the question of migration of Medical Students from the State of Maharashtra to the State of Madhya Pradesh and the matter has been decided after taking note of the judgments rendered by this Court in W.P. No. 1160/2003- **Neetu Singh Vs. State of M.P.**, decided on 16.9.2003 and W.P. No. 5143/2005-**Dr. Yamini Khapre Vs. State of M.P. & Ors.**, wherein the matter has been dealt with in the following manner :

“16. However, in the present case, the facts are entirely different. Petitioner is born in the State of Madhya Pradesh. She had her entire education and career in the State of Madhya Pradesh. Her father migrated in Madhya Pradesh before her birth i.e. more than 20-25 years back. The caste “Halba” is declared as Scheduled Caste in both the States and the Tehsildar, Jabalpur had issued caste-certificate in her favour in the year 1999 Annexure-P/1. Thus, the petitioner in the present case is a bonafide resident of Madhya Pradesh and as has been held by this Court in the case of Neetu Singh (supra) she has acquired the status of permanent domicile in the State of Madhya Pradesh as she fulfills the following condition viz-

- (i) She is born in the State of Madhya Pradesh and had her entire education right from the beginning to MBBS in the State of Madhya Pradesh; and
- (ii) her parents are continuously residing in the State of Madhya Pradesh for more than fifteen years.

17. As the petitioner had complied with the conditions for acquiring the status of a permanent domicile and, the caste to which she belongs is declared as Scheduled Tribe in the State of Madhya Pradesh, there is no reason to deny her the benefits of caste certificate. ”

Keeping in view the aforesaid legal principles and the facts and circumstances of the present case, particularly the fact that the petitioner's parents are





permanently residing at Bhopal, even prior to the birth of the petitioner in the year 1985, when Jashpur was part of un-divided State of Madhya Pradesh and the fact that the respondents do not deny that status of the petitioner and the fact that her parents are from Schedule Tribe Community, the insistence upon producing a caste certificate from the State of Chhattisgarh and proposing to cancel the admission on such consideration is nothing but an arbitrary and illegal action.”

- 11.** In the matter of *Ajeeta Khedle (Smt.) (supra)*, the High Court of Madhya Pradesh held that the mere fact that the petitioners’ father was not a resident of Sehore in 1950 when the Presidential Order came into existence could not be a ground to hold that the petitioners are not residents of Sehore. The relevant paras – 10, 11, 13 and 14 are reproduced herein below:-

“10. In Beniprasad (supra), the respondents had contested the election from Gotegaon as Scheduled Caste. The election was challenged on the ground that his forefather belonged to district Shahdol and was Kumhar by caste and, therefore, he could not have contested election as Scheduled Caste. This Court, while dealing with the election petition, held as follows :-

“Since residence is only the criteria for deemed to be a Scheduled Caste of that area then in that respect, the respondent shall be deemed to be a Scheduled Caste of that area as he got his residence change to localities specified in that order.”

- 11.** The matter travelled to the Apex Court and Their Lordships expressed the view as follows :-

“2. It appears from the discussion in Para 19 of the impugned judgment that the question regarding the status of the respondent. In Shahdol District was considered on facts by the High Court and the High Court referred to the evidence which was recorded in this behalf earlier in point of time and after considering the evidence, the High Court reached the conclusion that the respondent had succeeded in proving that he was an ordinary resident of Shahdol





District and also satisfied the test for being recognised as a “Kumhar” in Shahdol District and was, therefore, eligible to contest the election on that basis. The High Court came to the conclusion that the earlier enquiry undertaken for enrollment of his name in the voters’ list for the constituency in question had become final and could not be questioned in the election petition and that when the dispute was raised earlier in point of time evidence was recorded and on the basis of that evidence a decision was taken that the respondent was a “Kumhar” in Shahdol District. The learned Counsel for the respondent also took us through the salient aspect of the oral evidence led in this behalf to satisfy us that the stand taken by the respondent was well founded. R.W. 1, A.D. Srivastava was examined as a witness in the High Court and he stated that he was an Assistant Registration Officer, Nagar Palika, Shahdol and that he had brought the record pertaining to objections filed against the respondent. He has further stated that after making the necessary enquiry he rejected the objection on the strength of the evidence of the witnesses who deposed before him and that the Panchnama was prepared by him. The learned Judge in the High Court, as stated earlier, had made a brief reference to the evidence in this behalf in Paras 19 and 20 of the impugned order and had come to the conclusion that the name of the respondent having been entered in the voters’ list pursuant to an enquiry on the premises that he was an ordinary resident of Shahdol District, that part of the proceedings had terminated and could not be reopened. We also found that in the earlier proceedings after an elaborate enquiry by R.W. 1 it had been found that his family had been ordinarily residing in Shahdol District till 1952 when he shifted to the neighbouring Narsinghpur area where the respondent was born and thereafter the respondent had shifted to Shahdol District in 1969 and his name had been entered in the voters’ list in 1985 and he had been residing there since then and had also contested elections earlier in point of time all of which went to show that he was an ordinary resident of that district. The fact that he was a “Kumhar” was not in question and as stated earlier that question was concluded in favour of the respondent. If he was a “Kumhar” in the Narsinghpur area the only question was whether





he could get the benefit of belonging to the “Kumhar” community in Shahdol area also. It was not contended that he did not specify the requirements of being recognised as a “Kumhar” in the Shahdol District but what was contended was that he should have been a “Kumhar” in Shahdol District in 1950 when the Presidential Notification was issued. That contention does not appear to be correct because in that case those who are born after the Presidential Notification would be rendered ineligible for being considered as belonging to the Scheduled Castes.” (Emphasis supplied)

13. In the case at hand, the father of the appellants shifted in the year 1961 to Sehore. The appellants were born and got educated at Sehore. Therefore, there can be no scintilla of doubt that they are residents of Sehore. Hence, they are to be treated as ordinarily residing in District Sehore. The Presidential Order in Entry 22 includes ‘dhobi’ as Scheduled Caste in the districts of Bhopal, Raisen and Sehore. That apart, it is interesting to note that the evidence that has been brought on record shows that the grandparents and great-grandparents of the appellants belonged to Sehore. Their father was born at Betul and later on came and stayed at Sehore. The said aspect has borne out on record and has gone uncontroverted. Thus, they are to be treated as residents of District Sehore from both the angles. In Beniprasad (supra), Their Lordships have held that the contention to the effect that the respondent should have been a ‘kumhar’ in Shahdol District in 1950 when the Presidential Notification was issued was not correct because in that case those who are born after the Presidential Notification would be rendered ineligible for being considered as belonging to Scheduled Caste. The ratio which has been reproduced by the learned Single Judge in Paragraph 12 is not correctly applied and, therefore, the error has crept in as the father of the petitioners was not ordinary resident of Sehore in 1950 when the Presidential Order came into existence and hence, the petitioners shall not be entitled to caste certificate.

14. In view of the aforesaid, we are of the considered opinion that the appellants are entitled to caste certificate as their ancestors were ‘dhobi’ in the district of Sehore. They were born at Sehore and got educated and, therefore, they become residents of Sehore in view of the factum that they do not lose their caste because of shifting of their father for some years.”





12. In the matter of **Vandana Dhakad (supra)**, the High Court of Madhya Pradesh held that as the petitioner was born in the State of Madhya Pradesh, she had her entire education and career in the State of Madhya Pradesh, her father migrated in Madhya Pradesh before her birth, the caste 'Dhanuk' is declared Scheduled Caste in both the States and the competent authority had issued certificate in her favour and thus, the petitioner is bonafide resident of the State of Madhya Pradesh. The relevant para- 8 is reproduced herein below:-

“8. Petitioner is born in the State of Madhya Pradesh. She had her entire education and career in the State of Madhya Pradesh. Her father migrated in Madhya Pradesh before her birth i.e. more than 20-25 years back. The caste “Dhanuk” is declared as Scheduled Caste in both the States and the competent authority had issued caste certificate in her favour in the year 1989 and on 17-5-2002 by SDO Gwalior. Thus, the petitioner in the present case is a bona fide resident of Madhya Pradesh and as has been held by this Court in the case of Neetu Singh (supra), she has acquired the status of permanent domicile in the State of Madhya Pradesh as she fulfills the following conditions viz --

- (i) she has born in the State of Madhya Pradesh and had her entire education right from the beginning to M.B.B.S. in the State of Madhya Pradesh; and*
- (ii) her parents are continuously residing in the State of Madhya Pradesh for more than 25 years.”*

13. Now coming to the judgment relied on by Mr. Satish Gupta, the learned Government Advocate appearing for the respondents/State.
14. In the matter **Smt. Ranikori (supra)**, the petitioner had claimed the benefit of reservation on the ground that the caste 'Kori' is notified as Scheduled Caste in the State of Madhya Pradesh and in the State of





Chhattisgarh. The petitioner was married to one Naresh Kumar prior to the re-organization of the State of Madhya Pradesh; therefore, she is entitled to the benefit of the caste certificate issued by the State of Madhya Pradesh. Coordinate Bench concluded that merely because a given caste is specified in State A as a Scheduled Caste or Tribe does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the later State and eventually the case was dismissed. Para – 18 which is relevant is reproduced herein below:-



“18. Thus, taking into consideration the constitutional provisions and authoritative decisions rendered by Their Lordship of the Supreme Court (Constitution Bench) in the matter of Marri Chandra Shekhar Rao (supra) and Action Committee on Issue of Caste Certificate to SCs/STs (supra) and the judgment of this Court in the matter of Raj Kapoor Kachwaha (supra), this Court is of the opinion that the petitioner being a member of Scheduled Caste in relation to the State of Madhya Pradesh having caste certificate of that State is not entitled to the rights, privileges and concessions admissible to the Scheduled Castes of the State of Chhattisgarh.”

15. Now coming to the facts of the present case, in light of the above discussion held so far, it can be concluded that:-

- (I) The petitioner and her father belong to the “Chamar” caste which is notified Scheduled Caste in the State of Uttar Pradesh as well as in the State of Chhattisgarh.
- (II) The father of the petitioner came to the State of Chhattisgarh in the year 1972 and he was appointed as LDC in the Department of Panchayat and Social Welfare at Jagdalpur,



C.G.

- (III) The petitioner was born on 13.12.1983, she completed her education in Jagdalpur, C.G.
- (IV) The petitioner applied for the post of Assistant Conservator of Forest as a member of the Scheduled Caste and she was selected and appointed.
- (V) As per the definition of bonafide residents of Chhattisgarh according to the circular dated 17.06.2003, the petitioner has pursued her entire education in the State of Chhattisgarh, her father was a government servant and he was staying in the State of Chhattisgarh for more than 15 years, therefore, it can safely be held that the petitioner had obtained the status of a permanent resident of the State of Chhattisgarh when she was appointed as Assistant Conservator of Forest.
- (VI) The Circulars were issued by the State of Chhattisgarh dated 18.07.2004 and 27.06.2007 which clarified the status of government servants / employees of the State Government; Central Government; Local Bodies; employees of State Government; Local bodies; their Spouses and Children and according to these circulars they have been given the status of permanent residents of the State of Chhattisgarh and their spouses and children would be entitled to get the benefit of reservation if their caste is notified in the Presidential Order of both the States.
- (VII) The Committee vide order dated 21.07.2009 directed the petitioner to produce documents prior to the year 1950 without calling any report from the Vigilance Cell and the procedure adopted by the Committee was contrary to the judgment passed by the Hon'ble Supreme Court in the matter of ***Kumari Madhuri Patil (supra)***. The Committee cannot compel the petitioner to produce documents prior to the year





1950.

(VIII) On 03.08.2011, after the receipt of the report of Vigilance Cell, notice was issued to the petitioner for her appearance, but without affording any opportunity of hearing, the final order was passed on 20.09.2011 and such procedure cannot be held fair, just and proper.

16. Taking into consideration the above-stated facts and the law discussed above, in the considered opinion of this Court, the order passed by the High Power Caste Scrutiny Committee / respondent No. 2 dated 20.09.2011 is not sustainable in the eyes of law, therefore, the same is hereby quashed.

17. The matter is remitted back to the High Power Caste Scrutiny Committee / respondent No. 2 to decide the matter afresh in light of the facts and the law discussed above after affording a due opportunity of hearing to the petitioner.

18. With the aforesaid observation(s) / direction(s), this petition is **disposed of.**

Sd/-
(Rakesh Mohan Pandey)
Judge