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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2889 of 2009**

Mukesh Kumar Gautam, aged about 27 years, S/o Tulsi Ram Gautam, R/o Kududand, Vishnu Nagar, Ward No.2, Near Hanuman Mandir, Bilaspur.

---- **Petitioner****Versus**

1. The State of Chhattisgarh, through Secretary its Secretary Tribal Welfare Department, D.K.S. Bhawan, Raipur.
2. Chhattisgarh Public Service Commission, through its Chairman Shanker Nagar Marg, Raipur.
3. Examination Controller, Chhattisgarh Public Service Commission, Shanker Nagar Marg, Raipur.
4. Sub Divisional Officer, (Revenue) Bilaspur.

---- **Respondents**

 For Petitioner : Mr. Parag Kotecha, Advocate
 For Respondents No.1 & 4 : Mr. Aditya Bharadwaj, P.L.
 For Respondents No.2 & 3 : Mr. Sudeep Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****02.05.2022**

1. This writ petition is filed against the order dated 09.06.2009 passed by respondent No.4, rejecting application submitted by petitioner for issuance of social status certificate to him of Satnami caste on the ground that he comes within the Scheduled Caste notified in the State of Chhattisgarh.
2. Facts relevant for disposal of this writ petition, are that, petitioner prosecuted his studies of Primary level at Government Naveen Primary School, Jarhabhatha, Bilaspur, Chhattisgarh Higher Secondary School, Bilaspur for Middle, High and Higher Secondary School and completed his

graduation from Parmanand Sinha College, Bilaspur affiliated to Guru Ghasidas University, Bilaspur. Petitioner obtained caste status certificate initially from the Office of Tahsildar, Bilaspur, Chhattisgarh in the year 2007 and submitted an application before Sub Divisional Officer (Revenue), Bilaspur for grant of permanent caste status certificate mentioning therein that he belongs to a member of Schedule Caste community (*Satnamī*). The application submitted by petitioner came to be dismissed on 09.06.2009, which made the petitioner to approach this Court by way of filing instant writ petition with following reliefs:-

I. The Hon'ble Court may kindly be please to quash the order dated 9/6/09 (Annexure P/8) passed by respondent No.4 and further please to hold that the petitioner is entitle for the permanent Caste Certificate of Schedule Caste.

II. The Hon'ble Court may kindly be please to direct the respondent No.4 to provide a permanent Caste Certificate of Schedule Caste to the petitioner.

III. The Hon'ble Court may kindly be direct the respondent No.2 and 3 to accept the form for appearing in the Mains Exams 2008 and further please to permit the petitioner to appear in the main exams 2008.

IV. The Hon'ble Court may kindly be please to call for the records of the case from the respondent.

V. Any other relief which this Hon'ble Court deems fit and proper under the facts and circumstances of the case and in the interest of justice and cost of the petition may be awarded in favour of the petitioner.”

3. Learned counsel for the petitioner submits that after completion of his graduation, petitioner decided to participate in State Civil Services notified by Public Service Commission, Raipur at Chhattisgarh and at that relevant point of time, he moved an application before Tahsildar Bilaspur for issuance of social status certificate of petitioner to be a member belonging to Scheduled caste (Satnami). Tahsildar initially issued temporary Caste Certificate. As Sub Divisional Officer (Revenue) was competent authority for issuance of permanent caste certificate, petitioner moved an application before Sub Divisional Officer (Revenue) for permanent caste certificate, which came to be dismissed vide Annexure P/8. It is contended that order dated 09.06.2009 passed by Sub Divisional Officer (Revenue) rejecting application submitted by petitioner is arbitrary and illegal. Respondent No.4 has not considered the circular issued by State of Chhattisgarh time to time wherein it is provided that employee who, due to some compulsion allocated to State of Chhattisgarh, will be entitled for same benefit as they were availing in erstwhile State of Madhya Pradesh. Father of petitioner was initially provided the benefit of reserve candidate being a member of Scheduled Caste community and therefore,

petitioner is also entitled for the same benefit. In support of his contention, he places reliance upon circulars issued by State Government dated 21.07.2003, 06.07.2004 and further memorandum issued by Government of India, Ministry of Tribal Affairs dated 28.11.2005. He pointed out that State Government issued a circular on 27.06.2007 clarifying the definition of 'permanent resident'. Petitioner falls within the definition of 'permanent resident', hence also, he is entitled for the benefit of permanent caste certificate.

4. Per contra, Mr. Aditya Bharadwaj, P.L. for respondents No. 1 and 4/State would submit that from bare perusal of impugned order passed by respondent No. 4 dated 09.06.2009 rejecting application submitted by petitioner for grant of permanent social status certificate, it is apparent that origin of petitioner's ancestors are not of erstwhile State of Madhya Pradesh. He contended that from the pleadings and documents placed on record along with writ petition, it is clear that father of petitioner was originally resident of State of Uttar Pradesh, he came to erstwhile State of Madhya Pradesh within the territory of State of Chhattisgarh only after getting employment on 22.02.1979, and therefore, petitioner would not be entitled for permanent caste certificate of "Scheduled Caste" to take benefit of reservation, which is being provided to original resident of State of Chhattisgarh. He also submits that as per Presidential notification under Articles 341 and 343 of Constitution of India,

cut-off date is prescribed as date of issuance of Presidential notification. Petitioner is not entitled for social status certificate being member belonging to Schedule Caste as notified by State of Chhattisgarh as he being migrated from another State after issuance of Presidential notification.

5. Mr. Sudeep Agrawal, learned counsel for respondents No. 2 and 3 would submit that respondents No. 2 and 3 is only recruiting agency and therefore, he is not making submission on merits of claim of petitioner, but is adopting the submissions of learned counsel for the State/respondents No.1 and 4. However, petitioner will be at liberty to file a fresh application before the competent authority for grant of social status certificate under Form 4C under Rule 11 of the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certificate) Rules, 2013 (for short 'Rules, 2013').
6. I have heard learned counsel for the parties and perused the record of writ petition.
7. From the documents placed on record along with writ petition, particularly, Annexure P/9 would show that date of birth of Tulsi Ram Gautam, son of Budhu, father of petitioner is 07.07.1951. He was appointed in the Police Department in erstwhile State of Madhya Pradesh on 22.02.1979 as Constable. This document (Annexure P/9) as appearing was obtained from the service

record of father of petitioner issued by Superintendent of Police, Bilaspur, Chhattisgarh. As the place of birth of father of petitioner shown in service record of Police Department as village Mihoni, Police Station Madhaugarh, District Jalaun. Status of father of petitioner for the purpose of issue involved in the case is of migrant. Learned counsel for petitioner in pleadings of writ petition pleaded that entire education of petitioner was from the school situated in territory of State of Chhattisgarh. Copy of mark-sheets placed along with writ petition of Class-V, Class-VIII and other certificates definitely show that petitioner prosecuted his studies in schools and colleges situated at Bilaspur, Chhattisgarh and his date of birth is mentioned as 12.07.1982 in mark-sheet. Finding recorded by Sub Divisional Officer, who is competent authority, while rejecting application for grant of permanent caste certificate vide Annexure P/8 mentioned that father of petitioner was resident of District Jalaun, Uttar Pradesh is not disputed.

8. In the aforementioned facts of the case, it is to be considered whether any person being member of Scheduled Caste community as per Presidential order under Article 341 of the Constitution of India of one State can claim benefit of reservation of Scheduled Caste in another State also, merely because the caste, to which he belongs is also shown to be Scheduled Caste of migrant State in the order under Article 341 of the Constitution of India.

9. Object of providing benefit of reservation is to uplift members of reserve class category by providing them additional benefits within their State. If resident of one State migrates to another and having his caste listed as Scheduled Caste or Scheduled Tribe in another State also, if permitted, to avail the benefit of reservation then those person will encroach upon the rights of people origin in the said State belonging to reserve caste either “Scheduled Caste, Scheduled Tribe, and Other Backward Classes”, which is not the object of provision, under which, reservation is provided to reserved category people of a particular State.
10. Hon'ble Supreme Court in case of **Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and others** reported in **(1990) 3 SCC 130** while considering the issue of reservation claiming by a candidate migrated to other State for admission in medical college, held thus :

“10. It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far

protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult.....”

21. We have reached the aforesaid conclusion on the interpretation of the relevant provisions. In this connection, it may not be

inappropriate to refer to the views of Dr. B.R. Ambedkar as to the prospects of the problem that might arise, who stated in the Constituent Assembly Debates in reply to the question which was raised by Mr. Jai Pal Singh which are to the following effect:

"He asked me another question and it was this. Supposing a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing: the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in his Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe Certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration.”

11. Hon'ble Supreme Court in case of **Action Committee of Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another v. Union of India and another** reported in **(1994) 5 SCC 244** while considering the status of a person belonging Scheduled Caste/ Scheduled Tribe migrant him from original State to another State, held thus :

“4. The petitioners herein are aggrieved because the State of Maharashtra has denied the benefits and privileges available to Scheduled Castes and Scheduled Tribes specified in relation to that State to members of the Scheduled Castes and Scheduled Tribes belonging to other States who have migrated from other States to the State of Maharashtra. These benefits and privileges are denied on the basis of certain circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes specified in relation to any other State shall not be entitled to the benefits and privileges accorded by The State of Maharashtra unless

the person concerned is shown to be a permanent resident of the State of Maharashtra on 10-8-1950 in the case of Scheduled Castes and 6-9-1950 in the case of Scheduled Tribes. These are the dates on which the President first promulgated the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. The petitioners, therefore, contend that the denial of the benefits and the privileges by the State of Maharashtra is violative of the fundamental rights conferred on citizens by Articles 14, 15(1), 16(2) and 19 of the Constitution, besides being contrary to the letter and spirit of Articles 341 and 342 of the Constitution. The petitioners contend that a bare perusal of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 would show the same castes and tribes specified in respect of more than one State. Those belonging to the Scheduled Castes and the Scheduled Tribes, wherever situate, are economically backward. Besides on account of social and economic backwardness they have to suffer a host of indignities and atrocities and are very often compelled to migrate from one State to another in search of livelihood or to escape the wrath of their oppressors. Earlier they did not experience any difficulty in obtaining caste/tribe certificates to secure benefits available to the Scheduled Castes and

Scheduled Tribes in the State of Maharashtra. The situation, however, changed drastically after the Government of India issued a communication addressed to Chief Secretaries to all State Governments/Union Territories on 22-3-1977.

5. Before we refer to the contents of the communication dated 22-3-1977 it may be advantageous to notice the relevant provisions of the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 made in exercise of powers conferred by Article 341(1) and Article 342(1) respectively of the Constitution. In the Order first mentioned clause (2) provides as under:

"2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts I to (XXII) of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of the Schedule."

Clause (2) of the second mentioned Order reads as under:

"2. The tribes or tribal communities, or part of, or groups within, tribes or tribal communities, specified in Parts I to XIX of the Schedule to this Order shall, in relation to the State to which those Parts

respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Schedule."

6. The Government of India in the Ministry of Home Affairs noticed that certificates belonging to a particular Scheduled Caste/Scheduled Tribe were not issued strictly in accordance with the principles governing the issue of such certificates presumably on account of lack of understanding of the legal position regarding the concept of the term "residence" on the part of the authorities concerned. With a view to clarifying the legal position the communication of 22-3-1977 came to be issued. The relevant part of that communication may be reproduced for ready reference :

"As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-State area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for

them. Since the people belonging to the same caste but living in different State/Union Territories may not both be treated to belong to Scheduled Caste/Tribe or vice versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential Order applicable in his case, say for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that order in relation to his State/ Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order."

The communication further states that with a view to ensuring the veracity of permanent residence of a person and that of the caste/tribe to which he claims to belong, the Government of India made a special provision in the pro form a prescribed for the issue of

such certificates. In order to ensure that competent authorities should alone issue such certificates the Government of India (Department of Personnel and Administrative Reforms) by a letter dated 6-8-1975 indicated the authorities locality-wise who should issue the certificates. The communication then proceeds to add :

"Thus the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another District. Nor can such an authority of one State/Union Territory issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Residential Order, has been in a different State/Union Territory."

This was emphasised because only the revenue authorities of the locality of which the individual is the resident alone would have access to revenue records to be in a position to make reliable enquiries before the issuance of the certificate. In regard to persons born after the date of the notification of the relevant Presidential Order, the communication states that the place of residency for the purpose of acquiring Scheduled Caste or Scheduled Tribe certificate is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/tribe.

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste 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 latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....."

Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

12. Full Bench of Bombay High Court in case of **Kumari Shweta Santalal Lal v. State of Maharashtra** reported in (2010) 2 MhLJ 904 has held thus :

“26. Having said so, we may now answer the Reference. In case of a migrant belonging to a Scheduled Caste, not ordinarily resident as on 10.3.1950 in the area that now constitutes the State of Maharashtra and in a case of S.T., considering Rule 5, on 6.9.1950, would not be entitled to benefits of reservation as S.C./S.T. in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of origin. Reference answered accordingly.”

13. Hon'ble Supreme Court in case of **Bir Singh v. Delhi Jal Board and others** reported in (2018) 10 SCC 312 held thus :

“34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have

been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State 'A' cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State 'A'."

14. Annexure P/8 is the order of Sub Divisional Officer (competent authority at that relevant time) for issuance of permanent caste certificate whereby his application for grant of permanent caste certificate was rejected to be a member of Scheduled Caste of State of Chhattisgarh. Petitioner in this writ petition has filed circulars issued by State Government dated 21.07.2003 (Annexure P/4), 06.07.2004 (Annexure P/5) and notification issued by Government of India, Ministry of Tribal Affairs dated (Annexure P/6) to contend that petitioner was a permanent resident of erstwhile State of Madhya Pradesh and he became part of State of Chhattisgarh due to reorganization of State of Madhya Pradesh and carving out new State of Chhattisgarh. State Government has already taken care of consequential problems on account of posting of Government servants due to reorganization of erstwhile State of Madhya Pradesh and carving out new State of Chhattisgarh and therefore, issued circular dated 06.07.2004 (Annexure P/5) wherein members of Scheduled Caste and Scheduled Tribe of erstwhile State of Madhya Pradesh having caste certificate issued by competent authority, but placed within the territory of Chhattisgarh due to

allocation of service, their interest have been protected and they were given benefit of reservation.

15. Undisputedly, as per documents submitted by petitioner himself would show that birth of father of petitioner was on 07.07.1951 (Annexure P/9) at Village Mihoni, Tahsil Madhaugarh, District Jalaun, Uttar Pradesh. As per service record of father of petitioner, father of petitioner was an employee of Police Department as Constable, it also mention that father of petitioner was intermediate pass, from which, it is clear that father of petitioner is an educated man, but petitioner has not placed on record the place and school from where his father took his education. He joined his services only on 22.02.1979 at Bilaspur, Madhya Pradesh, now Bilaspur, State of Chhattisgarh after 01.11.2000.
16. From aforementioned facts, it is amply clear that father of petitioner migrated from State of Uttar Pradesh and status of petitioner therefore cannot be accepted to be migrant from State of Madhya Pradesh under compulsion for extending benefit of circular as projected by learned counsel for the petitioner before this Court. Status of father of petitioner was of migrant even in the State of Madhya Pradesh. Father of petitioner being migrant from State of Uttar Pradesh, case of petitioner will be squarely covered by aforementioned rulings of Hon'ble Supreme Court wherein Hon'ble Supreme Court in very categorical terms held that a person belonging to a Scheduled

Caste in State of origin will not be entitle for reservation in education or employment as Scheduled Caste person in relation to any other State, to which, he migrates. The benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory of origin of a person, hence, petitioner cannot claim the benefits of Scheduled Caste in State of Chhattisgarh also, in fact, he and his progeny will be entitle for all benefits in the "State of Origin" of their ancestor. "State of Origin" for the petitioner will be State of Uttar Pradesh where his father was born and his ancestors belongs. Hence, I do not find any error or infirmity in the order passed by Sub Divisional Officer rejecting the application for grant of permanent caste certificate.

17. State of Chhattisgarh in the year 2013 has enacted Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certificate) Rules, 2013 for issuance of social status certificate to the members belonging to reserved category either Scheduled Caste, Scheduled Tribe and Other Backward Classes.
18. In the aforementioned Rules, 2013, for issuance of certificate to applicants migrated from other State to State of Chhattisgarh can also apply for the caste certificate which will specify the status of the applicant. Rule 11 of Rules, 2013 reads as under :-

“11. Certificate for the Applicant migrated from other State to the State of Chhattisgarh. - In case, where the Applicant is a migrant from other States, Competent Officer shall issue a certificate in FORM-4C, after marking detailed inquiry, if necessary, through the District Magistrate or Verification Committee or through Vigilance Cell, regarding his social status in that State:

Provided that such certificate holder shall be eligible to avail the facilities provided to Scheduled Castes, Scheduled Tribes or Other Backward Classes, as the case may be, in that State from which he has migrated.”

19. Under Rules, 2013, petitioner can apply for social status certificate under Rule 11 before the competent authority.
20. In view of aforementioned discussions and rulings of Hon'ble Supreme Court, I do not find any merit in this writ petition, which is liable to be and is accordingly dismissed.

Sd/-
(Parth Prateem Sahu)
Judge