HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
SINGLE BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA

Writ Petition No.1563/2020

M.P. Public Service Commission

versus

The State of Madhya Pradesh & Others

Writ Petition No.1727/2020

Bhaskar Choubey & Others

versus

The State of Madhya Pradesh & Others

Shri Prashant Singh, learned senior counsel along with Shri V.P. Khare, learned counsel for the petitioner.

Shri Pushyamitra Bhargav, learned Additional Advocate General along with Shri Kushagra Jain, learned counsel for the respondents / State.

O R D E R
(Delivered on this 21st day of October, 2020)

Per : S.C. Sharma, J:

Regard being had to the similitude in the controversy involved in the present case, these cases were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.1563/2020 are narrated hereunder.

The petitioner before this Court, Madhya Pradesh Public Service Commission a body constituted under Article 315 of the Constitution of India, has approached this Court for quashment of a First Information Report lodged

by the Deputy Superintendent of Police, Anusuchit Jati and Janjati Kalyan Thana, Indore at Crime No.01/2020 against the officer of the Madhya Pradesh Public Service Commission for the offences punishable under Sections 3 (1)(r) and 3 (i)(u) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

02. The facts of the case reveal that one Shri Surendra Bamnia, Divisional President and Shri Anil Khedekar, District President of National Schedule Caste and Schedule Tribe Youth Sangh, Indore lodged a complaint against the office bearers of the Madhya Pradesh Public Service Commission stating that in the examination of Madhya Pradesh Public Service Commission dated 12.01.2020, in the Second Paper (Pros – 2) Set – D, a question was asked in respect of Bhil Community wherein a derogatory remark was made against the entire community, and therefore, the same has hurt the sentiments of Bhil Community. In the letter (Annexure-P/1), it was stated that action should be initiated against the Secretary of the Madhya Pradesh Public Service Commission as well as the other officers.

03. On the same day, the Deputy Superintendent of Police wrote a letter to the Secretary of the Madhya Pradesh Public Service Commission (Annexure-P/7) stating that a complaint has been received in respect of the second paper and various derogatory statements have been made against Bhil Community (Schedule Tribe), and therefore, the entire process relating to setting of question papers be explained and the details of the officer involved in the matter be furnished.

04. The Madhya Pradesh Public Service Commission with quite promptitude on 16.01.2020 informed the details of the process to the Deputy Superintendent of Police and the Deputy Superintendent of Police again sought information in respect of rules, details of examiners, who have framed the question paper, details of moderators etc. on 20.01.2020. The Madhya Pradesh Public Service Commission has submitted an exhaustive reply furnishing all minute details on 27.01.2020, and thereafter, an application was preferred by the Deputy Superintendent of Police under Section 91 of the Right to Information Act, 2005 again asking for further details in the matter.

05. The Madhya Pradesh Public Service Commission has filed books published by Madhya Pradesh Hindi Granth Academy 'Madhya Pradesh Ki Janjatiyan, Book published by Mansi Publication 'Jhabua Ke Bhilon Ki Sanskriti', 'Samajshastri Chintan Ki Lehrein' published by Radha Publication, 'Madhya Pradesh Samanya Gyan' by Ramesh Publishing House and Report of the Scheduled Areas and Scheduled Tribe Commission, Government of India, Volume – I, 2002 – 04 published by the Government of India and informed the Deputy Superintendent of Police that the questions have been framed based upon the books published after due approval of the authority working as Standardization of the Books. They have given details of all the books from where the information was collected and question paper was framed.

06. The petitioner's contention is that the entire exercise of setting a question paper was based upon various text

books. The details of questions have also been furnished in the connected writ petition.

07. It has been further stated by the Madhya Pradesh Public Service Commission that after a protest was lodged in the matter, they have already deleted all the questions, which were disputed questions related to Bhil Community, from all the sets of question paper of Paper No.2, however, only with a view to malign the image of the Chairman, members and other officers of the Public Service Commission, the First Information Report was lodged in the matter.

08. The Madhya Pradesh Public Service Commission has stated that the Madhya Pradesh Public Service Commission Rules of Procedure grants an immunity to Chairman, member and other officers in respect of any action done by them in good faith, and their contention is that in light of Rule 15, the question of taking any action against the petitioner or its employees or other office bearer does not arise.

09. It has also been stated that in order to maintain secrecy of the examination process, neither the Commission nor its employees are aware of the question asked in the question papers. The question framed are disclosed only after examination is over to the officer of the Public Service Commission and before the examination, no employee of the Public Service Commission knows about the question paper in order to keep the process as sacrosanct. The framing of question is done by the Paper Setters and Moderators and at no point of time, any employee is

involved in the process.

10. The petitioner has placed reliance upon a judgment delivered in the case of ***Lalita Kumari v/s The Government of Uttar Pradesh & Others*** *reported in* ***(2014) 2 SCC 1*** and it has been argued by Shri Prashant Singh, learned senior counsel appearing with Shri V.P. Khare that before registering a First Information Report in the present case, a preliminary inquiry should have been done, however, only with a vindictive and *malafide* attitude, the First Information Report was lodged in the matter. Reliance has also been placed upon a judgment delivered in the case of ***Babubhai Jamunadas Patel v/s The State of Gujrat & Others*** *reported in* ***(2009) 9 SCC 610***. Lastly, reliance has been placed upon a judgment delivered in the case of ***The State of Haryana & Others v/s Bhajanlal & Others*** *reported in* ***1992 Supp (1) SCC 335*** and prayer has been made for quashment of First Information Report.

11. A detailed and exhaustive reply has been filed in Writ Petition No.1727/2020 and the respondents have stated that they have received a complaint in respect of State Civil Services Examination, 2019 which was held on 12.01.2020 conducted by the Madhya Pradesh Public Service Commission alleging that certain objectionable questions have been asked in respect of Bhil Community. It has also been admitted that the complaint was received in the matter disclosing *prima facie* commission of an offence under Sections 3 (I)(r) and 3(I)(u) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and a First Information Report was registered in the matter. The

respondents have stated that the petitioner does not have locus to file the present petition as the First Information Report has been registered against the officers of the Commission and till liability and responsibility is fixed upon the persons, no cause of action is made out in the matter.

12. The respondents have further stated that the question paper was having question stating that the member of the Bhil Community are financially weak, they spend more than their income, they have criminal tendency etc. etc., and therefore, First Information Report was rightly lodged in the matter. They have also stated that the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted to remove the disparity of the Scheduled Caste and Scheduled Tribe, who remain vulnerable and who have been denied their civil right, and therefore, as Bhil Tribes have been ridiculed in the question paper, First Information Report has rightly been registered.

13. The respondents have also stated that the Commission has certainly forwarded the name of Moderator and the Setter, however, the investigation is still going on. They have stated that there is no requirement of conducting a preliminary inquiry for registering a First Information Report and reliance has been placed upon judgments delivered in the cases of ***Superintendent of Police, C.B.I. v/s Tapan Kumar Singh*** *reported in* ***(2003) 6 SCC 175***, ***The State of Tamil Nadu v/s S. Martin & Others*** *reported in* ***(2018) 5 SCC 718***, ***Mahavir Prasad Gupta v/s***

The State of Delhi *reported in* ***(2000) 8 SCC 115***, ***Manohar Dalani v/s Ashok Advani*** *reported in* ***(1999) 8 SCC 737*** and ***Union of India v/s W.N. Chada*** *reported in* ***(1993) 4 Supp. SCC 260***. A prayer has been made for dismissal of the writ petitions.

14. There is an application for intervention also in the matter and even in the second round, the intervenor was not present to argue the matter on behalf of intervenor. The intervenor in the intervention application has stated that based upon the written complaint submitted by the intervenor to the police, the First Information Report was registered in respect of the examination which took place on 12.01.2020 and the intervenor is also a necessary party. The Intervention Application was allowed, however, no one has appeared for the intervenor.

15. Heard learned counsel for the parties at length and perused the record. The matter is being disposed of with the consent of the parties at motion hearing stage itself through video conferencing.

16. The undisputed facts reveal that a complaint was lodged by one Shri Surendra Bamnia, Divisional President and Shri Anil Khedkar, District President of National Scheduled Castes and Scheduled Tribes Youth Sangh in respect of certain questions in the question paper relating to Madhya Pradesh Civil Services Examination which took place on 12.01.2020. The complaint, which is on record, is marked to his excellency the Governor, Chief Minister, Minister of the Department and to the Secretary, Public Secretary Public Service Commission. Copy of complaint

dated 15.01.2020 is also on record as Annexure-P/1 and the same reads as under:-

प्रति,

1) महामहिम राज्यपाल महोदय,
मध्यप्रदेश शासन
2) माननीय मुख्यमंत्री महोदय,
मध्यप्रदेश शासन
3) माननीय मंत्री महोदय,
आदिम जाति कल्याण विभाग मध्यप्रदेश
4) मुख्य सचिव महोदया,
मध्यप्रदेश लोक सेवा आयोग

विषयः म.प्र. लोक सेवा आयोग परीक्षा के द्वितीय प्रश्न–पत्र के गद्यांश–02 में भील समाज को अपमानित करते हुए भावनाओं को ठेस पहुॅचाने पाली टिप्पणी के विरोध में।

महोदय,

मध्यप्रदेश लोक सेवा आयोग की परीक्षा दिनांक 12/01/2020 के द्वितीय प्रश्न–पत्र (सेट–D) के गद्यांश–2 में विशेष रूप से भील समाज के बारे में ''अपराधिक प्रवृत्ति और गैर–वैधानिक एवं अनैकि कामों में संलिप्त तथा समाज को शराब के अथाह सागर में डूबी जनजाति बताया गया।'' जो कि लोक सेवा आयोग की परीक्षा बनाने वाले की तुच्छ मानसिकता को दर्शाता है। जो कि आदिवासी भील समाज भावनाओं को ठेंस पहुॅचाने वाली टिप्पणी की गई। जिसका आदिवासी भी समाज के छात्र घोर–विरोध करता है और मुख्य सचिव श्रीमति रेणु पंथ से मांफी मांगे एवं पेपर बनाने वाले दोषियों पर कड़ी कार्यवाही करते हुए पद से निष्कासित करने की मांग करता है।

सुरेन्द्र बामनिया	अनिल खेड़कर
संभागीय अध्यक्ष	जिलाध्यक्ष
राष्ट्रीय अनुसूचित जाति–जनजाति युवा संघ (NAJJY), जिला इन्दौर (म.प्र)	आदिवासी छात्र संगठन(ACS) जिला इन्दौर (म.प्र)

17. The complaint is dated 15.01.2020 and based upon the aforesaid complaint, a First Information Report was lodged on 15.01.2020 itself. This Court, for the first time, is witnessing lightening speed of the police officers who have received the complaint on 15.01.2020 and have immediately lodged a First Information Report against the officers of the Public Service Commission. If the police force works in similar manner in respect of the other offences / crime they deserve appreciation, however, the experience is otherwise.

18. The content of the First Information Report lodged

in the matter reads as under:-

> "मैं उप पुलिस अधीक्षक अजाक जिला इन्दौर के पद पदस्थ हूॅ। आवेदक श्री रवि बघेल पिता श्री सीताराम बघेल जाति भिलाला (भील) उम्र 30 साल निवासी–304 न्यू रानीबाग कालोनी इंदौर द्वारा म.प्र. लोक सेवा आयोग के अधिकारियों के विरूद्ध अनुसूचित जाति भील समाज को लोगों को अपमानित करने के संबंध में प्रस्तुत शिकायत आवेदन पत्र की जांच करते आवेदक रवि बघेल साक्षी राहुल बामनिया तथा अश्विनि सोलंकी के कथन लेख किये गये एवं सचिव म.प्र. लोक सेवा आयोग इंदौर को पत्र लेख किया गया तथा मौखिक तौर पर चर्चाकर जानकारी प्राप्त की गयी। अभीतक की जांच से, दिनांक 12.01.2020 को म.प्र. लोक सेवा आयोग द्वारा आयोजित की म.प्र राज्य सेवा परीक्षा 2019 के द्वितीय सत्र 02.15 बजे से 04.15 बजे तक, सामान्य अधि–रूचि परीक्षण (सी–सेट) के प्रश्न पत्र में भील जनजाति से सबंधित प्रश्न गद्यांश 4 में भील एक निर्धन जनजाति है, इनका मुख्य व्यवसाय कृषि है, इसके अतिरिक्त खेतों में मजदूरी, पशुपालन, जंगली वस्तुओं का विक्रय तथा शहरों में भवन निर्माणें में दिहाडी मजदूरी पर काम कर अपनी जीवन नैया चलाते है। भीलों की आर्थिक विपत्रता का एक प्रमुख आय से अधिक व्यय करना है। भील वधु मूल्य रूपी पत्थर से बंधी शराब के अथाह सागर में डूबती जा रही जनजाति है। उपर से सग्हूकारों व महाजनों द्वारा दिये गये ऋण का बढता ब्याज, इस समन्दर में बवन्डर का काम करता है, जिसके कुवक से ये लोग कभी बाहर नहीं निकल पाते। भीलों की अपराधिक प्रवृति का एक प्रमुख कारण यह है कि सामान्य आय से अपनी देन दारिया पूरी नहीं कर पाते। फलतःधन उपार्जन की आशा में गैर–वैधानिक तथा अनैतिक कामों में भी लिप्त हो जाते है। उक्त पद्यांश से म.प्र. अनुसूचित जनजाति के भील समाज के लोगों को अपमानित किये जाने पर म.प्र. लोक सेवा आयोग के संबंधित पदाधिकारियों के विरूद्ध अपराध धारा 3(1) (R) (U) अनुसूचित जाति/जनजाति (अत्या. निवारण अधिनियम 1989) का पाया जाने रो अपराध कायम कर विवेचना में लिया गया।"

19. On the same day, letter was written to Public Service Commission by the Deputy Superintendent of Police providing necessary information and necessary information, as desired from time to time, was supplied to the Deputy Superintendent of Police. The Deputy Superintendent of Police was informed about the entire process in the matter and the same reveals that at no point of time any officer / employee of the Public Service Commission is involved in the business of setting of question paper or in the business of moderation of question paper. The Public Service Commission does not come in picture till the question paper, after the examination, is

brought to the notice of Public Service Commission.

20. Not only this, the text filed by the Public Service Commission makes it very clear that the questions were asked on the basis of books published on the subject. The Public Service Commission has enclosed the books on the basis of which the question paper was framed. The question papers were prepared on the basis of books which have been referred earlier after approval of the authority working as Standardization of Books. Not only this, the questions are framed by subject experts, who are eminent Professors and moderation is also done by experts who are also eminent Professors. The Paper Setter and Moderator are not the employees of the Public Service Commission and mistake, if any, committed in the matter cannot be attributed to the Madhya Pradesh Public Service Commission nor to its employees.

21. Not only this, the Madhya Pradesh Public Service Commission Rules of Procedure, 2019 provides that no suit, prosecution or legal proceedings shall lie against the Commission, Chairman, Member, Secretary, Controller and other officers or any other deputed to assist the ommission in the matter of examination.

22. This Court, on the basis of material filed by the Madhya Pradesh Public Service Commission, is of the considered opinion that the neither Madhya Pradesh Public Service Commission nor any of its employees or officers can be prosecuted as they are not at all responsible in the matter and even the Moderator and Paper Setter are also not liable for prosecution keeping in view Rule 15 of the

Madhya Pradesh Public Service Commission Rules of Procedure, 2019. The paper setting and moderation was done based upon the text which is on record and at no point of time, any action has been taken against the authors and publishers in respect of the text books which are old text books published in the year 2000. The entire exercise of registering a First Information Report appears to be initiated with an oblique and ulterior motive.

23. This Court has carefully gone through the judgment relied upon by learned counsel for the parties. This Court, for the first time, is witnessing a First Information Report in respect of question paper asked in the Civil Services Examination and is of the considered opinion that in the present case, a preliminary inquiry should have been done keeping in view the judgment delivered in the case of *Lalita Kumari (supra)*.

24. The Hon'ble Supreme Court in the case of *Bhajan Lal (supra)* in paragraphs – 102 and 103 has held as under:-

> "102. In the backdrop of the interepretation of the various relevant provisions of th Code unde Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficient channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if

they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(20 of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 15592) of the Code.

(5) Where the allegation made in the FIR or complaint are so absurd and inherently imporbable on the baiss of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rar case; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made

> in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

25. In light of the aforesaid judgment, this Court is of the considered opinion that *prima facie* from bare perusal of the First Information Report, no case is made out against the Chairman, Members, Secretary and other office bearers / officers of the Commission nor against the Moderator and Paper Setter of the disputed questions. This Court really respects the sentiments of the Bhil Community, however, would like to make it clear that the questions were not asked to hurt the sentiment of the Bhil Community, they were based upon various text which is already on record.

26. The respondents / State, in the reply, have stated that the questions framed in the question paper were hurting the sentiments of Bhil Community (Schedule Tribe) and is in gross violation of the provisions of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989.

27. The report of the Scheduled Areas and Scheduled Tribes Commission, Government of India, which is on record (2002 – 04) has referred to the miseries of the tribal and various observations have been made in the aforesaid reports. The State Government should make all possible endeavor to provide basic amenities to the tribal, to ensure that they are given proper education by establishing institutions (educational institutions, medical institutions, vocational institutions etc. etc.) in order to ensure that the tribals are brought to the main stream. This Court hopes and trust that the recommendation of Government of India made

for the Scheduled Tribe Commission are implemented in its true sense.

With the aforesaid, the present Writ Petition stands allowed. The impugned F.I.R. is hereby quashed.

The connected writ petition i.e., W.P. No.1727/2020 (Bhaskar Choubey & Others v/s The State of Madhya Pradesh & Others), also stands allowed as the First Information Report dated 15.01.2020, bearing No.0001 has already been quashed.

No order as to costs.

Certified copy, as per rules.

(S.C. SHARMA)
J U D G E

Ravi