
(2008) 01 CAL CK 0023
In the Calcutta High Court
Case No : F.M.A. No's. 170 and 171 of 2004

Banibrata Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Chartered Accountants Act, 1949 — Section 21, 22A
West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 —
Rule 2, 3, 3(1)

Citation : (2008) 1 CALLT 299 : (2008) 3 CHN 1016

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Arunava Ghosh, S. Majumder, S. Sil and Raj Kumar Basu, Shaktinath Mukherjee and D. Saha Roy, for the Appellant; Subrata Mukhopadhyay and Basabi Roychowdhury, in F.M.A. No. 170 of 2004 and Pabitra Kumar Basu and Indrani Pal, in F.M.A. No. 171 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The appellant, Banibrata Das in both the appeals is an employee of Indian Oil Corporation (hereinafter referred to as "IOC"). He is the son of one Late Gobinda Das, son of Late Kangali Das, who was a driver working in the Calcutta State Transport Corporation (hereinafter referred to as "CSTC"). When Gobinda Das entered in service in CSTC he declared himself belonging to "Kayastha" caste. Accordingly his service book was recorded as such. He was all through out treated by the CSTC as a general category employee. He never obtained any benefit claiming to be schedule caste until the time hereinafter discussed. He retired from service on June 30, 1985. He died in 2000.

2. Gobinda had three sons and one daughter. Appellant Banibrata was one of the sons. It is an admitted fact that they pursued their studies in accordance to their status as general candidate and did not avail any benefit claiming to be schedule caste at any point of time. He joined IOC on 21st August, 1989 as a schedule

caste candidate on the basis of a certificate obtained by him on October 29, 1979. Pertinent to note, when he obtained his caste certificate on October 29, 1979 Gobinda was still considered as belonged to general category. After about 6 years in 1985 Gobinda obtained schedule caste certificate on August 31, 1985 much after his retirement. His claim was based upon the certificate of his son, Banibrata which should have been other way round.

3. A complaint was lodged to the effect that Banibrata obtained employment and was still enjoying benefit as a schedule caste candidate in IOC on the basis of a certificate obtained by fraud as he, in fact, did not belong to schedule caste category. Banibrata, however, contends that such complaint was made at the instance of his brother-in-law who became hostile due to family dispute.

4. By a letter dated April 9, 1999 Banibrata was asked to appear before the Deputy Magistrate and Deputy Collector along with all relevant documents in connection with his caste certificate. Accordingly he appeared and ultimately by a letter dated July 12, 1999 the Officer-in -Charge, Schedule Caste in the office of SDO issued a certificate to the effect that his schedule caste certificate dated October 29, 1979 was genuine and was issued by the SDO, Barasat. By a letter dated February 22, 2001 he was again asked by the Sub-Divisional Officer to deposit the schedule caste certificate for verification. He objected to the same through his advocate as according to him this was unwarranted and uncalled for. He approached this Court by filing a writ petition being W.P. No. 6857(W) of 2001. The said writ petition was disposed of by the learned single Judge by Judgment and order dated May 16, 2001 appearing at page 91-94 of the Paper Book. Pertinent to note by that time Gobinda had died. His Lordship observed that in case the father's caste certificate was cancelled and if his father was held to be not a schedule caste Banibrata would not be entitled to claim himself to be schedule caste. His Lordship observed that whether his father's certificate was issued by misrepresentation or not must be decided in the presence of the petitioner. His Lordship held that the notice impugned in the said writ petition was rightly issued against Banibrata by the authority. It was also provided in the said notice that an enquiry had already been held and in course of such enquiry his father had been interrogated. His Lordship granted 15 days time to reply to the show cause notice served upon Banibrata. Immediately after the said order the authority supplied him all necessary evidence which revealed in the enquiry including one audio and video cassette. The authority thereafter passed a reasoned order on May 25, 2001 appearing at page 96-99 of the Paper Book.

5. On perusal of the said order it appears Gobinda joined CSTC as driver in 1957. He originally registered himself as Kayastha. On February 2, 1978 Gobinda claimed to have obtained a schedule caste certificate from one non-governmental organisation namely Bengal Provincial Depressed Class League and on the basis of such certificate he subsequently applied in 1985 for schedule caste certificate. It also appears from the reasoned order that several persons were interrogated. It was also recorded that on June 27, 2000 Gobinda was interrogated in the

office of the Depot, CSTC, Belgachia by the Government officials where Gobinda confessed repeatedly that he belonged to Kayastha community and not Nomosudra community as claimed by Banibrata. The entire interview had been video recorded and a copy was given to Banibrata as recorded above. Upon being satisfied that Gobinda was wrongly issued the schedule caste certificate and such certificate was obtained by him by misrepresentation of facts and was liable to be revoked and upon such preliminary finding as recorded in the said reasoned order Banibrata was asked to submit proof of his caste identity. He was also asked to appear at the hearing to show cause why the certificate should not be revoked. Banibrata replied to the said show cause notice on June 19, 2001 appearing at pages 110-122 of the Paper Book. He contended that in view of two Supreme Court decisions in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and Basant v. State of Maharashtra reported in 2001 IV S 461 the said show cause notice was invalid. He also contended that although the High Court allowed the concerned authority to proceed as against the caste certificate of his late father issuing show cause notice for cancellation of his father's certificate as well as his certificate was a deliberate and willful violation of the Court order. He also contended that the earlier certificates dated 1978 issued in favour of Gobinda were all signed by gazetted officials and they were only entitled to cancel the same. He also dealt with the evidence relied upon by the State in support the cancellation. He also brought in the family dispute in his reply. He also contended that the video recording of the interrogation of his father was nothing but an evidence extracted from his father under coercion by the officials and should not be relied on.

6. After considering the reply so given by Banibrata and after giving opportunity of hearing the authority passed the reasoned order on August 17, 2001 appearing at page 123 and 126 of the Paper Book wherein the certificate of Gobinda issued on October 31, 1985 was cancelled, while doing so the authority also passed another order on the same day by cancelling the certificate issued to Banibrata on October 29, 1979; appearing at pages 128-131 of the Paper Book.

7. Banibrata filed two writ petitions challenging the respective orders of cancellation. He also made his brothers and sister party to the same. They were properly represented by their advocates before the learned single Judge.

8. Learned single Judge dismissed both the writ petitions by Judgment and order dated April 2, 2003 appearing at pages 136-148 of the Paper Book. His Lordship considered the earlier order passed in the writ application. His Lordship observed that in terms of order of this Court notice was served upon Banibrata wherein it was alleged that Gobinda son of Kangali being the father of Banibrata had obtained certificate by suppression of material fact that they belonged to Kayastha community which was not recognised as schedule caste. Banibrata being the heir and legal representative of Gobinda was given such show cause notice as by this time Gobinda had expired. His Lordship also observed that by the order dated May 16, 2001 the learned single Judge observed that the show

cause notice was properly issued; such order having not appealed from reached finality. Documents were furnished by the State to Banibrata in terms of the said order. Petitioner submitted his reply in terms of the said order. However, before His Lordship reliance was placed on Madhuri Patil (Kumari) (supra) and Basant (supra). His Lordship negated such plea on the ground that neither any such plea was taken as to the jurisdiction of the Sub-Divisional Officer nor any challenge was thrown to the provisions of the West Bengal Schedule Caste and Schedule Tribe Identification Act, 1994 or the Rules framed thereunder in the earlier writ proceedings. Hence, such plea could not be sustained. His Lordship also negated the plea that certificate of the father could not have been cancelled after his death. His Lordship observed that in the second writ application it was observed that if father was held not to be a schedule caste the petitioner could not claim as belonged to schedule caste. The show cause notice was not interfered with by the Court. His Lordship also observed that show cause notice was properly issued, enquiry was conducted which revealed that his father had joined CSTC and served them as a general category candidate by declaring him as Kayastha. His father had applied for the caste certificate after his retirement and based upon the caste certificate of his son Banibrata. Considering all these facts His Lordship dismissed the writ applications. Hence, this appeal.

9. Mr. Shaktinath Mukherjee, learned senior counsel appearing in support of the appeal has contended as follows:

(i) The Apex Court in the case of Madhuri Patil (Kumari) (supra) framed a guideline to be followed for the purpose of issuance and/ or cancellation of the caste certificate. Such procedure was again asked to be followed in the case of Basant (supra). Admittedly in the instant case the authorities did not follow such guideline. Hence, the orders are liable to be quashed and/or set aside on the said ground alone and the learned Judge erred in not doing so.

(ii) Assuming that the authority was entitled to proceed as per the procedure laid down under the relevant rules the order of cancellation in both the cases were passed without following the requirements of the West Bengal Schedule Caste and Schedule Tribe Identification Rules, 1995.

(iii) No opportunity was given to Banibrata to defend his certificate. No show cause notice was issued. In his case no opportunity of hearing was given to him. Hence, the order of cancellation of his certificate was violative of principles of natural justice and such inherent defect was incurable.

(iv) The plea of waiver as relied on by the learned single Judge was not available to the State as there could be no waiver against observance of principle of natural justice as it clearly hits the public policy.

(v) The authority should have conducted independent enquiry in terms of the guideline framed by the Apex Court in the case of Madhuri Patil (Kumari) (supra) in case of his father. Having not done so the order of cancellation of the caste certificate belonged to his father was liable to be set aside.

(vi) The order of cancellation of his own certificate was passed without initiating any proceeding as required under the said Rules, 1995 or as per the guideline framed in Madhuri Patil (Kumari) (supra), hence, was liable to be set aside.

In support of his contention Mr. Mukherjee has relied on the following decisions:

- (i) Baradakanta Mishra Vs. High Court of Orissa and Another,
- (ii) Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another,
- (iii) Balai Chandra Hazra Vs. Shewdhari Jadav,
- (iv) 1985 III SCC 378 (Anil Kumar v. Presiding Officer and Ors.)
- (v) Institute of Chartered Accountants of India Vs. L.K. Ratna and Others,
- (vi) Lilly Kutty Vs. Scrutiny Committee, S.C. and S.T. and Others,
- (vii) Indian Airlines Ltd. Vs. Prabha D. Kanan,

10. While opposing the appeal Mr. Pabitra Kumar Basu, Mr. Subrata Mukhopadhyay and Ms. Basabi Roychowdhury have contended that the appellant Banibrata did not prefer any appeal from the earlier order of this Court. The authorities acted in terms of the order of this Court and issued show cause notice to Banibrata which ultimately resulted in the reasoned order for cancellation. The authorities gave adequate opportunity not only to defend his own certificate but also his father's certificate. He was also given opportunity of hearing. Hence, the principles of natural justice were observed in the instant case. They have also relied upon the fact that in the video recording Gobinda confessed that he belonged to Kayastha community and not Nomosudra community. Kayastha community does not fall within the schedule and is always treated as a general caste. Gobinda all along throughout his service carrier was considered to be general category employee. He, however, obtained schedule caste certificate in 1985 much after Banibrata's certificate had been issued. In fact he had relied on Banibrata's certificate to obtain his certificate which should have been other way round. All the video recordings and audio recordings as also other relevant evidence were furnished to Banibrata before he replied to the show cause notice. Hence, there could be no grievance on the issue of natural justice. It has also been contended on behalf of the State that Banibrata once having invited the State to act in terms of the order of this Court passed in his own writ petition cannot turn back and contend that such proceeding was vitiated by illegality after participating in the said proceeding. It has also been contended that earlier orders of this Court in his writ petition were not appealed from. In support of their contention Mr. Mukherjee has relied on two Apex Court decisions of the Apex Court reported in 2004 VI SCC 325 (Vice-Chairman, Kendriya Vidyalaya, Sangathan and Anr. v. Girdharilal Yadav) and Additional General Manager/Human Resource Bharat Heavy Electricals Ltd. Vs. Suresh Ramkrishna Burde, .

11. Mr. Arunava Ghosh, learned Counsel being assisted by Mr. Soumya Majumder,

learned Counsel appearing for the Indian Oil Corporation has virtually adopted the contention of the State. In addition Mr. Ghosh has contended that, once Banibrata accepted the order of the learned single Judge permitting the State to proceed on the basis of the show cause notice plea of illegality of the proceeding cannot be taken at the belated stage when the order has gone against him. Mr. Ghosh also contends that the evidence so came out in the enquiry and relied upon by the authority in the reasoned order were sufficient enough to cancel the certificates and this Court should not interfere with such cancellation being not an appellate authority.

12. Mr. Majumder in addition to Mr. Ghosh has contended that unless it is shown that prejudice has caused to the delinquent for non observance of any rule the order impugned would not be available for judicial review.

13. Mr. Mukherjee in reply has contended that the earlier order of the single Bench empowered the authority to enter into the genuineness of the father's claim. On the basis of such persuasion the authority was at best entitled to proceed as against father's certificate. No leave was given to the authority to proceed as against Banibrata's certificate and that too without affording adequate opportunity to defend himself. He has also made remarks about the genuineness of the video recording. He says that no independent witness was called to support such video recording. He also contends that the authorities were put on notice two Apex Court decisions being Madhuri Patil (Kumari) (supra) and Basant (supra), even then the authorities did not care to consider those two decisions before proceeding as against Banibrata.

14. Under the West Bengal Schedule Caste and Schedule Tribe Identification Act State has been empowered through the proper authority to identify the persons belonging to the said caste. Rules framed thereunder in 1995 have laid down the procedure for issuance and/or cancellation and revocation of such certificate. Under Rule 3 of the 1995 Rules on receipt of a complaint or suo moto authority would be entitled to hold a preliminary enquiry. Under Rule 2 certificate issuing authority means, inter alia, Sub-Divisional Officer of a Sub Division. Under Rule 3 such authority is entitled to proceed for cancellation on the basis of a complain or suo moto by taking a preliminary enquiry by itself or by any officer above the rank of Inspector. Once a proceeding is initiated under Sub-rule (1) notice is to be issued to the person holding the certificate by giving him opportunity to defend his case. A detailed procedure is laid down in the said rule in this regard. In the instant case such procedure had been followed as observed by the learned single Judge. We also do not find any reason for disagreement on that score.

15. Question now remains whether the guidelines framed in Madhuri Patil (Kumari) (supra) had been followed and if not what would be the consequence. We have perused paragraph 13 of the said decision. A detailed procedure was laid down in respect of issuance as also cancellation of the certificate. Mr. Ghosh is not correct to say that the said procedure is only applicable in the case of issuance of the certificate and not cancellation. Such submission is factually

wrong. However, subsequently after enactment of the Act of 1994 and the statutory Rules in 1995 the State has been authorised by the legislature to proceed for identification of those persons as well as for cancellation of the licence issued to the erring persons. Identical plea was taken and/or supposed to have been taken before His Lordship in the earlier writ petition. His Lordship clearly observed that the notice was issued validly and then permitted the authority to proceed further. Banibrata did not challenge the order and allowed the authority to proceed further. After the order was passed against him he was not entitled to question the validity of the same unless he is successful in demonstrating that such order is patently illegal.

16. We have considered the decisions cited by Mr. Mukherjee. We are, however, unable to apply the ratio of those decisions.

17. In case of Baradakanta Mishra (supra) under the appropriate rules High Court was entitled to carry out disciplinary enquiry as against the judicial officers working at the district level, however, the Governor was entitled to pass appropriate order of dismissal. The High Court conducted the enquiry and passed the order of dismissal which was later on ratified by the Governor. Apex Court set aside the decision of the High Court by observing that if the order of the initial authority is void order of the appellate authority cannot make it valid. In the instant case the Sub-Divisional Officer is the appropriate authority under the Act and/ or the Rules. The order has been passed by him. Hence, we do not find any illegality therein.

18. We are not aware of the appropriate law on the subject in the State of Maharashtra. In the case of Basant (supra) the committee was framed as per the guideline of Madhuri Patil (Kumari) (supra). However, instead of three members two members passed the order. Considering such irregularity the Apex Court set aside the order without going into the merits of the matter. We do not find any scope of application in the instant case.

19. In the case of State of Kerala v. M.K. Krinannarayan (supra) the facts are totally different and have no resemblance with the present case. Three more decisions of the Apex Court have been cited by Mr. Mukherjee to support his contention that once there had been violation of natural justice such defect is inherent and cannot be cured at the appeal stage.

20. In the case of Institute of Chartered Accountants (supra) the respondent filed a writ petition before the High Court challenging the order of the institute cancelling his membership meaning thereby he would be debarred from practicing any further. On a complaint received against him the Council constituted a disciplinary committee to make an enquiry. The incumbent was given personal hearing. He was afforded opportunity to defend himself before the Committee after a thorough observance of principle of natural justice. The committee submitted its report holding him guilty of charges. The Council relying on the said report cancelled his membership without giving him any opportunity

to offer his explanation on the enquiry report. On perusal of paragraph 8 of the said decision it appears that he was to be called upon before the Council but in case he did not wish to be heard in person he was entitled to send a written representation against the proposed action. It was also made clear that scope of oral hearing for consideration of his written representation would be restricted to the penalty imposed. Such notice was challenged in the writ petition. High Court allowed his writ petition. Institute approached the Apex Court. It was contended on behalf of the Institute before the Apex Court that u/s 21 of the Chartered Accountants Act there was no scope for giving any copy of the enquiry report or asking for explanation or giving any personal hearing to the incumbent. It was also contended that even if he was not given any hearing before passing of the order by the council he would be entitled to prefer a statutory appeal u/s 22A before the High Court where he would be entitled to take all points available to him. This argument was negated by the Apex Court. The Apex Court was of the view that the disciplinary authority should have given him adequate opportunity not only for hearing but also for offering explanation on the report of the enquiry.

21. In the case of Balai Chandra Hazra (supra) there was no proper evidence on the plaintiffs requirement of the premises for his own use and occupation in the ejectment suit. The High Court in appeal granted opportunities to the parties to lead evidence and on that basis decided the case. The Apex Court negated such procedure.

22. In the case of Indian Airlines (supra) Regulation 13 was invoked to inflict summary dismissal. Such regulation was declared to be ultra vires.

23. All the above three cases have been relied upon by Mr. Mukherjee to support his contention that non-observance of principle of natural justice is an incurable defect and even at the appeal stage such defect cannot be cured.

24. In the case of Lillykutty (supra) the Apex Court relied upon the decision in the case of Madhuri Patil (Kumari) (supra) and set aside the order of the committee observing that the constitution of the said committee was not as per the decision of the Madhuri Patil (Kumari) (supra). In this Judgment Apex Court in paragraph 20 observed "since we are of the view that the findings recorded by the scrutiny committee and confirmed by the High Court cannot be said to be contrary to law or based on "no evidence" or otherwise objectionable, the grievance of the appellant is ill founded and no relief can be granted to her".

25. In the case of Anil Kumar (supra) the enquiry officer did not assign any reason why the evidence produced by the management to him was acceptable in preference to the evidence produced by the appellant. The Apex Court observed where a disciplinary enquiry affects the livelihood and is likely to cast a stigma is to be held in accordance with the principle of natural justice minimum expectation is that the report must be a reasoned one.

26. In the instance case a reasoned order has been passed after considering the objections raised by Banibrata. Hence, we do not find any non-compliance of the

ratio decided in the case of Anil Kumar (supra).

27. In a three bench decision in the case of Vice-Chairman, Kendriya Vidyalaya (supra) the Apex Court considered a case where incumbent was summarily dismissed after being found to have used an OBG certificate wrongly obtained by him. The Apex Court did not interfere with the decision of the Tribunal as well as the High Court dismissing the petition of the incumbent.

28. In the case of P.D. Agarwal v. State Bank of India reported in 2006 VIII SCC 776 the Apex Court observed that unless prejudice is shown to have been caused to the incumbent, plea of violation of principle of natural justice cannot be accepted. In paragraph 30 of the said decision the Apex Court observed "the principle of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change".

29. On a combined reading of the aforesaid decisions we are of the view that each and every case has to be judged on its factual matrix. In the instant case in the earlier writ proceeding learned single Judge observed that so long Gobinda was having the Schedule Caste Certificate Banibrata certificate could not be cancelled. Hence, there should be an enquiry on Gobinda's certificate after giving adequate opportunity to defend such action by the heirs of Gobinda as by this time Gobinda had died. Accordingly, notices were given. Banibrata contested the said proceeding. He was given audio and video recording of Gobinda's interrogation as well as the other material evidence relied upon by the State. He was also offered personal hearing. The authority thereafter passed an order cancelling Gobinda's certificate. We have carefully examined the provisions of the Rules of 1995. We have also carefully examined the order of the learned single Judge passed in the earlier writ proceeding. It was not assailed by any of the parties. We do not find any violation on that score. Merely because the guidelines in Madhuri Patil (Kumari) (supra) was not followed the reasoned order passed by the authority cannot be set aside specially when relevant Act and the Rules framed were enacted in the State after the decision of the Apex Court in the case of Madhuri Patil (Kumari) (supra).

30. Pertinent to note, the other heirs and legal representatives have not challenged the reasoned order passed by the authority. It is only Banibrata who is fighting for his own interest.

31. Hence, we do not find any scope of disagreement with the learned single Judge on that score and the order of the authority passed in the case of Gobinda in our view could be assailed as prayed for in the writ petition filed by Banibrata and the learned Judge rightly dismissed the same.

32. Let us now come to the issue of cancellation of the certificate of Banibrata. Learned single Judge in no uncertain terms in the earlier writ proceeding observed and in our view very rightly that once Gobinda's certificate was cancelled the Banibrata would become disentitled to claim independently

belonging to schedule caste. Pertinent to note, Banibrata obtained certificate when his father was admittedly recorded as belonged to general caste. This was not known to the appropriate authority. Once it came to the notice of the authority they caused a preliminary investigation where Gobinda confessed that he never belonged to Nomosudra community. Throughout his service carrier he did not claim so. He obtained certificate after Banibrata had got it. The authorities observed that his certificate was issued on the basis of the certificate issued to Banibrata. Once we have held that the learned Judge was right in rejecting the contention of Banibrata on the issue of cancellation of the certificate of Gobinda nothing further was left to be done in the case of Banibrata. Taking a support from the observation of the Apex Court we observe that the principles of natural justice and its violation are to be judged considering the facts and circumstances of a particular case. If the order of cancellation of Gobinda's certificate is held to be valid Banibrata cannot in no stretch of imagination claim that he independently is entitled to claim to be belonging to schedule caste. If we remand his case back to the authority by asking them to start the proceeding de novo by giving him further opportunity to defend his case it would be a mere formality. Such would only delay the process of cancellation. Hence, on the issue of cancellation of Banibrata's certificate we also express the same view and the learned Judge, in our view, was right in rejecting the writ petition. In this regard we may mention that in the case of Vice-Chairman, Kendriya Vidyalaya (supra) the Apex Court relied upon the report of the enquiry conducted by the District Magistrate and on that basis rejected the claim of the incumbent. In paragraph 11 of this decision the Apex Court observed, "the principle of natural justice, it is well settled, must not be stretched too far". The Apex Court in the said decision quoted an earlier decision of the Apex Court in the case of Ram Chandra Singh Vs. Savitri Devi and Others, , the Apex Court therein observed, "it is well settled that mis-representation itself amounts to fraud. Indeed innocent representation may also give reason to claim relief against, fraud".

33. Banibrata all through out knew that he did not belong to schedule caste community. He never claimed such benefit while undergoing study. At a later stage prior to obtaining employment he obtained such certificate. He availed benefit. Much thereafter Gobinda's certificate was issued. Gobinda during investigation confessed that he did not belong to schedule caste. What more was required for cancelling the certificate of Gobinda and Banibrata, is a question whose answer is not known to us and in any event such cloud, if any, could not be successfully removed by Mr. Mukherjee appearing for the appellant.

Appeal fails and are hereby dismissed.

There would be no order as to costs.

There would be, however, an order of stay of operation of this Judgment and order for a period of eight (8) weeks from date.

34. Before parting with we would be failing in our duty if we do not record an

unpleasant situation which we had to face today almost at the end of the hearing.

As we have observed earlier, in the earlier writ proceeding learned single Judge observed that since Gobinda was no more in this world opportunity should be given to all his heirs. When Banibrata filed the above writ petition he contended that no notice was given to the other heirs. He made them parties in his second writ petition. They were represented by learned lawyer as appears from the Judgment and order of the learned single Judge. Mr. Saha Roy appearing for the appellant contends that the other heirs being his brothers and sister initially appeared and supported him and thereafter disappeared from the scene. Possibly after reading the mind of the Court only two days before copies of the Paper Book have been served upon the other heirs as claimed by Mr. Kishore Dutta appearing for the other heirs. Mr. Dutta today submits on instruction from two of his clients who are present in Court that they were never served with any notice either by Sub-Divisional Officer or by the writ petitioner and/or the appellant as the case may be, earlier. We, however, on perusal of the Paper Book finds the name of the lawyers who represented them before the learned single Judge. We express our strong displeasure as to how attempt has been made to mislead this Court by making incorrect submission on behalf of the other heirs. In any event once the other heirs appeared in the writ petition the Judgment is binding upon them. They did not file any appeal from the said order. They never appeared at the hearing of the appeal until today.

Urgent xerox certified copy would be given to the parties, if applied for.

Tapas Kumar Giri, J.

35. I agree.