
(2016) 09 CAL CK 0060
In the Calcutta High Court
Case No : W.P. 23021(w) of 2010

Bikash Chandra Mahata

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Citation : (2017) 1 CalLJ 249 : (2017) 1 CalLT 162

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Partha Sarathi Bhattacharyya, Learned Senior Advocate, Mr. Arunava Maiti, Mr. Raju Bhattacharyya, Advocates, for the Petitioner; Mr. Ram Mohan Pal, Advocate, for the State

Final Decision : Allowed

Judgement

Samapti Chatterjee, J. - The petitioner filed the present writ petition for a direction for cancellation of the order dated 26.08.2010 passed by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur, on the ground that the written statement filed by Subhas Chandra Mahata and Himanshu Mahata was not furnished to the petitioner in terms of the direction passed on 25.02.2010 in W.P No. 1510(w) of 2010 and also the order was not passed by a Scrutiny Committee.

2. The petitioner's case brief is as follows:-

3. The petitioner is a Schedule Tribe Candidate and belongs to Bedia Community.

4. The names of two referees, namely, respondent no. 4 and 5 had been shown by the petitioner.

5. The Schedule Tribe Certificate of Subhas Chandra Mahato and Sri Himangshu Mahato had not been cancelled.

6. A show cause notice was issued on 01.04.2008 by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin

Dinajpur, asking the petitioner to show cause as to why the Schedule Tribe Certificate should not be cancelled, impounded or revoked.

7. The petitioner submitted a reply to the show cause on 15.10.2007. On 28.07.2008 the Sub Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur, passed an order holding that the Schedule Tribe Certificate issued to the petitioner is cancelled.

8. A writ petition being W.P 20605(w) of 2008 was filed by the petitioner challenging the order dated 28.07.2008 passed by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur and on 7th January 2009 an order was passed by an Hon''ble Single Judge in W.P No. 20605(w) of 2008 thereby setting aside the order dated 28.07.2008 passed by the Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur and by requiring such authority to hear the petitioner and take into account all relevant materials before passing a fresh order on the petitioner's application as to whether the Schedule Tribe Certificate should be cancelled and a direction was passed that the relevant officer will proceed from the stage of reply to the show cause notice and will comply with the provisions of the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Rules, 1995. A direction was also passed that the officer will also consider whether it would be desirable to allow the writ petitioner to rely on further documents in course of hearing and W.P No. 20605(w) of 2008 stood disposed of.

9. Pursuant to the directions passed on 07.01.2009 in W.P No. 20605(w) of 2008 the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur passed an order on 04.11.2009 holding that the Schedule Tribe Certificate of the petitioner should be cancelled as there is no reasonable and acceptable ground to nullify the earlier order of cancellation.

10. A writ petition being W.P No. 1510(w) of 2010 was filed challenging the order dated 04.11.2009 passed by the Sub-Divisional Officer, Balurghat (Sadar) and on 25.02.2010 a Single Judge was pleased to set aside the order dated 04.11.2009 passed by the Sub-Divisional Officer, Balurghat (Sadar) and the Hon''ble Single Judge observed that the documents which were produced by the petitioner were not given due consideration by the said office while passing the impugned order and the issue was remanded back to the Sub Division Officer for giving a decision afresh in accordance with law after granting opportunity of hearing to all interested parties and upon consideration of all documents that might be produced before him and in the event the prayer of the petitioner is declined a reasoned order shall be passed and the same shall be communicated to the petitioner and it was further made clear that the Sub-Divisional Officer, Balurghat (Sadar) shall not look into any documents unless copy of the same has been furnished to the petitioner and the writ petition stood disposed of.

11. After the order was passed on 25.02.2010 in W.P No. 1510(w) of 2010 a show cause notice was issued on 28.07.2010 calling upon petitioner to show

cause as to why the Schedule Tribe Certificate of the petitioner could not be cancelled, impugned or revoked.

12. The petitioner submitted a reply to show cause on 11.08.2010. On 26.08.2010 the Sub Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur passed an order thereby cancelling again the Schedule Tribe Certificate issued in favour of the petitioner. In the present writ petition the petitioner had challenged the order dated 26.08.2010 passed by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur on the ground that no copy of the written statement submitted by Subhas Chandra Mahato and Himangshu Mahato had been supplied to the petitioner and the direction passed on 25.02.2010 in W.P No. 1510(w) of 2010 had not been complied with.

13. Mr. Ram Mohan Pal, learned advocate appearing on behalf of the State Authority had contended that there is no infirmity in the order passed by the Sub-Divisional Officer, Balurghat (Sadar) and no interference is called in respect of the order passed on 26.08.2010.

14. Mr. Partha Sarathi Bhattacharyya, learned senior advocate appearing on behalf of the petitioner submitted that the order passed by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur, is without jurisdiction and no copy of the written statement submitted by Subhas Chandra Mahato and Himangshu Mahato had been supplied pursuant to the direction passed on 25.02.2010 in W.P No. 1510(w) of 2010.

15. Considering the submission advanced by the learned advocates as discussed above and after meticulously perusing the record and the relevant portions of the acts and the Hon''ble Supreme Court decision reported in Kumar Madhuri Patil (Supra) and Anand (Supra) I am of the view that the impugned order dated 26.08.2010 passed by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur is without jurisdiction and void ab initio and void ab initio and therefore cannot be sustained in the eye of law as the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur has no authority to cancel the Schedule Tribe Certificate of the petitioner granted by the appropriate authority after considering all requisite documents.

16. I also cannot ignore the judgment of Madhuri Patil (supra) where it is held that the order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution of India.

17. Therefore, cancelling the Schedule Tribe Certificate of the petitioner by the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur is wholly illegal and liable to be quashed.

18. The Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur failed to examine the petitioner's case as

per guideline laid down by the Hon"ble Apex Court in Madhuri Patil (Supra) reported in 94(6) SCC 241 and which was modified in the case of 97(5) SCC 437.

19. It was the duty of the Sub-Divisional Officer, Balurghat (Sadar) and Caste Certificate Issuing Authority, Balurghat, Dakshin Dinajpur to refer the matter before scrutiny committee to examine the Schedule Tribe Certificate of the petitioner instead of cancelling the same by the impugned order dated 26.08.2010.

20. The impugned order dated 26.08.2010 is quashed and set aside.

21. I direct the State Authority to constitute Scrutiny Committee and to refer the present case before the said Scrutiny Committee for denovo enquiry of the caste certificate of the petitioner and the said committee after receiving the caste certificate is directed to take decision in respect of the said caste certificate within 10 weeks from the date of communication of this order after holding enquiry and after supplying all documents to he petitioner handed over to the Scrutiny Committee by all parties and after giving consideration of the documents relied upon by the petitioner in respect of the caste certificate.

22. Needless to mention if it is found by the committee that the caste certificate of the Bikash Chandra Mahata is genuine then consequential steps should be taken if it is otherwise then a reasoned decision should be communicated to the petitioner within 2(two) weeks.

23. With this above direction, this writ petition is allowed.

24. There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.