

(2022) 11 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6424 Of 2014, 7159 Of 2021

Dipen Kumar Singha And 2 Ors.

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 28-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2022) 11 GAU CK 0049

Hon'ble Judges : A M Barbhuiya, J

Bench : Single Bench

Advocate : S F Maitai, H Sarmar, A M Barbhuiya

Final Decision : Disposed Of

Judgement

1. Heard Mr. AM Barbhuiya, learned counsel for the petitioners, Mr. B Goswami, learned Additional Advocate General, Assam for the respondents No. 1, 2, 3 and 4 being the authorities in the Water Resources Department, Government of Assam, Mr. S Biswas, learned counsel for the respondent No. 5 Ms. Priyanka Acharjee and Mr. R Dhar, learned Additional Senior Government Advocate for the respondent No. 6 being the authorities in the WPT&BC Department.

2. The writ petitioners Th. Dipen Kumar Singha, Lal Mohan Singha and Rajeev Singh as well as the respondent No. 5 Priyanka Acharjee participated in a selection process pursuant to an advertisement dated 06.07.2013 issued by the Executive Engineer, Silchar Water Resource Division inviting applications for 17 numbers of sanctioned vacant posts of Section Assistant(district level) in the establishment. The advertisement specifically provided that the last date of receipt of application was 22.07.2013 and that no applications would be entertained after the last date. The petitioners as well as the respondent No. 5 submitted their respective applications before the last date of submission. All the petitioners and the respondent No. 5 participated in the selection process as candidates belonging to the OBC category.

3. The selection process being a selection for the post, amongst others, reserved for OBC candidates and the petitioners and the respondent No. 5 having participated in the selection process as OBC candidates, there is also a requirement of law that the appropriate certificate certifying that the candidates do belong to the OBC category is also to be submitted along with the application form before the last date fixed for the purpose.

4. In the instant case, having participated in the selection process, the respondent No. 5 Priyanka Acharjee had been selected and appointed as per the order of appointment dated 31.10.2014. The writ petitioners who had also participated in the selection process, instituted the writ petitions on the ground that the OBC certificate relied upon by the respondent No. 5 was dated 28.08.2014 i.e. much after the last date of submission of the application.

5. Accordingly, by referring to the principle that all such certificates and documents that are relied upon by a candidate in a selection process to establish the eligibility of such candidate has to be submitted before the last date of submission of application, the petitioners assail the selection and appointment of the respondent No. 5 on the ground that the certificate which provides that she is an OBC candidate was submitted after the last date of submission of application and therefore, as on the last date of submission of the application form, the respondent No. 5 was ineligible to have been considered as an OBC candidate.

6. Mr. B Goswami, learned Additional Advocate General, Assam for the respondents in the Water Resources Department by referring to the records of the selection process states that the respondent No. 5 along with her application form did submit a certificate certifying that she is an OBC candidate, which is dated 15.07.2013 i.e. prior to the last date of submission of application. But the said certificate although certified by the Sub Divisional Level OBC Development Board was not countersigned by the Sub Divisional Officer (Civil) [in short SDO(Civil)] as required under the law. According to the learned Additional Advocate General, as the respondent No. 5 did submit a certificate certifying that she is an OBC candidate issued by the Sub Divisional Level OBC Development Board, the authorities entertained the application of the respondent No. 5 and allowed her to participate in the selection process.

7. Mr. AM Barbhuiya, learned counsel for the petitioners per-contra contends that the procedural law requires an OBC certificate to be certified by the Sub Divisional Level OBC Development Board, but to make it to be a complete certificate, there is also a requirement to be countersigned either by the Deputy Commissioner or by the SDO(Civil).

8. As in the instant case, the certificate of the respondent No. 5 was not countersigned by the SDO(Civil), therefore, the certificate itself was not a complete certificate under the law and therefore, the respondents ought not to have allowed the petitioner to participate in a selection process on the basis of

such incomplete OBC certificate.

9. Mr. AM Barbhuiya, learned counsel for the petitioners in order to substantiate the contention that the eligibility of a candidate to participate in a selection process is with reference to the last date of filing of application, relies upon the pronouncement of the Hon'ble Supreme Court rendered in paragraph 6 of its pronouncement in *Ashok Kumar Sharma & Others vs Chander Shekhar & Another*, reported in (1997) 4 SCC 18. By referring to the said proposition in paragraph 6 of *Ashok Kumar Sharma (supra)*, it is the submission of Mr. AM Barbhuiya, learned counsel for the petitioners that as the OBC certificate of the respondent No. 5 was not a complete certificate on the last date of submission of the application form, therefore, the respondent No. 5 was ineligible to participate in the selection process as an OBC candidate.

10. Mr. AM Barbhuiya, learned counsel for the petitioners also refers to the further provisions in paragraph 6 of the pronouncement in *Ashok Kumar Sharma (supra)* that an earlier majority view of the Supreme Court providing that having allowed more number of participants to participate in the selection process, the recruiting authority was able to get the best talent available had been rejected by the Supreme Court to be a clear error of law and an error apparent on the face of the record and, therefore, the said proposition cannot also come in the aid of the selection and appointment of the respondent No.5.

11. Mr. S Biswas, learned counsel for the respondent No.5, on the other hand refers to a judgment of the High Court of Delhi in *Tez Pal Singh and Ors. Vs. Government of NCT of Delhi and Another* reported in 2000(52) DRJ, wherein it has been held that if a person is SC by birth and not by acquisition because of any other event happening at a later stage, the certificate issued by the competent authority is only an affirmation of the fact which is already in existence and the purpose of such certificate is to enable the authorities to believe in the assertion that the candidate belongs to SC category and it is not that the person concerned did not belong to the SC category prior to the date on which the certificate was issued. It is also contended by Mr. S Biswas, learned counsel for the respondent No.5 that the aforesaid proposition was under consideration of the Supreme Court in *Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Another*, reported in (2016) 4 SCC 754 wherein the proposition of law laid down in *Tez Pal Singh (supra)* was affirmed.

12. Mr. B Goswami, learned Additional Advocate General Assam on the other hand, relies upon the proposition of law laid down by the Supreme Court in paragraph 7 of its judgment in *Manager, Corporate Educational Agency Vs. James Mathew and others* reported in (2017) 15 SCC 595 wherein it has been held that the certificate of the declaration of minority status is only a declaration of an existing status and there is no question of the availability of the status only from the date of the declaration and further what is declared is a status which is already in existence.

13. Heard the learned counsel for the parties.

14. The admitted facts in the present writ petition is that the last date of submission of the application form as per the advertisement dated 06.07.2013 was 22.07.2013. Along with the application form, the respondent No.5 Priyanka Acharjee, who had submitted her application under the OBC category had submitted an OBC certificate which was signed only by the Sub-Divisional Level OBC Development Board, Silchar and as required under the procedural law relating to such certificate, it was not counter signed by the Deputy Commissioner or by the SDO (Civil) concerned. Later on, before the interview was held, the respondent No.5 produced another certificate dated 28.08.2014, which was signed by the Sub-Divisional Level OBC Development Board as well as counter signed by the SDO (Civil) of the relevant place and hence as per the procedural requirement it was a complete and acceptable certificate.

15. We take note of one aspect of the matter that it is nobody's case i.e., either of the petitioners or of the respondents that a deliberate delay was caused by the authorities in conducting the interview for the selection to accommodate the respondent No.5 in any manner, so that she is able to provide her complete certificate and nor such issue has been raised before the Court. As the petitioners are relying upon the pronouncement of the Supreme Court in Ashok Kumar Sharma (supra) in paragraph 6, for convenience, paragraph 6 of the judgment is extracted as below:

"6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC

168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

16. A reading of the extracted proposition laid down by the Supreme Court in Ashok Kumar Sharma (supra) makes it discernible that the concept of eligibility of a candidate to be judged with reference to the last date of filing of the application is that if it were known that persons, who obtained the qualification after the prescribed date would also be allowed to appear in the interview process, other similarly placed persons who would have otherwise acquired the qualification subsequent to the last date of submission of the application form would also have applied and, therefore, the persons who makes an application, but acquires the qualification subsequently would be given an undue preference which would violate Article 14 of the Constitution of India. Therefore, it is a proposition of law that a person, who acquired the qualification subsequent to such prescribed date, cannot be considered at all.

17. We have taken note that in Ashok Kumar Sharma (supra) the issue before the Supreme Court was on the eligibility of a given candidate, who acquired the required qualification after the last date of submission of the application form, meaning thereby that the factual situation was such that on the last date of submission of the application form, the candidate concerned did not have the necessary qualification even to be eligible. The proposition of law in Ashok Kumar Sharma (supra) having been laid on the factual premises that in the case before the Supreme Court, the candidate concerned did not have the necessary qualification to be eligible on the last date of submission of the application form would be given a preferential treatment in violation of Article 14 of the Constitution if his or her application is accepted with the subsequently acquired qualification, if examined from the factual situation involved in the present case, it is noticeable that in the instant case, the issue of a complete certificate being submitted after the last date of submission of the application form is related to the status of the respondent No.5 Priyanka Acharjee as a person belonging to the OBC category. In other words, the factual basis upon which the proposition was laid down by the Supreme Court in Ashok Kumar Sharma (supra) would be different to an extent that in Ashok Kumar Sharma (supra) the factual aspect was that the person concerned did not have the qualification on the last date of submission of the application form, but acquired subsequently, whereas in the case at hand, the person concerned was otherwise an OBC candidate, but was formally certified and declared by the certificate dated 28.08.2014 which admittedly was after the last date of submission of the application form.

18. As per Black Law's Dictionary a 'certificate' means a document in which a fact is formally attested and also a document certifying the bearer the status or authorization to act in a specific way. Accordingly, it has to be understood that a 'certificate' is a document which formally attests the existence of a particular fact. The word 'fact' in the Black Law's Dictionary is again given the meaning of something that actually exists or that it is an aspect of a reality. Facts again are of two kinds, i.e., ancient fact and evidentiary fact. Ancient or existing fact is that which existed or occurred for a very long period of time, whereas evidentiary fact is a fact that is necessary for or leads to establishing the evidence of a fact. As the concept 'fact' itself can be of two kinds i.e., ancient fact and evidentiary fact, a certificate certifying the existence of a fact would also necessarily have to be examined as to whether the fact that is certified belongs to the category of ancient or existing fact or it belongs to evidentiary or a fact which comes into existence upon it being certified.

19. From the aforesaid perspective, when we examine a certificate certifying a person belonging to be of the OBC category in contradiction with another certificate certifying that a person had acquired a particular qualification or not, a certificate certifying a person to be belonging to OBC category would necessarily have to be a certificate certifying the existence of a pre-existing fact and it is accordingly a formal manner of putting forth the fact whereas a certificate certifying as to whether a candidate has acquired a particular qualification or not would be a document which certifies that such person do have the qualification and the existence of the qualification takes it effect from such certificate alone.

20. Having taken note of the aforesaid distinction regarding the existence of a fact that a candidate who belongs to the OBC category and the fact whether the person had acquired a particular qualification or not, we have to examine the applicability of the proposition of law laid down by the Supreme Court in Ashok Kumar Sharma (supra). A reading of the proposition of law laid down in Ashok Kumar Sharma (supra) makes it discernible that the consideration before the Supreme Court was that by means of a certificate establishing the qualification, the certificate would also render the existence of qualification of the person concerned and, therefore, if any such certificate after the last date of submission of the application form is made, it may also lead to the conclusion that as on the last date of submission of application form, the candidate concerned did not have the qualification. But when the matter is on the existence of a fact where the person belongs to the OBC category, the person belonging to the OBC category would be by birth having born in a family categorized to be OBC would be an OBC and a certificate thereof would only be a formal declaration of the existing fact and not that the fact comes into existence upon such certification. From such point of view, the proposition of law laid down in Ashok Kumar Sharma (supra) as regards the production of a certificate concerned on the last date of submission of the application form would not be applicable as regards where the fact to be established by the certificate as regards as to whether the candidate concerned belongs to OBC category. In this respect, we take note of the

proposition of law laid down by the High Court of Delhi in Tez Pal Singh (supra) wherein it has been held as extracted:

"The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved."

21. In the matter before the High Court of Delhi in Tez Pal Singh (supra), the question was as to whether a candidate becomes a SC candidate only upon being certified or as to whether the person who otherwise acquires the status by birth was only given a formal declaration by a certificate. Going by the concept that facts can be of two kinds, ancient or evidentiary facts to be established by the certificate, we are in agreement with the proposition of law laid down by the High Court of Delhi in Tez Pal Singh (supra) in the aforesaid paragraphs. We have also noticed that the said proposition has also been approved by the Supreme Court in paragraph 16 in Ram Kumar Gijroya (supra).

22. We also take note of the factual basis involved in this matter that the last date of submission of the application form was 22.07.2013 and the respondent No.5 was required to submit an OBC certificate before the last date of submission of the application form. Accordingly, the respondent No.5 Priyanka Acharjee approached the authorities for such certificate and the certificate was issued by the Sub-Divisional Level OBC Development Board on 15.07.2013, but without the counter signature of the SDO (Civil). The situation is sought to be explained that on the given date, the SDO (Civil) was not available in office to make the counter signature, whereas a renewed certificate was obtained by the candidate concerned subsequently, when the officer concerned for counter signature was available in office. But, be that as it may, the fact that remains is that the respondent No. 5 belongs to the OBC category, which, in fact, if yes, would be an existing fact and it cannot be a situation that the respondent No.5 would belong to OBC only upon the certification and not otherwise.

23. From such point of view, the concept of curable defect can also be made applicable in the present case i.e., if otherwise, on facts, a particular event or requirement exists, but the person concerned was either not formally certified

about it or for some reason did not produce any such certificate and later on produces the required certificate, such shortcomings would be a curable defect i.e. a defect in form rather than a defect in substance. From the said principle also, we are unable to accept the contention of the petitioners that the respondent No.5 was an ineligible candidate on the last date of submission of the application form so as to render the entire selection and appointment to be unacceptable in law requiring interference. From such point of view, we do not find any merit in the claim of the writ petitioners and the writ petition stands dismissed.

24. The petitioners by filing WP(C)No.7159/2021 also assails the OBC certificate dated 15.07.2014 granted in favour of the respondent No.5 Priyanka Acharjee. But the ground of challenge is that the said certificate could not have been relied upon by the respondent No.5 in the selection process, rather than it being a challenge to the acceptability and validity of the certificate itself. As the challenge to the certificate is on the ground of it being unacceptable in the selection process, rather than it being a certificate which is unacceptable or invalid in law, we are not required to give a separate adjudication in WP(C) No.7159/2021 and the judgment in WP(C)No.6424/2014 would cover the matter.

25. Both the writ petitions stand disposed of in the above terms.