

(2020) 01 CAL CK 0070

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 24655 (W) Of 2018, Civil Application (CAN)
No. 11173 Of 2019

Krishnapada Sardar And Another

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Order 6 Rule 4
West Bengal Schedule Castes And Schedule Tribes (Identification) Act, 1994 — Section 5, 8A, 8A(1), 8A(3), 8A(3)(c)(e), 8A(3)(c)(i), 9, 9(1), 9(2)
West Bengal Scheduled Castes And Scheduled Tribes (Identification) Rules, 1995 — Rule 3, 3(1), 3(2), 5

Citation : (2020) 01 CAL CK 0070

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, Arunabha Sengupta, Chama Mookherji, Paramita Pal, K.C. Sahoo, G.K. Das

Final Decision : Disposed Of

Judgement

Sabyasachi Bhattacharyya, J

The present challenge is against an order bearing no.16 dated November 26, 2018 passed by the Sub-Divisional Officer, Kakdwip, cancelling the schedule tribes certificate awarded to the present writ petitioners.

Learned counsel for the petitioners argues on the strength of a decision reported at AIR 1995 SC 94 (Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and others) that the procedure to be followed in awarding and cancelling such certificates was laid down in the said judgment. A detailed consideration of the customary beliefs and practices as well as the inhabitants of intractable terran regions of the country who were kept away from the mainstream of national life and with their traditional moorings were to be taken into consideration in ascertaining whether a person belongs to the schedule

tribes. Detailed guidelines were laid down in the said judgment as to how such certificates should be issued or cancelled and the several considerations which were to be taken into account before arriving at a decision as to the social status of the concerned person vis-à-vis his/her claim to be a member of the tribe or tribal community.

It is argued by learned counsel for the petitioner that the petitioner is a member of the 'Bagti' community, which is a sub-group under the Bhumij/Munda tribal community and as such the scheduled tribe certificate was rightly granted in favour of the petitioners. In support of such contentions, learned counsel further submits that there are textual authorities which are of the opinion that the 'Bagti' community, as distinct from the 'Bagdi' community, is a sub-community under the Munda tribe.

Learned counsel further points out that, by a cryptic order, the scheduled tribe certificate issued to the petitioners was cancelled by the Sub-Divisional Officer, thereby violating the specific provisions under Section 8A of the West Bengal Schedule Castes and Schedule Tribes (Identification) Act, 1994. It is submitted that the order of cancellation is vitiated on that score as well. Learned counsel for the petitioners also relies on a judgment reported at (2007) 12 SCC 796 (GM, Indian Bank vs. R. Rani and another) wherein it was held that the judgment of Madhuri Patil (*supra*) laid down guidelines or law, which were to be given effect to and were not merely directory or persuasive in nature.

Learned counsel appearing for the State-respondents submits that a reference ought to be made to the State Scrutiny Committee under Section 8A of the 1994 Act and the cancellation of the certificate directly by the Sub-Divisional Officer without seeking a report from such Committee was apparently illegal.

Learned counsel appearing for the private respondent no.9 submits that a detailed enquiry was held and the matter was referred by previous orders of the Sub-Divisional Officer to the Cultural Research Institute, Backward Class Welfare Department, Government of West Bengal, on the basis of the report furnished by which authority, the scheduled tribe certificate was cancelled.

Learned counsel for the private respondent no.9 seeks to file an affidavit in opposition at this juncture. However, such prayer is refused in view of the fact that previously the matter had been fixed today for hearing of the writ petition itself along with stay application and a direction had been given by a co-ordinate Bench for filing an affidavit in opposition within two weeks from the date of such order as long back as on December 17, 2018, which opportunity cannot be reopened for the private respondent at this mature juncture, particularly in view of no copy of such affidavit in opposition having been served on the respondents even till today.

Learned counsel for the private respondent seeks to impress upon this Court that the petitioners themselves made an application seeking to be classified under the schedule castes category and as such their scheduled tribe classification ought to

go on that ground alone.

Learned counsel for the private respondent cites a judgment reported at AIR 2008 SC 3266 (Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and others) for the proposition that the delay in making reference to the Scrutiny Committee for verification of the caste certificate, as also the delay on the part of the Scrutiny Committee in such verification, does not per se vitiate the order of termination of services of an employee, even when the certificate is ultimately found to be false. The said judgment was rendered in the context of the employee having rendered services to the employer for over twenty years and on the question as to whether it would be equitable to cancel her appointment, when admittedly in the first instance the employee was not eligible for such appointment. It was held in the said judgment that the issues were no longer *res integra*, since the implications of misuse of the benefits conferred by the Constitution on a particular section or sections of the citizenry were highlighted by the Supreme Court in *Madhuri Patil* (supra). It was said that the admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Casts or Scheduled Tribes and OBC candidates, as enjoined in the Constitution, of the benefits conferred on them by the Constitution. As such, it was held that the appointment obtained by fraud or misrepresentation should be cancelled even without waiting for the report of the Scrutiny Committee-in-question.

Learned counsel for the private respondent no.9 further cites an unreported Division Bench judgment of this Court dated September 22, 2017 in FMA 607-608 of 2010 (*Sri Biswajit Das Vs. The State of West Bengal and others*) for the proposition that if either on a complaint by any person or suo motu, the certificate issuing authority, upon recording a *prima facie* satisfaction that a certificate under the 1994 Act had been obtained by any person by furnishing any false information or by misrepresenting any fact or by suppression of any material information or by producing any document which is an act of forgery, may start proceedings for cancellation, impounding or revocation of the certificate, as the case may be. It was further held in the said judgment that when a person who is not a member of scheduled caste/tribe obtained a false certificate with a view to gain undue advantage to which he is/was not otherwise entitled, that would amount to commission of fraud, calling for immediate corrective action so as to prevent subversion of the Constitutional purpose and no leniency can be shown. It was further held that the prayer, that the matter therein ought to have been referred to the committee-in-question, need not be allowed in view of the other point raised in the said case, that the certificate issuing authority had assigned appropriate reasons for cancellation of the certificate issued in favour of the appellant.

Learned counsel for the State-respondents cites an unreported judgment of a coordinate Bench of this Court dated March 30, 2015 passed in MAT 2117 of 2014

(Darvell Investment & Leasing (I) Pvt. Ltd. and others Vs State of West Bengal and others) wherein it was held that the State Scrutiny Committee is empowered to enquire into a complaint of illegal cancellation of caste certificate by the certificate issuing authority under Section 9(1) of the Act of 1994 and/or to verify the social status of the certificate holder in relation thereto. It was further held in the said judgment that a conjoint reading of the powers of the Committee enumerated in Section 8A(3) and Section 8A(1) of the 1994 Act would make it clear that the intention of the legislature was not to restrict the power of the State Scrutiny Committee merely to verify social status of persons in whose favour a certificate has been illegally issued under Section 5. The committee, it was held, is empowered to look into all contraventions of any provisions of the Act. An illegal cancellation of a caste certificate issued under Section 5 of the Act to a member of the SC/ST community without following the procedure laid down in Section 9(1) read with Rule 3 of the State Rules is undoubtedly a contravention of the provisions of the Act which would be amenable to the supervisory jurisdiction of the Committee under Section 8A(3)(c)(e) and (i) of the Act.

In this context, the relevant sections ought to be referred to. Section 8A and Section 9 of the 1994 Act read, respectively, as follows:

8A. (1) The State Government may, by order, constitute a Committee to be called the State Scrutiny Committee for verification of social status of a person in whose favour a certificate is issued under Section 5.

(2) The Committee shall consists of the following Members :-

"(a) the Secretary, Backward Classes Welfare Department, Government of West Bengal, Explanation.-Secretary shall include a Special Secretary.

(b) the Commissioner, Directorate of Backward Classes Welfare, West Bengal or any officer no below the rank of Deputy Director, duly authorised by him.

(c) the Director, Cultural Research Institute, Backward Classes Welfare Department or any officer not below the rank of Deputy Director, duly authorised by him.

(3) Subject to any general or special order of the State Government, provisions of this Act and rules made thereunder, the Committee shall have powers-

(a) to verify the social status of a person in whose favour a certificate is issued under Section 5;

(b) to issue directions to the Vigilance Cell constituted under Sections 8B;

(c) to make an inquiry in connection with the contravention of any provision of this Act;

(d) to issue notice to any person or authority in such manner as may be prescribed;

(e) to call for information from any person or authority for the purpose of satisfying itself whether there has been any contravention of any provision of this Act or any rule or order made or direction issued thereunder;

(f) to require any person or authority to produce or deliver any document or think useful or relevant to the inquiry;

(g) to examine any person acquainted with the facts and circumstances of the case;

(h) to issue direction under sub-section (2) of Section 9 to the certificate issuing authority;

(i) to do such other things and perform such other acts not inconsistent with the provisions of this Act as may appear to be necessary or expedient for the proper conduct of its function, or which may be prescribed.

(4) The Committee shall meet at such place and time, and the meeting shall be conducted in such manner, as may be prescribed.

(5) All orders or directions of the Committee shall be authenticated by the Chairperson or by such officer of the Committee as may be authorised by the Chairperson on this behalf.

9. Power to cancel, impound or revoke certificate.- (1) If the certificate issuing authority is satisfied that a certificate under this Act has been obtained by any person by furnishing any false information or by misrepresenting any fact or by suppressing any material information or by producing any document which is an act of forgery, it may cancel, impound or revoke such certificate in such manner as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), if the Committee is satisfied that a certificate under this Act has been obtained by any person by furnishing any false information or by misrepresenting any fact or by suppressing any material information or by producing any document which is an act of forgery, it may issue a direction to the certificate issuing authority, in such manner as may be prescribed, to cancel, impound or revoke such certificate and, on receipt of such direction, the certificate issuing authority shall, by order in writing, cancel, impound or revoke such certificate.

Section 8A (3) envisages that, subject to general or special order of the State Government, provisions of this Act and the Rules made thereunder, the Committee shall have certain powers. Such powers, inter alia, include the verification of the social status of a person in whose favour a certificate is issued under Section 5 of the 1994 Act, as well as the power of making an enquiry in connection with the contravention of any provision of the Act, to issue notice to any person or authority in such manner as may be prescribed and to call for information from any person or authority for the purpose of satisfying itself whether there has been any contravention of any provision of this Act or any rule

or order made or direction issued thereunder. Further powers are given, as quoted above, to the said Committee under Section 8A.

On the other hand, Section 9 empowers the certificate issuing authority to cancel, impound or revoke the scheduled castes and scheduled tribes certificate if the authority is satisfied that a certificate under the Act has been obtained by any person by furnishing any false information or misrepresentation or suppression of any material information or by producing any document which is an act of forgery. Sub-Rule 2 of Section 9 categorically provides that, notwithstanding anything contained in sub-section (1), if the Committee is satisfied that a certificate under this Act has been obtained by any person by furnishing false information or by misrepresenting any fact or by suppressing any material information or by producing any document which is an act of forgery, it may issue a direction to the certificate issuing authority, in such manner as may be prescribed, to cancel, impound or revoke such certificate and, on receipt of such direction, the certificate issuing authority shall, by order in writing, cancel, impound or revoke such certificate.

Taken in conjunction with the Rules of 1995 framed under the said Act, it is seen that Rule 5 provides for the cancellation, impounding or revocation of certificates which, virtually, is similar in language to Section 9(1). The procedure for cancellation, impounding or revocation of certificate, however, is stipulated in Rule 3 of Rules 1995 which is as follows:

(3). Procedure for cancellation, impounding or revocation of certificate.-
(1) Whenever it appears to a certificate issuing authority on complaints by any person or suo motu that a person, in whose favour a Scheduled Caste or Scheduled Tribe certificate has been issued, does not belong to such caste or tribe, the certificate issuing authority shall hold a preliminary enquiry by itself or by any officer above the rank of Inspector of the Scheduled Castes and Tribes Welfare Department, as may be authorised by it in this behalf, and shall prima facie satisfy itself as to the truth or otherwise of the complaints as aforesaid, record the reasons of its satisfaction as to the truth or otherwise of the complaints, and, if necessary, start proceedings for cancellations, impounding or revocation of the certificate, as the case may be.

(2) Where any proceedings have been started under sub-rule (1), the certificate issuing authority shall, by written notice, ask the person holding the certificate to deposit the same, in original, in its office and, when a certificate has been so deposited, a receipt in favour of the person depositing the certificate shall be issued.

(3) The certificate issuing authority shall, then, issue a notice to the holder of the certificate to show cause within fifteen days or within a period of shorter duration as it may think fit, as to why the certificate issued in his favour shall not be cancelled, impounded or revoked on the grounds stated in the notice.

(4) (a) on the expiry of the period referred to sub-rule (3), the certificate issuing

authority shall fix a date of hearing of the case by notice to the complainant and the holder of the certificate, asking them to bring oral witness or documentary evidence against, or, as the case may be, in support of, the caste or the tribe identity of the holder of the certificate.

(b) A copy of the notice issued to the complainant, if any, and the holder of the certificate, shall be affixed to the notice board of the office of the certificate issuing authority for the information of the public.

(c) The service of any notice under these rules shall be governed by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

It is evident that whenever it appears to a certificate issuing authority, on complaints or suo motu, that a person, in whose favour a certificate has been issued under the Act, does not belong to such caste or tribe, the certificate issuing authority shall hold a preliminary enquiry by itself or by any officer above the rank of Inspector of the Scheduled Castes and Tribes Welfare Department, as may be authorised by it in this behalf, and shall prima facie satisfy itself as to the truth or otherwise of the complaints as aforesaid, record the reasons of its satisfaction as to the truth or otherwise of the complaints and, if necessary, start proceedings for cancellation, impounding or revocation of the certificate, as the case may be.

Sub-rule (2) of Rule 3 provides that where any proceedings have been started under sub-rule (1), the certificate issuing authority shall, by written notice, ask the person holding the certificate to deposit the same, in original, in its office and, when a certificate has been so deposited, a receipt in favour of the person depositing the certificate shall be issued.

Sub-rule (3) provides that the certificate issuing authority shall, then, issue a notice to the holder of the certificate to show cause within fifteen days or within a period of shorter duration, as it may think fit, as to why the certificate issued in his favour shall not be cancelled.

The rest of the provisions also deal with the procedure for cancellation of such certificate. It is well-settled that the Rules formulated under the aegis of a statute cannot override the provisions of the statute itself. As such, a harmonious construction has to be attributed to Rule 3 of Section 9 of 1994 Act.

A cursory perusal of Section 9 itself shows that the limited power of the certificate issuing authority for cancellation, impounding or revocation of castes operates where the person holding the certificate furnished false information or committed an act of misrepresentation of fact, suppressed any material information or produced any document which was an act of forgery. While dealing with such cases and only such cases, a certificate issuing authority can cancel, impound or revoke such certificate, subject to the provisions of Rule 3 of the 1995 Rules. The provisions of Sub-Rule (1) of Rule 3 for holding a preliminary enquiry by the issuing authority itself or by an officer above the rank

of Inspector of the Scheduled Casts and Tribes Welfare Department cannot be construed to mean that the said preliminary enquiry would be sacrosanct. The enquiry held by such an officer or the certificate issuing authority itself have to be on the same footing as to legal hierarchy and the report given by such officer above the rank of

Inspector cannot be held in any manner to be of higher authority than that prepared by the certificate issuing authority itself.

However, a conjoint reading of Section 9 and Section 8A of the 1994 Act makes it evident that such enquiry can only pertain to a case of false information, misrepresentation, suppression or forgery as per Section 9(1). That apart, sub-section (3) of Section 8A categorically enumerates the powers vested in the State Scrutiny Committee in that regard. This Court, accordingly, concurs substantially with the view expressed by co-ordinate Bench in *Darvell Investment & Leasing (I) Pvt. Ltd.* inasmuch as the State Scrutiny Committee has the authority to look into any irregularity or illegality committed in performing/ functioning any act under the 1994 Act and to make an enquiry with regard to contravention of any provision of the said Act.

However, although the judgments of *Madhuri Patil* (supra) and the subsequent cited judgment of the Supreme Court following the same did lay down guidelines in that regard, those are not relevant in the present context, since in the present *lis*, the Sub-Divisional Officer did not enter into the question as to verification as regards social status, with regard to the tribe to which the petitioner belongs, at all. Moreover, since the Sub-Divisional Officer did not refer the matter at all to the State Scrutiny Committee, but did so to some other authority not having any power under the statute to come to any finding in that regard, the said enquiry by the body to which the matter was referred to by the Sub-Divisional Officer, being the Cultural Research Institute, Backward Classes Welfare Department, Government of West Bengal, cannot be held on a higher footing, merely on the basis of which report the Sub-Divisional Officer could have passed the impugned order.

Such an enquiry could at best be of circumstantial value in deciding the matter, but not that not equivalent to a reference to the State Scrutiny Committee. This Court, in interpreting the judgment of *Darvell Investment & Leasing (I) Pvt. Ltd.*, seeks to go one step further and hold that the powers conferred on the State Scrutiny Committee, do not amount to the powers of an appellate authority, since an appeal is a creature of statute and has to be statutorily provided, this Court has jurisdiction under Article 226 of the Constitution of India to enter into the merits of the grievances raised in the present writ petition, since there is no provision in the 1994 Act creating a right of appeal from the cancellation of a scheduled tribe certificate by the certificate issuing authority.

However, the impugned order itself is vitiated on the score that the criteria stipulated for cancellation of a certificate in Section 9(1) of 1994 Act were not

invoked or gone into at all.

Although the provisions of Code of Civil Procedure are in no way applicable to the instant case, since the valuable rights of a person in respect of scheduled tribe certificate already granted in favour of the person is taken away by a cancellation, it is always open for any authority to apply the principles governing civil matters for the purpose of adjudicating such valuable rights. In the present case, the certificate issuing authority is not merely exercising the power conferred under the 1994 Act as an administrative authority but functions as a quasi-judicial authority, since the valuable rights of a person are being taken away, thereby affecting the livelihood as well as the right to live of the person concerned. Keeping in mind such conspectus, the principle as laid down in order VI Rule 4 of the Code of Civil Procedure ought to be borrowed in the present case and in the absence of specific particulars as to false information, misrepresentation, suppression or forgery committed by the present petitioner, and/or enquiry into such questions, it was de hors the jurisdiction of the Sub-Divisional Officer to cancel the certificate of the petitioner, within the purview of Section 9(1) of the 1994 Act.

Moreover, it was not merely directory, but mandatory to refer the matter to the State Scrutiny Committee formed under Section 8A of the Act, in view of conjoint reading of sub-section (2) of Section 9 and sub-section (3) of Section 8A of the said Act.

Since it is the prerogative and the power of the State Scrutiny Committee only to verify the social status of a person in whose favour a certificate is issued under Section 5 and to call for information, make enquiry and to adopt other modalities in that regard, it was mandatory for the certificate issuing authority, being the sub-divisional officer in the present case, to refer the matter to the State Scrutiny Committee instead of the Welfare Board, to which it was referred. In such view of the matter, since no appeal is provided for against the order of the Sub-Divisional Officer in the statute, this writ petition is entertained by this Court.

It is evident from the judgments cited on behalf of the private respondent that of all those pertained to cases which fall within the scope of Section 9(1), being suppression of material information, forgery or the like, and not a case which is governed by Section 8A(3) which pertains to verification of the social status of a person in whose favour a certificate is already issued under Section

5. Section 8A(3) and section 9(1) of the 1994 Act have to be read conjointly to attribute meaning to those sections, since it was the intention of the legislature that in a case where a certificate has been issued, the prerogative and authority to verify the social status of the person and, if necessary, to recommend cancellation of the certificate as envisaged under Section 9(2), lies with the State Scrutiny Committee and the said Committee alone.

In such view of the matter, the impugned order was de hors the law and cannot stand a moment's scrutiny. Accordingly, W.P. No.24655 (W) of 2018 along with

CAN 11173 of 2019 are disposed of by setting aside the impugned order passed by the Sub-Divisional Officer, Kakdwip, being order no.16 dated November 26, 2018, and all consequential action, if any, taken thereon.

It is made clear that this order will not deter the Sub-Divisional Officer from rehearing the complaint made by the private respondent upon reference to the State Scrutiny Committee in accordance with law and if such reference is made the said Committee, it would look into the matter also in accordance with law and come to a finding with regard to the social status of the petitioner and take necessary consequential steps.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.