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**(2007) 09 CAL CK 0038**

**In the Calcutta High Court**

**Case No : M.A.T. No. 2543 of 2005 and C.A.N. No. 6032 of 2007**

Satya Ranjan Mondal and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision : 07-09-2007**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 —  
Section 9  
West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 —  
Rule 3, 3(1), 3(2), 3(3)

**Citation : (2007) 4 CHN 761**

**Hon'ble Judges :** Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

**Bench :** Division Bench

**Advocate :** Milon Bhattacharya and D. Roy, for the Appellant; Dilip Kumar De and S. Bala, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of the writ petitioners and is directed against the Order dated 30th June, 2005 passed by a learned Single Judge of this Court by which His Lordship dismissed the writ application filed by the appellants wherein they challenged the writ application filed by the appellants wherein they challenged two identical notices both dated May 18, 2005 issued by the Sub-Divisional Officer, Kandi, Murshidabad, in terms of the provisions of Rule 3(2) of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 asking them to deposit the caste certificates earlier issued to them as he being prima facie satisfied has decided to start proceeding in terms of Rule 3(1) for cancellation of those certificates earlier issued.

2. It appears from record that subsequently a further notice has also been issued in terms of Rule 3(3) asking them to show-cause why the caste certificates earlier issued to them should not be cancelled on the ground that the writ

petitioners belonged to Kaibortya and were traditionally engaged in cultivation and as such, they did not belong to the Scheduled Castes. The further allegation was that the caste certificates were obtained by misrepresenting the actual fact and by suppressing the material information that they did not belong to the Scheduled Castes community.

As pointed out earlier, instead of complying with the direction, the writ petitioners have straightaway come up with the application under Article 226 of the Constitution of India challenging the legality of such notice.

3. It appears from the order impugned that the grievance of the writ petitioners was that in the past, the concerned respondent initiated a similar proceeding in the year 1976 but after enquiry the proceedings were dropped. According to the writ petitioners, once a proceeding for cancellation of the certificate has been dropped on proper enquiry, it should be presumed that the writ petitioners really belonged to Scheduled Castes community and as such, there is no occasion for further reopening the said question.

4. The learned Single Judge, however, has turned the objection raised by the petitioners and dismissed the same.

5. Being dissatisfied, the writ petitioners have come up with the present mandamus appeal.

6. Mr. Bhattacharya, the learned Advocate appearing on behalf of the appellants has raised the self-same point that once the concerned respondent initiated a proceeding for revoking the certificates but such proceedings were dropped, there was no scope of giving fresh notice for reopening the concluded chapter. In other words, Mr. Bhattacharya contends that there is no scope of a second enquiry for recalling the certificate if an enquiry has already been held and found in favour of the certificate-holder.

In addition to the aforesaid point, Mr. Bhattacharya further contends that it will appear from the notice impugned in the writ application that the concerned respondent was prima facie satisfied about the complaint made against the writ petitioners but neither the enquiry report nor the prima facie satisfaction was communicated to the writ petitioners and this omission, according to Mr. Bhattacharya, would invalidate the notice. Mr. Bhattacharya, therefore, prays for quashing of the notices on the aforesaid two grounds.

7. Mr. De, the learned Advocate appearing on behalf of the State-respondent has, however, opposed the aforesaid submissions of Mr. Bhattacharya and has contended that the State-respondent is not bound to disclose the prima facie reason on preliminary investigation and has every right to start fresh proceeding if any fresh complaint is lodged. Mr. De further submits that there was no justification of challenging the mere notice as the writ petitioners will get sufficient opportunity to deny the complaint and the learned Single Judge rightly dismissed the writ application. Mr. De, therefore, prays for dismissal of this

mandamus appeal.

8. Therefore, two questions arise for consideration in this mandamus appeal first, whether the concerned respondent has the authority to start fresh proceeding if an earlier proceeding was dropped after being satisfied that there was no ground of cancellation of the certificate and secondly, whether at the time of issuing a notice in terms of Rule 3(2) or Rule 3(3), it is obligatory upon the respondent authority to communicate the enquiry report or prima facie satisfaction on the preliminary enquiry held by the concerned authority.

9. To appreciate the aforesaid questions, it will be profitable to refer to Section 9 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 and Rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 which are quoted below:

9. Power to cancel, impound or revoke certificate.- 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 documents which is an act of forgery, it may cancel, impound or revoke such certificate in such manner as may be prescribed.

Rule 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 ground stated in the notice.

(4) (a) On the expiry of the period referred to in 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).

10. After hearing the learned Counsel for the parties and after going through the aforesaid provisions of law, we are unable to accept the contention of Mr. Bhattacharya, the learned Advocate appearing on behalf of the appellants, that the concerned authority is not authorised to initiate a proceeding for cancellation of the certificate, if in the past, on the basis of a different complaint, a separate proceeding was started and that ended in favour of the certificate-holder. In our view, if a citizen of this country wants to get the benefit of a Scheduled Caste certificate, he must be prepared to face the proceeding for cancellation of such certificate, if in future, any complaint is lodged by any person against him alleging that he had given false information as regards his status as a Scheduled Caste for the purpose of obtaining such certificate. Of course, before initiating such proceeding, the certificate issuing authority must hold a preliminary investigation on such complaint by an officer not below the rank of Inspector and should be prima facie satisfied about the genuineness of such complaint. We, therefore, find no substance in the first contention of Mr. Bhattacharya.

11. The position would have been different if the notice was issued based on the self-same complaint made by the same person based on same materials which had already been decided and found in favour of the certificate holder and in such a case, the petitioner could reasonably argue that he should not be harassed by the said complaint. We are, however, not prepared to accept the contention of Mr. Bhattacharya that if a particular complaint is not proved for want of sufficient evidence or a complaint is made recklessly without verifying its genuineness, there cannot be a genuine complaint in future with full particulars, if we accept the contention of Mr. Bhattacharya, the effect will be a disastrous one. A dishonest certificate holder may set up a fictitious complaint with insufficient evidence knowing fully well that such complaint with insufficient evidence will definitely fail and thereafter, he will be protected throughout his life against any future investigation and will get the benefit of the certificate based on false information and will resist a genuine complaint on the plea that a previous complaint challenging the status having failed, no new proceeding will lie. We have already indicated that for the purpose of protecting a genuine certificate holder from unnecessary harassment, the legislature has taken care to see that any complaint, before the same is acted upon and the certificate-holder is asked to show-cause, is investigated by an officer not below the rank of an Inspector and the certificate issuing authority is satisfied with the primary inquiry about the genuineness of such complaint.

12. We are also not impressed by the submission of Mr. Bhattacharya that at the time of passing direction of surrender of certificate, the report of preliminary investigation should be given to the certificate holder. The relevant rule does not speak of furnishing such document at the time of passing direction under Rule 3(2). It is needless to mention that at the time of answering show-cause in terms of Rule 3(3), he would get full opportunity of controverting all the evidence that would be produced against him.

We, therefore, find that the learned Single Judge rightly refused to entertain the writ application against the mere issue of a notice to surrender the certificate, as at this stage, there is no scope of making any investigation about the genuineness of the alleged contempt. It is not the case of the writ petitioners that the respondent issuing the notice is not the competent authority.

13. We, consequently, find no merit in this appeal and the same is dismissed. We make it clear that we have otherwise not gone into the merit of the allegations against the writ petitioners. No costs.

Rudrendra Nath Banerjee, J.

14. I agree.