

GAHC010111752019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/30/2019

KALBARI EDUCATED UNEMPLOYED YOUTH SOCIETY AND ANR.
REPRESENTED BY ITS PRESIDENT SRI RANJIT BASUMATARY, AGED 36
YEARS, S/- GOLAP BASUMATARY, VILLAGE AND P.O.- KALBARI, P.S.
TAMULPUR, DIST.- BAKSA, BTAD, ASSAM, PIN- 781367.

2: SUBESWAR SWARGIARY
S/O SITA RAM SWARGIARY
SECRETARY OF KALBARI EDUCATED UNEMPLOYED YOUTH SOCIETY
VILLAGE AND P.O.- KALBARI
P.S. TAMULPUR
DIST.- BAKSA
BTAD
ASSAM
PIN- 781367

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF TRIBAL AFFAIRS, NEW
DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY
DISPUR
GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
WPT AND BC DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE ALL ASSAM TRIBAL SANGHA
REPRESENTED BY ITS GENERAL SECRETARY

SRI ADITYA KHAKHLARI
TRIBAL REST HOUSE
SOLAPAR
P.O. AND P.S. PALTAN BAZAR
GUWAHATI- 781008

Advocate for the Petitioner : MR. B C DAS

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/4840/2018

JANAKLAL BASUMATARY AND ANR.
S/O- MRIGENDRA NATH BASUMATARY
R/O- VILL- BAGANSALI
P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
ASSAM
PIN- 783370

2: DAORAO DEKHREB NARZARY
S/O- LATE MAHESWAR NARZARY
VILL- MAIBONGRAGAT
KOKRAJHAR
P.O AND P.S- KOKRAJHAR
DIST- KOKRAJHAR
BTAD
ASSAM
VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY ITS SECRETARY
MIN OF TRIBAL AFFAIRS
NEW DELHI- 09

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
WP(T) AND BC DEPTT
DISPUR
GUWAHATI- 06

3:THE ALL ASSAM TRIBAL SANGHA
REP. BY ITS PRESIDENT
TRIBAL REST HOUSE

SOLARPAR
PALTAN BAZAR
GUWAHATI- 08
4:THE REGISTRAR GENERAL OF INDIA
2A/MANSINGH ROAD
NEW DELHI- 11
5:THE NATIONAL COMMISSION FOR SCHEDULE TRIBE
REP. BY THE REGISTRAR
LOK NAYAK BHAWAN
KHAN MARKET
NEW DELHI- 110003
6:NABA KUMAR SARANIA
S/O. LATE LAKHI KANTA SARANIA
VILL. DIGHILIPAR
P.O. AND P.S TAMULPUR
DIST. BAKSA (BTC)
ASSAM.

Advocate for : MR. B B NARZARY
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (ORAL)

Date : 01-03-2023

(A.M. Bujor Barua, J)

Heard Mr. BC Das, learned senior counsel assisted by Mr. S Chauhan, learned counsel for the petitioners. Also heard Mr. R Dhar, learned Additional Senior Government Advocate for the respondents in the WPT and BC Department of the Government of Assam as well as Ms. Binita Pegu, IAS, Secretary to the Government of Assam in the Tribal Affair (P) Department is personally present as per the requirement of the order dated 17.02.2023 and Mr. P Hazarika, learned counsel for the respondent no. 4 being the All Assam Tribal Sangha.

2. It is taken note that the WPT and BC Department of the Government of Assam has been renamed as the Tribal Affair (P) Department.

3. This PIL petition is instituted by the Kalbari Educated Unemployed Youth Society and

another assailing the notification dated 22.06.2009 of the Secretary to the Government of Assam in the WPT and BC Department by which it was provided that the Governor of Assam is pleased to authorize the President/Vice President of All Assam Tribal Sangha and District Unit of Assam Tribal Sangha to identify the status of Scheduled Tribes Communities and issue certificates to the Scheduled Tribes (P) and Scheduled Tribes (H) in Assam within the jurisdiction of their respective Districts and Sub-Divisions, temporarily, till finalization of amendment of Rule 3 (1)(b) of the *Assam SC and ST (reservation of vacancies in services and posts) Rules, 1983 (in short, the Rules of 1983)*. The petitioner also assails the communication dated 05.06.2018 from the Commissioner and Secretary to the Government of Assam in the WPT and BC Department made to all the Deputy Commissioners and Sub-Divisional Officers (Civil) in the State of Assam as regards issuing Scheduled Tribes (Plain) certificates to the '*Sarania Kachari*' community as '*Kachari*' tribe in Assam.

4. As regards the notification dated 22.06.2009 by which the Governor of Assam was pleased to authorize the President/Vice President of All Assam Tribal Sangha and District Units of Assam Tribal Sangha to identify the status of Scheduled Tribes Communities and issue certificates to the Scheduled Tribes (P) [in short, ST(P)] and Scheduled Tribes (H) [in short, ST(H)] in Assam, it is stated by Ms. Binita Pegu, the Secretary to the Government of Assam in the Tribal Affair (P) Department that the said notification had in the meantime been withdrawn and it is not having its force.

5. In view of such statement, we are not required to adjudicate on the acceptability of the notification dated 22.06.2009 of the Secretary to the Government of Assam in the WPT and BC Department. But as an issue had been raised by Mr. BC Das, learned senior counsel for the petitioners by referring to the judgment of the Supreme Court rendered in *Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development and others reported in (1994) 6 SCC 241* wherein in paragraph 13 a procedure had been provided as regards issuing the social status certificates, their scrutiny and approval, we also look into the contents otherwise of the notification dated 22.06.2009. In Clause 1 of paragraph 13 of the judgment rendered in *Kumari Madhuri (supra)* it had been provided that the application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the

Taluk or Mandal level.

6. The purport of the said provision of the Supreme Court in paragraph 13 of the judgment rendered in *Kumari Madhuri (supra)* would be that the application for grant of social status certificates are to made either to the Deputy Commissioner or Deputy Collector or the Revenue Sub-Divisional Officer.

7. It is stated that although the notification dated 22.06.2009 had authorized the President/Vice President of All Assam Tribal Sangha and District Unit of Assam Tribal Sangha to identify the status of the Scheduled Tribes communities and to issue certificates to ST (P) and ST (H) in Assam but the respondents in the WPT and BC Department, which is subsequently renamed as Tribal Affair (P) Department had sought to involve the All Assam Tribal Sangha in the matter of issuing the certificates inasmuch as the All Assam Tribal Sangha have better knowledge from the field level as to which person may belong to ST (P) and ST (H) communities and therefore, their expert knowledge in the field is being utilized in the nature of a preliminary enquiry in the process of issuing certificates.

8. Considering the aforesaid clarification given by the WPT and BC Department, which is subsequently being renamed as Tribal Affair (P) Department, we are of the view that the said process, if adopted, would not be contrary to any provisions of any other law, if the exercise is limited to the extent of making a preliminary enquiry as to which person would belong to the Tribal communities for being entitled to a certificate of their status but at the same time we also provide that the contents of the preliminary enquiry that may be made through the All Assam Tribal Sangha shall not be construed to be the final material for the Deputy Commissioner or Deputy Collector or the Revenue Sub-Divisional Officer for issuing the certificates and such authorities shall also make their own application of mind based upon the materials that may be available for issuing the certificates.

9. As regards the other notification dated 05.06.2018 by which the Commissioner and Secretary to the Government of Assam in the WPT and BC Department had provided that all the persons belonging to '*Sarania Kachari*' community will be issued ST (P) certificates under the sub tribe '*Kachari*', the Secretary to the Government of Assam in the Tribal Affair (P) Department has made a statement before the Court that the said communication in the

meantime had also been withdrawn and it will not have its effect under the law any further. As the communication providing that the '*Sarania Kachari*' community will also be issued the ST(P) certificate had been withdrawn, we are not required to adjudicate the matter any further. But however, we provide that as the said communication was withdrawn during the course of the proceeding in the present writ petition, may be because of certain questions being put by the Court to the Department, we further clarify that if the Government of Assam intends to also include the '*Sarania Kachari*' community within the Scheduled Tribe communities, the proceeding in this writ petition shall not be a bar on the authorities, provided the authorities follow the due procedure of law as required by the Constitution of India to include any community or tribe within the Scheduled Tribes.

10. In WP(C) No. 4808/2018 the same notifications dated 22.06.2009 and 05.06.2018 are also assailed and therefore, we propose to pass the same order as passed in the PIL No. 30/2019.

11. We have also taken note that in the PIL petition the amendment to Rule 3 (1) (b) of the Rules of 1983 had also been assailed. By the said amendment of the provisions of Rule 3 (1)(b) of the Rules of 1983, certain provisions were made that the MLAs, MPs and some other authorities would also be entitled to issue the status certificates of the caste or tribe who may claim for it. As the provisions under Rule 3(1)(b) of the Rules of 1983 are in the nature of authorizing an authority other than the Deputy Commissioner, the Deputy Collector or the Revenue Sub-Divisional Officer to also issue the status certificates regarding caste and tribe, we provide that without interfering with the said provision, the provisions of Rule 3(1)(b) of the Rules of 1983 are read down to mean that the said authorities referred therein may also have a recommendatory role regarding the identification of the persons to whom the social status certificates of the caste and tribe are being issued, but not the final authority to issue the certificates, on the same terms as already provided in this order in respect of the All Assam Tribal Sangha.

12. A copy of the communication of the Joint Secretary to the Government of Assam in the Department of Tribal Affairs (Plain) made to the learned Standing Counsel for the Department of Tribal Affairs (Plain) regarding the withdrawal of the communication dated 05.06.2018 is kept on the record.

With the aforesaid clarifications and observations, both the PIL and the writ petition, stand disposed of.

JUDGE

JUDGE

Comparing Assistant