

GAHC010233822022



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

Case No. : WP(C)/7855/2022

MADHAB DAS
S/O LATE MANINDRA DAS, R/O VILL- GOBHALI, P.O.-RAJA MAYANG, P.S.-
MAYANG, DIST- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY, ASSAM, ASSAM SECRETARIAT,
DISPUR, GUWAHATI-781006

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006

3:THE DISTRICT MAGISTRATE CUM DEPUTY COMMISSIONER
DIST-MORIGAON
ASSAM

4:THE ADDITIONAL DEPUTY COMMISSIONER
DIST-MORIGAON
ASSAM

5:THE CHAIRMAN
SCHEDULED CASTE DEVELOPMENT BOARD
MORIGAON
DIST-MORIGAON
ASSAM

6:KAHGEN MAHANTA
S/O LATE AJIT MAHANTA

R/O VILL- CHANDRAPUR (RAJGARH)
P.O.-CHANDRAPUR
P.S.-PRAGJYOTISHPUR
DIST- KAMRUP(M)
ASSAM
PIN-78115

Advocate for the Petitioner : MR. S P ROY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

23.08.2023

Heard Mr. S. P. Roy, learned counsel appearing for the petitioner. Also heard Mr. J. Handique, learned Addl. Sr. Govt. Advocate, Assam appearing on behalf of the respondent Nos.1 to 4. Ms. M. Nath, learned counsel is present on behalf of the respondent No.6. None has appeared for the respondent No.5.

The writ petitioner herein was holding a Scheduled Caste Certificate issued by the Sub-Divisional Scheduled Caste Development Board of Morigaon dated 20.05.2013 whereby it was notified that he belongs to the Kaibortta community, which is a recognised Scheduled Caste community in Assam. Aggrieved by the order dated 20.09.2018 passed by the respondent No.3 cancelling the Caste Certificate of the petitioner, the instant writ petition has been filed.

Mr. Roy submits that after the decision of the Supreme Court in the case of

Kumari Madhuri Patil & another Vs. Addl. Commissioner, Tribal Development and others reported in **(1994) 6 SCC 241** requiring that a specially constituted scrutiny committee would alone be authorised to examine the validity of a Caste Certificate and also to cancel it, if deemed necessary. Mr. Roy submits

that the respondent No.3 did not have any authority or jurisdiction under the law to issue the impugned order cancelling the caste certificate of the petitioner. It is also the submission of Mr. Roy that the proceedings were initiated at the instance of the petitioner's rival in a civil proceeding and the impugned order has been issued without giving him proper opportunity of being heard in the matter. Under the circumstances, submits Mr. Roy, the impugned order is bad both due to want of jurisdiction as well as for violation of principles of natural justice.

Mr. J. Handique, learned Addl. Sr. Govt. Advocate, Assam submits that he has not received any instruction in the matter. He, however, submits that the writ petition is hit by delay and laches.

Ms. Nath, learned counsel for the respondent No.6 has also not advanced any argument in support of the impugned order.

Be that as it may, there can be no doubt or dispute about the fact that the decision in the case of **Kumari Madhuri Patil & another** (supra) delineates the procedure that has to be followed in the matter of issuance and/or cancellation of caste certificate. Paragraph 13 of the said decision lays down certain guidelines which are to be followed by every State Government and its instrumentalities in such matters. However, from a perusal of the impugned order dated 20.09.2018, this Court is of the view that no such procedure, as prescribed by the decision of the Supreme Court, has been followed in the present case. Moreover, materials available on record also does not indicate that the impugned order was passed after giving proper opportunity of being heard to the petitioner.

It is no doubt correct that there is some delay in filing the writ petition. However,

the assertion of the petitioner that the impugned order was never served upon him and he came to know about the same only after the said fact was disclosed by his rival party in the civil suit at a much later date has remained un-rebutted. I am, therefore, of the view that the petitioner cannot be non-suited only on account of delay in approaching the Court assailing the impugned order more so, since there is nothing on record to show that proper notice of the proceeding was ever served upon the writ petitioner.

For the reasons mentioned herein above, this writ petition succeeds and is hereby allowed. The impugned order dated 20.09.2018 is hereby set aside. Consequently, the Caste Certificate earlier issued to the petitioner on 20.05.2013 stands revived.

This order would, however, not come in the way of the competent authority in initiating a fresh proceeding so as to examine the validity of the Caste Certificate of the petitioner, after following the due process of law, if so advised. With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant