

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 423 of 2023

Sri Alak Kumar Das @ Alok Kumar Das,
Son of late Narendra Chandra Das,
Resident of Town Pratapgarh, adjacent to V2 Shopping Mall,
near Ramthakur Sangha, P.O.- Agartala- 799003, West Tripura.

.....*Petitioner(s).*

VERSUS

- 1. The State of Tripura,**
Represented by the Chief Secretary,
Government of Tripura,
- 2. The Chairman,**
Secretary-in-charge of Department for Welfare of Scheduled Castes,
other Backward Classes and Minorities,
State Level Scrutiny Committee,
Pandit Nehru Complex, Gurkha Basti, Agartala, West Tripura,
- 3. The Member-Secretary,**
State Level Scrutiny Committee,
The Director for Welfare of Scheduled Casts and other Backward Classes,
Pandit Nehru Complex, Gurkha Basti,
Agartala, West Tripura
- 4. Sri Saumitra Das,**
Son of late Chitta Ranjan Das,
Presently residing at C.R. Villa, Shyamalibazar, Kunjaban,
Agartala, West Tripura.
- 5. Sub-Divisional Magistrate,**
Sadar, Agartala, West Tripura.
- 6. Addl. DM & Collector,**
Agartala, West Tripura.
- 7. Sri G.K. Malakar,**
Former Asst. Engineer (Planning),
Irrigation & Flood Control, PWD,
Opposite to Jagriti Club, Dhaleswar Road No.7,
P.O.- Dhaleswar, Agartala, West Tripura.

.....*Respondent(s).*

For Petitioner(s)	:	Mr. DK Biswas, Sr. Advocate Mr. GK Nama, Advocate
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharya, G.A. Mr. S. Talapatra, Advocate.
Date of hearing	:	15.07.2024.
Date of pronouncement of Judgment & Order	:	18.07.2024.
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order

Heard Mr. DK Biswas, learned senior counsel assisted by Mr. GK Nama, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharya, learned G.A. appearing on behalf of the State and Mr. S. Talapatra, learned counsel for the unofficial respondent No.4.

[2] The present writ petition is filed under Article 226 of the Constitution of India for quashing the order dated 06.03.2023 in file No.2-134(D)(A-84)/SCW/GL/08, year 2023 passed by the State Level Scrutiny Committee.

[3] The case of the petitioner in brief is that according to him, father of Respondent No.4 (Chitta Ranjan Das) was a migrant in the state of Tripura, who came from West Bengal in the year 1956 and joined Government job as Overseer (Junior Engineer) under the PWD (Water Resource). It is contended by the petitioner that according to the respondent No.4, namely, Saumitra Das, his father Chitta Ranjan Das belongs to “Mahishya Das” community and this community is not recognized as scheduled caste in the State of West Bengal but, in the State of Tripura, this community is recognized as scheduled caste. The father of respondent No.4 somehow managed the authority, consequently the authority issued him SC certificate.

[4] According to the petitioner, before issuing SC certificate to the father of respondent No.4, the authority did not make any attempt to verify his residential status and the SC certificate which was issued to said Chitta Ranjan Das (father of respondent No.4) is not a valid document. As Chitta Ranjan Das knew that his SC certificate is not a valid document, he did not register his caste status in the record and also did not take benefits of the SC certificate. It is also contended that the respondent No.4 has obtained the SC certificate on the basis of his father's illegal certificate. It has been mentioned that as per the service record of respondent No.4, he was permanent resident of West Bengal and on that reason, he was entitled to the benefit of HTC (Home Travel Concession) from the Government of Tripura.

[5] After learning about the said illegal activities, the petitioner filed complaint to the appropriate authority in the year 2008. It is contended that on making complaint to the appropriate authority, no result came out for a long period of 8 years and the petitioner submitted several representations and filed writ petition being WP(C) No.230 of 2015 before this Court. Thereafter, this Court by order dated 15.12.2016, directed the respondent- State Level Scrutiny Committee (SLSC for short) to investigate the complaint filed by the petitioner. The State Level Scrutiny Committee initiated the proceeding in 2016, show cause notice was issued to Respondent No.4 and vigilance enquiry was ordered. The vigilance officer sought permission from the SLSC to go to the permanent place of residence of Chitta Ranjan Das and his son respondent No.4 as required by law, but the same was not allowed. Thereafter, the SLSC ordered for a fresh vigilance enquiry on 22.01.2020. Accordingly, on 04.05.2021, fresh vigilance report has been submitted by the enquiry officer contending that the permanent address of Shri Saumitra Das (respondent No.4) and his father late Chitta Ranjan Das is Madhyamgram, West Bengal. and Mahishyadas community is not recognized to be scheduled cast in the State of West Bengal. It is mentioned in the said report that the SC certificate of respondent No.4 which was obtained from Tripura is not valid.

[6] Thereafter, the respondent committee (SLSC) after conducting an elaborate proceedings and giving opportunities to both the sides, decided

the matter on 06.03.2023 in favour of the respondent No.4 and as a result, complaint of the petitioner herein has been dismissed.

[7] Aggrieved thereby, the petitioner has preferred this instant writ petition seeking following reliefs:

“i. Issue rule asking the respondents to show cause as to why order dated 6-3-2023 in File No.2-134(D)(A-84)/SCW/GL/08, year 2022, passed by the State Level Scrutiny Committee in the case titled as the *State of Tripura -versus- Sri Saumitra Das* should not be declared illegal and arbitrary; and thereafter quash the said order.

ii. Issue rule asking the respondent Nos. 5 and 6 to show cause as to why appropriate action should not be taken against them for assisting illegally and without any authority the father of Respondent No.4 (Lt. Chitta Ranjan Das), Soumitra Das (Respondent No.4) and other brothers and sister of Soumitra Das in obtaining the SC certificates.

iii. After hearing the parties make the rule in terms of above i and ii absolute.

iv. Pass any order/orders as may be deemed fit and proper for ends of justice.....”

[8] Mr. DK Biswas, learned senior counsel appearing for the petitioner submits that the respondent No.4 and his father are the migrants to the State of Tripura as their permanent residence is in the State of West Bengal where “Mahishya Das” community is not recognized to be scheduled caste. He, contends that as required under Articles 341 and 342 of the Constitution of India, Ministry of Home Affairs, Government of India issued a clarification letter on 22nd March, 1977 to the Chief Secretaries of all State Governments/Union Territory Administrations regarding issuing of Scheduled Caste and Scheduled Tribe Certificates. As per the said clarification letter, it was clarified that in case of a person born after the date of notification of the

relevant Presidential order, the place of residence for the purpose of acquiring scheduled caste or scheduled tribes status, is the place of permanent abode of their parents at the time of the notification of the presidential order under which they claim to belong to such caste/tribe.

[9] He further submits that by the impugned order respondent SLSC illegally dismissed his complaint without conducting a deeper scrutiny. To support his contention, learned senior counsel has placed reliance on the judgment of the Hon'ble Supreme Court in ***Raju Ramsing Vasave versus Mahesh Deorao Bhivapurkar & others*** reported in ***2008 Legal Eagle (SC) 1168*** .

[10] It is also contended that the respondent No.4 is a resident of West Bengal, where he does not belong to SC category and thus, he cannot be entitled for benefit of being Scheduled Caste in the State of Tripura. He submits that, the respondent No.4 on the strength of his fake certificate, got promotions to the higher posts. Learned senior counsel submits that the petitioner would have been promoted to the post of Joint Director in the year 2010, if the respondent No.4 was not treated as scheduled caste. The petitioner herein was deprived of his genuine right of getting promotion to the higher post. He, therefore, urges this Court to quash the impugned order dated 06.03.2023 passed by the respondent- State Level Scrutiny Committee.

[11] Mr. S. Talapatra, learned counsel appearing for respondent No.4 contends that the said respondent is affected and necessary party in the writ petition and the petitioner alongwith respondent No.4 joined service under the Government of Tripura on 12.10.1987. The petitioner did not file any objection till 2008 regarding the SC certificate of respondent No.4. He further contends that the 'place of origin' and 'place of permanent residence' are different things. As a citizen of India, it is open for any person to chose his permanent residence. Learned counsel further submits that the respondent No.4 has already been retired from service in the year 2023. With regard to the complaint before the respondent- SLSC, he has placed all the relevant documents and on examining the verification reports and the evidences, the respondent committee was pleased to dismiss the complaint of the petitioner by a reasoned order. He further contends the said complaint was filed by the petitioner due to ill motives and therefore, the present writ petition is liable to be dismissed.

[12] Mr. Kohinoor N. Bhattacharya, learned G.A. on behalf of the State respondents submits that the petitioner has no *locus standi* in terms of seeking any relief(s) under Article 226 of the Constitution of India in challenging the State Legal Scrutiny Committee (SLSC) proceedings. He argues that the petitioner has been miserably failed to prove that the father of the respondent No.4 had migrated to Tripura from West Bengal and that respondent No.4 or his father are not persons belonging to Scheduled Caste

Community. He, further contends that the respondent- SLSC acted as per law after affording ample opportunity to the parties and as the petitioner could not prove his case against respondent No.4 and his father late Chitta Ranjan Das, the SLSC passed the order dated 06.03.2023 in favour of the respondent No.4.

[13] Mr. Bhattacharya, learned GA submits that the committee has categorically appreciated the documentary evidences placed on behalf of the respondent No.4 for issuing the certificate and also the enquiry report and further the evidences/statements which were recorded. Observing all the aspects of law, they have dismissed the complaint of the petitioner. High Court is not a court of appeal to appreciate those evidences. He, therefore, prays that the order impugned of the respondent SLSC should not be interfered with and this present writ petition be dismissed.

[14] To support his contention, learned G.A. has further placed reliance on the judgments of Hon'ble Supreme Court, which are as under:

1. ***Navneet Kaur Harbhajansing Kundles alias Navneet Kaur Ravi Rana v. State of Maharashtra and others*** reported in **2024 SCC OnLine SC 494**.
2. ***Kumari Madhuri Patil and Another v. Addl. Commissioner, Tribal Development and others*** reported in **(1994) 6 SCC 241**.

[15] Heard the submissions made at the Bar. Counter-affidavits have also been filed. Perused the record.

[16] For the purpose of reference, the relevant contents of the impugned order dated 06.03.2023 of the respondent SLSC is extracted herein-below:

“.....**Evaluation of the evidences by the Committee:**

15. (i) On meticulous examination of the records, the Committee noticed that, the entire prosecution claim is based on the Vigilance Enquiry Reports, submitted twice by the respective Enquiry Officers, both of which concluded with the similar finding to the effect that, the O.P had his permanent residence at West Bengal and since Mahishyadas is not a valid SC community in West Bengal, the caste certificate of O.P is not valid in Tripura.

(ii) For arriving at such a conclusion, the former Vigilance Enquiry Officer never visited the alleged place of residence of the O.P in West Bengal; rather he had depended upon some documents only. The bone of contention of his observation was that the father of the OP Chitta Ranjan Das had migrated into Tripura from West Bengal in the year 1956 and got government service under PWD. During his service, he obtained SC certificate during the year 1979, but never submitted his SC certificate nor he got promotion as SC candidate. It also stated that two of the O.P's paternal uncle namely Sri Jyoti Ranjan Das and Lt. Phani Bhushan Das and their families are still residing in West Bengal. They are not a member of Schedule Caste. His another brother namely Shri Kishore Das is also residing in Madhyamgram, 24 Pargana of West Bengal and who is also not a member of SC under the State of West Bengal. Further, in the service book of OP his permanent residence is shown as Mahyamgram, West Bengal and he has availed home travel concession to visit West Bengal for more than once. On the basis of that logic it was observed that the OP's Caste Certificate as Mahisyadas Community is not valid the State of Tripura.

(iii) The Vigilance Enquiry officer of the fresh enquiry visited West Bengal for the purpose of his enquiry and recorded the statements of relatives of the OP, namely Sri Jyoti Ranjan Roy, Sri Kishor Das and Smt. Madhuchhanda Das. The first one is the paternal uncle of the OP, whereas the second and third are the brother and sister of the OP. This enquiry report concludes with the observation that the other relatives of the OP are permanently residing in West Bengal and they are not availing any benefit of Scheduled Caste community in the State of West Bengal, since Mahishyadas is not a recognized Scheduled Caste Community therein and as such the OP, being migrant from West Bengal is not entitled to get the benefit of Scheduled Caste Community in Tripura under Rule 5(2)(a) & (d) of the Tripura SCs and STs Reservation Rules, 1992.

(iv) On the other hand, the local enquiry reports of the Sub-Divisional Magistrate and the opinion of the concerned SC Welfare Sub-Committee, Agartala Municipal Corporation have stated that the OP belong to Mahishyadas Community, which is a recognized Scheduled Caste Community in the State of Tripura and the Caste Certificate of the OP is very much valid.

(v) The Vigilance Enquiry Report is mainly based on the statement of the witnesses, who are the relatives of the OP. In the cross-examination of the PW-3, Sri Jyoti Ranjan Roy, it was disclosed and admitted that himself and father of the OP were born in Bangladesh and they belong to Mahishyadas Community in Bangladesh. He migrated to West Bengal in the year 1963 and before he came to India, the father of the OP joined service in Tripura. The PW-4, Sri Kishore Kumar Das in his cross-examination categorically stated that his father Chitta Ranjan Das was born in Charkathi of Bangladesh in the year 1956. After completion of his studies, he came to Agartala and settled down permanently. Then he joined service. He died in the year 1984. His father belonged to Mahisya Das Community. The PW-5, Smt. Madhuchhanda Das stated that their origin is in Bangladesh. Their father studied at Jadavpur University, West Bengal and on completion of study he moved to Tripura and settled down permanently in Tripura. All of their brothers and sisters, including the OP under studied in Tripura. In cross-examination the witness has confirmed that they belong to Mahishyadas Community in Bangladesh, and her paternal uncle Sri Jyoti Ranjan Roy had changed his surname by affidavit only to give his daughter's marriage with general caste. These witnesses voluntarily stated to the committee that, under fear she has signed the statement to the Vigilance Officer and whatever she has stated orally were not recorded by the Enquiry Officer.

(vi) The OP adduced four independent witnesses in support of his defense. DW-2, Sri Subhas Chandra Das was the Secretary of Tripura Mahishyadas State Committee, who stated that he was examined by the Vigilance Officer about three/ four years back, to whom he has confirmed the Scheduled Caste Community of the OP. The DW-2 (2nd Phase) Smt. Kajal Halder, DW-3 Sri Madhab Majumder (Member of SC Welfare sub-Committee, AMC) and DW-4 Sri Dilip Kumar Das have firmly confirmed that the OP belong to Mahishyadas Community and his forefather has migrated from Charkathi, Bangladesh.

The Committee also examined and scrutinized all the relevant documents, like –

(1) Citizenship Registration Certificate, issued by the then Addl. DM & Collector, West Tripura Vide No.233/DM/CRC/W/79 dated 12.02.79, (2) SC certificate of Chitta Ranjan Das vide No.25/DM/GL/W/79 dated 01.03.1979, (3) Report of the then S.D.O., P.W.D., to the effect that Chitta Ranjan Das, S/O. Late Radhacharan Das has been residing permanently in Tripura since 1956, (4) the local enquiry reports of the Sub-Divisional Magistrate and (5) the opinion the opinion of the concerned SC Welfare Sub- Committee, Agartala Municipal Corporation.

FINDINGS OF THE COMMITTEE:

(i) While evaluating the evidences of both the sides and discussing the findings of the committee, lets recall some of the reported observations of the Hon'ble Apex Court, relevant to this case.

The Apex Court in the case of State of Maharashtra and ors. VS. Ravi Prakash Babulalsing Parmar and anr. [(2007) 1 SCC 80] has taken the view that Caste Scrutiny Committee is a quasi-judicial body and it has been set up for a specific purpose to prevent fraud on Constitution.

In Jarnail Singh VS State of Punjab, the Court with reference to Sec. 101 of the Indian Evidence Act, 1872 has held that if the prosecution fails to present the satisfactory evidence in the court to discharge the burden, it does not depend upon those types of evidence which was adduced by the accused person.

Under Sec. 102 of the Indian Evidence Act, burden of proof always lies on the party who has challenged the fact rather than the party who denies the actual fact or evidence of the case.

(ii) Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.

(iii) On the basis of the records available, 'oral testimony and other evidences, placed from both the sides, and after evaluation of those evidences, as discussed above, the observation of the committee in respect to point No.(i) is that the Mahishyadas community is a recognized Scheduled Caste Community in the State of Tripura according to the Presidential Order, dated 20.09.1951 issued under Article 341(1) of the Constitution and the same continue to find its place in the List at the relevant time when the Caste Certificate of the OP and his father as well, were issued.

(iv) The Committee is not bound by the report of Vigilance Officer and acts independently to reach its findings. ***Accordingly the point No.(i), taken for adjudication by the committee, is decided in favour of the OP.***

From the facts and circumstances and the materials placed before the committee, the basis of the prosecution claim is based only on the reports of the Vigilance Enquiry Officers, which is also depended upon the oral testimony of some witnesses. Though in the cross-examination those prosecution witnesses didn't support the contention of the Enquiry Report. From their statements it was confirmed that the father of the OP migrated from the then East Pakistan and was the permanent residents of Tripura. For the purpose of the study only he stayed in West Bengal for the time being. Non-claiming of any service benefit by a genuine SC category persons is not enough to hold that he is not a genuine SC. Furthermore, the onus probandi in this case is on the prosecution to prove that the OP is not a genuine SC category person in the State of Tripura, which they could not establish by adducing sufficient evidence.

Accordingly the point No.(ii), taken for adjudication by the committee, is decided in favour of the OP.

In view of the above findings, it can be safely said that the OP is a permanent resident of the State of Tripura much before the relevant period of time when the Caste Certificate was issued to him and since they belong to Mahishyadas Community, which is a recognized SC Community in the State of Tripura. So, the provision of rule 5(2)(d) of the Tripura SCs & STs Reservation Rules, 1992 will not attract in the case of this OP.

Accordingly the point No.(iii), taken for adjudication by the committee, is decided in favour of the OP.

Since all the three points for adjudication of the committee is decided in favour of the OP, the committee is of opinion that, the OP belongs to the Mahishyadas Community, which is a recognized Scheduled Castes community in Tripura and the complaint is dismissed.

Supply a copy of this order to the OP Sri Saumitra Das and also to the other concerned authorities.....”

[17] During the course of argument, Mr. Biswas, learned senior counsel for the petitioner, to support his contention, has also placed reliance on the following provisions under the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992:

“Rule-5***** (2) (d) A community certificate holder who has migrated to Tripura from his State of origin for the purpose of seeking education, employment etc. will be deemed to be Scheduled Caste/Tribe of the State of his origin and will be entitled to derive benefits from the State of his origin and not from Tripura.

[6. Cancellation of Scheduled Caste or Scheduled Tribe certificate An authority who issued a Scheduled Caste Certificate or Scheduled Tribe certificate to any one may, at a subsequent stage cancel it, if after an enquiry and after giving the party concerned an opportunity of being heard, it finds that the person to whom the Community Certificate was issued does not actually belong to the Scheduled Caste or the Scheduled Tribe, as the case may be.

Provided that in cancelling a Scheduled Caste Certificate, the issuing authority shall obtain the views of the concerned Block Level or Nagar Panchayat Level or Municipal Level Scheduled Castes Welfare SubCommittee and in cancelling a Scheduled Tribe certificate, the issuing authority shall obtain the views of the Sub-Divisional Level Scheduled Tribes Welfare Sub-Committee, if any, constituted by the Government, as to whether the certificate holder belongs to Scheduled Caste or Scheduled Tribe and the views so given by the Scheduled Castes Welfare or Scheduled Tribes Welfare Sub-Committee shall form a part of the order cancelling the certificate in question.

Provided further that the Scrutiny Committee shall also be competent to cancel a community certificate issued by a competent authority. For arriving at a decision whether the community certificate in question shall be cancelled or not, the Scrutiny Committee shall follow the procedure prescribed in Rule 7A hereinafter along with reports/records obtained from the competent authority.]

[7A Constitution, Powers and Functions of the Scrutiny Committee.

(1) At the State Level there shall be two Scrutiny Committees as follows –

(a) For verification of community status of Scheduled Caste Certificate holders, the Scrutiny Committee shall consist of :-

(i) The Secretary-in-charge of Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities

- Chairman.

(ii) The Director for Welfare of Scheduled Castes and Other Backward Classes

- Member-Secretary

(iii) Joint Secretary or Deputy Secretary of the Law Department]

- Member

[(iv) Additional Director or Joint Director or Deputy Director for Welfare of Scheduled Castes & Other Backward Classes -

- Member.*****

[(2) Director of Vigilance shall constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors and Sub-Inspectors to investigate into the community status and claims as may be required.

(3) The Investigating Officer would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed. He should personally verify and collect all the facts of the social status claimed by the certificate holder or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the certificate holder in relation to their caste etc. or such other persons who have knowledge of the community status of the certificate holder and submit a report to the Director of Vigilance who will verify the correctness of the report and transmit it to the Member-Secretary of the Scrutiny Committee concerned together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.*****

(6) The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, the Committee shall pass an order cancelling the][certificate issued and confiscate the same. The Committee shall communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the certificate holder and in case the certificate holder is a minor to his parent or guardian.....”

[18] It is seen from the record that when an opportunity was given to the petitioner, he could not place any satisfactory evidence in support of his case nor he has availed the opportunity.

[19] Mr. Biswas, learned senior counsel while arguing his case on behalf of the petitioner, has also placed reliance on the clarification letter dated 22nd March, 1977 of the Ministry of Home Affairs, Government of India addressed to the Chief Secretaries of all State Governments/Union Territory Administrations regarding issuing of Scheduled Cast and Scheduled Tribe Certificates. In this regard, provisions under Article 341 of the Constitution of India and the relevant contents of the said clarification letter dated 22nd March, 1977 of the Ministry of Home Affairs, Govt. of India are quoted as under:

Article 341 of the Constitution of India

“341. Scheduled Casts.- (1) The President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Clarification letter dated 22nd March, 1977 of the Ministry of Home Affairs, Govt. of India

“.....I am directed to say that many instances have come to the notice of this Ministry wherein certificates of belonging to a particular Scheduled Caste/Tribe have not been issued strictly in accordance with the principles governing the issue of such certificates. This is presumably due to inadequate appreciation of the legal position regarding the concept of the term "residence" on the part of the authorities empowered to issue such certificates.

2. As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in different States /U.Ts may not both be treated to belong to Scheduled Caste/Tribe or vice-versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that Order in relation to his State/UT. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

3. It is to ensure the veracity of this permanent residence of a person and that of the caste/tribe to which he claims to belong that the Government of India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to the deserving persons it is necessary that proper verification based primarily on revenue records and if need be, through reliable enquiries, is made before such certificates are issued. As it is only the Revenue Authorities who, besides having access to relevant revenue records are in a position to make reliable enquiries, Government of India insists upon the production of certificates from such authorities only. In order to be competent to issue such certificates, therefore, the authority mentioned in the Government of India (Department of Personnel and Administrative Reforms) letter No. 13/2/74-Est (SCT), dated the 5th August, 1975, (copy enclosed) should be the one concerned with the locality in which the person applying for the certificate and his place of permanent abode at the time of the notification of the relevant Presidential Order. Thus, the Revenue Authority of one District would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State/UT issue such certificates in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential Order, has been in a different State Union Territory. In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a Caste/Tribe.

4. It is understood that some State Governments/Union Territory Administrations have empowered all their Gazetted Officers to issue such certificates and even Revenue Authorities issue certificates on the basis of the certificates issued by Gazetted Officers, M.P.s and M.L.A.s etc. If such a practice is followed, there is a clear danger of wrong certificates being issued, because in the absence of proper means of verification such authorities can hardly assure the intrinsic correctness of the facts stated in such certificates.

In order to check the issuance of false certificates, the question of verification assumes all the more importance.

5. All the State Governments/Union Territory Administrations are, therefore, requested to Streamline their respective procedures for issuing such certificates so as to conform to the above instructions as well as to those issued from time to time. Where Revenue Authorities have been empowered to issue certificates on the basis of a certificate issued by an M.P., M.L.A, Gazetted Officer, etc., they would do so only after having made proper verifications and after having satisfied themselves of the correctness of such certificates.....”

[20] The above-quoted clarifications which have been given way-back in the year 1977 by the under Secretary, Ministry of Home Affairs, Govt. of India, do not indicate under what capacity the issuing officer has issued the said clarification to the precedential order to the Act or Rules under Article 341 & 342 of the constitution of India. The clarification is not a gazette notification also.

In view of the same, this Court feels that these are only instructions and the same cannot have any statutory force of law as it is settled law that administrative instructions cannot have any overriding effect upon the statute. The said clarification has not been made by way of any amendment to the statute. Thus, it cannot be said that these have statutory force of law. Hence, this Court has no hesitation to say that these cannot be read in substituting the main statute and thus, no reliance can be placed before this Court regarding that clarification.

[21] Mr. DK Biswas, learned senior counsel for the petitioner placed reliance on the paragraphs 31 & 32 of the judgment of the Hon’ble Supreme

Court in *Raju Ramsing Vasave versus Mahesh Deorao Bhivapurkar & others* reported in *2008 Legal Eagle (SC) 1168*. The said contents of the judgment as referred by the learned senior counsel is quoted as under:

“.....31. We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such a grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so. We could have dismissed this application on the simple ground that the appellant has no locus standi. We did not do so because as a constitutional court we felt it to be our duty to lay down the law correctly so that similar mistakes are not committed in future. Apart from the general power of the superior courts vested in it under Article 226 or Article 32 of the Constitution of India, this Court is bestowed with a greater responsibility by the makers of the Constitution in terms of Articles 141 and 142 of the Constitution. Decisions are galore wherein this Court unhesitatingly exercised such jurisdiction to resort to the creative interpretation to arrive at a just result in regard to the societal and/ or public interest. We thought that it is a case of that nature.

32. We may notice that recently such a legal principle has been considered by this court in *Indian Bank v. Godhara Nagrik Cooperative Credit Society Ltd. and Another* [2008 (7) SCALE 363].

This Court, however, while laying down the law suitably mould the relief so as to do complete justice between the parties.....”

[22] Mr. Kohinoor N. Bhattacharya, learned G.A. while opposing the submission of learned senior counsel for the petitioner, has placed reliance on the following paragraphs of the judgments of Hon’ble Supreme Court:

Navneet Kaur Harbhajansing Kundles alias Navneet Kaur Ravi Rana v. State of Maharashtra and others:

“.....15. Now, when the Scrutiny Committee which is principally tasked with the fact-finding exercise for validation of caste claim, had applied its mind and reached a conclusion, then in such a situation, whether a roving enquiry by High Court was required? It is well settled that High Courts as well as Supreme Court should refrain themselves from deeper probe into factual issues like an appellate body unless the inferences made by the concerned authority suffers from perversity on the face of it or are impermissible in the eyes of law. In the instant case, the order passed by Scrutiny Committee reflects due appreciation of evidence and application of mind and in absence of any allegation of bias/malice or lack of jurisdiction, disturbing the findings of Scrutiny Committee cannot be sustained.*****

17. Having perused the order passed by the Scrutiny Committee and findings recorded by it to reach its subjective satisfaction with respect to claim of Appellant, at this juncture, if we look at the whole exercise carried out by High Court from the perspective of settled principles of law for invocation of jurisdiction under Article 226 of Constitution of India, particularly in relation of writ of certiorari, it leaves us with no scope of doubt that the High Court has clearly overstepped by re-appreciating the evidence in absence of any allegation of mala-fide or perversity. As fairly settled by this Court in catena of judgments, the writ of certiorari being a writ of high prerogative, should not be invoked on mere asking. The purpose of a writ of certiorari for a superior Court is not to review or reweigh the evidence to adjudicate unless warranted. The jurisdiction is supervisory and the Court exercising it, ought to refrain to act as an appellate court unless the facts so warrant. It also ought not re-appreciate the evidence and substitute its own conclusion interfering with a finding unless perverse. The High Court in a writ for certiorari should not interfere when such challenge is on the ground of insufficiency or adequacy of material to sustain the impugned finding. Assessment of adequacy or sufficiency of evidence in the case at hand, fell within the exclusive jurisdiction of the Scrutiny Committee and re-agitation of challenge on such grounds ought not have been entertained by High Court in a routine manner.

18. As per the ratio of larger Bench judgment of this Court in ‘*Dayaram Vs. Sudhir Batham*, (2012) 1 SCC 333’, it reveals that the Court while answering the question as to whether the Civil Courts’ jurisdiction was rightly barred by judgment in *Kumari Madhuri Patil* (supra), observed that a Scrutiny Committee is not an adjudicating authority like a Court or Tribunal, rather it is an administrative body which verifies the fact, investigates into a specific caste claim and ascertains whether the caste claim is correct or not. It was further observed that permitting civil suits to challenge such proceedings with the provisions of appeal and further appeals would defeat the purpose of the scheme. However, such decisions were rightly made available to challenge in proceedings under Article 226 of the Constitution of India ‘which may be within the parameters for invoking the writ jurisdiction by High Court’ in the judgment of *Kumari Madhuri Patil* (supra). Though at the same time, the said observation does not explicitly give a wide power in a writ of certiorari which is not within the purview of issuance of such writ merely because of decision of Scrutiny Committee is under challenge.*****

20. In a recent reference in '*Mah. Adiwasi Thakur Jamat Swarakshan Samiti*' (supra), while answering the question as to 'whether paramount importance should be given to the affinity test while adjudicating upon a caste claim on the basis of a caste certificate issued by a Competent Authority, or in other words, whether the affinity test is a litmus test for deciding a caste claim', this Court observed that if the Scrutiny Committee is satisfied with the documents, it need not mechanically forward the same to the Vigilance Cell for verification in a routine manner. Even as per Rule 17(7) of the 2012 Rules, the Scrutiny Committee is not required to send every document to Vigilance Cell. It is only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, it may refer to Vigilance Cell. Therefore, in our considered view, the observations made by the High Court in the case at hand regarding not sending the documents to Vigilance Cell is not justified.*****

22. In view of the aforesaid discussion, we are of the considered opinion that High Court inadvertently undertook an erroneous exercise of appreciating evidence in exercise of its jurisdiction under Article 226 of Constitution of India and swayed itself into a roving inquiry which was not expected as per settled legal position. At the cost of repetition, we again observe that under Rule 13(2)(a) of 2012 Rules, the adjudication on the basis of the documents falls solely within the domain of Scrutiny Committee based on the inputs received from the Vigilance Cell. The Scrutiny Committee is an expert forum armed with fact finding authority. The High Court ought not to have interfered, especially when Scrutiny Committee had followed the due procedure under Rule 12, 17 and 18 of the 2012 Rules and that there was nothing perverse about a finding of fact.....”

Kumari Madhuri Patil and Another v. Addl. Commissioner, Tribal Development and others:

“.....15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.

16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his

favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases.....”

[23] Insofar as, the facts are concerned, admittedly, the respondent No.4 was born in Tripura. It is seen from record that the respondent No.4 was born at Kailashahar in the State of Tripura on 17.12.1963. It is contended on behalf of respondent No.4 that he studied in different schools in Tripura and thereafter, selected as S.C. Candidate for admission to Assam Agricultural University, Jorhat, Assam and obtained B.Sc (Agri) degree in the year 1987. After obtaining the degree in 1987, he qualified for a job under the Government of Tripura. The petitioner has not disputed the said facts. Thus, this Court considers that the respondent No.4 was born and brought up in the State of Tripura and he is a local man of this State.

[24] It is also not disputed that the father of the respondent No.4, Chitta Ranjan Das was born in the village of Charkathi, Khulna, Bangladesh. During his student-life, father of respondent No.4 had shifted to West Bengal from where he obtained diploma in Engineering from Jadavpur University. Thereafter, he shifted to Tripura in the year 1956. They were settled in Tripura and became permanent residents of Tripura and the father of respondent No.4

got selected for a job under the P.W.D., Government of Tripura. The petitioner, except reiterating that the respondent No.4 is 'migrant from West Bengal' and 'Mahishyadas does not fall under the category of Scheduled Caste in West Bengal', has never denied and disputed above facts.

[25] Since, the said facts have not been disputed by the petitioner before the respondent committee and to disprove the said contention, no document is placed on record, this Court considers that the father of the respondent No.4 is also not a migrant from West Bengal. This Court has no hesitation to say that the petitioner has failed to prove his case that the SC Certificate issued to the respondent No.4 certifying that he belongs to 'Mahishya Das' community is not genuine in the State of Tripura as he is a migrant from West Bengal. Thus, the judgment as referred by the learned senior counsel for the petitioner is also not relevant to the facts and circumstances of this case.

[26] In view of the above discussion, this Court is of the considered opinion that the impugned order dated 06.03.2023 passed by the respondent-State Level Scrutiny Committee, Government of Tripura be upheld. Resultantly, the present writ petition filed by the petitioner is liable to be dismissed.

Accordingly, the present writ petition stands dismissed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE

Sabyasachi G.

**SABYASACHI
GHOSH**

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