

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 457 of 2023

Sri Subrata Kairi,

S/O-Late Bhagaban Kairi, Vill-Asharambari PO Asharambari,
PS-Tulasikhar, District - Khowai Tripura, Age- 44 Years

.....PETITIONER.

Versus

1) The State of Tripura represented by the Secretary,
Tribal Welfare Department, Government of Tripura, Civil
Secretariat, New Capital Complex, Lichu Bagan, PS-NCC,
West Tripura, PIN 799 010.

2) The State Level Scrutiny Committee, represented by
the Member Secretary, (The Director of Schedule Tribe
Welfare), Government of Tripura, Pandit Nehru Complex,
Gurkhabasti,

3) The Director, Tribal Welfare Department,
Government of Tripura, Pandit Nehru Complex,
Gurkhabasti, Agarlala, West.

4) The Superintendent of Police, Vigilance Department,
Government of Tripura, Agartala PHQ, West Tripura

5) The Sub Division Magistrate, Khowai Sub-Division,
Government of Tripura, PO- Khowai, Khowai Tripura,

6) The Sub Divisional Magistrate, Belonia Sub-Division,
Government of Tripura, PO- Belonia, South Tripura,
Agartala, West Tripura.

.....RESPONDENTS

For Petitioner(s)	:	Mr. SM Chakraborty, Sr. Advocate. Mr. S. Datta, Advocate. Ms. P. Chakraborty, Advocate.
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For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A. Mr. RP Singh, Advocate
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Date of hearing and Delivery of judgment and order	:	08.04.2024.
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Whether fit for reporting:	YES
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HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order(Oral)

Heard Mr. SM Chakraborty, learned senior counsel assisted by Mr. S. Datta, learned counsel appearing for the petitioner. Also heard Mr. RP Singh, learned counsel for the respondent No. 2. Mr. M. Debbarma, learned Addl. G.A. is present on behalf of the State.

[2] The present writ petition has been filed under Article 226 of the Constitution of India for quashing/setting aside the order dated 12.07.2023 passed by the State Level Scrutiny Committee (respondent No.2) whereby, the Schedule Tribe Certificate of the petitioner has been cancelled.

[3] The case of the petitioner in brief is that he belongs to 'KAUR' community which is recognized as Schedule Tribe community of Tripura. The fore fathers of the petitioner came to Tripura before about 200 years as Tea garden labourer and settled down in different places of Tripura including Khowai, Kamalpur. The father of the Petitioner was having ST certificate in his name and he was an employee of Tripura Forest Development and Plantation Corporation Ltd. (a Govt. of Tripura Undertaking) and he was killed by the extremist while in service. Thereafter, the petitioner was given employment in the said Corporation under die-in-harness scheme.

[4] It is contended in this writ petition that in the year 1984, the then Sub-Divisional Officer, Belonia Sub Division issued a

Schedule tribe certificate in the name of the father of the petitioner on 30.04.1984 where he (father of the petitioner) wrongly wrote community in place of surname, so he duly corrected it by putting initials. The father of the petitioner also obtained ST certificate for the petitioner when he was only 10 (Ten) years old and nobody ever challenged the same. In and around 2019, one person namely Sri Jiban Kumar Dasgupta challenged the ST status of the petitioner following which inquiries were held and the matter was finally placed for decision before SLSC i.e. respondent no.2.

[5] According to the petitioner, the said respondent No.2 without applying mind to the facts and circumstances of the case has cancelled and confiscated the ST certificate of the petitioner by its Order dated 12.07.2023 with a direction to hand over the original certificate before it within 7 (seven) days of receipt of the order. For the purpose of reference, the order passed by the respondent No.2 on 12.07.2023 is quoted herein-below:

“ The case was instituted on the basis of a complaint lodged by one Jiban Kumar Dasgupta of Agartala, alleging that the caste certificate of Sri Subrata Kairi, serving at TFDPC Limited is fake and he is enjoying the benefits of ST illegally. On receipt of the complaint, the Tribal Welfare Department referred it to the Vigilance Inquiry authority for inquiry and they submitted their report with the finding that Sri Subrata Kairi is not a member of a Schedule Tribe.

The Sub-Divisional Magistrate, Khowai, being the certificate issuing authority, was also requested to conduct an inquiry against the caste status of Sri Subrata Kairi, son of Lt. Bhagaban Kairi of Asharam bari, Khowai and accordingly the Sub-division level Schedule Tribe Sub-Committee for Khowai Sub- Division, in their meeting held on 26.12.2019 come to the conclusion that Sri Subrata Kairi belongs to OBC, but not ST community.

The Tribal Welfare Department itself conducted an inquiry to verify the genuinity of the ST certificate of Sri Subrata Kairi and the inquiry committee submitted its report to the Director, Tribal Welfare Department on 02.11.2020, with the finding that it was difficult to ascertain whether Sri Subrata Kairi actually belongs to Schedule Tribe or not.

With all these negative findings against the OP, Sri Subrata Kairi, the case was referred to the SLSC for the final decision of the caste status of the OP.

The committee examined all the records including vigilance inquiry report and decided to proceed for a detail inquiry, so as to provide equal opportunity to the opposite party, allowing him to adduce evidence to discard the allegations against him.

During the preceding, the prosecution side produced two prosecution witnesses, namely the complainant Sri Jiban Kumar Dasgupta as PW-1 and Sri Badal Datta, Inspector of Police, Inquiry Officer as PW-2. The opposite party also produced two witnesses namely the Opposite Party himself as DW- 1 and Sri Debarata Kairi the brother of the OP, as DW-2.

The committee had to decide the following points, to arrive at the conclusion in respect to the Schedule Tribe status of the OP Sri Subrata Kairi –

1. Whether the vigilance inquiry was conducted following due procedure prescribed by the Hon'ble Supreme Court of India in Kumari Madhuri Patil case or not?
2. Whether the surname 'Kairi' finds its place in the SCs and STs Order (Amendment) Act, 1976 and the notifications from time to time issued by the Department of Welfare of ST's?
3. Whether the ancestry of the OP supports Schedule Tribe status of the OP?
4. Whether the Schedule Tribe certificate obtained by the OP is fake and by misrepresentation of fact and if so, whether it is liable to be cancelled and confiscated?

The committee found that the Vigilance Inquiry officer, in the course of inquiry, has recorded the statement of as much as thirteen witnesses and has examined all relevant records. The OP could not find any laches or any fault to discard the report of the Vigilance Inquiry.

So, the committee is of the opinion that the vigilance inquiry was conducted perfectly.

The committee has perused and examined the List of Schedule Tribes, issued time to time under the Schedule Tribes order and the surnames 'kairi' is not found in any of the lists. The surname 'Kaura', 'Koir', 'Kaur' etc. were found but nowhere the surname 'Kairi' was found. On the other hand the Director of Welfare of OBC, in their letter NO.F. 9- 4/STET/OBC-Dir/2014/50-51, dated 07.04.2021 to the vigilance inquiry officer has informed 'Koiri' community is recognized as OBC in the State of Tripura with effect from 27th April, 1994 vide Notification NO.F.6-74/SCW/OBC/STET/94/10194- 10350.

From the official records of different departments, it is so ascertained that 'Kairi' does not find its place in any government documents as a recognized Schedule Tribe community in the State of Tripura.

The father of the OP Lt. Bhagaban Kairi had obtained caste certificate on 30.04.1984 from the O/o SDO, Belonia and subsequently, on the strength of the caste certificate of his father, the OP of the case, Sri Subrata Kairi obtained caste certificate, wherein the surname of the certificate holder is rewritten by striking off the surname 'Kaur', which creates a smoke of doubt. It is clearly written down on the certificate of the OP, as well as his father that they, belong to the community 'Kaur'. But, it does not clear wherefrom the issuing authority of the caste certificates has construed that the community 'Kaur' is a recognized Schedule Tribe in the State of Tripura. It is also not clear how the issuing authority has categorized the surname 'Kairi' under the 'Kaur' community. Form the statements of the witnesses, recorded by the Vigilance Inquiry Officer it has been emerged that grandfather of the OP Lt Rambhajan Kairi had migrated to Sonaravillage of present Kamalpur Sub-Division about 200 years back as tea garden labourer from Uttar Pradesh and settled down there. In the course of time, the father of the OP obtained the Schedule Tribes certificate from the then SDO Office, Belonia and subsequently showing the ST certificate of his father the OP has obtained the ST certificate from the O/o SDM, Khowai. There are about 300 such 'Kairi' in that particular vicinity, but except the father of the OP none of those 'Koiri' has obtained the ST certificate. Rather some of them had obtained SC certificate and others obtained OBC certificate.

From the above, it is clear that ancestry of the OP and the other substantial evidence do not support the Schedule Tribe status of the OP. Since all the above points are decided against the Schedule tribe status of the OP, it is obvious that the Schedule Tribes certificate obtained by the OP was obtained by mispresentation of fact and hence it is liable to be cancelled and confiscated.

In view of the above findings of the committee and from the oral testimony of all the witnesses, the inquiry report of the Sub-Divisional committee, the Vigilance Inquiry report and from the other relevant records including Schedule Castes and Schedule Tribes Orders (Amendment) Act, 1976, the SCs & STs Lists (Modifications) issued time to time and the

Notification issued by the Government of Tripura, Department of Welfare in Schedule Tribes, the committee comes to the conclusion that-

The OP failed to disprove the accusation against him to the effect that he does not belong to Schedule Tribe community. On the other hand the prosecution has satisfactorily proved that the OP Sri Subrata Kairi does not belong to the recognized Schedule Tribe community in the State of Tripura and as such the Schedule Tribe certificate obtained by him is a fake one. The ST certificate of the OP bearing No. 245/SDO/KH/TW/89 dated 19.05.1989 was fraudulently obtained and it is hereby cancelled and confiscated. O.P Sri Subrata Kairi is hereby directed to return his original ST certificate to the office of the Director, Tribal Welfare Department within 7 (seven) days from the date of receipt of this order.

Issue copy of the Order to the Certificate Issuing Authority for making an entry in the relevant register.

Supply a copy of this order to the OP Sri Subrata Kairi, the complainant and also to the other concerned authorities...."

[6] According to the petitioner, while cancelling the ST status of the petitioner, the State Level Scrutiny Committee (in short SLSC) totally misdirected itself in arriving at the conclusion regarding the ST status of the petitioner, as it totally confused itself with the terms 'Community and Surname'. Being aggrieved by the aforesaid order dated 12.07.2023 of the SLSC, the petitioner has filed this writ petition seeking following reliefs:

"i. Admit this petition.

ii. Issue Rule NISI upon the respondents to show cause as to why the impugned order of the Respondent no. 2 dated 12/07/2023 (ANNEXURE-27) shall not be quashed/set aside by issuing a writ of certiorari;

AND

iii. As to why writ of Mandamus shall not be issued upon the respondents to restore and maintain the ST status of the petitioner on the strength of the ST certificate issues his name by the respondent no. 2 on 19/05/1989 (ANNEXURE-4)

iv. In the interim stay all operation of the order dated 12-07-2023(ANNEXURE-27) passed by the respondent no.2 till disposal the writ petition....."

[7] Mr. SM Chakraborty, learned senior counsel assisted by Mr. S. Datta, learned counsel submits that cancellation of the ST certificate of the petitioner is violative of principles of natural justice. The ST certificate of the petitioner was sent for verification to the respondent No.5 i.e. SDM, Khowai and in his report, he has confirmed that the certificate was genuine one. Under that

circumstance, the finding of the respondent No.2 that the ST certificate of the petitioner is fake is totally arbitrary one. For the purpose of reference, the relevant contents of the said report of the SDM, Khowai dated 03.07.2019 is quoted herein-below:

"GOVERNMENT OF TRIPURA
OFFICE OF THE SUB DIVISIONAL MAGISTRATE
KHOWAI TRIPURA
(T.W.Section)

NO.351F.IV(8)/SDM/KHW/TW/Verification/ST-Cert/2018-19,

Dated. 03.07.2019

To
The Additional Director
Tribal welfare Department
Govt. of Tripura

Sub:- Verification of ST certificate of Shri Subrata Kalri S/O Bhagaban Kairi of village Asharambari, P/S Khowai.

Ref No. 41825/4(73)/TW/R.CELL/2018 Dated. 08.02.2019.

Sir,

With reference to the subject cited above, I would like to inform you that as per our office record the ST certificate bearing No.245/SDO/KH/TW/89 Dated.19.05.1989 issued in favour of Shri Subrata Kairi S/O Shri Bhagaban Kairi Vill-Asharambari PS-Khowai, District- West Tripura is found genuine and issued from this office.

Rest of the information as sought against point no (ii) to (vi) of the application of Sri Jiban Kumar Dasgupta, Joynagar are not available in this office.

This is for favour of your kind information & doing the needful.

Yours sincerely
Sd/-
Sub-Divisional Magistrate
Khowai Tripura"

[8] Mr. Chakraborty, learned senior counsel further contends that the findings of the respondent No.2 that the petitioner obtained the certificate fraudulently is arbitrary and mechanical one as on the date of issuance of the said certificate i.e. on 19.05.1989, the petitioner was only a minor boy of 10(ten) years. He, therefore, urges this Court to allow the writ petition setting aside the impugned order dated 12.07.2023 passed by the SLSC (respondent No.2).

[9] On the contrary, Mr. RP Singh, learned counsel for respondent No.2 contends that the respondent being statutory authority discharged its statutory responsibility and after granting ample opportunity to the parties passed the said order dated 12.07.2023 cancelling and confiscating the illegal ST Certificate held by the petitioner. He, further submits that the impugned order passed by the respondent authority is not arbitrary and not violating the principle of natural justice. Learned counsel, therefore, urges this Court to dismiss the instant writ petition.

[10] Heard the submissions advanced by the learned counsel for the respective parties and perused the record.

[11] To examine the case of the petitioner, it is relevant to reproduce **Rule 7A(4)** of the **Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992** and accordingly the same is quoted herein-below:

"...7A.....(4) The Member-Secretary of the Scrutiny Committee concerned, on receipt of the report from the Director of Vigilance if finds the claim for community status is not genuine or doubtful or spurious or falsely or wrongly claimed, the Member-Secretary concerned shall issue show-cause notice supplying a copy of the report of the vigilance officer to the community certificate holder by a registered post with acknowledgement due or through the head of the institution or office concerned in which the certificate holder is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case, on request, not more than 30 days from the date of receipt of the notice. In case, the certificate holder seeks an opportunity of hearing and claims an inquiry to be made in that behalf, the Member-Secretary on receipt of such representation or reply shall convene the meeting of the committee and the Chairperson of the Committee shall give a reasonable opportunity to the certificate holder and in case the certificate holder is a minor to the parent or guardian to adduce all evidences in support of his claim. A public notice by beat of drum or any other convenient mode may also be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may also be given to him or it. After giving such opportunity in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the

objections raised by the certificate holder or opponent and pass an appropriate order with brief reasons in support thereof.

Provided that in case a certificate holder engages a legal practitioner to represent his case before the Scrutiny Committee, the Director for Welfare of Scheduled Castes and Other Backward Classes or the Director for Welfare of Scheduled Tribes as the case may be, may engage a lawyer.

Provided further that before passing a final order, the Committee shall also take into consideration the local enquiry report of the Sub Divisional Magistrate and opinion of the Sub-Committee concerned....."

Emphasis supplied

[12] The above-quoted provisions of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, clearly indicate that in this case, it was necessary to issue show-cause notice to the certificate holder seeking his representation/reply. But, in the final order of the respondent authority dated 12.07.2023, nowhere it has been reflected that such notice was issued to the certificate holder or any such, reply/representation was ever received from the certificate holder(petitioner herein). The counter-affidavit filed by the respondent no.2 is also silent about the same. Thus, it is opined that the principle of natural justice was not followed by the respondent authority in cancelling the ST certificate of the petitioner.

[13] It is seen from record that on 30.04.1984, the then Sub-Divisional Officer, Belonia Sub Division issued a Schedule tribe certificate in the name of the father of the petitioner, where the father of the petitioner wrongly wrote community in place of surname and the same was duly corrected by putting initials.

[14] The complainant Mr. Jiban Kumar Dasgupta has not made out a case before the respondent board /authority and also

has not indicated in the complaint with regard to his *locus sandi* and also the cause of action for making such complaint against the writ petitioner. He did not appear before the enquiry board/committee and has not led any evidence in support of his complaint. In view of the same, this Court has drawn an adverse inference against the complainant. Thus, this Court has no hesitation to say that the same is because of ill motives, the said complaint was lodged against the petitioner.

[15] The inquiring officer who has conducted the enquiry has not given a clear finding in respect of his investigation to say that the petitioner is non-tribal and he is holding a fake or unauthorized certificate and the same is required to be cancelled. For the purpose of ready reference, the relevant portion of the enquiry report dated 02.11.2020 in respect of genuineness of ST Certificate of Sri Subrata Kairi (petitioner herein) is extracted below:

".....In view of the above, it has become difficult to conclude whether Sri Subrata Kairi, S/O- Bhagaban Kairi is actually belonging to Scheduled Tribe or not....."

[16] In view of the facts and circumstances, this Court is of the opinion that as in the final order passed by the respondent authority on 12.07.2023 as well as in the counter affidavit filed by the respondent, nowhere it has been mentioned that any notice was issued to the petitioner calling for explanation, it is nothing else but, violation of doctrine of *Audi alteram partem*.

In view of the above, the present writ petition is allowed setting aside the final order of the respondent authority dated 12.07.2023 cancelling the ST certificate of the petitioner and the same is accordingly disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE

Sabyasachi G.

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