

GAHC010024962020



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

Case No. : Cont.Cas(C)/179/2020

HIRALAL SHAW
S/O- MAHABIR SHAW, OF VILL- PADAMBIL, P.O.- GOSSAIGAON, DIST-
KOKRAJHAR, ASSAM.

VERSUS

A.N.HAZARIKA, ACS AND ANR.
JT. SECY. TO THE GOVT. OF ASSAM, WPT AND BC DEPTT., DISPUR, GHY.-6,
ASSAM. PIN NO. 06.

2:BIREN CHANDRA PHUKAN
PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
DIST- KOKRAJHAR
BTAD
ASSAM
PIN NO 78337

Advocate for the Petitioner : MR. I A TALUKDAR
Advocate for the Respondent : MR. R DHAR

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

25.06.2024

Heard Mr. I. A. Talukdar, learned counsel for the petitioner. Also heard Mr.
R. Dhar, learned counsel for the contemnor / respondent No.1.

By filing this application under Section 11 and 12 of the Contempt of Court Act, 1971 read with Contempt of Court (Gauhati High Court Rules, 1977), the petitioner is drawing notice of alleged willful disobedience and violation of the order dated 28.02.2019 passed by this Court in WP(C) No. 5617/2018.

In the said WP(C) No. 5617/2018, the issuance of caste certificate in favour of Esha Shaw daughter of Jawaharlal Shaw in WP(C) 6516/2018 and in favour of Abinash Shaw, son of Hiralal Shaw (petitioner herein) in WP(C) No. 5617/2018, was involved.

This Court disposed of the aforesaid writ petition by order dated 28.02.2019 with a direction to reach a distinct conclusion as regard the caste status of Esha Shaw and Abinash Shaw the proper procedure would be for the respective guardians to make necessary application before the State Level Scrutiny Committee and as and when such application supported by necessary documents are brought before the committee, a decision with regard to the cast status of Esha Shaw and Abinash Shaw will be made by the State Level Scrutiny Committee within a period of four weeks from the date of making such application.

It is the specific case of the petitioner that despite an application dated 19.03.2019 being filed before the State Level Scrutiny Committee, the Committee is sitting silent over the matter in sheer disregard of the order passed by this Court. Accordingly, the instant contempt petition has been filed.

Mr. I. A. Talukdar, learned counsel for the petitioner submits that despite the application having been filed in terms of the court's order, the contemnor No.1 has not complied with the decision of this Court.

Mr. R. Dhar, learned counsel for the contemnor No.1 on the other hand, submits that the petitioner has not filed the application as required in terms of the order dated 28.02.2019 and as such, no case of disobedience is being made out against the contemnor.

Heard the submissions of the learned counsel for the parties at length and perused the materials available on record.

The order of this Court dated 28.02.2019 is absolutely clear and unambiguous to the effect that it requires the petitioner to make necessary application before the State Level Scrutiny Committee and only upon such application being received by the State Level Scrutiny Committee supported by necessary documents, a decision with regard to the caste status of the petitioner's son and Esha Shaw will be made by the said committee within a period of four weeks from the date of making such application.

Though it is contended on behalf of the petitioner that on 19.03.2019, an application was filed before the State Level Scrutiny Committee, Assam Scheduled Caste and Scheduled Tribe, Dispur, the original copy being produced before this court shows that the same has been received by the Directorate of Welfare of Scheduled Caste, Assam, Guwahati on 19.03.2019. It further appears that the contemnor No.1 by filing its affidavit-in-opposition categorically averred that since no application whatsoever in terms of this Court's order dated 28.02.2018 was received by the Committee, the Deputy Secretary to the Government of Assam, WPT and BC Department by letter dated 10.09.2020 requested the petitioner to submit application before the Chairperson of the Scrutiny Committee.

Paragraph 6 and 7 of the said affidavit-in-opposition is reproduced here

under for ready reference.

“6. That with regard to the statements made in paragraph 2 and 3 of the contempt petition, most humbly the respondent no.1 I would like to state that the allegation made are false, baseless and not based on true facts and vehemently denied. The deponent with due respect and humble submission begs to state that the contemnor Shri A. N. Hazarika, ACS is presently working as one of the Joint Secretary of the WPT & BC Department. The State Level Scrutiny Committee for caste verification constituted vide No. TAD/BC/855 /2013/153 dtd 11/05/2018 with the following members:

- (1) Secretary, WPT & BC -----Chairperson*
- (ii) Director, WPT & BC, Assam -----Member*
- (iii) Director, Welfare of Scheduled Caste, Assam -----Member.*
- (iv) Addi. Secy. / Joint Secy, to the Govt. of Assam, WPT & BC Dept-----Member Secretary*
- (v) Supdt. Of Police, CID, Assam -----Member*
- (v) Joint Director, AIRT & SC,----- Member*

As per notification dated 11/05/2018, Additional Secretary/ Joint Secretary has been notified as member secretary of the said Committee, The contemnor is not notified as member Secretary by his name and does not deal with State Level Scrutiny Committee matter. However, the contemnor in his capacity as Joint Secretary receives official correspondence of the Department as and when required and forwards the same to department's Superintendent for necessary record. In this regard, WPT & BC Department's Receipt. Register has been thoroughly checked and found that no such correspondence/ letter has been received in the Department from the petitioner as stated in the contempt petition. Further the letter dated 19.03.2019 (Annexure -2 of the writ petition) written by Sri Hiralal Shaw as alleged to the State level Scrutiny Committee, Assam for Schedule caste & Schedule Tribes bears no acknowledgement sign or seal of the WPT & BC Department on it. The WPT & BC Dept. while receiving any letter or documents issues either an acknowledgement receipt or a signed and sealed copy of the countersigned documents that's being received, further the department has the highest respect for the Hon'ble

High Court and its orders and the same are always given highest priority in regard to compliance etc The deponent believes that the petitioner has done some mistakes by human error or otherwise and has not submitted the

Representation along with a copy of the writ petition and the Hon'ble High Court's order dated 28.02.2019 before the office of the WPT & BC nor to the respondent No. 1.

Copy of the notification dated No. TAD/BC/855/2013/153 dtd 11/05/2018 annexed as Annexure-I

7. That with regard to the statements made in paragraph 4 of the contempt petition, most humbly the respondent no. 1 would like to state that No action was initiated as no record of receipt of such letter was found in the Receipt Register. However, WPT & BC Department has taken action as soon as the department has come to know about the order dated 28.02.2019 passed by the Hon'ble High Court through the contempt case filed by the petitioner after the dept. has received a copy of the same. This Department has issued letter to Shri Hiralal Shaw requesting him to submit his petition along with documents in support to his claim as Scheduled Caste on 10-09- 2020. This Deptt. has also requested Superintendent of Police, Kokrajhar, on 15-09-2020 by a W.T. message to inform Shri Shaw to submit his petition urgently. The matter will be placed immediately to State Level Scrutiny Committee as soon as the petition received from the petitioner.

A Copy of letter dated 10.09.2020 is annexed as Annexure-II and the Copy of W.T. message dated 15.09.2020 is annexed as Annexure-III.”

Thereafter, the petitioner filed an affidavit-in-reply on 22.05.2024 against the aforesaid affidavit-in-opposition filed by the contemnor No.1 wherein the petitioner stated that despite of the application filed earlier on 19.03.2019, the petitioner submitted his document though online to the authority along with all relevant records, however, the e.mail receipt is not available with the petitioner.

Paragraph 2 and 3 of the aforesaid affidavit-in-reply is also reproduced

here under for ready reference:

“2. That as regard to the averments made in para no.6 is concern the annexure-2 of contempt petition is having receipt copy with the petitioner and the petitioner crave the leave of the honorable court to furnish the receipt copy of the application at the time of hearing. Apart from this the petitioner after awaiting many months the authority given notice to the petitioner on 10th September 2020 which receipt by the petitioner for submission of documents relating to claim as schedule caste. Accordingly the petitioner submitted his documents through online to the authority along with all relevant records. Prior to the said email sent the petitioner already submitted records along with copy of the writ petition and the order of the High court and the same was duly receipt even than ignoring the same.

3. That as regard to the statements made in para no.7 of affidavit in opposition in response to WT message the petitioner submitted his reply along with related documents in response to the communication dated 10th Sept. 2020 through email but the email receipt is not available with the petitioner. The petitioner craves the indulgence of the honorable court to direct the contemnor to verify the email of the petitioner in the website which will prove the authenticity of the claim of the petitioner. However, the contemnor is trying to avoid the contempt proceeding before the honorable court in one pretext or the other despite having issued receipt of application and the order of the honourable court but to avoid the responsibility taking one plea or the other and nothing else.”

In order to constitute the offence of contempt, the essential ingredients are the factum of “willful disobedience”. Admittedly, the application dated 19.03.2019 filed by the petitioner pursuant to the order dated 28.02.2018 in WP(C) No. 5617/2018 though is addressed to the State Level Scrutiny Committee, Assam Scheduled Caste and Scheduled Tribe, Dispur, the same has been filed in the Directorate of Welfare of Scheduled Caste, Assam, Guwahati. It appears from the notification dated 11.05.2018 (Annexure-1) to the affidavit-in-opposition filed by the contemnor No.1 that the State Level Caste Scrutiny committee was constituted. It further appears that the direction of

this Court was to submit the application before the said State Level Scrutiny Committee. However, it appears from the original application placed before the Court that the application was not filed before the State Level Scrutiny Committee but to the Directorate of Welfare of Scheduled Caste, Assam. Therefore, unless and until the application is filed before the Committee, the directions issued by this Court earlier, cannot be undertaken by the Committee.

In view of above, it appears that there is no willful disobedience or disregard by the contemnor in complying with the direction given by this Court by order dated 28.02.2019 in WP(C) 6516/2018. As such, no case of contempt is made out.

The photocopy of the receipt dated 19.03.2019 as placed before this Court is kept on record and marked as "X" and the original copy accordingly is returned.

Accordingly, this petition stands dismissed and disposed of.

JUDGE

Comparing Assistant