

GAHC010238012023



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

Case No. : WP(C)/6219/2023

GAJENDRA SINGH
SON OF RAMNIHORA SINGH,
RESIDENT OF VILLAGE- WATIZUR NO. 2,
PO- FOREST BAZAR, PS- KHERONI,
DIST- WEST KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM,
GENERAL ADMINISTRATIVE DEPARTMENT,
DISPUR, JANATA BHAWAN, DIST.- KAMRUP(M),
ASSAM.

2:THE DEPUTY COMMISSIONER
WEST KARBI ANGLONG
HAMREN
DIST.- WEST KARBI ANGLONG

ASSAM.

3:THE SUB-DIVISIONAL OFFICER(CIVIL)
WEST KARBI ANGLONG
HAMREN
DIST- WEST KARBI ANGLONG

ASSAM.

4:THE ASSISTANT COMMISSIONER
WEST KARBI ANGLONG
HAMREN

P.O. AND P.S.- HAMREN

DIST.- WEST KARBI ANGLONG

ASSAM.

5:THE STATE LEVEL CASTE SCRUTINY COMMITTEE
GOVERNMENT OF ASSAM
REPRESENTED BY THE SECRETARY

SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT

GOVERNMENT OF ASSAM

DISPUR
DIST- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. R BORA, MR. D GOGOI,MR. D. BORAH

Advocate for the Respondent : GA, ASSAM, SC, GAD,MS. S BARUAH (R-2 TO R-4),JR. GA, ASSAM,MR R M DAS (R-5),SC, SOCIAL JUSTICE AND EMPOWERMENT

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 23.09.2024

1. Heard Mr. R Bora, learned counsel for the petitioner. Also heard Mr. A Phukan learned counsel for the respondent No.1, Mr. G Bokolian learned counsel for respondent Nos.2, 3 & 4, and Mr. C Sarma learned counsel for respondent No.5.
2. Aggrieved by the order dated 02.09.2023 by means of which, the caste certificate of the petitioner was cancelled, the present writ petition is filed.
3. The contention of the writ petitioner is that the impugned

order dated 02.09.2023 has been passed in most arbitrary and illegal manner and in violation of the law laid down by the hon'ble Apex Court in the case of ***Kumari Madhuri Patil Vs. State of Maharashtra and others*** reported in ***(1994) 6 SCC 241***.

4. The caste certificate was issued to the petitioner on 02.09.2023 by the Deputy Commissioner, West Karbi Anglong district certifying that the petitioner is Koiri(Tea Garden /Ex Garden Tribe/Tea Garden Labour/Ex-Tea Garden Ardent Tribes, which is recognized as Other Backward Classes (OBC)/More Other Backward Classes (MOBC) by the Govt. of Assam.

5. Such certificate issued was cancelled by the Assistant Commissioner, West Karbi Anglong, district by the impugned order dated 03.10.2023 on the ground that the petitioner's certificate was issued in absence of the recommendation from the Chah Janajati Jatiya Sanmilani, West Karbi Anglong which is required as per the Department of Social Justice Empowerment's Letter No.Ecf- 228962/23 dated nil May, 2023.

6. As per the impugned order, the petitioner has not submitted any recommendation from Chah Janajati Jatiya Sanmilani, West Karbi Anglong, nor any relevant document showing that father or fore father of the petitioner were ex-tea garden labourers and he has also not submitted the physical caste certificate issued earlier.

7. The respondent State has filed an affidavit taking the similar stand, however, it is admitted that the petitioner was not given any opportunity of hearing before passing of the impugned order.

8. The fact also remains that a caste certificate of OBC/MOBC was issued by the Sub Divisional Officer (C), Hamren Sub Division Hamren certifying that the petitioner belongs to Koiri ex-tea garden tribe. Therefore, one of the reasons of cancellation of the caste certificate is that the petitioner had not submitted the earlier certificate issued in his favour. However, if the impugned order is seen, it clearly discloses that the petitioner had submitted along with his application the caste certificate earlier issued on 12.09.1995. Therefore, this part of the impugned order is not based on the materials placed before it. Therefore, it is nothing but a perversity.

9. Though the application filed by the petitioner did not contain a certification from Chah Janajati Jatiya Sanmilani, West Karbi Anglong in terms of notification dated 29.03.2022, however, without hearing the petitioner the authorities could not have cancelled the certificate issued in favour of the petitioner, more particularly, when the petitioner is having a caste certificate issued on 12.09.1995. Until and unless such caste certificate issued in earlier point of time is held to be fraudulent or non-existent, such ground could not have been the reason for setting aside the order.

10. Another aspect of the matter is that the principles of natural justice is not followed. The principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any action against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected to submit his/ their case. A fair hearing means that a person against whom an adverse order is passed should

be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to be decide.

11. Law is by now well settled that until and unless the adherence of principles of natural justice is excluded, every action which results in civil consequences must follow due procedure of principles of natural justice which has not been followed in this case. On this count alone the impugned decision of the Deputy Commissioner is liable to be set aside.

12. Be that as it may, as the petitioner did not have any opportunity to place its stand before cancellation of certificate and therefore, in the considered opinion of this court, the impugned order is liable to be interfered for non adherence of principles of natural justice.

13. Accordingly, in the totality of the matter, the impugned order dated 03.10.2023 passed by the Assistant Commissioner, Karbi Anglong district, Hamren stands set aside. However, it is provided that if the respondent authority still wants verification or any doubt as regards the certificate issued already to the petitioner, they may issue a notice to the petitioner to place his defence and thereafter they may pass an appropriate order, if so advised.

14. It is made clear that the matter is not relegated to the caste scrutiny committee in terms of the decision of ***Madhuri Patil*** (supra), for the reason that the caste certificate has been cancelled by

the authority for want of document and not for the reason that the petitioner does not belong to OBC or MOBC.

15. With the aforesaid, the writ petition stands allowed.

JUDGE

Comparing Assistant