

GAHC010285362023



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

Case No. : I.A.(Civil)/3752/2023
with
Review Pet. /2023
(Filing Srl. No. 15408/2023)

THE STATE OF ASSAM AND ANR.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM,
PERSONNEL DEPTT., DISPUR, GUWAHATI- 6.

2: THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI- 6

VERSUS

MONSOON BARKAKATI AND 5 ORS.
R/O CHEKONIDHARA GAON, KHELMATI CLUB ROAD, P.O. AND P.S.-
JORHAT, ASSAM- 785001.

2: THE SECRETARY
TO THE GOVT. OF ASSAM
WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES DEPTT.
DISPUR
GUWAHATI- 6.

3: THE STATE LEVEL COMMITTEE
REP. BY ITS CHAIRPERSON

WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES DEPTT.

DISPUR
GUWAHATI- 6.

4: THE DEPUTY COMMISSIONER

JORHAT
ASSAM.

5:THE DEPUTY COMMISSIONER
TINSUKIA
ASSAM.

6:THE ANTI CORRUPTION LIBERATION UNION
H.O.- JORHAT
ASSAM
PIN- 785001 REPRESENTED BY ITS GENERAL SECRETARY

INDRAJIT CHUTIYA
AGED ABOUT 32 YEARS
S/O PRADIP CHUTIYA
PERMANENT RESIDENT OF SILAPATHAR
P.S.- SILAPATHAR
DIST.- DHEMAJI
ASSAM

Advocate for the Petitioner : MR. D NATH

Advocate for the Respondent : MR. J PATOWARY (r-1)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA

19/01/2024

(M.Thakuria, J)

1. Heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. D. Nath, learned Senior Government Advocate, Assam for the applicants and Mr. K N Choudhury, learned Senior Advocate, assisted by Mr. J. Patowary, learned Counsel for the Opposite Party No. 1.

2. A complaint was submitted by one Anti-corruption Liberation Union, Jorhat, Assam alleging that the Opposite Party No.1 obtained a fake and fabricated Other Backward Classes (OBC) Certificate belonging to "Koch" community, though she belongs to General Category of "Kalita" community and thereby managed to clear the Assam Public Service Commission Combined

Competitive Examination 2016 in the cadre of Land and Revenue Service (Junior Grade) under the reservation Quota. The State Level Scrutiny Committee (SLSC), Welfare of Plain Tribes and Backward Classes (WPT&BC) Department in the Government of Assam, after hearing the parties, including the Opposite Party No. 1, by a Speaking Order dated 26.02.2021 came to the conclusion that the Opposite Party No.1 obtained her OBC Caste Certificate through unfair means and the SLSC by the said order dated 26.02.2021 directed the authority concerned to cancel the OBC Certificate issued to Opposite Party No. 1 with immediate effect.

3. Pursuant to the said recommendation of the SLSC in the WPT&BC Department of the State vide order dated 26.02.2021, the Deputy Commissioner, Jorhat by order dated 01.03.2021 cancelled the OBC Certificate issued to the Opposite Party No. 1. Consequently the State Government in the Personnel (A) Department by order dated 12.03.2021 placed the Opposite Party No. 1 under suspension under Rule 6(1) of the Assam Services (Discipline & Appeal) Rules, 1964.

4. Aggrieved with such actions, the Opposite Party No. 1 preferred a Writ Petition being WP(C) No. 2286/2021. Considering the enquiry report dated 03.10.2019 of the Inspector of Police, CID, Assam pertaining to the OBC Certificate of the Opposite Party No. 1 that was placed by the State respondents therein and the direction of the Hon'ble Supreme Court passed in the case of *Kumari Madhuri Patil and Another -Vs- Additional Commissioner, Tribal Development and Others*, reported in (1994) 6 SCC 241 and finding that the respondents therein proceeded in terms of the procedure laid down by the Hon'ble Supreme Court in the case of *Kumari Madhuri Patil* (supra), the learned Single Judge by order dated 24.11.2022 passed in said WP(C) No. 2286/2021, set aside and quashed the said Speaking Order dated 26.02.2021 passed by the SLSC in the WPT&BC Department of Assam.

5. The complainant Anti-corruption Liberation Union, Jorhat, Assam aggrieved with said order dated 24.11.2022 passed in WP(C) No. 2286/2021 filed Writ Appeal No. 42/2023 and the Hon'ble Division Bench after hearing the parties by Judgment dated 01.06.2023 dismissed the said Writ Appeal No. 42/2023 being devoid of merit and thereby uphold the order dated 24.11.2022 passed by the learned Single Judge in WP(C) No. 2286/2021 affirming the social status of the Opposite Party No. 1 as OBC ("Koch").

6. The State respondents did not prefer any appeal against the order dated 24.11.2022

passed by the learned Single Judge in WP(C) No. 2286/2021 and filed the connected review petition on 14.12.2023 for review of the judgment dated 01.06.2023 passed by the Division Bench in said WA No. 42/2023 praying amongst others, to issue notice to the respondents therein to show cause as to why the judgment dated 01.06.2023 passed in WA No. 42/2023 should not reviewed and after causes being shown and on hearing the parties, to review the same.

7. While filing the said review petition by the State for review of said judgment dated 01.06.2023 passed in WA No. 42/2023, there is a delay of 165 days and the State has therefore filed the interlocutory petition under Section 5 of the Limitation Act, 1963 to condone the said delay.

8. The opposite party No.1 filed an affidavit-in-opposition against condonation of the said delay and in that regard placed reliance on the judgments of the Hon'ble Apex Court in the cases of the *Office of the Chief Post Master General Vs. Living Media Limited*, reported in (2012) 3 SCC 563; *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, reported in AIR 2012 SC 1629; *Pundilik Jalam Patil Vs. Jalgaon Medium Project*, reported in (2008) 17 SCC 448 as well as a judgment of a Division Bench of this Court in the case of *Mori Riba Vs. Yomkar Riba*, reported in 2011 (3) GLR 66 stating that the claim of latitude on account of impersonal machinery and inherited burocratic methodology of making several notes cannot be accepted and in view of the modern technologies being used/available, that the law of limitation binds everybody including the Government, that the Court helps those who are vigilant and do not slumber over their rights and that no premium can be given for total lethargy on part of the Officers of State or its agencies as condonation of delay cannot be allowed as a matter of course by accepting the plea that the dismissal of the matter on the ground of bar of limitation will cause injury to public interest.

9. Mr. Saikia, learned Advocate General placing the decision of the Hon'ble Supreme Court in the case of *Board of Control for Cricket in India Vs. Netaji Cricket Club* reported in (2005) 4 SCC 251 submitted that for the subsequent finding the review petition can be filed with regard to any such decision of Court of law involving the issues of the case and therefore, delay should be condoned and review petition should be considered.

10. By filing an additional affidavit in the review petition, the applicant brought on record the detailed enquiry report dated 26.12.2023 submitted by the CID, Assam with regard to the Caste

Certificate of the opposite party No.1 stating that the said opposite party is not entitled for the OBC Certificate as her father belongs to General Category and she received all kind of support from her father. On 27.12.2023, the Personnel Department forwarded the said enquiry report of the CID, Assam dated 26.12.2023 to the Social Justice and Empowerment Department and considering the said enquiry report, the Director of Welfare of Schedule Caste and Backward Communities of Assam has issued show cause notice to the opposite party No.1 asking her to explain the reason that led to her to obtain the Caste Certificate of OBC Caste to which she does not belong. In the said affidavit the applicant State also stated that earlier enquiry report dated 10.03.2019 relating to the Caste status of the opposite party No.1 submitted by the Inspector of CID was subsequently found not to be proper and perfunctory, for which the authorities concerned have initiated Departmental action against the said Inspector of CID.

11. With regard to the Caste status of an offspring born in an inter-caste marriage, Mr. D. Saikia, learned Advocate General of the State placed the Notification No.12017/02/2017-SCD (R.L.Cell) Government of India in the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, New Delhi, whereby, after considering the direction and observation of the Hon'ble Apex Court in the case of *Rameshbhai Dabhai Naika Vs. State of Gujarat and Others* reported in (2012) 3 SCC 400 as well as the decision of the Hon'ble Delhi High Court in the case of *Rumi Choudhury Vs. the Department of Revenue, Government of NCT of Delhi and Another*, the Department of Social Justice and Empowerment on 03.10.2019 notified that — *where it is established that the child has been brought up in the surroundings of a notified community to which the mother belongs to and has suffered the deprivations, indignities, humanities and handicaps like any other member of that community and he/she was always treated as a member of the mother's community not only by that community but by people outside the community as well, then such a child of separated/divorced/single woman has to be treated as a member of the Schedule Caste community and would be entitled to receive benefits as such. However, each individual case will have to be examined in the light of existing facts and circumstances in such cases.*

12. Mr. Saikia, learned Advocate General also submitted that the enquiry report of the CID Inspector dated 03.10.2019 was not in conformity with the direction specified by the Hon'ble Supreme Court in the case of *Kumari Madhuri Patil* (supra) as well as *Rameshbhai Dabhai Naika* (supra) and that though in the impugned judgment dated 01.06.2023 passed in WA No. 42/2023

the writ appellate Court considered those two judgments along with others and also considered the determination of Caste of an off spring is essentially a question of fact to be decided on the basis of the evidence adduced in each case, but did not consider the fact that the report of the CID Inspector dated 03.10.2019 was not in conformity with the judgment, observation and direction of the Hon'ble Supreme Court passed in those two cases and hence, there is a mistake/error apparent on the face of the record for which the judgment dated 01.06.2023 passed in WA No. 42/2023 needs to be reviewed.

13. On the other hand, Mr. K. N. Choudhury, learned Senior counsel for the opposite party No.1 submitted that any such subsequent enquiry through Vigilance Cell can be directed by the State Level Empowered Committee only as per the law laid down in the case of *Kumari Madhuri Patil* (supra) and not at the instance of the Chief Minister of the State. Mr. Choudhury, learned senior counsel for the opposite party No.1 in that regard placed a note of the Chief Minister of the State dated 17.12.2023 as Annexure-B in the affidavit-in-opposition filed against condonation of delay.

14. Placing the reliance on the Hon'ble Supreme Court in the case of *J. Chitra Vs. District Collector and Chairman, State level Vigilance Committee, Tamil Nadu and Others* (Civil Appeal No. 5160/2010 decided on 02.09.2021), Mr. Choudhury, learned Senior Counsel submitted that the State, i.e., the review petitioners did not challenge the enquiry report dated 03.10.2019 of the Inspector of CID issued in favour of the opposite party No.1 and now cannot have a second enquiry by the State CID with regard to the OBC Caste Certificate issued in favour of the opposite party No.1 merely on the direction of the Chief Minister of the State, whereas such direction of vigilance enquiry can be given only by the State Level Empowered Committee as per the law laid down in the Case of *Kumari Madhuri Patil* (Supra) and not by the State.

15. It is also submitted by Mr. Choudhury, that the State, if so aggrieved may seek the relief by preferring Special Leave Petition before the Hon'ble Supreme Court of India and not merely by filing the review petition herein as law is well established that once there is a finding on merit, the same cannot be a matter of review and the same is the matter of appeal.

16. On the other hand, relying on the same decision of the Hon'ble Supreme Court in the case of *J. Chitra* (supra), Mr. Saikia, learned Advocate General, Assam submitted that in the last part of paragraph 8, the paragraph that has been relied by Mr. Choudhury learned Senior Counsel for the

opposite party No. 1, the Hon'ble Apex Court have laid down that reopening of inquiry into Caste Certificate can be made in case it is vitiated by fraud or when it was issued without proper inquiry. Mr. Saikia submitted that the report of the Inspector of CID dated 03.10.2019 regarding OBC Caste Certificate of the opposite party No.1 and the closure report with prayer to pass order for closing of the enquiry by the said Inspector of CID is apparently not in conformity with the direction of the Hon'ble Apex Court in the Cases of *Kumari Madhuri Patil* (supra) and *Rameshbhai Dabhai Naika* (supra) that was being considered by the learned Single Judge as well as the Division Bench and after proper inquiry by the CID, Assam it is now found that the OBC Caste Certificate issued in favour of the opposite party No.1 is vitiated by fraud and without proper inquiry by the Inspector of CID as reported on 03.10.2019, as required under the law well established by the Hon'ble Supreme Court.

17. Learned Advocate General, Assam also placed the relevant records in original regarding the inquiry report dated 26.12.2023 submitted by the Superintendent of Police, CID pertaining to the issuance of OBC Caste Certificate to the opposite party No.1 and the inquiry report dated 03.10.2019 conducted by the Inspector of CID that was taken into consideration by the learned Single Judge in its order dated 24.11.2022 passed in WP(C) No. 2286 of 2021, that goes to show that in the month of March, 2023 itself there was a specific note of the Chief Minister of the State regarding proper determination and consideration of Caste Certificate of the opposite party No.1 as well as in similar types of cases, complying the specific provisions while submitting the vigilance enquiry report in that regard.

18. We have considered the submissions made by the parties and the judgments cited by them.

19. Facts of each case vary. Considering the facts herein, the report of the Inspector of CID dated 03.10.2019 as reflected in the order dated 24.11.2022 of the learned Single Judge passed in WP(C) No. 2286/2021, the judgment dated 01.06.2023 passed by the Division Bench in WA No. 42/2023 and the directions of the Hon'ble Supreme Court in the case of *Kumari Madhuri Patil* (supra), *Rameshbhai Dabhai Naika* (supra), *J. Chitra* (supra) and *Board of Control for Cricket in India* (supra), we found force in the argument of Mr. D. Saikia, learned Advocate General, Assam.

20. From the above, we found that applicants could show sufficient reasons for the delay of 165 days in preferring the review petition noted above and as a result, the said delay of 165 days

is hereby condoned.

- 21.** The Registry shall register and number the connected review petition.
- 22.** This interlocutory application is accordingly stands disposed of.

JUDGE

JUDGE

Comparing Assistant