

THE HIGH COURT OF TRIPURA
AGARTALA

W. P. (C) No.38 of 2008 &

W. P. (C) No.254 of 2011

In W. P. (C) No.38 of 2008

Shri Sew Prasad Biswas,
Son of late Bhabani Ranjan Biswas,
Vill & P.O. Kumarghat,
Sub-Division- Kailasahar,
Dist- North Tripura.

.....Petitioner

- V E R S U S -

1. The State of Tripura (To be represented by the Commissioner and Secretary, Department of Welfare for Scheduled Castes & OBCs, Government of Tripura, Secretariat Complex, Agartala, West Tripura.
2. The State Level Scrutiny Committee, (to be represented by its Member Secretary) The Director of Welfare for Scheduled Castes & O.B.Cs, Government of Tripura, Agartala, West Tripura.
3. The Chairman,
State Level Scrutiny Committee (The Commissioner & Secretary, Department of Welfare for Scheduled Caste & O.B.Cs, Government of Tripura, Secretariat Complex, Agartala, West Tripuar.
4. The Member Secretary,
State Level Scrutiny Committee, (The Director, Department of Welfare for Scheduled Caste & O.B.Cs., Government of Tripura, Agartala, West Tripura.
5. The Member,
State Level Scrutiny Committee (The Joint Director, Department of Welfare for Scheduled Caste & O.B.Cs., Government of Tripura, Agartala, West Tripura.
6. The Deputy Secretary, Department of Law, Government of Tripura, Gorkhabasti, Agartala, West Tripura.
7. The Under Secretary, Department of General Administration (P&T), Government of Tripura, Agartala, West Tripura.
8. The Director, Printing & Stationary Department, Government of Tripura, Agartala, West Tripura.
9. The District Magistrate & Collector, South Tripura District, O/o. The D.M. & Collector, Udaipur, South Tripura.
10. Shri Sachindra Kr. Shil (Inquiring Officer),
Sub-Inspector of Police (Vigilance Organization),

Agartala, Tripura. (Notice to be served through Dy. Superintendent of Police (Vigilance), In-charge, Special Vigilance Cell, Fire Brigade Chowmohani, Agartala West Tripura.

.....Respondents

For the petitioner	: Mr. S.M.Chakraborty, Sr. Advocate, Mr. P. Roy Barman, Advocate.
For the State respondents	: Mr. S. Deb, Sr. Advocate, Mr. S.C. Das, Advocate.
For the respondent- SLSC	: Mr. J. Majumder, Advocate

In W. P. (C) No.254 of 2011

Sri Abhisek Biswas,
Son of Sri Sew Prasad Biswas,
Resident of Indranagar,
P.O. Indranagar-799006
P.S. East Agartala,
District West Tripura,
Presently residing at North East Police Academy, Umsaw, Meghalaya.

.....Petitioner

- V E R S U S -

1. The State of Tripura (represented by the Special Secretary to the Government of Tripura, Department of Welfare for Scheduled Castes & OBCs, Civil Secretariat, Capital Complex, P.O. Kunjaban, Agartala-799006, West Tripura.
2. The Secretary to the Government of Tripura, General Administration (P & T) Department Civil Secretariat, Capital Complex, P.O. Kunjaban, Agartala -799006, West Tripura.
3. The State Level Scrutiny Committee, (represented by the Member-Secretary) Director, Welfare for Scheduled Castes & O.B.Cs, Government of Tripura, Pandit Nehru Complex, Gurkhabasti,P.O. Kunjaban, Agartala-799006, P.S. West Agartala, West Tripura.
4. Sri Shantanu Das,
Chairman, State Level Scrutiny Committee (Special Secretary, Deptt. of Welfare for Scheduled Castes & OBCs, Govt. of Tripura.
5. Sri Niranjan Barman,
The Member-Secretary, State Level Scrutiny Committee (Director of Welfare for Scheduled Caste & O.B.Cs., Pandit Nehru Complex, Gurkhabasti, P.O. Kunjaban, Agartala-799006, P.S. West Agartala, West Tripura.
6. Sri Pran Krishna Paul, Deputy Secretary (Law), Member, State Level Scrutiny Committee, Law Department, Civil Secretariat, Capital Complex, P.O. Kunjaban, Agartala-799006, West Tripura.

7. Sri Uttam Mandal,
Member, State Level Scrutiny Committee, Deputy Director, Welfare for
Scheduled Castes & OBCs, Govt. of Tripura, Pandit Nehru Complex,
Gurkhabasti, P.O. Kunjaban, Agartala-799006, P.S. West Agartala,
West Tripura.
8. The Sub-Divisional Magistrate, Ambassa, P.S. & P.O. Ambassa, District-
Dhalai.

.....**Respondents**

For the petitioner	: Mr. S. M. Chakraborty, Sr. Advocate, Mr. P. Roy Barman, Advocate.
For the respondents	: Mr. S. Deb, Sr. Advocate, Mr. S.C. Das, Advocate.
For the respondent- SLSC	: Mr. J. Majumder, Advocate

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA

Date of hearing and delivery of judgment and order	: 10.07.2015
Whether fit for reporting	: NO.

Judgment and Order (Oral)

These writ petitions are filed by Sew Prasad Biswas and Abhishek Biswas, father and son, for quashing the orders dated 09.10.2007 and 21.05.2011 respectively, passed by the State Level Scrutiny Committee, the respondent No. 2 herein, cancelling the Scheduled Caste Certificates of both the petitioners. The order dated 09.10.2007 was communicated on 05.11.2007 vide Letter No. 11811-14/F.2-142(long. Velly-23)/ SCW/ GL/97, issued by the Member Secretary State Level Scrutiny Committee (Director of Welfare for Scheduled Castes and OBCs, Tripura) cancelling the Scheduled Caste Certificate of the petitioner Sri Sew Prasad

Biswas in writ petition No. 38 of 2008 which was issued by the Sub-Divisional Officer, Kailashahar, North Tripura vide No. 494/SDO/KLS/GL/77 dated 01.02.1978 and the order dated 21.05.2011 was communicated on 21.05.2011 by the Member Secretary, State Level Scrutiny Committee (Director of Welfare for Scheduled Castes and OBCs, Tripura) cancelling the Scheduled Caste Certificate of the petitioner Sri Abhisek Biswas in writ petition No. 254 of 2011 which was issued by the Sub-Divisional Magistrate, Ambasa, Dhalai Tripura, vide No. 376 dated 13.12.2000.

[2] Heard Mr. S.M. Chakraborty, learned senior counsel and Mr. P. Roy Barman, learned counsel appearing for the petitioners as well as Mr. S. Deb, learned senior counsel and Mr. S.C. Das learned counsel appearing for the state respondents.

[3] The brief facts of the pleaded case of the petitioners are as follows:

That the petitioner in WP(C).No. 38 of 2008 entered into the Government Service as Addl. Tahasildar in the year 1979 against the S.C. quota after necessary investigation about his status by the competent authority and thereafter, he was promoted time to time and finally when he was discharging his duties as the T.C.S. Grade-II Officer the show cause notice dated 19.10.2007 was issued to him by the Member Secretary, State Level Scrutiny

Committee as to why his S.C. Certificate should not be cancelled as the same was obtained by mis-representation of fact.

[4] Thereafter, the petitioner replied to the show cause that he did not receive the 8(eight) sheet enclosures along with show cause notice and expressed his inability to meet the dead line of submitting his representation without having the enclosures. Subsequently, the enclosures were served to the petitioner and he replied to the show cause on 30.04.2007 denying the allegations.

[5] Thereafter, an inquiry was done by the State Level Scrutiny Committee through an Inquiry Officer, Sub-Inspector of Police, Vigilance Organization, who during the inquiry examined the witnesses of locality as well as the old in-habitants of the area and finally submitted his report stating that the petitioner does not belong to the S.C. Community. Ultimately considering the reply of the petitioner and the enquiry report, the State Level Scrutiny Committee cancelled the caste certificate of the petitioner by the impugned order.

[6] In WP(C).No. 254 of 2011, the petitioner who is the son of the petitioner in WP(C).No. 38 of 2008 also challenged the impugned order of cancellation of certificate on the ground that though the show cause notice was issued to him and in consequence thereto, he replied to the show cause but finally after

holding the inquiry his caste certificate was cancelled without discussing the evidence of the witnesses produced by him.

[7] His further contention is that as the State Level Scrutiny Committee has already cancelled the caste certificate of his father, they mainly cancelled the certificate of the petitioner on that ground. It is also stated by the petitioner that though the State Level Scrutiny Committee cancelled the caste certificate of him as well as his father, but the caste certificate issued by the same authority in favour of his grandfather i.e. the father of the petitioner in WP(C).No. 38 of 2008 was not cancelled.

[8] The respondents by way of filing their counter affidavit denied the allegations of both the petitioners made in their respective petition and contended that all the opportunities were given to the petitioners to prove their caste status.

[9] Mr. Chakraborty, learned senior counsel and Mr. Roy Barman, learned counsel appearing for the petitioners have submitted that the State Level Scrutiny Committee in its order dated 09.10.2007 mentioned that the caste certificate was obtained by the petitioner by misrepresentation of the facts but did not discuss how and what manner he misrepresented the facts. Learned counsel appearing for both the parties also submitted that though the State Level Scrutiny Committee acted on the views of the Block Development Officer, Manu R.D. Block, S.C. Welfare

Sub- Committee but the resolution of the said Welfare Sub-Committee was not provided to the petitioner.

[10] They further submitted that the impugned order dated 09.10.2007 whereby the caste certificate of the petitioner in WP(C).NO. 38 of 2008 was cancelled is a non-speaking order and without any reason and there is also no discussion regarding the facts stated by the petitioner in his written statement.

[11] They also submitted that the writ petitioner, Sew Prasad Biswas, submitted one document relating to the inquiry earlier done by the Superintendent of Police, Vigilance dated 10.09.1998, wherein, it is stated that the petitioner belongs to the S.C. Community. But the said document was not considered by the State Level Scrutiny Committee for which itself the impugned order is required to be quashed.

[12] It is also stated that the petitioner's son has furnished some documents before the issuing authority of the caste certificate in respect of his claim. But neither the vigilance Officer nor the State Level Scrutiny Committee examined the author of those documents.

[13] Mr. Deb, learned counsel appearing for the state respondents submits that the cancellation of the caste certificate of Sew Prasad Biswas by the State Level Scrutiny Committee is a non-speaking order without giving any reason. He also submits

that though in the impugned order passed by the State Level Scrutiny Committee relating to Abhishek Biswas, some reasons were given but one of the basis for issuing the said impugned order is the cancellation of caste certificate of his father. Thus, it would be better to remit the matter again to the State Level Scrutiny Committee to decide the matter afresh taking note of the document (Annexure-14 to the writ petition), submitted by the petitioner and of being examined the author of those documents.

[14] Mr. Majumder, learned counsel appearing for the State Level Scrutiny Committee while supporting the impugned order, submitted that the burden to prove that they are S.C. lies on them and not only that, the petitioner in WP(C).No. 38 of 2008 though submitted his reply, but did not seek any personal hearing or produced any witness in his defence. Thus, there is no wrong in the impugned order. He has also submitted that the petitioners failed to discharge their burden as required under Section 11 of the Tripura S.C. and S.T. Reservation Act, 1991.

[15] This Court has gone through the impugned order dated 09.10.2007. Upon perusal of the impugned order, this Court is of the considered opinion that in the said order, the respondent State Level Scrutiny Committee did not even discuss regarding the documents relied upon by the Inquiry Officer i.e. Vigilance

Authority. Even there is no discussion regarding the documents submitted by the petitioner along with his written statement.

[16] In view of above, the impugned order dated 09.10.2007 is hereby set aside and the matter is remanded to the State Level Scrutiny Committee to decide the matter afresh after providing opportunities to the petitioner including personal hearing.

[17] This court has also gone through the impugned order dated 21.5.2011 (Annexure-4 to the writ petition No.254/2011). There is no doubt that in the said order, some reasons have been given by the State Level Scrutiny Committee, but one of the basis for cancellation of the caste certificate of the petitioner, namely, Abhishek Biswas, is the cancellation of the caste certificate of his father. It appears from the impugned order that the petitioner was not provided any opportunities to cross-examine the complainant and not only that, even he was not allowed to cross examine some of the witnesses.

[18] In view of above, the impugned order dated 21.5.2011 is hereby set aside and the matter is remanded to the State Level Scrutiny Committee to decide the matter afresh after providing opportunities to the petitioner including personal hearing. The state respondent, State Level Scrutiny Committee herein, is also directed to decide the caste status of both the petitioners afresh

preferably within a period of 3 months from today. It is also to be mentioned that the State Level Scrutiny Committee shall issue notice to the petitioners for their appearance in the proceeding.

[19] With the above observation and directions, both the writ petitions are disposed of.

JUDGE

A.Ghosh