

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.339 OF 2009

Sri Prabir Kumar Das,
S/O Late Prafulla Kumar Das,
R/O Village Assampara,
P.O. Ranirbazar, P.S. Jirania,
District-West Tripura.

..... *Petitioner*

- *Vs* -

1. The State of Tripura

(to be served upon the Chief Secretary to the
Government of Tripura).

2. The Secretary to the

Government of Tripura,
Department of Scheduled Castes and O.B.Cs,
Agartala.

3. The Director,

Welfare of Sch. Caste & OBCs,
Government of Tripura,
P.N. Complex(Gurkha Basti),
Agartala.

4. The Member-Secretary,

State Level Scrutiny Committee,
(Director for Welfare of Scheduled
Castes and O.B.Cs, Agartala),
Pandit Nehru Complex(Gurkha Basti),
Agartala.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. B. Das, Sr. Advocate
Mr. N. Majumder, Advocate

For the respondents : Mr. T.D. Majumder, G.A.

Date of hearing and
delivery of
Judgment & order : **14.08.2015**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER(ORAL)

The petitioner contended that he belonged to Scheduled Caste(*Jalia Kaibarta*) community and after due inquiry a caste certificate was issued in his name by the Sub-Divisional Officer, Sadar Sub-Division on 26.05.1984(*Annexure-A* to the writ petition). It is alleged that on 13.03.1996, Sub-Divisional Officer, Sadar Sub-Division Agartala issued a show cause notice to the petitioner as to why the caste certificate should not be cancelled on the ground that on enquiry it was found that the petitioner does not belong to Scheduled Castes community. Thereafter, on 04.10.1996 another show cause notice was issued and the petitioner submitted reply on 17.10.1996 but thereafter the Sub-Divisional Officer, Sadar by order dated 01.06.1998 cancelled his Scheduled Castes certificate issued on 26.05.1984.

The petitioner challenged the order by filing Civil Rule No.195 of 1998 before Agartala Bench of the then Gauhati High Court and by a common judgment dated 04.01.2006 the writ petition was allowed and the order dated 01.06.1998 passed by the Sub-Divisional Officer, Sadar was quashed. A copy of that judgment annexed as *Annexure-B* to the writ petition.

After that judgment the State Level Scrutiny Committee issued a notice on 23.06.2006 to the petitioner to show cause as to

why his Scheduled Castes certificate should not be cancelled on the ground that the Committee was *prima facie* satisfied that the Scheduled Castes certificate of the petitioner was not genuine and that it was a false certificate obtained by the petitioner and in response to that show cause the petitioner submitted his reply on 03.08.2006. The petitioner annexed the copy of show cause notice and his reply as *Annexure-C and Annexure-D* to the writ petition.

It is alleged that the State Level Scrutiny Committee thereafter cancelled the caste certificate of the petitioner by order dated 28.11.2006 and a copy of that order was communicated to the petitioner by the Member Secretary of the State Level Scrutiny Committee by letter dated 05.01.2007 and a copy of that order with forwarding letter annexed as *Annexure-E* to the writ petition.

The petitioner, thereafter made representation for review of the order but it was rejected. The petitioner, therefore, prayed for the following relief:-

".....

(b) issue writ quashing, setting aside and/or reversing the impugned order, dated 28-11-2006 of the State Level Scrutiny Committee, communicated to the Petitioner vide No.15834-36/F.2-134(A)(JIR-7)SCW/GL/98, dated 5-1-2007 purportedly cancelling the Scheduled Caste certificate of the Petitioner for second time(Annexure-E) and also the impugned review order, dated 16-9-2009 passed by the Member-Secretary,

State Level Secretary Scrutiny Committee, which was communicated to the Petitioner vide No.12215 F.2-134(A)(Jir-7)/SCW/GL/98, dated 8-10-2009(Annexure-G) and also directing the Respondents and each of them not to give effect to the afore-said orders in any manner whatsoever;

.....”

2. Respondents by filing counter affidavit contended that there was a detailed vigilance enquiry in respect of the caste status of the petitioner and enough evidence was collected in support of the contention that the caste status certificate was obtained by false representation and therefore after the judgment was passed by the High Court in the civil rule, the State Level Scrutiny Committee issued show cause notice to the petitioner asking him to show cause as to why his caste status certificate should not be cancelled and he was provided opportunity to adduce evidence in support of his contention of his caste status but he did not adduce any evidence to prove that he belonged to Scheduled Castes community and therefore the State Level Scrutiny Committee rightly passed the order cancelling the certificate and the order does not deserve any interference by this Court.

3. It is an undisputed fact that SDO, Sadar issued a caste status certificate in the name of the petitioner on 26.05.1984 and thereby certified that the petitioner belonged to Jalia Kaibarta community, recognized as a Scheduled Castes community. It is also an undisputed fact that the certificate was cancelled by SDO, Sadar

by order dated 01.06.1998 and that order was challenged in Civil Rule No.195 of 1998 and by judgment dated 04.01.2006 the learned Single Judge of the then Gauhati High Court, Agartala Bench allowed the writ petition and observed as follows:

"20. All the writ petitions are accordingly allowed in the light of the discussions made above with a direction to the State respondents to refer the cases of the petitioners to the scrutiny committee, which is competent to cause an inquiry to be done in accordance with the procedure laid down by the Supreme Court as noted above and contained in the notification dated 12.12.2003 of the State Government. Till the entire process of inquiry and decision making is completed, the status of the petitioners herein and all the benefits flowing therefrom shall remain unhindered and unaffected.

There shall be no order as to cost."

It is also an undisputed fact that after the above order passed by the High Court, the State Level Scrutiny Committee issued show cause notice dated 23.06.2006(Annexure-C to the writ petition) and the show cause notice reads as follows:-

"CONFIDENTIAL

*GOVERNMENT OF TRIPURA
MEMBER SECRETARY
STATE LEVEL SCRUTINY COMMITTEE
(DIRECTORATE FOR WELFARE OF SCs, & OBCs)
TRIPURA :: AGARTALA*

No.2-134(A)(JIR-7)/SCW/GL/98 Dated ____ 2006

SHOW CAUSE NOTICE

WHEREAS a S.C. Certificate bearing No.624/F.XII-2/SDO/SDR/TW/84-85 dated 26/5/1984 was issued to Shri Prabir Kr. DasS/O...Sri Prafulla Kr. Das by the Sub-Divisional Officer-Sadar.

And

WHEREAS a complaint received against Sri Prabir Kr. DasS/O Sri Prafulla Kr. Dasof..Assampara P.O.-Ranirbazar PS-Jirania, West TripuraDistrict indicates that he does not belong to Sch. Caste(Copy of the report enclosed).

Now, THEREFORE, the undersigned, after taking into consideration the above mentioned enquiry report is prima facie satisfied that the certificate was obtained by misrepresentation of facts and proposes to cancel the aforesaid S.C Certificate of the said Shri ..Prabir Kr. Das. However, before a final decision is taken, SriPrabir Kr. Das is hereby given an opportunity of representing his case in writing, with all relevant records/evidences within 2 weeks from the date of receipt of this notice for consideration. In case of failure of Shri Prabir Kr. Das to respond to this show cause notice by the stipulated period, decision will be taken exparte.

*Enclo:- As stated
12(twelve) Sheets*

*(B.B. Das)
(Director for Welfare of
Sch. Castes & OBCs,)
Tripura :: Agartala*

*To
Shri Prabir Kr. Das
S/O Sri Prafulla Kr. Das
Of Assampara P.O.-Ranibazar PS-Jirania"*

In response to the above show cause notice the petitioner submitted his reply dated 03.08.2006(Annexure-D to the writ petition) which reads as follows:

"To
The Member-Secretary
State Level Scrutiny Committee
(Director for Welfare of
Sch. Castes & OBCs)
Tripura, Agartala.

Sir,

In invoking a reference to the Notice communicated under No.2-134(A)(JIR-7)/SCW/GL/98 dated 23.06.2006 asking me to show cause as to why my Sch. Castes Certificate should not be cancelled on ground that you are prima-facie satisfied that my aforesaid Sch. Castes Certificate is false as purportedly appears to you from an enquiry report, I say as follows:-

01. That you have contended that you received a complaint against me, but who has lodged complaint has not been indicated and no copy of the said complaint has been supplied to me.

02. That, that apart, you have stated that from an enquiry said to be conducted through the officials of the Vigilance but I am not aware of any such enquiry through some questions were put to me by an official of the Vigilance, which cannot be said to be an enquiry worthy-name.

03. That an enquiry is to be held when a opportunity to cross examine the witnesses, examine in support of the allegation and also to lead evidence in defence. Merely securing explanation from one is not enough. This is the law laid down by the Hon'ble Supreme Court in a catena of decision.

04. That therefore, the enquiry which is said to have been conducted, is not an enquiry at all and no such reliance can be placed on the report of such purported enquiry.

05. That it is pertinent to point out that my Sch. Castes Certificate was already cancelled and I filed a Writ petition in the Hon'ble High Court, which was registered as C.R. No.195 of 1998 and by Judgment and Order dated 04.01.2006, the said order of cancellation of my Sch. Castes Certificate has been quashed on a finding that no opportunity has been given to me and also that as per instruction, elaborate enquiry was held into my claim that I belong to a Sch. Castes community and after being satisfied, the Sch. Castes certificate was issued to me in 1984 and after a long time somebody unknown is behind me to do harm to me and it appears that you are also out virtually to stick to the illegality already committed in respect of my Sch. Caste Certificate.

06. That many of my family members have been given Sch. Castes Certificate and when Vigilance official asked me, I intimated and supplied copies of such documents.

07. That in the circumstances, it is futile to issue any notice once again asking me to show cause as to why my Sch. Caste Certificate should not be cancelled, while administratively it was decided to cancel my Sch. Castes Certificates followed by an order of cancellation and you are also a part & parcel of that administration.

08. That knowing fully well that there was a Judgment of the Hon'ble High Court and knowing fully well that the said order of cancellation of my Sch. Caste Certificate has been quashed by the Hon'ble High Court, you have

not mentioned anything in the purported Show Cause Notice.

I would, therefore, most fervently request to kindly refrain from proceeding in the matter any further and allow me to hold my Sch. Castes Certificate as usual and to get benefit as may be available under the law.

And for this act of kindness, I shall remain grateful.

*Dated, Agartala
The 03 August, 2006*

*Yours faithfully
(PRABIR KR. DAS)
S/O Sri Prafulla Kr. Das
Of Assampara, P.O. Ranirbazar,
P.S. Jirania, West Tripura*

4. After considering the show cause reply and the materials available before the State Level Scrutiny Committee, the caste certificate was cancelled by the State Level Scrutiny Committee by order dated 28.11.2006 which reads as follows:

" ORDER

28-11-06

The State Level Scrutiny Committee has gone through direction of the Hon'ble Guwahati High Court, Agartala Bench of dated 4-1-2006 in C.R.No.195 of 1998.

The case was referred to the Special Vigilance Cell of vide letter No.7164/F.2-485/SCW/OBC/GL/03 dated 2-8-2004. The Special Vigilance Cell has submitted their report on 28th January, 2005 enclosing the report submitted by Shri Pran Krishna Das, Inquiring Officer, Inspector of Police(Vigilance), Special Vigilance Cell. The Inquiring Officer clearly stated that Shri Prabir Kr.

Das actually belongs to "Kayastha Community" which is not recognized as Scheduled Caste, though he claimed that he belongs to "Jalia Kaibarta" community. So the Caste Certificate issued by SDO, Sadar vide his No.624/F.XII.2/SDO/SDR/TW/84-85 dated 26-5-1984 was based on incorrect information. On receipt of the report from the Special Vigilance Cell Show cause notice was issued on 23-6-2006 enclosing a copy of the report submitted by the Special Vigilance Cell with a direction to giving him opportunity of representing his case in writing with all relevant records/evidence within two weeks from the date of receipt of this notice for consideration to Shri Prabir Kr. Das, S/o Lt. Prafulla Kr. Das of Assampara. P.O. Ranirbazar. P.S. Assampara, P.O. Ranirbazar, P.S. Jirania through Chief Executive Officer, Agartala Municipal Council, Agartala. On receipt of this Shri Prabir Kr. Das submitted a representation on 3rd August, 2006 stating that the complaint lodged against him has not been indicated and no copy of the complaint has been supplied to him. In his representation it was also mentioned by him that a petition was filed before the Hon'ble High Court, which was registered as C.R. No. 195 of 1998 in which the cancellation order has been caused as no opportunity was given to him. He had also mentioned that knowing fully well that there was a Judgment of the Hon'ble High Court quashing the order of cancellation of Sch. Certificate was not mentioned anything in the purported Show cause notice. So he requested to refrain from proceeding in the matter any further and allow him to hold his SC certificate and to get benefit as available under law.

The Committee carefully examined the reply of Show cause notice submitted by Shri Prabir Kr. Das.

Shri Das did not take any defence to prove his SC status in order to seek any personal hearing before the Committee to prove the caste status but cleverly tried to avoid the direct reply to the Show Cause notice.

Now on careful examination and consideration of all records the Committee has come to the conclusion that Shri Prabir Kr. Das does not belong to SC and had obtained the SC certificate bearing No.624/F.XII-2/SDO/SDR/TW/84-85 dated 26-5-1984 by SDO under West Tripura District by misrepresentation of facts. Accordingly the said SC certificate is hereby cancelled.

The copy of this order is to be supplied to Shri Prabir Kr. Das."

5. Learned senior counsel, Mr. Das appearing for the petitioner has submitted that except issuance of show cause notice, the State Level Scrutiny Committee did not make any inquiry about the caste status of the petitioner. Simply based on the vigilance inquiry report the certificate which was issued in the year 1984 has been cancelled without having any inquiry and collecting any other evidence.

Learned G.A., Mr. Dutta Majumder has submitted that the petitioner in his show cause reply did not propose to cross-examine the Vigilance Officer or any of the witnesses examined by the Vigilance authority and also did not propose to adduce any evidence. While he has not proposed to cross-examine or adduce any evidence to justify his claim, the State Level Scrutiny Committee passed the order based on the vigilance report and the

show cause reply since there was no claim for further inquiry or production of evidence by the petitioner.

6. In the case of ***Director of Tribal Welfare, Govt. of Andhra Pradesh V. Laveti Giri & Anr.***, reported in **(1995) 4 SCC 32** the Supreme Court has categorically held that burden lies on the petitioner who claims a caste status and that burden cannot be shifted on the State or other authority. A caste status certificate can be scrutinized at any time. So the burden was on the petitioner to prove that the caste status certificate issued in his name was a genuine certificate and actually he belonged to a Scheduled Caste community.

The show cause reply submitted by the petitioner has been reproduced hereinbefore and in that show cause reply the petitioner nowhere stated that he wants cross-examination of the Vigilance Officer or the witnesses examined by the Vigilance and that he intends to adduce any evidence in support of his claim. While he did not state anything specifically in his show cause reply that he intends to adduce evidence or that he likes to cross-examine the Vigilance Officer and witnesses on whom the State Level Scrutiny Committee relied, I find nothing wrong in the order passed by the State Level Scrutiny Committee based on the materials available before the State Level Scrutiny Committee.

7. A reading of the show cause notice dated 23.06.2006 which has been reproduced hereinbefore, issued by the State Level Scrutiny Committee it transpires that the petitioner has been given opportunity of representing his case in writing with all relevant records/evidence but along with the show cause reply he did not enclose any evidence in support of his claim. The show cause notice further shows enclosures of 12 sheets of papers, i.e the report of the Vigilance Officer which contains the statements of the witnesses on the basis of which the Vigilance Officer submitted report.

8. The Supreme Court in the case of **Laveti Giri(supra)** has detailed the procedures to be followed in respect of scrutiny of a caste status certificate. We may refer here paras 5, 6, 7, 8 and 9 of the judgment which read as follows:

"5. The Presidential notification clearly mentions that Kondakapus and Kondareddis are Scheduled Tribes in Andhra Pradesh. It cannot be disputed that Kapus and Reddis are plain people who are regarded as forward castes belonging to the mainstream of the society and are of upper social strata. The endemic characteristics of Scheduled Tribes and plain people are distinct, different and never in common. Kondakapu and Kondareddis live in tribal areas of forest, mountainous tracks and shifting cultivation and gathering of minor forest produce is their main avocation. The totemics clearly differentiate and demarcate them from the plain people Kapus and Reddis. Their customs and marriages are different. The Government in GOMs No.147 dated 27-04-1977 of Social Welfare Department clearly

mentioned that the Tehsildar or Revenue Divisional Officer or Assistant Collector or Sub-Collector of the Taluk or Divisional Districts in respect of which the members claim nativity are competent to issue social status certificates. In the same GO Kondakapus and Kondareddis have been enumerated to be Scheduled Tribes. In GOMs No.245 dated 30-6-1977 Social Welfare Department enumerated the distinct groups of tribes different from plains. Kapus and Reddis do not have any similarity in their social habits and culture. There was no common social or economic patterns. In order to establish whether a particular candidate belongs to any of the Scheduled Tribes/groups diverse ethnic or cultural identities were mentioned. In Annexure I of the GO the candidates are required to furnish the particulars prescribed therein. The competent officer was to verify and satisfy himself of the true social status of the candidate before issuing the social status certificate. The same was further enumerated and elaborated in GOMs No.289 dated 26-11-1986, after the dispute in this case had arisen with which we are not concerned in this appeal. The orders also specifically say that whoever was given or taken false caste certificate is liable to be prosecuted. The officer be penalised in departmental proceedings for dereliction of duty including dismissal from service when found that officer deliberately issued false certificates.

6. The learned Single Judge has pointed out that in Writ Petition No.9071 of 1982 filed by the sister of the respondent, the father of the respondent and his sister were called upon to produce the social status certificate from the native Tehsildar or the Revenue Divisional Officer but they failed to produce the same. It was also noted that Vasudeva Rao, brother of Hanumantha Rao,

has a son by name Ravi Kumar. He also claimed social status as a Kondakapu for admission into MBBS course. His Writ Petition No.6637 of 1979 was disposed of on - 3-11-1979 finding that L. Ravi Kumar's claim for social status as Kondakapu was doubted. The matter was referred to the Director wherein it was held that Ravi Kumar was not a Kondakapu. We agree with the learned counsel for the appellant that the High Court adopted a traditional approach of placing the burden of proof of social status founded on the entries in Government record etc. and called upon the State to rebut it on the touchstone of Evidence Act. We are unable to appreciate the view taken by the Division Bench. Burden of proof of social status is always on the person who profess it to seek constitutional socio-economic advantages. It is no part of the duty of the State to disprove or otherwise. The criteria to obtain caste certificate from Native Tehsildar/Mandal Revenue Officer/Revenue Divisional Officer is relevant for the reason that Scheduled Tribes generally live in forest areas, mountainous regions and specified pockets and will be known to local officers or easily accessible for verification. The respondent is not as innocent as the Division Bench appears to have presumed him to be. It is seen that the father of the respondent deliberately abstained from appearing before the Director. The social status certificate to the daughter was required to be produced from the Tehsildar of the native jurisdiction but failed. Though he lived in Malakpet within the jurisdiction of Musheerabad Tehsildar, he produced the certificate from Tehsildar, Vallabhnagar in Ranga Reddy District who had no jurisdiction to issue it. Yet he had chosen to obtain from him and the officer was a willing and accommodating one to issue false certificates. When the Principal doubted its correctness and referred

the matter to the Director of Tribal Welfare, the father admittedly did not appear to establish the social status. Though respondent, a minor, appeared before the Director, his statement cannot be used as evidence. His father is a government servant. He knows the consequences and so he deliberately absented from being present before Director. Instead he chose to send his son with records. The Director considered the record and concluded that the respondent is not a Scheduled Tribe but he is a "Kapu" by caste as evidenced by the school certificate of his father declared to be a Kapu. It bears evidentiary value and relevant material evidence. The subsequent record manufactured by his father and his continuance in service on that basis, even if it is accepted by the Department, is not conclusive and cannot be implicitly relied as gospel truth. The totemic characteristics are required to be satisfied as noted in detail in the Annexure I of the GO referred hereinbefore. They had not satisfied the Director by furnishing those characteristics for verification and to take a decision thereon. The Division Bench had totally omitted to consider all these aspects and characterised the finding of the Director to be based on conjectures and surmises. It is an accepted position that the Director, Tribal Department established a research wing and made scientific study of the endemic characteristic, cultural moorings, habits, their modes of marriages, customs etc. of different particular tribal communities. The questionnaire was prepared as per the Annexure in the GO obviously, Knowing that he cannot satisfy the required features, the father of respondent deliberately abstained from appearing before the Director, Tribal Welfare. Instead he got filled the writ petition in the High Court, put the burden of proof on the State that the Court relieved the father of proving the status of his

son's claim of not being a Scheduled Tribe. This Court while considering the similar claims and school register of the father of Madhuri and Saritha in Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development, (1994) 6 SCC 241, held that the entry in the school certificate of the caste of the father bears relevance and would prove to be false claim as Scheduled Tribe. This Court has laid guidelines how the matter was required to be dealt with and stated in para 13 (SCC pp. 254-57) thereof :

7. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates envisaged of the benefits conferred on them by the Constitution. By reason thereof, the genuine candidates would be denied admission to professional course etc. or appointments to offices or posts under State instrumentalities. More often they are denied social status certificates while ineligible or spurious persons secure them easily would secure them. After falsely gaining entry, they resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is the parent or the guardian who may play fraud claiming false status certificate to his child. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be in the following manner:

- 1. The application for grant of social status certificate shall be made to the Revenue Sub-*

Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned. (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspectors would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the

candidate 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 the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either 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 candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case the candidate

is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the mean while the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/candidate should be prosecuted for making claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

8. While reiterating the above guidelines to be workable principles, it is high time that the Government of India should have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals, etc. etc., so that the menace of fabricating the false records and to gain unconstitutional advantages by plain/spurious persons could be prevented. Lest they would defeat the constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39.

9. By orders of the High Court the respondent had already completed his engineering course, though he played fraud on the Constitution depriving the real tribal of the benefit of the education as an engineer. He was minor at the relevant time. So nothing can be done except declaring that he is not a tribal and that he is not entitled to any employment or any other advantage on the basis of his false status as Scheduled Tribe, namely, Kondakapu. His father did not appear before the Director and he is not before this Court to direct the Government to lay prosecution. Accordingly the appeal is allowed with costs quantified at Rs. 25,000 to defray the amount spent on the respondent.”

It is clearly held by the apex Court in para 6 above that in case a candidate seeks for an opportunity of hearing and claims an enquiry to be made in that behalf the Director on receipt of such representation shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to

the candidate/parent/guardian to adduce all evidence in support of their claim. So it is clear that the petitioner has to make a claim for giving evidence in support of his caste status. If no such claim is made the State Level Scrutiny Committee is not obliged to fix the matter for further hearing and therefore I find nothing wrong in the action taken by the State Level Scrutiny Committee. The argument advanced by learned senior counsel, Mr. Das, on this point, therefore, merits no consideration.

9. The next argument advanced by learned counsel, Mr. Das is that even if the caste certificate is cancelled the benefit which the petitioner has already availed in view of a valid caste certificate issued in his name, those cannot be taken away and in support of his contention he referred the case of ***Dattu Namdev Thakur v. State of Maharashtra & Ors.*** reported in ***2012 AIR SCW 203.***

Learned G.A. has submitted that the observation made in that case is in particular context and that case relates to admission of students by virtue of false caste status certificate and in the fact of that particular case the Supreme Court has given the direction which cannot be applied in the present case. In that reported case the Supreme Court in para 9 of the judgment held thus:

"9. Accordingly, while dismissing all the three Special Leave Petitions, we direct that whatever advantage the three petitioners in the three Special Leave Petitions,

may have derived on the basis of their 'Caste Certificates', shall not be disturbed and the cancellation of their respective 'Caste Certificates' will not deprive them of the benefits which they have already enjoyed. However, we also make it clear that none of the three petitioners in the three respective Special Leave Petitions, will be entitled to take any further advantage of reservation in future, either for studies or for employment. Following the judgment in Swati's case, we also direct that if the petitioners in the 2nd and 3rd Special Leave Petitions, have obtained any concession by way of reduction in fees, as a reserved candidate, they will have to make good the same by paying the difference in fees that is being paid by general candidates. Such payment has to be made within a period of six months and in default of such payment, this order will cease to have any effect."

From careful reading of that judgment it appears that it was relating to admission in the school and in the given fact of that particular case the Supreme Court has directed that the advantage which the petitioners availed should not be disturbed but they will not be entitled to any further advantage of reservation in future on the basis of that caste certificate. That observation was made by the apex Court in the particular fact of that case and in my considered opinion that observation cannot have a general application in all cases.

10. It is a settled law that an observation of the apex Court in a particular case without laying down any principle of law is not a

precedent. It is only where the Supreme Court lays down a principle of law that will amount to a precedent. A mere direction without laying down the principle of law is not a precedent. In the case of ***Dattu Namdev Thakur(supra)*** the Supreme Court has not laid down any principle of law to be followed as a precedent. In my considered opinion the apex Court in the given facts of that case has made observation that the petitioners will not be deprived of the benefits which they have already enjoyed and that principle cannot be followed in the present case in view of the fact that no principle of law has been laid down by the apex Court and further fact that the Tripura Scheduled Castes & Scheduled Tribes Reservation Act, Section 8(11)(a) prescribes otherwise which reads as follows:

"8(11)(a) Notwithstanding anything contained in any other law or service rules, whoever, not being a person belonging to the Scheduled Castes or the Scheduled Tribes, secures or has secured any appointment to any service or post on the basis of false certificate in any establishment under the State shall, on cancellation of the community certificate, be forthwith terminated from the service or post."

11. In view of the discussions made above, the writ petition is found to be devoid of any merit and hence stands dismissed.

No order as to costs.

JUDGE