

THE HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

CRP No.42 of 2015

Sri Jatindra Chandra Sarkar,
S/o Sri Abinash Ch. Sarkar,
resident of Village Golaghati,
PS - Takarjala, P.O. Golaghati,
District - Sepahijala.

..... *Petitioner.*

– *Versus* –

1. **The State of Tripura,**
to be represented by the Chief Secretary
to the Government of Tripura,
Civil Secretariat, New Secretariat Complex,
Kunjaban, P.S - New Secretariat Complex,
P.O - Kunjaban, Agartala,
District - West Tripura,
PIN - 799006.
2. **The Secretary-in-Charge**
of the Scheduled Caste & OBC Welfare Department,
Government of Tripura,
Civil Secretariat, New Secretariat Complex,
P.O - Kunjaban, Agartala,
District - West Tripura,
PIN - 799006.
3. **State Level Scrutiny Committee (S.C. Welfare)**
to be represented by its Member-Secretary(Director for Welfare
of Sch. Castes & OBCs),
Gorkhabasti, Kunjaban, Agartala,
PS - New Secretariat Complex,
P.O - Kunjaban, Agartala,
District - West Tripura,
PIN - 799006.
4. **The Director, Handloom, Handicrafts & Sericulture,**
Government of Tripura,
Gorkhabasti, Kunjaban, Agartala,
PS - New Secretariat Complex,
P.O - Kunjaban, Agartala,
District - West Tripura,
PIN - 799006.

..... *Respondents.*

_B_E_F_O_R_E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. K N Bhattacharji, Sr. Advocate,
 Mr. S C Das, Advocate.
 For the respondents : Mr. S Chakraborty, Addl. G.A.
 Date of hearing and : 27.4.2015.
 delivery of judgment.
 Whether fit for reporting : Yes.

JUDGMENT & ORDER (ORAL)

By means of this petition, the petitioner has challenged the order dated 27.3.2015 whereby the State Level Scrutiny Committee (S. C. Welfare) constituted under the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 has directed the petitioner to produce evidence to prove that he is a member of Scheduled Caste.

2. The undisputed facts are that the petitioner obtained government employment on the basis of a scheduled caste certificate issued in his favour on 19.9.1997. On 3.12.2000, the said certificate was cancelled by the District Magistrate & Collector, West Tripura. Thereafter, show cause notice was issued on 07.4.2001 to the petitioner by his employer as to why his services should not be terminated. The petitioner filed a writ petition being WP(C) 235 of 2001 challenging the legality of the order passed by the District Magistrate cancelling his scheduled caste certificate and the order of the District Magistrate was stayed. Thereafter, on 14.7.2006, the State Level Scrutiny Committee issued fresh show cause notice to the

petitioner asking him to show cause why the scheduled caste certificate granted in his favour be not cancelled. However, since the matter was pending in the High Court no further action was taken. The writ petition being WP(C) 235 of 2001 was finally disposed of after a decade in the year 2011 only on the ground that since the State Level Scrutiny Committee had issued notice on the same subject, the order of the District Magistrate had become redundant and, therefore, the State Level Scrutiny Committee may proceed with the matter. This order passed in the writ petition has become final.

3. For reasons best known to the State Level Scrutiny Committee despite the fact that the writ petition was disposed of on 18.11.2011, the State Level Scrutiny Committee kept silent for three long years and a fresh notice was issued to the petitioner on 04.3.2015. The petitioner appeared before the State Level Scrutiny Committee on 10.3.2015 and he also filed an application that the State be first asked to produce its witnesses so that the petitioner could cross-examine them and after the witnesses, if any, are produced by the State, then the petitioner would produce his evidence. This application was rejected by the State Level Scrutiny Committee after making reference to the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and the Rules. The Committee held that since the burden lay upon the petitioner to prove his caste, he must lead his evidence first.

4. I have heard Mr. K N Bhattcharji, learned senior counsel and Mr. S C Das, learned counsel for the petitioner at length. The main thrust of the argument of the learned counsel is that in an adversarial system, the witnesses of the prosecution must be examined first and only after the prosecution witnesses are examined, then the person who is to suffer and who is in the nature of an accused, can be called upon to submit his evidence.

5. I am not at all in agreement with this submission. The caste of a person is a fact which is best known to the person who claims to belong to a particular caste. This would also be a fact known to his family members. The caste will be proved by leading evidence either documentary or oral to show that the person who claims to be a member of the Scheduled Castes and Scheduled Tribes actually belongs to this caste. This Court cannot shut its eyes to the hard reality that in Tripura there are innumerable cases of persons belonging to the general category masquerading as persons belonging to the reserved categories only to get the benefit of reservation. When they do so, they deprive those persons who belong to the scheduled castes or scheduled tribes of their legitimate right to employment or seats in educational institution. To meet with the situation, the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 has been amended and now very serious consequences have been incorporated, in those cases where it is proved that the reserved category certificate on the basis of which

he gets employment or a seat in an educational institution is found to be fake or a false certificate.

6. Section 8 of Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 sets out the offences and penalties and this has been made a criminal offence also. Sub-rule 11 of Rule 8 provides that if it is proved that a person not belonging to the Scheduled Castes or Scheduled Tribes secures appointment into any service or post on the basis of such false certificate shall, on cancellation of the community certificate, be forthwith terminated from the said service or post.

Section 11 of the Act reads as follows :

“11. Onus of Proof:

When in any proceeding under this Act or the rules made there under the question is whether a person belongs to the Scheduled Caste or Scheduled Tribe, the onus of proof shall be on the person who claims himself to be member of the Scheduled Castes or the Scheduled Tribes, as the case may be.”

This provision makes it clear that when any proceeding under the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 regarding the correctness of such certificate is pending, the onus of proving that the person who claims to be a member of the reserved category shall lie upon him and he must discharge this onus which has been transferred to him.

7. Criminal law is replete with instances where by legislative intervention, the burden under such circumstances shifts. To illustrate, under the Narcotic Drug and Psychotropic Substances Act, 1985 if a person is found to be in possession of a contraband substance, then the burden shifts and he has to explain how he was in possession of the substance. The legality of this provision is not under challenge before this Court and Section 11 makes it clear that the onus of proof lies upon the person who claims to belong to the reserved category be it Scheduled Caste or Scheduled Tribe in any proceedings conducted under the law.

8. This Court is not oblivious to the fact that in criminal or *quasi-criminal* proceedings even if the onus shifts, it is the prosecution which must prove its case. The findings of the State Level Scrutiny Committee have very wide ranging effect and can be used in criminal proceedings and in fact a finding given by it could entail a person losing his job. Therefore, the proceedings must be conducted according to the rules of natural justice. Reference in this behalf may be made to Rule 7A of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 as amended up to May, 2007. Under Rule 7A, the State government has constituted two '*Scrutiny Committees*'. The Director of Vigilance has been directed to constitute a vigilance cell in this regard. The Investigating Officer who is dealing with an investigation in relation to the correctness or otherwise of a certificate issued in favour of a person claiming to

belong to the Scheduled Caste or Scheduled Tribe at the stage of inspection is expected to go to the place where such person normally resides or in case such person has migrated to the town, to the rural areas to which he originally belongs.

9. Sub-rule (3) of Rule 7A reads as follows :

“(3) The Investigating Officer 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. He should personally verify and collect all the facts of the social status claimed by the certificate holder 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 certificate holder in relation to their caste etc. or such other persons who have knowledge of the community status of the certificate holder and submit a report to the Director of Vigilance who will verify the correctness of the report and transmit it to the Member-Secretary of the Scrutiny Committee concerned together with all particulars as envisaged in the proforma, 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.”

This clearly envisages that even before the report is submitted to the State Level Scrutiny Committee, the Investigating Officer has to not only visit the place from which the concerned person originally hails, he is also required to examine the school records, birth registration certificate etc. The Investigating Officer is also required to examine the parents, guardian or other relatives of

the certificate holder and after conducting these exercises and keeping into consideration their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. give a *prima facie* report as to whether such person belongs to the Scheduled Caste or Scheduled Tribe or not.

10. After such report is given, the State Level Scrutiny Committee has to act in accordance with the sub-rule (4) which reads as follows :

“(4) The Member-Secretary of the Scrutiny Committee concerned, on receipt of the report from the Director of Vigilance if finds the claim for community status is not genuine or doubtful or spurious or falsely or wrongly claimed, the Member-Secretary concerned shall issue show-cause notice supplying a copy of the report of the vigilance officer to the community certificate holder by a registered post with acknowledgement due or through the head of the institution or office concerned in which the certificate holder 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 receipt of the notice. In case, the certificate holder seeks an opportunity of hearing and claims an inquiry to be made in that behalf, the Member-Secretary on receipt of such representation or reply shall convene the meeting of the committee and the Chairperson of the Committee shall give a reasonable opportunity to the certificate holder and in case the certificate holder is a minor to the parent or guardian to adduce all evidences in support of his claim. A public notice by beat of drum or any other convenient mode may also be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may also be given to him or it. After giving such opportunity 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 certificate holder or opponent and pass an appropriate order with brief reasons in support thereof.

Provided that in case a certificate holder engages a legal practitioner to represent his case before the Scrutiny Committee, the Director for Welfare of Scheduled Castes and Other Backward Classes or the Director for Welfare of Scheduled Tribes as the case may be, may engage a lawyer.

Provided further that before passing a final order the Committee shall also take into consideration the local enquiry report of the Sub-Divisional Magistrate and opinion of the Sub-Committee concerned.

This is the sub-rule which lays down the procedure that the Scrutiny Committee must follow. A bare reading of this provision makes it absolutely clear that after report is submitted by the Director of Vigilance and in such report if it is reported that the community status as claimed by the person is not genuine or doubtful or spurious or false or wrongly claimed, the Member Secretary of the State Level Scrutiny Committee shall issue show cause notice to the said person. Along with the said show cause notice, the Member Secretary must send a copy of the report of the Vigilance Officer. The notice should indicate that the representation or reply, if any, should be made within two weeks from the date of receipt of the notice. If the person whose certificate is under dispute seeks an opportunity of hearing and seeks inquiry in the matter, then the matter has to be placed before the State Level Scrutiny Committee and the Chairperson of the Committee must give the certificate holder a reasonable opportunity of putting forth his case. He should

also be given a right to lead and produce such evidence as he may desire. The last portion of the sub-rule is very crucial. It lays down that after such opportunity in person or through counsel has been given, the Committee may inquire as it deems expedient and consider the claims vis-à-vis the objections raised by the certificate holder or opponent and pass an appropriate order with brief reasons in support thereof. This is the part which is slightly vague and, therefore, I propose to clarify this issue once and for all.

11. Though I am not in agreement with the submission of the petitioner that the petitioner cannot be asked to lead evidence at the first stage, as has already been discussed hereinabove, I am clearly of the view that the opportunity given to the person should be an opportunity which is just and reasonable, an opportunity which gives him reasonable chance to rebut the case of the State, an opportunity which does not deprive him of his right to lead evidence and an opportunity which is consistent with the rules of natural justice.

12. The Rule is not clear and only directs that the copy of the report of the Vigilance Officer should be made available to the person whose certificate is under challenge. In case, the burden is to shift to the person whose certificate is under challenge, then not only a copy of the report but the entire evidence collected by the Investigating Officer must be supplied to the said person otherwise

such person will not know what is the case which he has to answer. The person whose certificate is under challenge must know what is the exact material which the Vigilance Officer relied upon. Therefore, not only the report of the Vigilance Officer but the entire record including the statements of the witnesses if any recorded, the documentary evidence, if any collected, must be handed over to such person. If that is done then I see no harm if such person is asked to lead his evidence first because such person is in knowledge of the entire material on which the department relies.

13. This Court would also like to make it clear that if this procedure is followed and the person leads his evidence, even if the evidence of the State is led at a later stage the evidence must be confined only to the material which has been relied upon by the Vigilance Officer and which has been supplied to the person whose certificate is under challenge. In case any fresh material is sought to be brought in by the Vigilance Officer or the department concerned against the person, then that material cannot be used against him unless he is supplied that material in advance and is given a fresh opportunity to rebut the said material. The inquiry should normally be confined to the material which has been placed on record by the Vigilance Officer because that is what contemplated under sub-rule (4) of Rule 7A. However, in certain cases if some very relevant evidence comes to the knowledge of the Scrutiny Committee even during the course of the inquiry, it can use the same but the same

can only be used after giving notice to the person whose certificate is under challenge that this is the fresh material which has been collected. The fresh method should be supplied to the person and he should be given reasonable opportunity of rebutting the same by adducing evidence. Rebutting this additional material means that he will be given a chance not only to reply to the application for leading such evidence but also be given a chance to rebut such evidence if such evidence is produced.

14. The Scrutiny Committee must realize that it is dealing with the future of the person. It is dealing with issues which not only entail civil consequences inasmuch as such person may lose his job but it also entails criminal consequences where such person can go behind bars. Therefore, the Scrutiny Committee must ensure that in each and every case, the procedural laws are followed in *letter and spirit* and the rules of natural justice are not violated. It is also made clear that though the onus of proving the caste may shift on to the person claiming his caste, the burden in such cases never shifts. The State will have to prove that the certificate is false. In all cases the SLSC must pass a detailed reasoned order in support of its findings.

15. The petitioner is directed to appear before the Scrutiny Committee on 2nd May, 2015 and the Scrutiny Committee shall ensure that all documents relied upon by the Vigilance Officer, if not already supplied, are supplied to the petitioner on or before 7th May,

2015 and the petitioner shall be permitted two opportunities to lead his evidence but both these opportunities shall be in the month of May, 2015 itself and no further opportunity shall be granted to the petitioner. The entire proceedings should be completed latest by **30th June, 2015**. The SLSC must pass a reasoned order.

16. With these observations this petition is disposed of in *limine*.

17. The Registrar General is directed to send a copy of this judgment to the Member Secretary of the State Level Scrutiny Committee who shall bring it to the notice of Chairman and all the Members of the Scrutiny Committee to ensure that in future a proper procedure is followed.

CHIEF JUSTICE

Sukhendu