

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No. 15952 of 2018
IA No: CAN 3 of 2021**

**Sumitra Sarkar
Vs.
State of West Bengal and others**

For the petitioner : Mr. Kamalesh Bhattacharya,
Mr M. R. Sarbadhikari,
Mr. S. Chatterjee,
Mr. Pintu Karar

For the
respondent-authorities : Mr. Pantu Deb Roy,
Mr. Pannalal bandopadhyay

Hearing concluded on : 22.02.2021

Judgment on : 25.02.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner was issued a Scheduled Caste certificate by the Sub-Divisional Officer, Chanchal on April 10, 2018. On the basis of such certificate, the petitioner contested in the last Panchayat Election of West Bengal held on May 14, 2018. The winning certificate for such Election was issued in favour of the petitioner on May 17, 2018. The said election was contested by the petitioner from a seat reserved for the Scheduled Caste candidates.
2. Subsequently, upon receiving a memo bearing No.1500/SDO/CHL dated August 16, 2018, issued by the Sub-Divisional officer, Chanchal-II, Malda, the petitioner learnt of a proceeding for

cancellation/impounding/revocation of the Scheduled Caste certificate of the petitioner having been initiated.

3. In the meantime, a writ petition bearing WP No.10516(W) of 2018, was filed by the present respondent no.6 challenging the SC certificate of the petitioner, which is still pending.
4. The hearing of the cancellation proceeding was fixed on August 21, 2018 to the knowledge of the petitioner. However, the petitioner allegedly had to be admitted to a nursing home due to her cardiac problem on August 20, 2018. An adjournment was sought on behalf of the petitioner by her son on August 21, 2018 by submitting relevant medical documents.
5. However, the Sub-Divisional Officer, Chanchal, passed the impugned order dated August 21, 2018, without granting any adjournment to the petitioner, thereby revoking and cancelling the SC certificate issued in favour of the petitioner. Being thus aggrieved, the present writ petition has been preferred.
6. Learned counsel for the writ petitioner submits that the Sub-Divisional Officer acted *de hors* the law in considering only the paternal genealogy of the petitioner and ignoring the genealogy of her spouse, who belongs to a scheduled caste.
7. It is argued that the petitioner belongs to the scheduled caste, both by virtue of her marriage to a scheduled caste family as well as through the lineage of her mother.

- 8.** Learned counsel for the petitioner further submits that as per Rule 3(3) of the West Bengal Scheduled Casts and Scheduled Tribes (Identification) Rules, 1995, the Certificate Issuing Authority shall, upon deposit of the certificate which has been challenged, issue a notice to the holder of the certificate to show cause within 15 days or within a period of shorter duration as it may think fit, as to why the certificate issued in his favour shall not be cancelled, impounded or revoked on the grounds stated in the notice. In the present case, however, such notice was issued only on August 16, 2018 and the date of hearing was fixed shortly thereafter, on August 21, 2018, thereby giving the petitioner far less than 15 days to prepare for such hearing.
- 9.** That apart, it is argued that the petitioner's prayer for adjournment, made on a single occasion due to her hospitalisation, was refused arbitrarily by the Sub-Divisional Officer and the cancellation order was passed in hot haste.
- 10.** In this context, learned counsel relies on *Rampal Vs. State of Haryana and others*, reported at (2009) 9 SCC 187. In the said case, no opportunity of hearing was granted to the certificate holder before cancelling the Scheduled Caste certificate. In the absence of such opportunity of hearing, the Supreme Court held, such cancellation was to be set aside. In the present case, no opportunity as per the rules was given to the petitioner.

- 11.** Learned counsel then contends that no enquiry was undertaken by the Sub-Divisional Officer as contemplated under Section 8A of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994. The said provision stipulates that the State Government may, by order, constitute a Committee to be called the State Scrutiny Committee for verification of social status of a person in whose favour a certificate is issued under Section 5 of the Act.
- 12.** Section 9(1) contemplates the power of the Certificate Issuing Authority to cancel, impound or revoke such certificate if it is satisfied that the certificate was obtained by furnishing false information, misrepresentation of fact, suppression of material information or production of any document which is an act of forgery.
- 13.** Sub-section (2) of Section 9 provides that if the Scrutiny Committee, as contemplated in Section 8A, is satisfied that a certificate has been obtained by furnishing false information, misrepresentation of fact or suppression of any material information or by producing any document which is an act of forgery, it may issue a direction to the Certificate Issuing Authority to cancel, impound or revoke such certificate.
- 14.** In the present case, no such procedure was resorted to by the Sub-Divisional Officer before cancellation of the certificate.
- 15.** Learned counsel appearing for the petitioner places reliance on an unreported judgment of this court dated January 10, 2020 rendered in *WP No.24655(W) of 2018 (Krishnapada Sardar and another Vs. The*

State of West Bengal and others) for the proposition that reference to the Scrutiny Committee is mandatory before cancelling a Scheduled Caste certificate. Learned counsel further relies on *Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others*, reported at (1994) 6 SCC 241, which lays down the procedure for issuance of social status certificates, their scrutiny and their approval, taking into account the verification of the caste certificate by the Scrutiny Committee.

16. Learned counsel further places reliance on a Division Bench judgment of this Court dated August 10, 2010 passed in *M.A.T. 853 of 2009 (Bhola Nath Mahato Vs. The State of West Bengal and Others)*. The Division Bench reiterated the procedure laid down in *Kumari Madhuri Patil* (supra) and observed that it is the duty of the State Authorities to follow the direction given in the said decision. Since such Committee had not yet been constituted by the State Government, such Committee was directed to be constituted accordingly. It was held that the SDO, Buniadpur had no authority to cancel the Scheduled Caste certificate issued in favour of the writ petitioner in the absence of verification of the caste certificate by the Scrutiny Committee.
17. Learned counsel for the petitioner then cites *GM, Indian Bank Vs. R. Rani and another* reported at (2007) 12 SCC 796 wherein the Supreme Court reiterated the procedure laid down in *Kumari Madhuri Patil* (supra). On the strength of such judgments, the petitioner submits

that the impugned order was vitiated in law due to absence of prior reference of the questions of the petitioner's social status to the Scrutiny Committee.

18. Learned counsel appearing for the respondent-authorities controverts the contentions of the petitioner and submits that the procedure stipulated in the 1995 Rules were followed to the letter. Upon due notice to the petitioner on *prima facie* satisfaction, as required under Rule 3(1), a hearing was duly held, in which the petitioner remained absent. It is argued that the adjournment petition was made on behalf of the petitioner almost two hours after the commencement of the hearing, before the Receiving Section of the Office of the Sub-Divisional Officer, Chanchal, by which time the proceedings had already been concluded. As such, there was no question of deciding on the adjournment petition, which was itself filed after conclusion of the hearing.
19. It is further submitted, by placing reliance on the various orders of the Sub-Divisional Officer, that only upon a detailed preliminary enquiry entrusted to the B.D.O. and upon taking full-fledged evidence, the Sub-Divisional Officer came to the finding that the petitioner did not belong to a Scheduled Caste. As such, the impugned order cannot be said to have been vitiated by contravention of law.
20. Learned counsel further argues that the petitioner, by birth belongs to the 'O.B.C.' category and only claimed to fall under the Scheduled Caste category by virtue of her marriage. However, it is well-settled, it

is argued, that such marriage could not have conferred the benefits attributable to Scheduled Castes by birth. In this context, learned counsel places reliance on *Sunita Singh Vs. State of Uttar Pradesh and others*, reported at (2018) 2 SCC 493.

- 21.** Learned counsel for the respondent-authorities further submits that the writ petition was filed by the petitioner after two days from the cancellation of the caste certificate, although allegedly she was in a nursing home in Malda when the hearing took place. This belies the submission of the petitioner that she could not attend the hearing due to her health condition.
- 22.** In reply, learned counsel for the petitioner submits that the allegation made in paragraph 4(m) of the affidavit-in-opposition, on the fact that the hearing took place on August 21, 2018 at 11.30 a.m. whereas the adjournment application was filed by the petitioner's son at about 1.15 p.m. on the same date, has been controverted not only in paragraph no.7 of the affidavit-in-reply but also in paragraph no.5(e) of the affidavit-in-reply. Learned counsel for the petitioner reiterates that the petitioner was issued a Scheduled Caste certificate not merely on the basis of her marriage but also as per the hereditary lineage of her mother.
- 23.** Upon considering the submissions of both sides as well as the materials-on-record, it transpires that the date of hearing was fixed on August 21, 2018 whereas the notice of such hearing was given on August 16, 2018, thus leaving four clear days in-between. Rule 3(3) of

the 1995 Rules provides that, upon a certificate being deposited, the Certificate Issuing Authority shall issue a notice to the holder of the certificate to show cause within 15 days or within a period of shorter duration as it may think fit. Thus, it is not mandatory that the notice of hearing has to be of 15 days. In the present case, the authority granted four clear days' time from the date of the notice itself, which cannot be said to be to contravene Rule 3(3), which also contemplates a period of shorter duration than 15 days if the authority so deems fit.

- 24.** On the date of hearing, that is August 21, 2018, the hearing commenced at 11.30 a.m. as per paragraph 4(m) of the affidavit-in-opposition and the petitioner's son presented the petition for adjournment in the Receiving Section of the Office of the Sub-Divisional Officer at about 1.15 p.m., when the proceedings had already been concluded.
- 25.** In reply to such allegation, the petitioner made a bald denial in paragraph 7 of her affidavit-in-reply, in general terms, without addressing such time lapse between the conclusion of the hearing and the filing of the petition. Paragraph 5(e) of the affidavit-in-reply merely mentions that the petitioner's son attended before the S.D.O. at the time of hearing on August 21, 2018 and submitted an application to consider the medical condition of his mother and prayed for an adjournment. Read in conjunction, there is no specific denial in the reply of the petitioner to the clear allegation that the adjournment petition was filed at about 1.15 p.m., that too before the Receiving

Section of the Office of the Sub-Divisional Officer, after conclusion of the proceeding. Thus, there was no scope for the authority to consider such adjournment petition. Moreover, it was within the discretion of the S.D.O. to refuse such adjournment, even if made during hearing.

- 26.** The writ petition only discloses the ordering portion of the impugned decision of the S.D.O. However, the entire order sheet of the case has been annexed to the affidavit-in-opposition of the respondent-authorities. The impugned order dated August 21, 2018 was elaborate in details and considered all relevant aspects leading to the cancellation of the petitioner's certificate. It appears from the initial part of the order that the petitioner was absent on several calls. Only thereafter, being satisfied of the service return from the petitioner, the S.D.O. proceeded to pass the impugned order. The petitioner has failed to rebut the presumption that the adjournment petition was not even filed in time.
- 27.** The order sheet of the case reveals that the procedure laid down in Section 9(1) of the 1994 Act, read with Rule 3 of the 1995 Rules, was exhaustively followed in the present case before cancelling the certificate.
- 28.** *Krishnapada Sardar* (supra) was not passed solely on the consideration that an enquiry as contemplated under Section 5 of the 1994 Act is a necessary prerequisite for Section 9(1) of the Act. In the said case, the Sub-Divisional Officer did not enter into the question as

to verification as regards social status with regard to the tribe to which the petitioner therein belonged, at all. It was only on the basis of a report by the Cultural Research Institute, Backward Classes Welfare Department, Government of West Bengal that such order of cancellation was passed, in the said case. The criteria stipulated for cancellation of the certificate in Section 9(1) of the 1994 Act were not invoked or gone into at all, in terms of the observations in *Rampal* (supra).

- 29.** That apart, the proposition on which I relied in *Krishnapada Sardar* (supra), as regards a reference of the matter to the State Scrutiny Committee in an enquiry under Section 9(1) of the 1994 Act was *per incuriam*. A bare reading of the provisions of Section 9 of the said Act makes it clear that sub-sections (1) and (2) of Section 9 are independent of each other in their sphere of operation. Section 9(1) contemplates cancellation or revocation of a certificate if the Certificate Issuing Authority is satisfied that the same was obtained by furnishing any false information or by misrepresentation any fact or suppression of any material information or by producing any document which is an act of forgery. The procedure for such inquiry has been laid down in detail in Rule 3 of the 1995 Rules, which contemplates a preliminary inquiry, a subsequent hearing upon consideration of oral and documentary evidence upon notice and a subsequent adjudication on the issue by the Sub-Divisional Officer. Rule 3(4)(c) provides that the certificates of any notice under the Rules shall be governed by the provisions of the Code of Civil Procedure.

- 30.** In the present case, such procedure was observed meticulously.
- 31.** Section 9(2), on the other hand, begins with a *non-obstante* clause, dissociating the said sub-section from sub-section (1) of Section 9. Under sub-section (2), the State Scrutiny Committee, if satisfied on similar criteria as the S.D.O. under sub-section (1), may issue a direction to the Certificate Issuing Authority to cancel, impound or revoke such certificate, upon which the Certificate Issuing Authority has no say but to do so. Section 8A of the 1994 Act describes the constitution of the State Scrutiny Committee and its powers.
- 32.** There is nothing in Section 9, sub-sections (1) or (2) to indicate that a reference to the State Scrutiny committee is mandatory for an enquiry under Section 9(1). Hence, the proposition iterated by me in *Krishnapada Sardar* (supra) to the contrary, being against the law, is held to be *per incuriam*.
- 33.** The decision rendered by the Division Bench in *Bhola Nath Mahato* (supra) did not lay down a blanket proposition that it is mandatory for the certificate issuing authority, in all cases, to refer the matter to the State Scrutiny Committee for a report. The facts of the case are not clear from the judgment itself and it does not necessarily be similar to the present case. Moreover, the question of such reference did not fall for consideration before the Division Bench. Hence, the observation made therein as to the report of the S.D.O. being vitiated in the absence of a report from the State Scrutiny Committee did not enunciate a binding precedent for the proposition that a reference to

the State Scrutiny Committee is mandatory for an adjudication under Section 9 (1) of the Act.

- 34.** As far as the alleged acquisition of scheduled castehood by the petitioner by marriage or through her mother's hereditary lineage is concerned, such proposition is patently contrary to settled law. The Supreme Court in *Valsamma Paul (Mrs.) Vs. Cochin University and others*, reported at (1996) 3 SCC 545, while observing that a lady could adopt the caste of her spouse upon marriage, categorically laid down that the movement from a forward into a backward caste by adoption, marriage or conversion does not confer eligibility to the benefits of reservation under Article 15(4) or Article 16(4) of the Constitution of India. The said proposition was reiterated in several judgments, including *State of Tripura and others Vs. Namita Majumdar (Barman)*, reported at (1998) 9 SCC 217, *Sandhya Thakur Vs. Vimala Devi Kushwah and others*, reported at (2005) 2 SCC 731, *Meera Kanwaria Vs. Sunita and others* [(2006) 1 SCC 334] and lastly in *Sunita Singh Vs. State of Uttar Pradesh and others* [(2018) 2 SCC 493]. In the last of the above, the Supreme Court categorically laid down that caste is determined by birth and cannot be changed by marriage with a person of scheduled caste. In the said case, the certificate was cancelled, which was upheld by the Supreme Court on such ground.
- 35.** In the present case, the petitioner was considered to be of the "Malla/Malo" community by virtue of her marriage. Even if the caste of the petitioner's mother was to be considered, the petitioner's caste

could not have been determined by the maiden caste of her mother, since the petitioner was born into the family of her father and acquired her caste by virtue of such birth. The maiden caste of her mother became irrelevant prior to her birth.

- 36.** Hence, in any event, there was sufficient justification in the cancellation of the petitioner's caste certificate on the premise that she did not belong to the scheduled caste communities but to the O.B.C. category by birth. The orders dated July 11, 2018 and August 16, 2018 passed by the B.D.O. in the matter, exhibited that the S.D.O. followed due procedure and elaborately considered the question of the petitioner's caste not only on the basis of the report given by the B.D.O., Chanchal-II but also on the basis of detailed oral and documentary evidence. Thus, the finding arrived at by the S.D.O. could not be faulted from any perspective.
- 37.** The ratio of *Rampal (supra)* does not apply to the present case, since in the said report, no opportunity was given at all to the person whose certificate was cancelled. In the present case, ample opportunity of hearing and detailed inquiry preceded the cancellation.
- 38.** In such view of the matter, the impugned order cancelling the Scheduled Caste certificate of the petitioner was well within the authority of the Sub-Divisional Officer and passed in consonance with law and procedure. There is no scope for interference with the same.
- 39.** WPA No.15952 of 2018 is thus dismissed on contest. IA No: CAN 3 of 2021 is disposed of accordingly.

- 40.** There will be no order as to costs.
- 41.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)