

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 533 of 2021
with
IA NO.: CAN 1 of 2021

(Through Video Conference)

Reserved on : 06.12.2021

Pronounced on: 04.02.2022

Sumitra Sarkar

...Appellant

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Partha Sarathi Bhattacharyya,
Mr. Sufi Kamal,
Mr. Raju Bhattacharyya,
Mr. Tanweer J Mandal, Advocates
... for the Appellant

Mr. Pantu Deb Roy,
Mr. Pannalal Bandopadhyay, Advocates
..... for the State

Mr. Subir Sanyal,
Mr. Sutirtha Das , Advocates
.....for the respondent No. 6

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the learned Single judge dated February 25, 2021 passed in W.P.A. No. 15952 of 2021 (Sumitra Sarkar - versus- State of West Bengal & Ors.) has been questioned by the writ petitioner. This appeal is concerned with the order of the said learned Single Judge who upheld the validity of an impugned order dated 21/8/2018 issued by the Sub Divisional Officer, Chanchal cancelling the alleged wrongful issuance of a Scheduled Caste certificate to the writ petitioner/appellant.
2. The private respondent no.6 herein had filed a writ petition W.P. No. 10516 (W) of 2018 under article 226 of the Constitution of India challenging the issuance of Scheduled Caste certificate in favour of Smt. Sumitra Sarkar. It came to the notice of the concerned authorities that the writ petitioner Smt. Sumitra Sarkar belonged to sub-caste Tantubaya Tanti under the OBC category. Accordingly, a proceeding under Rule 3(3) of the West Bengal Scheduled Caste and Scheduled Tribe (Identification) Rule 1995 was initiated by the office of the Sub-divisional officer, Chanchal on an urgent basis since the writ petitioner was an elected candidate from Chandrapara-III constituency under Chandrapara Gram Panchayat which was reserved for the Scheduled Caste category.
3. Following an enquiry into the said matter, a report was submitted by the Block Development Officer Chanchal, which ascertained that the Scheduled Caste certificate had been wrongly issued in favour of Smt. Sumitra Sarkar. In spite of issuing two separate notices to the petitioner-appellant which informed her to submit the original Scheduled Certificate by 21 st August, 2018 and also to file a reply to show cause as to why the said Schedule Caste certificate would not be cancelled or revoked, she failed to submit the original

Scheduled Caste certificate and file any reply to such show cause. Consequently, in terms of Section 9(1) of the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994 and the Rules framed thereunder, the caste certificate issued in favour of Smt. Sumitra Sarkar being No.WB0601SC201801252 dated 10 th April, 2018 was revoked and cancelled.

4. Submission of the appellant is that the impugned order dated February 25, 2021 is liable to be set aside by this Hon'ble Court, as the court erred in appreciating the matter in proper perspective. The issues before the learned Single judge were :

- a) whether the impugned order dated 21/8/2018 issued by the Sub Divisional Officer, Chanchal was illegal/arbitrary/and liable to be set aside?
- b) whether the impugned order dated 21/8/2018 issued by the said Sub Divisional Officer, was passed without any reason and therefore, liable to be set aside?
- c) whether impugned order dated 21/8/2018 issued by the said Sub Divisional Officer was passed in violation of the principle of natural justice and fair play and the same was passed without providing any reasonable opportunity of hearing?

5. The learned Single judge after hearing the learned counsel for the parties and perusal of the records, observed that Rule 3 (3) of the West Bengal Scheduled Casts and Scheduled Tribes (Identification) Rules, 1995 provides that the Certificate issuing authority shall issue a notice to the holder to show cause within fifteen (15) days OR "within a shorter period as it may deem fit." Thus, in the case at hand, the authority by granting four (4) days from the date of notice, cannot be said to be in contravention of the said Rule 3(3) which contemplates and gives the authority discretion, If it shall deem fit.

It was further observed that on August 21, 2018, hearing commenced at 11:30 am and the petitioner's son prayed for adjournment at 1:15 pm when the proceedings had already concluded. Thus, there was no scope for the authority to consider such adjournment petition. Also, it is within the discretion of the Sub Divisional Officer to refuse such adjournment, even if made during the hearing.

6. The learned Single Judge concluded that the Impugned order dated August 21, 2018 was elaborate and considered all relevant aspects leading to cancellation of the Petitioner's certificate. The appellant was absent on several calls and the adjournment Petition was not even filed in time i.e., she failed to address the time lapse between conclusion of the hearing and filing of the petition for adjournment. In light of the above discussions, the learned Single Judge observed that the Order sheet revealed that procedure laid down in section 9 (1) of the West Bengal Scheduled Casts and Scheduled Tribes (Identification) Act, 1994 read with Rule 3(3) of the said 1995 rules, was duly followed.

7. As per section 9 of West Bengal Scheduled Casts and Scheduled Tribes (Identification) Act, 1994, sub-section (1) and (2) are independent of each other in their sphere of operation. In the present case, the procedure for an inquiry laid down in Rule 9 of 1995 Rules was observed meticulously. It is not mandatory under Section 9(1) or (2) the said Act for an inquiry to be referred to a State Scrutiny Committee. The petitioner's certificate was cancelled as she does not belong to Schedule Caste category but Other Backward Classes category, by birth. Also, the findings of the Sub Divisional Officer could not be faulted from any perspective because due procedure was followed on the basis of detailed oral and documentary evidence. The learned Single Judge has also

correctly observed that the ratio of Rampal Vs. State of Haryana and others, (2009) 9 SCC 187 does not apply to the case at hand, because unlike in the present case, no opportunity of hearing was given to those whose certificate before being cancelled. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed.

8. However, the appellant in view of Apex Court's decision in Kumari Madhuri Patil and another Vs Addl. Commissioner, Tribal Development and others, (1994) 6 SCC 241 may approach the State Scrutiny Committee if so advised.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

04.02.2022

PA(BS)