

**The State of West Bengal & Ors.
Vs.
Smt. Sila Mani Lama & Ors.**

**Mr. Tapan Mukherjee, Ld. Addl. G.P.,
Mr. P. Halder.**

... for the petitioners.

**Mr. D. N. Roy,
Mr. Sourav Halder.**

... for the respondent nos. 1 & 2.

**Mr. Anand Bhandari,
Mr. Urgan Lama,
Mr. Mayank Bhandari.**

... for the respondent nos. 3, 4 & 5.

Mr. Suman Basu.

... for the respondent no. 6.

Astonishingly the State has filed the instant writ petition challenging the order dated 8th February, 2022 modified on 23rd February, 2022 passed by the West Bengal Administrative Tribunal in OA 638 of 2019; whereby and whereunder the concerned respondent, i.e. the Commissioner of Commercial Taxes was directed to consider the claim of the applicant therein in the light of the succession certificate issued by the competent Court of Law as well as the service book of the deceased employee.

Before we proceed to record the submissions of Mr. Mukherjee, learned Additional Government Pleader, appearing for the writ petitioner, the undisputed facts are adumbrated as under:

That one Harka Bahadur Lama, since deceased as ex-patrol man, died on 28th July, 2010 while in service. He was posted under the Siliguri zone and one Sila Mani Lama claiming herself to be widow of the deceased employee applied for release of pension and other death cum pensionary benefits in her favour and in favour of her daughter.

Such being the undisputed fact an approach was made to the Tribunal and the reliance was placed upon the succession certificate granted by the competent Court in favour of the applicant of the tribunal application.

Mr. Mukherjee, learned Additional Government Pleader, appearing for the writ petitioner submits that there is a rival claim from two different ladies claiming themselves to be the widow of the deceased employee and, in fact, the applicant before the Tribunal is not a legally wedded wife as there was a subsisting marriage.

We are not impressed with the aforesaid submission of Mr. Mukherjee after noticing that the succession certificate has been granted by the competent Court in favour of the applicant before the Tribunal. The authority can neither adjudicate the status of a person nor the Tribunal is clothed with such power.

Interestingly the State while filing the instant writ petition have impleaded such persons as party when they were not before the Tribunal. In view of the judgement of the Supreme Court in case of *Rajeev Kumar & Anr. vs. Hemraj Singh Chauhan & Ors.* reported in (2010) 4 SCC 554, it is not open to the writ petitioner while challenging the order to implead a person as party, who was not a party before the Tribunal. The Apex Court after taking into consideration the Constitutional Bench decision rendered in case of *L. Chandra Kumar vs. Union of India* reported in (1997) 3 SCC 261 held that the Tribunal, in fact, acts as a Court of first instance and, therefore, the persons who were not party before the Tribunal cannot seek their addition in a writ petition filed before the High Court.

Be that as it may, we find that the succession certificate had been issued in favour of the applicant before the Tribunal and, therefore, the effect of such succession certificate is required to be recapitulated before we arrive at the ultimate decision.

Section 374 of the Indian Succession Act, 1925 confers power upon the District Judge to grant certificate specifying the debts and securities set-forth in the application for the certificate and may thereby empower the person to whom the certificate is granted to receive the interest or the dividends or any other debts and securities. The word “empower” connotes that by virtue of such certificate, right to claim such securities or debts have been crystallized unless revoked or set aside in a validly constituted proceeding.

In view of the above, we have no hesitation that the directions passed by the Tribunal deserve no interference.

The writ petition is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

