

D/L. 75.
June 14, 2023.

WPA No. 2916 of 2023

Sonia Kewat
Vs.
State of West Bengal and others

Ms. Sonia Kewat

... petitioner in person.

Mr. Amitesh Banerjee,
Mr. Suddhadev Adak

...for the State.

The petitioner, appearing-in-person, has challenged the cancellation of the Scheduled Caste Certificate issued to the petitioner by the Sub-Divisional Officer, Diamond Harbour, District: South 24 Parganas, West Bengal on December 9, 2021. By virtue of the impugned Order dated December 15, 2022, the Caste Certificate was cancelled on the premise that the petitioner had applied from an address where she is not an ordinary resident, by misrepresentation of fact and as per her ordinary residence evident from her EPIC, Ration Card and AADHAR details, she should have made her application before the District Welfare Officer, Kolkata. Accordingly, the Caste Certificate was cancelled and liberty was granted to the petitioner to apply before the

appropriate authority as per her ordinary residence again for issuance of Caste Certificate.

The facts of the case are peculiar. By a previous order dated December 4, 2014, the District Welfare Officer, Kolkata had rejected a prior application of the petitioner for issuance of a Scheduled Caste Certificate on the ground that the petitioner had failed to prove her family's settlement in West Bengal since 1950. Along with the petitioner's application, the similar application of Sneha Kewat, her sister, was also dismissed.

Subsequently, the petitioner obtained a Caste Certificate upon production of further documents from the Diamond Harbour Sub-Divisional Officer on December 9, 2021, the cancellation of which is the subject-matter of the present dispute.

The petitioner argues that the petitioner has been running from pillar to post. Her application was duly entertained by the Diamond Harbour authority and the Caste Certificate was issued accordingly. The petitioner also relies on photocopies of several documents proving her residence in Kolkata which have been annexed to the writ petition as well.

It is submitted that despite such documents having been produced, those were not considered while cancelling the Caste Certificate. Rather, on a technical point, the petitioner has been relegated to the Kolkata Authority.

It is submitted that the petitioner is well-qualified and came first within West Bengal under the SC/ST Category in the All India AYUSH Post-Graduate Entrance Test, 2022 held by the National Testing Agency, National Commission for Homeopathy.

However, due to the cancellation of her Caste Certificate, she has been precluded from obtaining admission in any Homeopathy college. Although the last date for admission in such colleges is already over, the petitioner has been granted the opportunity to have a belated entry, which will also spend its force on June 16, 2023.

Learned standing counsel appearing for the State submits that no documents whatsoever and/or copy of any application made by the petitioner was found in the records of the Diamond Harbour Authority. It is alleged that the certificate which has now been cancelled is

manufactured and has been obtained by fraud by the petitioner.

It is submitted that only when the petitioner's sister, being emboldened by the petitioner's false certificate and relying on the same, also applied for a Caste Certificate before the Kolkata Authority, the fraud was detected. Accordingly, a complaint was lodged by the District Welfare Officer, Kolkata on September 6, 2022. Upon such reference, the matter was reopened and it was found that the petitioner had obtained such Caste Certificate erroneously from a wrong jurisdiction.

It is further argued that the petitioner ought not to be permitted to take advantage of her own wrong for having applied before the Diamond Harbour authority. The Caste Certificate has been rightly cancelled since the Diamond Harbour Sub-Divisional office had no authority to grant the same.

Although the State has also argued on the veracity of the Caste Certificate of the petitioner issued on December 9, 2021 by the Sub-Divisional Officer, Diamond Harbour on the ground of alleged fraud, the requirements of Order VI Rule 4 of the Code of Civil Procedure

and principles akin thereto have not been satisfied. There are no particulars mentioned in the opposition filed by the respondents regarding the allegation of fraud.

That apart, even from the impugned order it is seen that the authority concerned never alleged that the document had been fraudulently obtained. Rather, it has been indicated in the impugned order that hard copies of the application, along with supportive documents, were not found at the office of the said authority in the records of application for caste certificate of Diamond Harbour Municipality. It is further recorded that the BDO, Falta was requested to verify the caste and sub-caste of the petitioner and re-submit the hard copies related to issuance of caste certificate of the petitioner. The application of the petitioner and the ID No. and date thereof were also mentioned clearly in the impugned order.

Hence, the allegation now sought to be made by the respondent-authorities is beyond the case of respondents as made out even in the impugned order.

It is further evident from the impugned order that several documents produced by the

petitioner were considered by the authority, including the EPIC, Aadhar Details and other documents of the petitioner and the authority came to the finding that the petitioner was an ordinary resident of 149, Kasba Assembly Constituency under the Kolkata Municipal Corporation.

Hence, the allegation of the certificate being manufactured is a new plea taken by the respondents now, beyond the records.

We find from the records that the Sub-Divisional Officer, Diamond Harbour did not cancel the caste certificate of the petitioner on any substantial ground. In fact, it was an error on the part of the Sub-Divisional Officer, Diamond Harbour himself, to have issued such certificate in the first place without looking into the maintainability of the application in his jurisdiction.

Such imbroglio has arisen solely due to such wrong assumption of territorial jurisdiction by the concerned authority.

The predicament of the petitioner is that the petitioner will be deprived of a valuable academic year despite having coming first in the State among the SC/ST persons, for the course which she wants to take in an affiliated

Homeopathic College. Hence, the error of territorial jurisdiction on the part of the authority cannot itself be sufficient to deprive the petitioner of the opportunity to enroll for such a course.

On such premise, the only viable solution could be to grant an opportunity to the petitioner to participate in the current academic session on the basis of the caste certificate purportedly cancelled by the impugned order.

Accordingly, WPA No.2916 of 2023 is disposed of by granting liberty to the petitioner to approach the District Welfare Officer, Kolkata within a week from date, as per the direction given in the impugned order dated December 15, 2022 with all relevant documents available to her for the purpose of a reconsideration as to whether the petitioner is entitled to the grant of a Scheduled Caste Certificate.

Such enquiry, upon giving proper opportunity to the petitioner to be heard, shall be concluded in accordance with law within six weeks from the date of such approach being made by the petitioner, upon which the District Welfare Officer, Kolkata shall pass a reasoned order and communicate the same to the petitioner.

Until the said fresh enquiry is finally concluded, the order of cancellation of Caste Certificate by the impugned order dated December 15, 2022 shall be kept in suspension/abeyance. However, the said suspension/abeyance shall be subject to the final outcome of the reconsideration by the District Welfare Officer, Kolkata.

It is made clear that upon coming to a final conclusion, if the District Welfare Officer is of the opinion that the petitioner is otherwise entitled to get a Caste Certificate as granted by the Sub-Divisional Officer, Diamond Harbour, a fresh Caste Certificate shall be issued and necessary orders shall be passed in that regard, treating the cancellation order on the ground of territorial jurisdiction, dated December 15, 2022 to revive. In the event the District Welfare Officer holds otherwise, in that event also the order dated December 15, 2022 shall revive, but without any fresh caste certificate being granted to the petitioner.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the

parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)