

22.02.2023
sayandeep
Sl. No. 09
Ct. No. 05

WPA 3579 of 2023

Basudeb Mahato
-Versus-
The State of West Bengal & Ors.

Mr. Prohlad Chandra Ghosh
Ms. Kakoli Samajpati
Mr. Subir Hazra
.....for the petitioner

Mr. Debasish Ghosh
Ms. Piyali Sengupta
.....for the State

The petitioner is aggrieved by an order dated 7th February, 2023 passed by the Sub-Divisional Officer, Lalbagh, cancelling the Caste Certificate of the petitioner under Section 9(1) of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994. The impugned order was passed on the basis of the petitioner obtaining Scheduled Tribe Certificate from the SDO, Lalbagh by furnishing forged documents including the petitioner's ration card and the ration card of his uncle.

The petitioner seeks to have this order quashed. Learned counsel appearing for the petitioner submits that there has been violation of principles of natural justice and that the matter should now be sent to the Scrutiny Committee under the provisions of the 1994 Act.

Learned counsel appearing for the State relies on a Judgment of a co-ordinate Bench in WPA 15952 of

2018 (*Sumitra Sarkar vs. State of West Bengal & Ors.*) to submit that the petitioner was given a hearing and that the impugned order was passed upon a detailed enquiry pointing to certain facts which led to cancellation of the petitioner's Caste Certificate.

Section 9 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification), Act, 1994 provides for the power to cancel, impound or revoke a certificate. Section 9(1) gives the power to the certificate issuing authority when such authority is satisfied that the certificate under the Act has been obtained by a person upon furnishing false information or by misrepresentation or suppression of material information.

Section 9(2) is a separate and distinct provision which starts with *non obstante* clause and reserves the power to cancel Caste Certificate to the Committee upon similar conditions. Section 8A of the Act, which provides for constitution of a State Scrutiny Committee.

It is evident from the facts in the present writ petition that the impugned cancellation was not made by the Committee but by the certificate issuing authority which is the Sub-Divisional Officer, Lalbagh. Hence, Section 9(1) of the Act would be relevant for the present case and not Section 9(2).

The impugned order indicates that the SDO considered two reports in coming to the conclusion that

there has been misrepresentation of material facts. The first is an enquiry Report dated 19th December, 2022 of the concerned Inspector of the SDO office and second, the Report of the Sub-Divisional Controller, Food and Supplies, Lalbagh. The SDO formed an opinion based on these two Reports to hold that the petitioner had obtained the Caste Certificate from the certificate issuing authority by furnishing forged documents. The impugned order makes it evident that none of these two Reports were furnished to the petitioner before the conclusions were arrived at. Besides, Rule 3(4)(a) of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 makes it clear that the complainant as well as holder of the certificate shall be given a notice of hearing and shall be asked to bring all documentary evidence in support of their respective cases. Rule 4 further provides that any order by the certificate issuing authority for the purpose of hearing of the witness giving evidence against or in support shall be in writing. Both these Rules indicate the procedure to be followed by the concerned authority and certainly indicate that the certificate holder shall be given sufficient opportunity to present his/her case. The impugned order makes it clear that this opportunity was not given to the petitioner since none of the two Reports relied on by the SDO were furnished to the petitioner. This is in breach of principles of

natural justice and against the scope of Rules 3 and 4 of the 1995 Rules.

WPA 3579 of 2023 is allowed for the above reasons and disposed of by quashing the impugned order dated 7th February, 2023. The concerned authority shall be at liberty of taking proceeding in the matter but with due compliance of the 1994 Act and 1995 Rules.

(Moushumi Bhattacharya, J.)