

AD-03
Ct No.09
15.06.2023
TN

WPA No. 13372 of 2023

Sri Mrinmay Karmakar and another
Vs.
The State of West Bengal and others

Mr. Chittapriya Ghosh,
Mr. Samir Kumar Adhikari

.... for the petitioners

Despite service, none appears for the respondents at the time of call. Affidavit-of-service filed today be kept on record.

The petitioners have challenged the cancellation of the petitioners' caste certificate, initially by the concerned Sub-Divisional Officer (SDO), which was affirmed by the Appellate Authority, that is, the District Magistrate, Jhargram.

It is contended that, as per the provisions of Section 9 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 (for short "the 1994 Act"), only if the certificate issuing authority is satisfied that a certificate has been obtained by any person by furnishing any false information or by misrepresenting any fact or by suppressing any material information or producing any document which is an act of forgery, it may cancel, impound or revoke such certificate.

In the present case, it is argued that the petitioners were duly issued Scheduled Caste certificate, which was subsequently cancelled upon a rehearing on the merits of the issue, which was *de hors* the powers conferred on the authorities under Section 9.

A perusal of the annexures to the writ petition indicates that the SDO as well as the Appellate Authority entered into the merits of the question as to whether the petitioners, who belong to the sub-caste Karmakar, stand on an equal footing as the Lohar Community, which is a scheduled caste, and thereafter went on to cancel the certificates, which had been issued to the petitioners after a valid enquiry.

However, nothing transpires from the orders of either of the authorities below to the extent that the petitioners had suppressed any material information or furnished any false information or produced any forged document at any point of time. That apart, an enquiry on merits was undertaken before issuing the caste certificate to the petitioners as long back as in the year 2016.

Moreover, it is also palpable that a report, which was purportedly relied on by the first authority for cancelling the caste certificate of the petitioners, was

never handed over to the petitioners for the petitioners to consider it and address on the same.

Hence, even on a *prima facie* perusal of the impugned orders, it is evident that the prerequisites of Section 9 were not fulfilled in the present case. Thus, the impugned orders cannot stand the scrutiny of judicial review.

Accordingly, WPA No. 13372 of 2023 is allowed, thereby directing the respondent no. 6, that is, the Sub-Divisional Officer of Jhargram Sadar Sub Division to rehear the matter, upon giving a fresh hearing to the petitioners and upon prior service of copies of the enquiry report and other documents, on which the SDO intends to rely, to the petitioners. After such rehearing is given, the SDO shall decide the issue afresh, as to whether the criteria stipulated in Section 9 of the 1994 Act are satisfied in the present case or not.

Accordingly, the SDO, upon giving due opportunity of hearing to all concerned, shall decide the issue afresh in accordance with law, preferably within three months from the date of communication of this order to the respondent no. 6.

It is, however, made clear that the merits of the matter have not been gone into by this court and it will be open to the SDO to decide on all issues

involved, independently and in accordance with law. However, since the petitioners' separate caste certificates were cancelled by the same impugned order, it was for the petitioners to file two separate writ petitions, having different cause of action. Such technical defect, however, can be cured in the event the petitioners deposit the equivalent of the court fees payable for filing another writ petition by tomorrow before the concerned department of this court.

It is made clear that this order shall stand conditional to such deposit by the petitioners. In the event such deposits of additional court fees are not made by the petitioners by tomorrow, this order shall stand automatically revoked and cancelled without further reference to the court.

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.)