

Item No.03(SL)

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

19.06.2023
Ct-24
AGM

WPA 14478 of 2023

Bandana Pramanik

v.

The Secretary of West Bengal Election Commission &
Ors.

Mr. Sabyasachi Chatterjee
Mr. Sayan Banerjee
Mr. B. Karim

... for the petitioner.

Mr. Sirsanya Bandopadhyay, Jt. Standing Counsel
Mr. Arka Kumar Nag

... For the State.

Ms. Sonal Sinha
Ms. Sanjukta Samanta

... for the Election Commission.

The petitioner claims to be a member of the Scheduled Caste community. She applied for obtaining a certificate in support of her caste before the competent authority on 23rd August, 2021.

The petitioner filed her nomination for contesting the Panchayat General Election, 2023 disclosing herself to be a member of the Scheduled Caste community and attached the acknowledgement slip dated 23rd August, 2021 which was supplied at the time of filing the application for obtaining her Scheduled Caste certificate.

The petitioner submits that though the application for obtaining the Scheduled Caste Certificate was filed on 23rd August, 2021, despite repeated requests, the same was not handed over to her.

According to the petitioner, the Scheduled Caste Certificate issued in her name though mentions the date of issue as 5th March, 2022 but the same was actually handed over to her only on 17th June, 2023 after the same was signed by the Sub Divisional Officer, Baruipur on 16th June, 2023.

The petitioner claims that the State Election Commission has practically rejected her application as her application was not supported by the Scheduled Caste Certificate.

The petitioner prays that the date of withdrawal of the nomination being 20th June, 2023, the petitioner may be permitted to produce her Scheduled Caste Certificate before the competent authority so that she may be permitted to participate in the Panchayat General Election.

It has been submitted that her application is yet to be formally rejected but as she failed to submit the Scheduled Caste Certificate, her candidature has been treated to be cancelled.

Learned advocate representing the State respondents submits that it is clearly mentioned in the

acknowledgement slip that the application is to be followed by a hearing in the office of the concerned BDO/SDO within sixty days from the date of filing the online application. The petitioner failed to appear in the hearing within the prescribed time period.

The petitioner was supposed to produce two recent passport colour photographs for the purpose of obtaining the Caste Certificate along with original documents in support of her claim.

Learned advocate of the State respondents produces copy of the letter written by the petitioner to the SDO, Baruipur Sub-Division on 16th June, 2023 wherein the petitioner, for the first time, produced her documents in support of her claim.

It has been submitted that immediately on receipt of the letter dated 16.06.2023 the Sub-Divisional Officer signed the Caste Certificate and handed over the same to the petitioner on 17th June, 2023.

Learned advocate representing the State Election Commission submits that as the application of the petitioner was not accompanied by the necessary documents, accordingly, the said application cannot be treated to be a valid one.

I have heard the submissions made on behalf of all the parties and have perused the documents annexed thereto. I have also perused the letter written by the

petitioner on 16th June, 2023 to the Sub-Divisional Officer, Baruipur Sub-division.

It appears that the petitioner submitted online application for obtaining the Caste Certificate on 23rd August, 2021. The acknowledgement slip clearly mentions that the applicant is to appear for hearing in the concerned BDO/SDO Office on 2nd or 4th Wednesday of any month within the next sixty days between 12 noon and 3 p.m. after online submission.

The online submission will be automatically rejected if the applicant does not appear for hearing within sixty days from the date of filing the online application.

It appears that in the present case though the application was submitted online on August 23, 2021, but till 16th June, 2023 the petitioner neither produced her original documents nor appeared in the hearing before the concerned authority as required for obtaining the Scheduled Caste Certificate.

In terms of the recording in the acknowledgement slip, the application of the petitioner ought to have been treated as automatically rejected for not producing the relevant documents and for not appearing in the hearing within sixty days.

For reasons best known, the Sub-Divisional Officer on receipt of the application made by the

petitioner on 16th June, 2023, processed the online application filed by the petitioner on 23rd August, 2021 and issued the Scheduled Caste Certificate in her favour on 16th June, 2023. The Certificate of the petitioner, however, is dated 5th March, 2022 but signed by the Sub-Divisional Officer on the 16th June, 2023.

According to the provisions of Section 46(3) of the Panchayat Elections Act, 2003, the nomination paper for any seat, reserved for a candidate of Scheduled Caste shall be accompanied by a copy of the Certificate of the Scheduled Caste granted by the competent authority and that the original copy of such Certificate shall be produced at the time of making delivery of the nomination paper to the Panchayat Returning Officer.

In the instant case, the petitioner made the application within the prescribed time limit but failed to forward/annex the copy of the Caste Certificate as the same was not in her possession.

Had the petitioner been so interested to contest the Panchayat General Election as Scheduled Caste candidate, she ought to have been ready with her Caste Certificate in proper time so that the application could have been made in accordance with the provisions of the Act. Admittedly, the application of the petitioner was not accompanied by the Caste Certificate.

Fact however remains that the Caste Certificate was issued in her favour in March 2022, signed by the competent authority on 16th June, 2023 and handed over to the petitioner on 17th June, 2023.

At this stage the only requirement is the production of the original Caste Certificate already issued in her favour. The date of scrutiny of the nominations was over on 17th June, 2023. The petitioner claims to have submitted the Caste Certificate on 17th June, 2023.

According to the settled provisions of law, if the candidate is born in a Scheduled Caste community she has to be treated as a Scheduled Caste candidate. It is not that the petitioner acquired her caste upon issuance of the caste certificate in her favour. The petitioner is a Scheduled Caste candidate from the date of her birth and the said fact is presently supported by issuance of the Caste Certificate.

In such a situation the concerned authority may accept the Caste Certificate submitted by the petitioner.

The State Election Commission is, accordingly, directed to give credence to the Caste Certificate submitted by the petitioner before the competent authority and treat the petitioner as a Scheduled Caste candidate.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)