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16.11.2023
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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 24330 of 2023

Amardeep Kumar
Vs.
The State of West Bengal & Ors.

Mr. Vivekananda Bose,
Mr. Rahul Kumar Singh,
Mr. Ratikanta Pal
.... for the petitioner

Mr. Biswabrata Basu Mallick,
Ms. Sujata Mukherjee
....for the State

Mr. Kumar Jyoti Tewari,
Mr. Tarunjyoti Tewari,
Mr. Amrit Sinha,
Mr. Aniruddha Tewari
....for the respondent nos. 9 and 10

1. Learned counsel for the petitioner contends that the petitioner, being a member of a Scheduled Caste community, had obtained a valid caste certificate in the year 2011. Subsequently the petitioner made certain allegations and lodged complaint against the respondent no. 10 for having violated the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. On the basis of such complaint a proceeding was initiated against the respondent no. 10, which instigated the respondent no. 10 as a backlash to set up respondent no. 9, who represents a body apparently speaking about the cause of Schedule Castes, to lodge a complaint against the petitioner seeking a cancellation of the Scheduled Caste certificate given to the petitioner. A hearing was given by the concerned Sub Divisional Officer (S.D.O.) to the parties including the petitioner and before the S.D.O., several documents and other materials were produced, which led the S.D.O. to arrive at the opinion that the Scheduled Caste certificate was issued validly to the petitioner. However, the proceeding did not advance any further.

3. Much subsequently thereafter, apparently on the instigation of the respondent no. 9, the National Commission for Scheduled Castes, without giving a prior notice of hearing to the petitioner or any opportunity to the petitioner to make out his defence, by a minutes of hearing annexed to the writ petition, directed the concerned authorities of the State to cancel the Scheduled Caste certificate of the petitioner. In blind deference thereto, without applying his independent mind, the concerned S.D.O. cancelled the Scheduled Caste certificate of the

petitioner, prompting the petitioner to file the instant writ petition.

4. Learned counsel for the petitioner submits that the National Commission does not have any authority under the Constitution or any law to usurp the powers of the concerned S.D.O. and the State authorities, who are responsible for undertaking enquiries regarding cancellation of caste certificates.

5. It is argued that even the recommendation of the National Commission admits that there has been no formation of a valid Caste Scrutiny Committee at the district level, which was the relevant authority on the basis of whose report a cancellation of caste certificate is to be effected in the State.

6. That apart, even in the minutes of hearing of the National Commission dated May 01, 2023, it is categorically indicated that the same was initiated on a representation dated September 07, 2022 regarding a request for proper enquiry of fake caste certificate issued by the concerned S.D.O., Asansol, Paschim Burdwan, “for the last six months”. However, the petitioner’s Caste Certificate was issued as long back in the year 2011 and, as such, could not have fallen within the ambit of the enquiry at all.

7. Learned counsel places reliance on the relevant provisions of the concerned Rules and the Act of 1994,

that is, the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 to argue that the procedures as contemplated therein have no role for the National Commission at all.

8. Moreover, despite a previous attempt having of cancelling the petitioner's caste certificate having failed, the S.D.O. acted *de hors* the law in reversing its previous stand and cancelling the certificate of the petitioner solely on the ground of the purported recommendation by the National Commission, which does not have jurisdiction or authority to so recommend.

9. Despite service, none appears for the National Commission for Scheduled Castes, although the respondent nos. 9 and 10 and the State-respondents are represented through counsel. Affidavit-of-service filed in Court today be kept on record.

10. Learned counsel for the respondent nos. 9 and 10 argues that on facts, the petitioner palpably obtained a fake Scheduled Caste certificate and a person committing fraud on the authorities does not have a locus standi to have a further hearing on such count.

11. Learned counsel places reliance on the provisions of Article 338 of the Constitution of India, in particular Sub Article (5)(b) thereof, to argue that

the National Commission has sufficient authority and power to adjudicate individual cases of complaint as well. On such count, learned counsel also places reliance on the provisions of the Rules of Procedures of the National Commission for Scheduled Castes, published in the Gazette of India, Extra Ordinary dated June 15, 2009.

12. Certain peculiar features of the present case strikes at the very root of the matter.

13. The only authority which is capable of cancelling a caste certificate duly issued to a person is the authority as stipulated under the 1994 Act. Under Section 9 of the said Act, if the certificate issuing authority is satisfied that the certificate under the Act has been obtained by any person by furnishing any false information or by misrepresenting any fact or by suppressing any material information or by producing any document which is an act of forgery, it may cancel, impound or revoke such certificate in such manner as may be prescribed.

14. The corresponding Rules of 1995, in particular Rule 3 thereof, provides the detailed procedure for so cancelling, impounding or revoking a certificate. It is provided *inter alia* in the said Rules that whenever it appears to a certificate issuing authority on complaints by any person or *suo motu* that a person

in whose favour a Scheduled Caste or Scheduled Tribe Certificate has been issued does not belong to such Caste or Tribe, it shall hold a “preliminary enquiry” by itself or by the officers as stipulated therein and shall prima facie satisfy itself as to the truth or otherwise of the complaints as aforesaid, record the reasons for such satisfaction as to the truth or otherwise of the complaints and if necessary “start proceedings” for cancellation, impounding, etc., as the case may be. While doing so, the certificate issuing authority shall, as per sub Rule (2) of Rule 3, by written notice, ask the person holding the certificate to deposit the same in original in its office and when the certificate has been so deposited, a receipt in favour of the person depositing the certificate shall be issued. Thereafter, the authority has to issue a notice to the holder to show cause within fifteen days or within a period of shorter duration, as it thinks fit, as to why the certificate shall not be cancelled, impounded or revoked on the ground stated in the notice. A detailed modality of hearing is thus given thereunder, which has been palpably flouted in the present case.

15. The National Commission, on some unknown self-imposed authority, issued a recommendation by way of a directive on the S.D.O to cancel the certificate of the petitioner.

16. Let us now explore the provisions of Article 338 of the Constitution, which is the genesis of the power of the National Commission. The relevant provision, as rightly pointed out by learned counsel for the respondent nos. 9 and 10, is sub-Article (5) of the same. It says that it shall be the duty of the Commission, *inter alia*, to enquire into specific complaints in respect to the deprivation of rights and safeguards of the Scheduled Castes. A bare perusal of the said sub-Article discloses that the scope of operation and functioning of the National Commission is on a nationwide level and of a much general basis than individual complaints against individual persons.

17. For example, clause (a) of Article 338(5) envisages that the Commission may investigate and monitor all matters relating to safeguards provided for the Schedule Castes under the Constitution or under any law and to evaluate the working of such safeguards.

18. Clause (c) speaks about participation and advice on the planning process of the socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State.

19. Clause (d) speaks about presentation to the President annually and at other times as the

Commission thinks fit, reports upon the workings of those safeguards.

20. Clause (e) speaks about recommendations. The recommendations are restricted to the reports as dealt with earlier, and pertain to the measures that should be taken by the Union or any State for the effective implementation of the safeguards and other measures for protection, welfare and socio-economic development of the Scheduled Castes as a whole.

21. Considered in such setting, clause (b) has to be read in context and proper perspective. Clause (b) provides that the National Commission may enquire into specific complaints. However, the term ‘specific’ need not necessarily refer to specific individuals on allegations of such individuals having flouted the provisions of law but speak about specific complaints about general deprivation of rights and safeguards of the Scheduled Castes as a whole.

22. Hence, on a composite reading on the statute which governs the issuance of Scheduled Caste certificates in the State of West Bengal, that is, the 1994 Act, and Article 338 as a whole, there is no scope of confusing the wide powers and recommendatory jurisdiction of the National Commission with the limited powers of the State authorities in issuance and cancellation of caste

certificates, which merely enable a person to avail of the benefits available to the particular castes, which are, in turn, dealt with on a wider footing by the National Commission. T

23. The Rules of Procedure of the National Commission for the Scheduled Castes, cited by the respondent nos. 9 and 10, are virtually a replica of the provisions of Article 338 of the Constitution and do not exceed the contours of the Article. Rule 1 itself clearly delineates the duties of the Commission in terms of Article 338(5) of the Constitution, which have been replicated further.

24. Hence, on a composite reading of the provisions of Article 338 and the corresponding Rules, this court is of the opinion as the National Commission is not required, duty-bound or even empowered to usurp the powers of the local authorities regarding allegations of individual irregularities or illegalities in issuance and cancellation of the caste certificates of particular individuals.

25. As such, the minutes of hearing dated May 01, 2023 (Annexure P-7 at page 56 of the writ petition) was palpably *de hors* the authority and powers of the National Commission insofar as it related to the recommendation for cancellation of caste certificates of particular persons including the present petitioner.

In a peculiar manner not sanctioned by Article 338 of the Constitution or any provision of law including the 1994 Act, the Commission clearly stooped much below itself in hierarchy and observed that the petitioner and another person, as per 'documentary evidence', have obtained fake caste certificates for which the Commission strongly recommended the District Magistrate, Asansol, Paschim Bardhaman to cancel fake certificates issued to the petitioner and another. Not only stopping there, the Commission went on a step further by noting that in case the District Administration fails to implement the recommendation within the stipulated time, the Commission would be at liberty to exercise the powers conferred on it under Article 338 of the Constitution and file atrocities case against the concerned authority including Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The entire exercise was not only utterly without jurisdiction, but also tainted by contravention of cardinal principles of natural justice as the petitioner or the other accused person was not given any notice, hearing, or opportunity to defend themselves.

26. The Commission also recommended that remaining 17 alleged fake certificates would require a Caste Scrutiny Committee of 7 to 9 members of

District Level to be constituted, which favour, unfortunately, was not advanced to the present petitioner for reasons known only to the National Commission.

27. The S.D.O., who is the authorised authority under the 1994 Act and the 1995 Rules, surprisingly, paid obeisance to the unlawful recommendation made by the National Commission and solely on the ground of such purported recommendation observed that “therefore” it was canceling the caste certificate issued to the petitioner.

28. Such cancellation is not only unknown to law but palpably *de hors* the provisions of Section 9 of the 1994 Act as well as Rule 3 of the corresponding Rules of the State of West Bengal. Peculiarly, while doing so, no prior notice was even given to the petitioner for the petitioner to point out the palpable lack of jurisdiction and factual aspects to the respondent authorities. Such exercise is thoroughly deprecated by this Court. In future, it is expected that the National Commission shall be more cautious in arrogating powers to itself, which have not been conferred either under the Constitution, which is the high authority quoted by the Commission itself, or any statute for that matter.

29. In any event, having flouted the law, the respondents' action are required to be set aside and quashed.

30. Accordingly, W.P.A. No. 24330 of 2023 is allowed on contest, thereby setting aside the impugned order of the Sub Divisional Officer, District Paschim Bardhaman dated May 04, 2023 whereby the caste certificate of the petitioner was cancelled. The Scheduled Caste Certificate of the petitioner is hereby restored as valid.

31. Needless to say, the minutes of hearing of the National Commission for Scheduled Castes dated May 01, 2023 to the extent that the recommendations was made for cancellation of the petitioner's certificate and the observations made therein regarding the petitioner's caste certificate being fake are hereby expunged and quashed.

32. However, nothing in this order shall preclude the appropriate authorities under the 1994 Act to take appropriate steps in future, if so required, strictly adhering to the provisions of the relevant statutes, for the purpose of initiating any proceeding against the petitioner, if the authorities are otherwise so entitled in law.

33. There will be no order as to costs.

34. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)