

03 24.01.2024
Ct-08

MAT 159 of 2024
with
I.A No. CAN 1 of 2024

Anik Barua
Vs.
Union of India & Ors.

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Mr. Sakya Sen
Mr. Sunil Gupta
Mr. Shuvojeet Gupta
... For the Appellant

Mr. Siddhartha Lahiri
Mr. Pradyut Saha
... For the Respondent no. 1/
Union of India

Mr. Somnath Ganguli, Ld. AGP
Ms. Priyamvada Singh
... For the State Respondents

Mr. Biswaroop Bhattacharyya
Mr. Raju Mondal
... For the Respondent/
Writ Petitioner

1. We have heard the learned counsel
appearing for the parties.

2. The appellant is aggrieved by the order
dated 21st January, 2023 passed in a writ
petition in which it was alleged that out of
several candidates the present appellant
obtained document on the basis of producing
fake certificate. Learned Single Judge has
proceeded on the basis of the submission made
by Mr. Biswabrata Basu Mallick, learned AGP

representing the State, that on scrutiny of the documents, the State has found that 14 candidates, who had taken admission in different medical colleges are to be removed from the vacancies because they used fake certificates. It further appears that some documents were produced by Mr. Mallick before the learned Single Judge on the basis whereof learned Single Judge had arrived at a finding that the respondent no. 28 has produced a fake tribe certificate. However, the cancellation process was initiated subsequent to the impugned order. On 27th December, 2023 the Sub-Divisional Officer, Ranaghat, Nadia has passed an order by which the Schedule Tribe Certificate of Anik Barua, the present appellant, was cancelled by relying upon the school transfer certificate of the father of the appellant and a communication from the Manager, Easter Coalfield Limited, Mandarboni Colliery, Pandabeswar.

3. As rightly submitted by Mr. Sakya Sen, learned counsel representing the appellant, that in absence of any order merely on the basis of the submission made on behalf of the State respondents, the Schedule Tribe Certificate of the appellant could not have been held to be invalid the purported decision of SDO is also

illegal. Learned counsel representing the State has failed to demonstrate that the documents on which they relied at the time of hearing on 21st December, 2023 were in fact supplied or shared with the learned counsel for the appellant. Mr. Sen has produced before us the original transfer certificate of Biswajit Barua, the father of the appellant, issued by the Headmaster of Bibekananda Sikshayatan and the progress report of the father of the appellant for the year 1986 to demonstrate that the requisition by the SDO was sent to a wrong address and accordingly the finding arrived at by the SDO, Ranaghat, Nadia, was erroneous. The original transfer certificate along with the progress report produced in Court today show that the father of the appellant was a student of Bibekananda Sikshayatan, which unfortunately was not considered by the SDO, Ranaghat in deciding the issue.

4. We are also prima facie of the opinion that the SDO could not have disregarded the documents of colliery just because of giving prompt reply. In fact, these two issues have not been considered when the impugned order was passed.

5. The appellant has an arguable case on merit. The appellant cannot be condemned unheard.

6. Learned counsel representing the writ petitioner has submitted that the order passed by the SDO, Ranaghat is an appealable order under Schedule Castes and Scheduled Tribes (Identification)(Amendment Act) 2022. However, having regard to the fact that the learned Single Judge did not wait for the outcome of the enquiry and it prima facie shows that the document produced are genuine the appellant should be given an opportunity to prefer a statutory appeal. The appellant could have availed the statutory remedy as his fate was decided prior to the order passed by the SDO.

7. The appellant has also prayed for leave to prefer a statutory appeal. We grant such leave. The impugned order shall remain stayed for a period of three months or till the disposal of the statutory appeal and until the said authority decides the matter against the appellant it cannot be said that the certificate of the appellant is a fake certificate. However, this will not prevent the appellant to challenge any such adverse order in accordance with law.

8. In the event, the appellant prefers an appeal within 10 days from date. The District Magistrate, Nadia being the authority shall decide the said appeal within a period of eight weeks from the date of filing of the appeal after giving a reasonable opportunity of hearing to the parties and serve a copy of the final order to the appellant within a week thereafter.

9. All further proceedings against the appellant before the learned Single Judge shall remain stayed till the disposal of the matter by the District Magistrate, Nadia.

10. If any step has been taken by any authority pursuant to the impugned order the authority shall not proceed with such proceeding and any action taken pursuant thereto shall stand quashed.

11. In view of the aforesaid order, the appellant shall be allowed to resume classes subject to the final outcome of the writ petition.

12. Mr. Biswaroop Bhattacharyya, learned counsel representing the writ petitioner, submits that the authority concerned could be directed to accommodate the petitioner against the resultant vacancy caused due to the production of fake certificates by the remaining candidates before

the learned Single Judge. This prayer may be renewed before the learned Single Judge.

13. The scan copy of the original transfer certificate duly authenticated by A.C.O attached to this Court be kept with the record.

14. In view of the above, MAT 159 of 2024 stands disposed of.

15. In view of the disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2024 and the same is accordingly disposed of.

16. However, there shall be no order as to costs.

17. Since this appeal and connected application are disposed of without calling for any affidavit, the allegations made therein are deemed to have been denied.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar ,J.)

(Soumen Sen, J.)

