

30.01.2024
Court No. 13
Item No. 30
AP

WPA 2013 of 2024

**Mamoni Khilari @ Mamoni Bagal
Vs.
State of West Bengal and Ors.**

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
Ms. Gulsanwara Pervin
Mr. Aniruddha Singh
Mr. Arka Ranjan Bhattacharya

.... For the Petitioner.

Mr. Lalit Mohan Mahata
Mr. Ziaul Haque

.... For the State.

1. The State has produced a report issued by the S.D.O., Jhargram Sadar dated 24th January, 2024 along with annexures and the same is taken on record.
2. The report is comprehensive and a copy has been served to the writ petitioner. This Court does not feel the need to call for any affidavits and the writ petition itself is taken up for hearing.
3. The petitioner challenges an order dated 11th January, 2024 passed by the District Magistrate, Jhargram under the provisions of Section 9A of the West Bengal Scheduled Castes & Scheduled Tribes (Identification) (Amendment) Act, 2022. The District Magistrate was, in fact, hearing an appeal of the petitioner from the order dated 31st October, 2023 of the S.D.O., Jhargram, holding that the petitioner did not belong to

the MAHAR community and hence not of the Scheduled Caste.

4. Prior thereto the writ petitioner had challenged by way of WPA No. 27565 of 2023, a notice of the S.D.O., Jhargram dated 1st December, 2023 proposing to convene a meeting of the Kenddangri Gram Panchayat for removal of the writ petitioner as the Pradhan. By an order dated 8th December, 2023 a Coordinate Bench of this Court recorded that a Joint Commissioner for reservation was inquiring into the caste status of the writ petitioner along with 2500 other candidates across the State. It was directed that until the appeal of the writ petitioner against the order of the S.D.O. dated 31st October, 2023 is disposed of, no meeting to remove the writ petitioner as Pradhan should be conducted. The said notice issued by the S.D.O. dated 1st December, 2023 was set aside.

5. In terms of the decision of the coordinate Bench dated 8th December, 2023, the District Magistrate, Jhargram took up the appeal. This Court notices impropriety in the procedure followed in the appeal. The impropriety is with regard to the alleged absence of the writ petitioner on 8th January, 2024 at 11 am when the appeal was fixed for hearing.

6. It appears from the records that the writ petitioner on the same day had addressed a letter duly received by the office of the District Magistrate. The said letter firstly

indicated that she was present in the DM's office throughout the day and secondly asked for a report of the Joint Commissioner for scheduled caste and scheduled tribes, which was being considered by the District Magistrate in the appeal.

7. The hearing of the appeal was adjourned to the 11th January 2024. No documents were supplied to the petitioner. The appeal was rejected and disposed of by the District Magistrate, Jhargram on 11th January, 2024.

8. What is clearly evident as a violation of natural justice is that the District Magistrate relied upon the CRI filed investigation report of the Deputy Commissioner for reservation dated 19th December, 2023, which was not supplied to the writ petitioner. The writ petitioner, therefore, did not have an opportunity to deal with the said report.

9. The proceedings before the S.D.O., which culminated in the order dated 31st October, 2023, did not also refer to the report of the Deputy Commissioner of reservation dated 19th December, 2023. The following violations of natural justice are noted in the hearing of the appeal:-

(a) The documents based on which the first authority i.e. the S.D.O. decided the writ petitioner's caste status did not contain the report of the Deputy Commissioner dated 19th December,

2023. The petitioner could not, therefore, have any knowledge or access to the same.

(b) The writ petitioner had specifically asked the District Magistrate for the report of such Joint Commissioner/ Deputy Commissioner of the Backward Classes Welfare Department, which was never provided to her.

(c) The District Magistrate, Jhargram's order is based on such report of the Deputy Commissioner for Reservation & Ex-Officio Deputy Secretary to the Government of West Bengal, Backward Classes Welfare Department. The said document was not available before the first authority and not even furnished to the writ petitioner.

(d) It is now well settled proposition of administrative law that if an appellate authority has access to any evidence or documents which the first authority did not have, he ought to remand the matter back to the first authority for consideration afresh based on the new document. This rule may be subject to some dilution if the additional document supports the view of the first authority.

(d) Then again the writ petitioner is entitled to in law, to have access to the said document and go back to the first authority as otherwise she would

lose one forum guaranteed under the Statute for challenging an administrative order.

10. The writ petitioner even otherwise appears to have been deprived of an opportunity to deal with and/or be heard on the findings of the Deputy/Joint Commissioner of the Backward Classes Department of the State before the District Magistrate, Jhargram. She has also additionally lost a forum to ventilate such grievances. The writ petitioner has been dealt with a double whammy. The procedure adopted by the respondents in cancelling her SC certificate is therefore vitiated.

11. In view of the above, the orders passed by the District Magistrate, Jhargram dated 11th January, 2024 and the S.D.O. dated 31st October, 2023 shall stand quashed and set aside.

12. The petitioner has been furnished with a copy of the report of the Joint/Deputy Commissioner of Backward Classes of the State referred to hereinabove across the Bar. She shall also be furnished with a copy of all records and proceedings and documents before the SDO, within 7 days from date.

13. The S.D.O., Jhargram shall conduct a fresh hearing, after a period of 22 days from date. The writ petitioner shall be entitled to file a comprehensive representation and/or application and/or objection in the proceedings before the S.D.O., Jhargram. Upon receipt of

such representation the S.D.O., Jhargram shall notify the writ petitioner and all other parties of a date fixed for hearing.

14. The writ petitioner shall be heard by the S.D.O., Jhargram and the hearing of any other parties or fresh documents shall be conducted in the presence of the writ petitioner upon prior service to her of such documents. The S.D.O., Jhargram shall thereafter pass a reasoned order and communicate the same by hand to the writ petitioner. The writ petitioner shall thereafter be entitled to prefer an appeal in accordance with law before the District Magistrate, Jhargram.

15. It is once again clarified that if the District Magistrate, Jhargram finds any new evidence he shall furnish the same to the writ petitioner and remand the matter back to the S.D.O. for consideration.

16. In view of the above, the order of removal of the writ petitioner from the post of Pradhan of Kenddangri Gram Panchayat, shall also stand quashed and set aside.

17. It is made clear that this Court has not gone into the merits of the claims of the writ petitioner as regards the status as a scheduled caste person or the evidence produced by the State to the contrary. The authorities under the Statute shall take a decision independently in accordance with law.

18. With the aforesaid directions, the writ petition is disposed of.

19. There shall be no order as to costs.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)