

D/L.9 with 10.
April 4, 2024.

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In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA No. 22832 of 2023

Sushil Shikary and another
Vs.
The State of West Bengal and others

With

WPA No. 18246 of 2023

Bappa Dutta
Vs.
The State of West Bengal and others

Mr. Sayantan Adhya
Mr. Rameshwar Sinha
Ms. Debanjana Sen
... for the petitioners.

Mr. Gopal Chandra Das,
Ms. Tanushree Dasgupta
...for the KMC
in WPA 22832 of 2023.

Mrs. Susmita Saha Dutta
...for the respondent no. 8
in WPA 22832 of 2023.

Mr. Somnath Ganguli,
Mr. Rajaram Banerjee
...for the State
in WPA 22832 of 2023.

Mr. Amal Kumar Sen,
Mr. Jaladhi Das
...for the State
in WPA 18246 of 2023.

Mr. Alok Kumar Ghosh,
Mr. Swapan Kumar Debnath
...for the KMC
in WPA 18246 of 2023.

Mr. Dhiraj Trivedi, Ld. DSG
Ms. Sumita Sarkar
... for the Union of India

1. At the outset, learned counsel for the respondent no. 8 in WPA 22832 of 2023 submits that the name of the respondent no. 8 be deleted from the array of parties.
2. However, it will be premature at this stage, even before the writ petitioners move the matter, to pass such order without scrutinizing the necessity of impleadment of the said respondent no. 8 as a party.
3. As such, the writ petitions are taken up for hearing.
4. The petitioners claim to have acted as Enumerators in the 1991 Census. However, when the petitioners sought benefits under the Exempted Category by asking for Exempted Category Cards, those were not issued by the respondent authorities, which prompted the petitioners to prefer a challenge.
5. When the matter came up before a coordinate Bench in WPA 19145 of 2022, by an order dated April 21, 2023, the learned Single Judge remanded the matter to the authorities on the ground that the question of violation of Article 14 of the Constitution of India was to be looked into.
6. The backdrop of the case is that initially, a different coordinate Bench in a different matter had directed the Exempted Category Cards to be issued on the basis of the certificate issued

by one Ganesh Guha Thakurtha, purportedly a Chairman of Borough-XII of Kolkata Municipal Corporation for the relevant period in 1991.

7. The said order was affirmed by a Division Bench of this Court. Ultimately, a challenge was taken out before the Supreme Court where the Supreme Court set aside the judgment of the Division Bench as well as the learned Single Judge and observed that the Chairman of Borough-XII of the Kolkata Municipal Corporation did not have the authority under the law to issue such a certificate.
8. Thereafter, pursuant to the direction dated April 21, 2023 passed in WPA 19145 of 2022, an adjudication was made by the respondent authorities whereby the petitioners' claim was refused. Insofar as the question of violation of Article 14 is concerned, it is argued that the same was not properly dealt with by the Directorate of Employment, West Bengal in the impugned order.
9. It is pointed out that on the basis of experience certificate issued by the self-same Borough Chairman, several other equally placed persons as the petitioners were issued Exempted Category Cards. However, the said

ground has not been clearly dealt with in the impugned order.

10. The petitioners claim parity with the other persons who were issued Exempted Category Cards on the basis of certificates issued by the self-same Borough Chairman.

11. That apart, learned counsel for the petitioners argues that in both the matters, the age of the petitioners was taken to be a relevant consideration. It was observed in the impugned order that the age of the petitioners were around 11-12 years when allegedly they worked as Enumerators in the Census.

12. By placing reliance on the relevant provisions of the Census Act and the Rules framed thereunder, it is argued that no age bar is stipulated anywhere in the law.

13. Learned counsel appearing for the respondent authorities places reliance on the judgment of the coordinate Bench where it was clearly observed by the learned Single Judge while directing the matter to be re-heard on the ground of contravention of Article 14, that the Supreme Court's order is binding in the context of the certificates issued by the Borough Chairman Ganesh Guha Thakurtha not being issued in accordance with law.

14. It is also argued that the very nature of the job of an Enumerator, which the petitioners claim

to have done, requires some amount of maturity. As per the calculation from the documents furnished by the petitioners themselves, the petitioners were aged around 11-12 years at the relevant point of time, when the enumeration was allegedly done. It is argued that it is inconceivable that minors of such tender years could have done the job.

15. A perusal of the impugned order shows that the same was passed within the purview of the remand order passed by the coordinate Bench.

16. The limited question which was to be considered was whether the petitioners are entitled to get Exemption Category Cards on the basis of parity, since otherwise there would be a contravention of Article 14 of the Constitution of India.

17. The matter has been dealt with in a reasonable manner, however, in the impugned order. The Director of Employment, in the impugned order, has observed that there are no records of 1991 Census found at Borough-XII. That apart, the Chairman of Borough-XII was not empowered to issue experience certificate to the Enumerators and Supervisors by the Directorate of Census Operation, West Bengal.

18. Such observation is supported not only by the decision of the Supreme Court which has been cited by the respondents and was recorded in the order of the coordinate Bench, but also by virtue of the Notification annexed to the affidavit-in-opposition filed by the respondents in the writ petition.

19. Moreover, the respondents have contended that at the relevant point of time the said Ganesh Guha Thakurtha was not even the Chairman of Borough-XII and could not have issued the certificates.

20. Even without going into the question as to the above-named person was actually the Chairman of Borough-XII at the relevant point of time, it is now settled by the Supreme Court that the Chairman of the Borough-XII did not have the authority to issue such a certificate. As such, it is beyond legal doubt that such a certificate could not confer a right on the petitioners to get an Exempted Category registration card.

21. The question which remains is whether there is a contravention of Article 14 of the Constitution in grant of similar cards to other similarly placed persons on the basis of certificates issued by the self-same person but to refuse the same to the present petitioners.

22. The concept of equality as enshrined in Article 14 of the Constitution of India, it is well settled, cannot be seen from a negative perspective and a person cannot claim negative equality in the sense that two wrongs do not make a right.

23. Even if Exemption Category Cards were issued to some persons *de hors* the law, on the basis of certificates issued by a person not having the authority to do so, such illegal act on the part of the authorities do not confer any right, either Constitutional or legal, on other similarly placed persons to claim an equality *de hors* and contrary to the law.

24. That apart, the principle of *fait accompli* has been appropriately taken into consideration in the impugned order.

25. Since cards already issued erroneously and illegally come within the purview of *fait accompli*, having been already issued, although illegally, the same cannot furnish a justification for subsequent issuance of cards on similarly illegal footing.

26. Thus, the limited scope of the review in terms of the order of the previous coordinate Bench has been answered quite correctly in the impugned order, inasmuch as the petitioners do not have a legal right in the first place

based on an illegality, to claim equality under Article 14, on an illegal footing.

27. Insofar as the age factor is concerned, even if the same was to be decided in favour of the petitioners, it would be superfluous and redundant, since the claim of the petitioners can be negated on the ground enumerated above. However, since such a point has been raised, although the Census Act does not put in any such rider, practical reality and logic defy the possibility of minors of 11-12 years to do the job of an Enumerator which involves application of mind and some amount of maturity.

28. Thus, although there is no legal bar in the Census Act, the realm of practical reality cannot be altogether overlooked while passing order based on equity. Equitable considerations demand that the practical realities of life have to be taken as a backdrop of interpretation of statutes.

29. Seen from such perspective also, sufficient doubt is cast as to whether the certificates produced by the petitioners were genuine and sufficient for issuance of Exempted Category Cards.

30. Hence, I do not find any illegality in the decision-making process or the law applied by the respondent authorities in passing the

impugned orders whereby the petitioners' applications for getting Exempted Category Cards on the basis of certificates purportedly issued by the Chairman of Borough-XII were refused.

31. However, nothing in this order shall preclude the petitioners from making fresh applications upon production of valid documents/ certificates which might entitle the petitioners to such Exemption Category Cards, if the petitioners so wish. That apart, the petitioners shall also be duty-bound to satisfy the authorities in that case as to the age conundrum, which was one of the grounds of refusal in the first place.

32. On the basis of the above observations, WPA 22832 of 2023 and WPA 18246 of 2023, are dismissed on contest, without, however, any order as to costs.

33. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Sabyasachi Bhattacharyya, J.)