

7th May, 2024
(D/L No.27)
(SKB)

W.P.A. 27837 of 2017

Mithun Kumar Verma
Versus
The State of West Bengal and others

Mr. Sudeep Sanyal,
Mr. Sukanta Das,
Mrs. Tutun Das,
Mr. Chandrachur Lahiri
... for the petitioner.

Mr. Pabitra Charan Bhattacharjee,
Mr. Sovan Nayak
... for the respondent no.2.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra,
Mr. Bipin Ghosh
... for the State.

1. The writ petitioner, the respondent no.1/State and its Sub-Divisional Officer, Kharagpur (hereinafter referred to as the 'SDO, Kharagpur' in short) i.e. respondent nos.4 and the respondent no.2 are represented by their learned advocates.
2. By filing the instant writ petition, the writ petitioner has prayed for an appropriate order directing the respondent no.4/S.D.O., Kharagpur to return to the petitioner the Scheduled Tribe Certificate being No.STC-62/96 of 1996 in the name of the writ petitioner.
3. In course of his submission, Mr. Sanyal, learned advocate for the writ petitioner, at the very outset,

submits before this court that the present writ petitioner belongs to 'GOND' community, which is a scheduled tribe as per Serial No.12 of the list of Scheduled Tribes published by the Government of West Bengal. It is further submitted on behalf of the petitioner that at the material time, the petitioner applied for his employment with a co-operative society and at that time, the employer in the process of verification of the scheduled tribe certificate as issued in the name of the petitioner made some communication with the Director, Cultural Research Institute. Drawing attention to page no.28 of the writ petition, it is submitted by Mr. Sanyal that by a communication dated 17.5.2017, the then Director, Cultural Research Institute, wrote a letter to the Managing Director, West Bengal Tribal Development Cooperative Corporation Limited stating, *inter alia*, that on field level investigation, it has been found by him that the present petitioner does not belong to scheduled tribes community. It is further submitted by Mr. Sanyal that on receipt of such letter dated 17.5.2017 and as forwarded by the aforesaid Managing Director, the then S.D.O. under cover of his letter dated 21.06.2017 wrote a letter to the present petitioner to submit his original Scheduled Tribe certificate since the Sub-Divisional Officer, Kharagpur/respondent no.4 has been asked to

confiscate the said certificate issued by the Managing Director, West Bengal Tribal Development Cooperative Corporation Limited.

4. Drawing attention to page nos.32, 33 and 34 of the instant writ petition, it is further submitted that pursuant to such letter dated 21.06.2017, the writ petitioner duly deposited and/or surrendered his aforesaid original certificate with the respondent no.4 and since then it has been kept under the custody of the respondent no.4 for the reason best known to the said SDO, Kharagpur i.e. the respondent no.4 herein.
5. In course of his submission, he further draws attention to this court to page nos.14, 18 and 19 of the writ petition. It is submitted by Mr. Sanyal that from the aforesaid three pages, it would reveal that the paternal grandfather of the present writ petitioner belongs to 'GOND' community and during his lifetime, he changed his surname to 'Varma' and since then, the father of the petitioner as well as the present petitioner started using the said surname 'Varma' and the present petitioner as well as his predecessor-in-interest, however, remained in 'GOND' community which is a scheduled tribe community as per the list published by the Government of West Bengal.
6. It is further submitted by Mr. Sanyal that from the materials as placed before this court, it would reveal

that the aforementioned authorities during field verification were probably persuaded with the surname of the present petitioner and, thus, apprehended that the present petitioner does not belong to 'GOND' community, which is a scheduled tribe community and, thus, an illegal and wrongful order has been passed for confiscation of the scheduled caste certificate of the writ petitioner.

7. In course of his submission, Mr. Sanyal further draws attention to this court to Rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules 1995 (hereinafter referred to as the 'said Rules' in short). It is submitted that Rule 3 of the said Rules deals with the procedures for cancellation, impounding or revocation of certificate by the appropriate authority i.e. the Certificate Issuing Authority. It is submitted that even after deposit of the said scheduled tribe certificate, the respondent no.4 has not initiated any proceeding in accordance with Rule 3 of the said Rules and, therefore, the respondent no.4 has got no authority to keep the scheduled caste certificate of the present petitioner in his custody for an indefinite period without assigning any reason.
8. In course of his submission, Mr. Sanyal also draws attention to this court to the affidavit-in-opposition as filed on behalf of the respondent no.4. It is

submitted that from page nos.10 and 11 of the opposition, it would reveal that it is the clear admission of the respondent no.4 that the present writ petitioner belongs to 'GOND' community, which is appearing at Sl. No.12 of the said scheduled tribes list. Mr. Sanyal thus submits that it is a fit case for passing an appropriate order by directing the respondent no.4 to return the Scheduled Tribe Certificate to the writ petitioner forthwith.

9. In course of his submission, Mr. Bapin Ghosh, learned advocate appearing on behalf of the respondent nos.1 to 4 submits before this court that the aforementioned confiscation of the said certificate was done pursuant to the recommendation of the recommending authority and no proceeding could be initiated under Rule 3 of the said Rules because of the pendency of the instant writ petition.
10. Learned advocate appearing on behalf of the respondent no.2 i.e. West Bengal Tribal Development Cooperative Corporation Limited, in course of his submissions, placed his reliance upon the report as submitted before this court. It is submitted by him that in course of field level investigation by the Director, Cultural Research Institute, it has been found that the present petitioner is not a scheduled tribe.

11. On perusal of the entire materials as placed before this court and after hearing the learned advocates for the contending parties, it appears to this court that for effective adjudication of the instant lis, a look to the provision of Rule 3 of the said Rules is very much necessary. The said Rule 3 is quoted hereinbelow in verbatim:

“3. Procedure for cancellation, impounding or revocation of certificate.

- (1) 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, the certificate issuing authority shall hold a preliminary enquiry by itself or by any officer above the rank of Inspector of the Scheduled Castes and Tribes Welfare Department, as may be authorised by it in this behalf, and shall prima facie satisfy itself as to the truth or otherwise of the complaints as aforesaid, record the reasons of its satisfaction as to the truth or otherwise of the complaints and, if necessary, start proceedings for cancellations, impounding or revocation of the certificate, as the case may be.
- (2) Where any proceedings have been started under sub-rule (1), the certificate issuing authority shall, by written notice, ask the person holding the certificate to deposit the same, in original, in its office and, when a certificate has been so deposited, a receipt in favour of the person depositing the certificate shall be issued.
- (3) The certificate issuing authority shall, then, issue a notice to the holder of the certificate to show cause within fifteen days or within a period of shorter duration as it may think fit, as to why the certificate issued in his favour shall not be cancelled, impounded or revoked on the grounds stated in the notice.
- (4) (a) On the expiry of the period referred to in sub-rule (3), the certificate issuing authority shall fix a date of hearing of the case by notice to the complainant and the holder of the certificate, asking them to bring oral witness or documentary evidence against, or, as the case may be, in support of, the caste or the tribe identity of the holder of the certificate.

(b) A copy of the notice issued to the complainant, if any, and the holder of the certificate, shall be affixed to the notice board of the office of the certificate issuing authority for the information of the public.

(c) The service of any notice under these rules shall be governed by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).”

12. On perusal of the aforesaid provision, it, thus, reveals to this court that the said Rule 3 clearly postulates for holding preliminary enquiry by the Certificate Issuing Authority in order to come to a logical conclusion as to whether a person holding such certificate belongs to scheduled castes or scheduled tribe in the following manner:

- i) Receipt of complaints or by *suo motu*.
- ii) Holding of preliminary enquiry.
- iii) *Prima facie* satisfaction about the truth of the complaint.
- iv) Initiation of proceeding for cancellation, impounding or revocation of the certificate.

13. The aforesaid rule further provides that the Certificate Issuing Authority has every right to require the person to deposit the original certificate with him and, thereafter, the said authority shall issue a show-cause notice within a specified period and, thereafter, shall fix a date of hearing where the said authority shall give adequate opportunity to the complainant as well as to the holder of the certificate to adduce oral and documentary evidence over which the said authority can come to a logical conclusion

with regard to the complaint as to whether the holder of the certificate belongs to the said caste or tribe.

14. From the materials as placed before this court, it reveals that, admittedly, the respondent no.4 received a complaint from an appropriate authority i.e. the Managing Director, West Bengal Tribal Cooperative Corporation Limited that on field verification, it has been found that the writ petitioner does not belong to Scheduled Tribe community. Materials have been placed before this court and pursuant to the direction of the respondent no.4, the writ petitioner has deposited his original ST certificate with the said respondent no.4.
15. From the affidavit-in-opposition, it reveals further that for some reason or other, the respondent no.4 made no venture to start a proceeding under the aforesaid Rules to come to a logical conclusion as to whether the writ petitioner belongs to ST community or not.
16. On the contrary, it is found from the affidavit-in-opposition that it is the candid admission of the respondent no.4 that the present writ petitioner belongs to 'GOND' community which is admittedly a ST community which is appearing at Sl. No.12 of the said list of scheduled tribes. Materials have been placed on behalf of the writ petitioner to substantiate

at least, *prima facie*, that his father as well as his grandfather also belong to ST community.

17. In view of the facts as discussed supra and in view of the candid admission of the respondent no.4 in his affidavit-in-opposition that the present writ petitioner belongs to ST community, I cannot find any justifiable reason on the part of the respondent no.4 to hold the ST certificate of the present writ petitioner for indefinite period.
18. In view of the discussions made hereinabove, the instant writ petition succeeds. This court, thus, directs the respondent no.4 to return the scheduled tribe certificate bearing No.STC-62/96 of 1996 standing in the name of the writ petitioner i.e. Mithun Kumar Varma to the writ petitioner positively within a fortnight from the date of communication of this order.
19. With the abovementioned observation, the instant writ petition is disposed of.
20. All the parties to the instant lis including the SDO, Kharagpur/respondent no.4 are directed to act on the server copy of this order.
21. Urgent photostat certified copy of this order, if applied for, be given to the parties after compliance of all usual formalities.

(Partha Sarathi Sen, J.)