

AD-10
Ct No.09
22.02.2024
TN

WPA No. 27651 of 2023

Sri Mrinmay Karmakar and another
Vs.
The State of West Bengal and others

Mr. Swarup Pal,
Mr. Chittapriya Ghosh,
Mr. Samir Kumar Adhikari

.... for the petitioners

Mr. Biswabrata Basu Mallick, Ld. AGP,
Ms. Parna Roy Choudhury

.... for the State

- 1.** The petitioners challenge the cancellation of their Scheduled Caste certificates by the concerned Sub-Divisional Officer (SDO) under the provisions of Section 10 of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994 (hereinafter referred to as “the 1994 Act”), read with the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Rules, 1995 (hereinafter referred to as “the 1995 Rules”).
- 2.** Learned counsel argues that in the impugned order, the SDO relied on an enquiry report as well as the fact that apparently the ex-Panchayat Pradhan as well as the local MLA had disclosed and declared that all of them had kept blank signed certificates in their offices which the people of the area used to collect. It is submitted

that none of the said declarations of the State public functionaries were handed over to the petitioners to enable them to controvert the same at the hearing.

- 3.** Insofar as the enquiry report is concerned, it is argued that the said enquiry report does not show in any place that either of the petitioners or their families were contacted. As such, the enquiry report itself is vitiated, being not relevant for the present purpose.
- 4.** Insofar as non-disclosure of the petitioners' OBC certificates is concerned, it is argued that as per the form given in Annexure-I and the declaration thereunder under the 1995 Rules, there is no column for disclosing whether the applicant has an OBC certificate or otherwise.
- 5.** Insofar as the relevant information is concerned, the petitioners disclosed all the information within the contemplation of the said format and, as such, the cancellation of the Scheduled Caste certificates of the petitioners on the ground of suppression of material facts is unlawful.
- 6.** Learned counsel places reliance on the language of Section 10 of the 1994 Act and submits that the petitioners do not come within the purview of any of the said clauses.

- 7.** Learned counsel for the petitioners next contends that under Clause 7D of the 1995 Rules, the certificate issued by the Pradhan of a Gram Panchayat shall be deemed to be authentic unless challenged or proved to be otherwise. In the present case, the petitioners had produced valid certificates from the Gram Panchayat Pradhan on the basis of which the Scheduled Caste certificates were issued to the petitioners.
- 8.** Lastly, it is argued that the respondent-authorities sought to rely on documents of 1950 but prior to 1950, the Karmakar community was treated to be Lohars, both of which were traditionally blacksmiths/ironsmiths. As such, the impugned cancellation, it is argued, is required to be set aside.
- 9.** Learned counsel for the State places reliance on the affidavit-in-opposition, to which has been annexed separate authenticated lists from the official website of the State Government which shows that Karmakars fall within the Other Backward Classes category whereas Lohars fall under the purview of Scheduled Castes.
- 10.** Thus, it is argued that the petitioners, who are Karmakars by community, cannot claim to be Schedule Caste people.

- 11.** Learned counsel for the State seeks to explain that nothing hinges merely on the title, which can even be changed by way of an affidavit. However, the community from which the concerned person hails is the relevant factor to decide whether he or she is a Scheduled Caste or an OBC person.
- 12.** Insofar as Section 10 of the 1994 Act is concerned, learned counsel for the State urges that all the clauses under the said section are satisfied in the present case, since most germane materials were suppressed by the petitioners at the time of obtaining the SC certificates. For example, the fact that the petitioners were holding OBC certificates simultaneously with SC certificates was not disclosed. That apart, the petitioners represented themselves to be from the Lohar community, which is also a falsification of facts.
- 13.** A careful consideration of the impugned order shows that certain declarations were relied on by the SDO while passing the impugned order, along with other considerations. The petitioners might have a point in arguing that the declarations given by the functionaries including the MLA and the ex-Panchayat Pradhan were not handed over to the petitioners for them to be able to controvert

those. Since the certificate of the Pradhan of the Gram Panchayat is a relevant consideration under Rule 7D (9) of the 1995 Rules, there may be a valid point raised by the petitioners on such count.

- 14.** However, non-furnishing of the said declarations to the petitioners does not vitiate the impugned order of cancellation, since the SDO did not rely solely on the said declarations but also proceeded on the enquiry report and otherwise decided the matter on merits.
- 15.** At the end of the day, two facts cannot be denied. First, the petitioners do not belong to the Lohar community but hail from the Karmakar community. Secondly, that the petitioners were admittedly holding OBC certificates when the SC certificates were obtained by them.
- 16.** Although it has been sought to be insinuated that automatically the OBC certificate is made defunct in the concerned website once the SC certificate is issued, I do not find anything from the materials on record to substantiate such point. That apart, whatever happens in the website, holding two different certificates under different categories simultaneously cannot be said to be *bona fide* from any perspective whatsoever, since the authorities or persons before whom the said

certificates would be used may not be expected to verify each time from the concerned website whether the concerned person has also a different certificate with him.

- 17.** Thus, the State has a point in arguing that the provisions of Section 10 of the 1994 Act are satisfied in the present case, in view of the petitioners having suppressed that they were carrying OBC certificates simultaneously with Schedule Caste certificates which falls within Clause (a) of Section 10 which deals with knowingly furnishing false information, Clause (b) which pertains to knowingly misrepresenting any fact, as well as Clause (c) which pertains to knowingly suppressing any material information.
- 18.** That apart, the fact also remains that the petitioners come from the Karmakar community and not the Lohar community. Reliance has been placed by learned counsel for the petitioners on several pieces of literature and other collateral evidence to seek to impress upon the court that both Lohars and Karmakars traditionally belong to the blacksmith community and, as such, should be equated for the present purpose.
- 19.** However, such stand is negated by the fact that the State of West Bengal has clear, demarcated and separate lists of communities falling under

the OBC category as well as SC category. Whereas the Lohar community comes within the purview of SC category, Karmakars fall under the OBC category.

- 20.** In view of such distinction in the State of West Bengal, the issuance of the SC certificates to the petitioners in the first place was based on incorrect representation given by the petitioners. Thus, irrespective of there being certain technical errors in the impugned order insofar as the copies of the declarations given by the Panchayat were not given to the petitioners, the same does not vitiate the order since it can be supported on the several grounds as elucidated above.
- 21.** Lastly, it must be mentioned that the certificates issued by the Pradhan of a Gram Panchayat is not sacrosanct even on a proper reading of Rule 7D (9) of the 1995 Rules. As per the said sub-rule, such certificate is deemed to be authentic unless challenged or proved to be otherwise, which has precisely happened in the present case.
- 22.** The certificate issued by the Gram Panchayat Pradhan has a merely presumptive value, subject to being rebutted, which has been done in the present case on the grounds as indicated above.

- 23.** In such view of the matter, there is no scope of interference in the present writ petition.
- 24.** Accordingly, WPA No. 27651 of 2023 is dismissed on contest without any order as to costs, thereby affirming the cancellation of the Scheduled Caste Certificates of the petitioners.
- 25.** However, it is made clear that nothing in this order shall prevent the petitioners from using their OBC certificates which they are otherwise entitled to use. Since the State has taken a stand that those were taken in custody by the State authorities in view of the ongoing enquiry at the relevant juncture, the respondents shall ensure that the OBC certificates of the petitioners are now returned to the petitioners within a week from date.
- 26.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)