

(2014) 08 TP CK 0018

Tripura High Court

Case No: W.P. (C) No. 428 of 2005

Kamal Das Vs The State of Tripura

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 19, 2014

Acts Referred:

- Constitution of India, 1950 - Article 136, 14, 21, 226, 311(2)
- General Clauses Act, 1897 - Section 21

Hon'ble Judges: Deepak Gupta, C.J; S. Talapatra, J

Bench: Division Bench

Advocate: B. Das, Senior Advocate and D. Chakraborty, Advocate for the Appellant; N. Majumder, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

S. Talapatra, J.

The petitioner while working as the Extension Officer (Engineering), received a notice dated 26.06.2002, Annexure-"B" to the writ petition, whereby he was asked to show cause as to why the Scheduled Caste Certificate under No. 1413/F.XII-2/SDO/SDR/TW/82, dated 29.07.1982, issued by the Sub-Divisional Officer, Sadar, West Tripura in his favour should not be cancelled. The petitioner had obtained the said status certificate on claiming that he belongs to the "Jaliakaibarta" community, which is recognised as the Scheduled Caste, in terms of the Constitution (Scheduled Caste) Order, 1950 for the State of Tripura. On receipt of the said show cause notice dated 26.06.2002, the petitioner filed his reply on 05.07.2002, contending that on proper enquiry in respect of his status, the said status certificate was issued by the Sub-Divisional Officer. The petitioner has denied to have obtained the status certificate by misrepresentation of fact as alleged in the show cause notice dated 26.06.2002. By the Memorandum dated 13.05.2003, Annexure-"D" to

the writ petition, the Scheduled Caste Certificate issued in favour of the petitioner, dated 29.07.1982 was cancelled in exercise of the powers conferred under Rule 6 of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992, on observing as follows:

"WHEREAS an enquiry was conducted to ascertain the actual caste status of said Sri Kamal Kr. Das. On enquiry it reveals that said Sri Das belongs to Latabaidya (Baraijibi) Community which is not recognised as Sch. Caste.

And

WHEREAS the Sch. Caste Welfare Sub-Committee, Bishalgarh R.D. Block offered views in regard to the Caste status of said Sri Kamal Kr. Das through their resolution dated 8.8.2002 as communicated by the B.D.O., Bishalgarh R.D. Block vide No. F.12(9)/BDO/BLG/SCW/2002-03/13432-33 dated 13.8.2002 that said Sri Kamal Kr. Das, S/O Sri Nagarbashi Das does not belong to Sch. Caste, but he belongs to Barujibi Community which is not recognised as Sch. Caste in the State of Tripura.

And

WHEREAS said Sri Kamal Kr. Das given opportunity to represent his case by appearing himself with all relevant records/evidences to prove his Sch. Caste status vide notice No. 926-28/F.2/SDO/SDR/TW/92 dated 26.6.2002. Said Sri Das appeared and the undersigned heard him, said Sri Das could not adduce/produce any documentary evidence except a written statement in support of his belonging to Sch. Caste status.

NOW, after thoroughly considering the facts and circumstances stated in the foregoing paras, the undersigned is satisfied that said Sri Kamal Kr. Das, S/O Sri Nagarbashi Das does not belong to Sch. Caste Community and the Sch. Caste certificate bearing No. 1413/F.XII-2/SDO/SDR/TW/82 dated 29.7.82 issued in favour of said Sri Das is hereby cancelled in exercise of power conferred upon the undersigned under Rule-6 of the Tripura S.C's and S.T's (Reservation of vacancies in services and posts) Rules-1992."

2. By the impugned memorandum dated 13.05.2003, the petitioner was asked to submit the original Scheduled Caste Certificate within seven days from the date of issuance of the Memorandum. Even though the status certificate of the petitioner was cancelled by the Memorandum dated 13.05.2003, the petitioner did not challenge the said order till he was terminated from the service, in the aftermath of a disciplinary proceeding. By the Memorandum dated 28.01.2004, Annexure-F to the writ petition, an inquiry had been sought to be initiated under Rule 14 of the CCS(CCA) Rules, 1965 on the following articles of charge:

"Article-I

Sri Kamal Kr. Das, a S.C. candidate was offered for the post of Extension Officer (Engineering) being selected by the Tripura Public Service Commission, Agartala as S.C. candidate alongwith others. Accordingly he has submitted attestation Form and other certificates/testimonies including S.C. certificate. Accordingly Sri Das was appointed to the post of Extension Officer (Engineering) vide Department's Memo No. F.2(102)-Agri(Estt)/73-74 dated 17.11.1987 against a S.C. reserved post.

Subsequently the S.C. Welfare requested the Department vide their letter No. 10777/F.2-134/SCW/GL/98 dated 10.6.1993 regarding that he is not Scheduled Caste and matter was referred to the Sub-Divisional Magistrate, Sadar and reported that Sri Das belong to Latia Baidya Community which is not belong to Sch. Caste and the Sch. Caste certificate issued by the Sub-Divisional Officer, Sadar has been cancelled vide their Notification No. 3838-60/F.2-44/SDM/SDR/TW/93 dated 13.5.2003.

Thus it is a case of wilful concealment of Caste status for getting the benefit of Reserved quota for his personal interest and thus deprived a genuine S.C. candidate from service as per Reservation Rules.

As per provision of Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (First Amendment) Rules, 1992 (published in the year, 2000) amendment of Rules-4(3):

(a) Notwithstanding anything contained in any other service rules, if verification reveals that a person holding a post or service has preferred a false claim to be a member of the Scheduled Caste or Scheduled Tribe, his disciplinary authority shall draw up a disciplinary proceeding against him irrespective of whether he has been appointed or promoted to any reserved post or not and impose on him any of the following penalties according to the gravity of the offence:-

(i) Termination from service;

(ii) Reversion to the original post to which he was initially appointed;

(iii) Reversion to the next lower post or grade;

(iv) Withholding of not less than two annual increments with cumulative effect;

He is liable for punishment on the offence of submitting false Sch. Caste certificate.

Article-II

Sri Das has faced the Tripura Public Service Commission by submitting false documents and got selection as S.C. candidate and accordingly he entered into the Govt. service which is gross misconduct as per C.C.S. (C.C.A.) Rules, 1965 and also violating the provision of Rule-14. He has also submitted false Oath of allegation before the Authority at the time of acceptance of offer of appointment which is not only misconduct but also he has lost his integrity to the Department and liable for punishment under the Rule-4(3) as referred in Article-I."

3. The petitioner, by filing the written statement of defence dated 09.02.2004, Annexure-"G" to the writ petition, has denied the charge levelled against him and submitted that he did not commit any misconduct as alleged.
4. It appears from the records that the Disciplinary Authority was not satisfied with the reply filed by the petitioner and, as consequence thereof, the case was referred for inquiry to the Special Commissioner of Departmental Inquiries, Govt. of Tripura, Agartala. Thereafter, by filing a representation dated 12.05.2004, Annexure-"H" to the writ petition, before the Special Commissioner of Departmental Inquiries, the petitioner had asked for some additional documents. Subsequently, the Special Commissioner of Departmental Inquiries submitted his findings on 27.11.2004, Annexure-"I" to the writ petition, holding that the charges drawn up against the petitioner have been proved. As sequel, by the order dated 01.04.2005, Annexure-"J" to the writ petition, the petitioner has been terminated from the service in terms of the provisions of Rule 4(3) of the Tripura Scheduled Casts & Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992, as it was then. The petitioner being aggrieved by the said order dated 01.04.2005, preferred an appeal on 12.04.2005 to the respondent No. 2, the Secretary to the Govt. of Tripura, Department of Agriculture. Alongwith the rejoinder, the copy of the appellate order dated 23.08.2006, Annexure-"L" to the rejoinder has been filed. By the said order dated 23.08.2006, the appeal filed by the petitioner was dismissed. But, the petitioner did not challenge the said order by way of amendment. It may be pointed out that the order dated 23.08.2006 was passed after the writ petition was filed.
5. Mr. D. Chakraborty, learned counsel appearing for the petitioner has emphatically submitted that even though in the memorandum dated 13.05.2003, Annexure-"D" to the writ petition, it has been observed that a field-level enquiry was conducted to ascertain the actual caste status of the petitioner and such enquiry report was considered by the Sub-Divisional Magistrate (formerly, the Sub-Divisional Officer) alongwith the other records, such as, the resolution of the Scheduled Caste Welfare Sub-Committee, Bishalgarh, dated 08.08.2002. Neither the petitioner was asked to participate in the said enquiry nor was he supplied with the copy of the enquiry report as conducted by the Sub-Divisional Magistrate. Even the petitioner was not supplied with the copy of resolution dated 08.08.2002 adopted by the Scheduled Caste Welfare Sub-Committee at any point of time. As such, the petitioner was denied the reasonable opportunity to have his say on the records which were used for drawing an adverse inference against him, and thus the principles of natural justice were given a go-bye. The entire enquiry has been conducted behind the back of the petitioner and surreptitiously. Having denied the petitioner's access to those records, the enquiry has turned out to be vitiated. Based on such enquiry, since the impugned memorandum dated 13.05.2003 has been passed, the said order cannot be sustained in law.

6. Mr. Chakraborty, learned counsel appearing for the petitioner has further submitted that during the Departmental Enquiry the petitioner was denied some additional documents as requisitioned for his defence by the application dated 12.05.2004, Annexure-"H" to the writ petition, on the plea that those records were damaged by flood. He has further submitted that the findings of the Special Commissioner for Departmental Inquires dated 27.11.2004 has not been supplied to him at any point of time. Thus the petitioner has been denied the opportunity to have his say on such findings. Such action is contrary to the provisions of Rule 15 of the CCS (CCA) Rules, 1965, which are as under:

"The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."

Moreover, from the order of termination it would be apparent that the Disciplinary Authority had never discussed the report of the Inquiring Authority nor made any reference whether the petitioner had been given any opportunity to have his say in respect of the findings of the Special Commissioner of the Departmental Inquiries. Thus, the entire proceeding has turned vitiated. Mr. Chakraborty, learned counsel has contended that the appellate authority has failed to appreciate the grounds of objection as taken in the memorandum of appeal. As such, the appellate authority has as well failed to discharge their duties as provided by Rule 27 of the CCS(CCA) Rules, 1965.

7. Mr. Chakraborty, learned counsel appearing for the petitioner has further contended that the Sub-Divisional Magistrate or the Sub-Divisional Officer does not have any authority to conduct an inquiry as regards the status certificate in view of the decisions of the apex court in [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others](#), and [Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another](#), In those cases, the apex court has categorically held that all the State Governments shall constitute a Scrutiny Committee for that purpose. For reference, the relevant part from Kumari Madhuri Patil is extracted hereunder:

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or

spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned Directorate.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the

proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other

authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

[Emphasis supplied]

The similar guidelines have been reiterated in *Laveti Giri*.

8. To further buttress his contentions, Mr. Chakraborty, learned counsel appearing for the petitioner, has referred a decision of the Gauhati High Court in [Prabir Kumar Das and Others Vs. State of Tripura and Others](#), where it has been held that the procedure as prescribed in *Laveti Giri* has to be observed inescapably. For reference, the following passages are reproduced from the said decision:

"But before *Milind* (supra) and despite *Basavalingappa* (supra), the competent authorities under the State Government issued large number of certificates after making elaborate inquiry as to whether such persons claiming them belong to a particular caste or tribe bearing a name though not mentioned in the Presidential Order, actually belong to a caste or tribe mentioned in that Order. Unfortunately, many of such certificates were not based on correct informations about status of the certificate holders, which called for a suitable mechanism to be devised in order to undertake a cleansing operation to render invalid all those certificates, which do not reflect true and correct status of the certificate holders. In [Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another](#), the Supreme Court has laid down certain guidelines to streamline the procedure for the issuance of the social status certificate through scrutiny and their approval, which have been adopted by the State Government and incorporated in the notification dated 12th December, 2003, issued by the Govt. of Tripura in the General Administration (AR) Department. It would appear from the same that a State level committee consisting a Commissioner/Secretary to the Government of Tripura, SC, OBC and Minority Welfare Department as Chairman with the Director and the Deputy Director of that department as the Member Secretary and Member has been constituted for cancellation of SC certificates issued by the competent authority."

In the above decision, it has been held further that:

"The Director has a duty, on receipt of the report from the Vigilance Officer, to issue show cause notice supplying a copy of the report of the Vigilance Officer to the candidate by registered post. The parents or guardians of the candidate are also to be notified and a day to day proceeding not exceeding two months should be conducted for the purpose of deciding the fate of such certificate."

9. Mr. Chakraborty, learned counsel appearing for the petitioner has also referred a decision of this High Court in *Gobinda Deb Barma Vs. State of Tripura & Ors.*, reported in (2014) 1 TLR 585, where it has been held that:

"Indisputably, respondent No. 5, the Additional SDM, Sadar, issued the impugned Memo dated 4.7.2003 cancelling the Caste Certificate of the petitioner which was issued by the respondent No. 5 on 17.7.1991. The Scrutiny Committee constituted by the State Government is only authorized to cancel the Caste Certificate once issued in favour of a person and the Memo dated 4.7.2003 (Annexure I to the writ petition) issued by the respondent No. 5 prima facie makes it clear that it was issued by an authority, not entrusted to cancel the same. Reasonable opportunity was supposed to be given to the petitioner as per rules and that was also not given while cancelling the Certificate. The impugned Memo dated 4.7.2003 (Annexure I to the writ petition) is, therefore, quashed and set aside."

[Emphasis supplied]

10. For the petitioner, it has been further urged that none other than the Secretary to the Govt. of Tripura in the Department of Welfare of SCs, OBCs and Minorities or the Secretary to the Govt. of Tripura in the Department for Welfare of Scheduled Tribes, has the authority to cancel the Scheduled Caste Certificate or Scheduled Tribe Certificate. In support of such contention, he has referred to the provisions of Section 6 of the Tripura Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992. For reference, the relevant provision of the Tripura Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts) (First Amendment) Rules, 2000, which came into force from 18.10.2000, is reproduced hereunder:

"(1) An authority who issued a Scheduled Caste certificate or a Scheduled Tribe certificate to anyone or the Government may, at any subsequent stage cancel the Scheduled Caste certificate or Scheduled Tribe certificate by a notification in the official gazette, if after an enquiry and after giving the party concerned an opportunity of representing his case in writing it is found that the person to whom the Scheduled Caste certificate or the Scheduled Tribe certificate was issued does not actually belong to the Scheduled Caste or the Scheduled Tribe, as the case may be.

Provided that in cancelling a Scheduled Caste certificate or a Scheduled Tribe certificate the issuing authority or the State Government may obtain the views of the concerned Block level Municipal level/Scheduled Castes Welfare Sub-Committee or Scheduled Tribes Welfare Sub-Committee if any, constituted by the Government, as to whether the Certificate holder belongs to Scheduled Caste or Scheduled Tribe and the views so given by the Scheduled Castes Welfare or Scheduled Tribes Welfare Sub-Committee shall form a part of the order cancelling the certificate in question.

(2) The powers of the State Government under sub-rule (1) in respect of cancellation of a Scheduled Caste or Scheduled Tribe certificate shall be exercised by the Secretary to the Government of Tripura in the Department for Welfare of SCs, OBCs and Minorities or by the Secretary to the Government of Tripura in the Department for welfare of Scheduled Tribes, as the case may be."

[Emphasis added]

11. Mr. N. Majumder, learned counsel appearing for the respondents has submitted that the petitioner did not challenge the impugned order dated 13.05.2003 immediately. The petitioner has challenged the said order only when he has chosen to challenge the order dated 01.04.2005, terminating his services by the Director of Agriculture, Tripura. Mr. Majumder has further submitted that after due inquiry and affording the petitioner all reasonable opportunities inclusive of giving him the show cause notice dated 26.06.2002, the decision as contained in the Memorandum dated 13.05.2003 has been taken and, as such, the petitioner cannot have any legitimate grievance whatsoever. That apart, Mr. Majumder, learned counsel has submitted that in terms of Rule 4(3)(a) of the Tripura Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts), as it was then, a disciplinary proceeding was initiated against the petitioner. For purpose of reference, Rule 4(3)(a) of the said Rules is reproduced hereunder:

"Notwithstanding anything contained in any other service rules, if verification reveals that a person holding a post or service has preferred a false claim to be a member of the Scheduled Caste or Scheduled Tribe, his disciplinary authority shall draw up a disciplinary proceeding against him irrespective of whether he has been appointed or promoted to any reserved post or not and impose on him any of the following penalties according to the gravity of the offence:

(i) Termination from service;

(ii) Reversion to the original post to which he was initially appointed;

(iii) Reversion to the next lower post or grade;

(iv) Withholding of not less than two annual increments with cumulative effect."

12. Mr. Majumder, learned counsel has continued to submit that after culmination of the departmental proceeding as carried out in strict conformity to the provisions

of Rule 14 of the CCS (CCA) Rules, 1965, the service of the petitioner was terminated. Even the appeal filed by him has been dismissed.

13. Mr. Majumder, learned counsel appearing for the respondents has submitted that during inquiry it has surfaced that all other family members of the petitioner belong to "Lata Baidya" community, not to "Jalia Kaibarta" community. Thus the petitioner had misrepresented the fact at the time of obtaining the status certificate. He has further contended that the petitioner was given adequate opportunity, but he could not establish that he does belong to "Jailia Kaibarta" community. By taking aid from the order dated 05.07.2002, the inquiry report dated 08.09.1989, the verification report by the Block Development Officer, Bishalgarh R.D. Block, dated 13.04.1998, the inquiry report by the Extension Officer, Bishalgarh Block dated 28.07.1993, the inquiry report by the Enquiring Officer attached to the office of the Sub-Divisional Officer, the inquiry report by the Extension Officer, Sadar, dated 26.07.2003, the resolution of the villagers of Vill. Shibnagar under K.K. Nagar Gram Panchayat and the copy of the Register of residence (Annexures R/7, R/8, R/9, R/11, R/12, R/13, R/13-A and R/13-B respectively to the counter-affidavit filed by the respondents), Mr. Majumder, learned counsel appearing for the respondents has submitted that all those documents and the inquiry reports have established beyond any doubt that the petitioner does not belong to the Scheduled Caste Community. Mr. Majumder, learned counsel has further submitted that all reasonable opportunities were provided to the petitioner during the Departmental Enquiry, but he could not make any intelligible reply as to why the copies of the findings of the Inquiring Authority has not been supplied to the petitioner.

14. On the face of the rival contentions as raised by the learned counsel for the parties and the records so placed before us, the following questions fall for our consideration:

(i) Whether the petitioner has been given reasonable opportunity to set up his plea before issuance of the impugned memorandum dated 13.05.2003?

(ii) Whether the Sub-Divisional Magistrate, formerly the Sub-Divisional Officer, is competent to conduct an enquiry and cancel the status certificate, which was issued by him, on subsequent verification?

(iii) Whether for not supplying the additional documents as requisitioned, the Departmental Enquiry is vitiated? and

(iv) Whether by not supplying the findings of the Inquiring Authority, the petitioner has suffered any detriment?

(i) Whether the petitioner has been given reasonable opportunity to set up his plea before issuance of the impugned memorandum dated 13.05.2003?

15. We have perused the records filed alongwith the counter-affidavit and found that before cancelling the Scheduled Caste Certificate of the petitioner, the

Sub-Divisional Magistrate conducted the inquiry through various agencies and they collected series of materials which were used for returning the impugned findings, but those were not made available to the petitioner, and based on those findings, his status certificate was cancelled. The petitioner was allowed to appear once before the Sub-Divisional Magistrate, as reflected in the order dated 05.07.2002, Annexure-R/7 to the counter-affidavit. He was also allowed to submit the documents. But, except the reply to the show cause notice, the petitioner did not file any document. From the records it appears that the petitioner was not supplied with the copies of the multiple inquiry reports, the resolution taken by the villagers and copy of the register of residence etc. All those reports/documents have been used against the petitioner and, as such, we are constrained to hold that the petitioner was denied to have his say on the contents of those documents or materials and, hence the petitioner has been denied the reasonable opportunity, an inviolable component of principles of natural justice.

As consequence thereof, the impugned memorandum dated 13.05.2003, cancelling the Scheduled Caste Certificate dated 29.07.1982 in favour of the petitioner is hereby set aside and quashed.

(ii) Whether the Sub-Divisional Magistrate, formerly the Sub-Divisional Officer is competent to conduct an enquiry and cancel the status certificate, which was issued by him, on subsequent verification?

16. As regards the competence of the Sub-Divisional Magistrate to cancel the Scheduled Caste Certificate of the petitioner on subsequent verification, we have come across the provisions of Rule 6 of the Tripura Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992 as stated above. For the said provision, there cannot be any amount of doubt that the statute has provided the authority to the issuing authority i.e. the Sub-Divisional Magistrate (formerly, the Sub-Divisional Officer), who had admittedly issued the Scheduled Caste Certificate dated 29.07.1982 in favour of the petitioner, to cancel the said certificate. Such provisions of law is also consistent with the provisions of Section 21 of the General Clauses Act, 1897, which provides as under:

"Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

17. Mr. Chakraborty, learned counsel appearing for the petitioner, has raised another objection as ancillary to this issue that such cancellation can only be done by the Secretary to the Govt. of Tripura in the Department of Welfare of SCs, OBCs and Minorities or by the Secretary to the Govt. of Tripura in the Department for Welfare of Scheduled Tribes, as the case may be.

The contention as raised by Mr. Chakraborty, learned counsel, does not persuade us at all, inasmuch as, a simple reading of the provisions of Rule 6 of the Tripura Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992 would show that the legislature has unequivocally provided that either the authority who issued the status certificate to anyone or the Government may, on subsequent verification cancel the Scheduled Caste Certificate or Scheduled Tribe Certificate by a notification in the official gazette, if after an enquiry and after giving the party concerned an opportunity of representing his case in writing it is found that the person to whom the Scheduled Caste Certificate or the Scheduled Tribe Certificate was issued does not actually belong to the Scheduled Caste or the Scheduled Tribe, as the case may be. By this provision, two authorities have been created for purpose of cancellation of the status certificate. One is the issuing authority and, the other is the Government, in addition to the issuing authority. Even the Government may cancel the status certificate on subsequent verification and, in that event the power of the Government as provided under sub-rule (1) of Rule 6 of the Tripura Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1992 can only be exercised by the Secretary to the Govt. of Tripura in the Department of Welfare of SCs, OBCs and Minorities or by the Secretary to the Govt. of Tripura in the Department for Welfare of Scheduled Tribes, as the case may be. No space has been left for ambiguity.

18. Another question as raised by Mr. Chakraborty, learned counsel appearing for the petitioner is that except the State Level Scrutiny Committee, no other authority can conduct the investigation/enquiry on the basis of any complaint in view of Kumari Madhuri Patil and Laveti Giri.

After elucidated by those apex court decisions, we are of the view that the apex court did not hold that where there is statutory provisions for conducting any inquiry, those shall stand substituted by the procedure/guidelines as laid down in Kumari Madhuri Patil and Laveti Giri. Rather, for purpose of prompt disposal of the inquiry, the apex court has paved a parallel and efficacious mechanism. That apart, the decision or the order of the apex court cannot be and should not be construed in a manner inconsistent with the provisions of the Act. In [Ravindra Singh Vs. Phool Singh and Another,](#), the apex court has enunciated the law as under:

"Secondly, the said order cannot be understood as laying down a proposition contrary to law. All that it says is that the petitioner therein, i.e., respondent Phool Singh "will be entitled to choice in respect of plots forming the subject-matter of the sale deed". The said words are not capable of being construed as authorising Phool Singh to surrender the transferred land even if he is in a position to comply with the requirement of surrender of surplus land without touching the transferred land. To repeat, the order of this court cannot and should not be construed in a manner inconsistent with the provisions of the Act. This court could not have contemplated passing an order contrary to the provisions of the Act or to authorise the

respondent Phool Singh to surrender surplus land contrary to the provisions of the Act. We are, therefore, of the opinion that the said order of this court is not capable of nor can it be construed as overriding or superseding the provisions of the Act. The choice referred to in the order of this court is the choice referred to in Section 12A(d) and not independent of it".

19. It has been observed by us that by the subsequent amendment carried out by the Tripura Scheduled Castes & Scheduled Tribes (Reservation of Vacancies in Services and Posts) (2nd Amendment) Rules, 2007, the following provisions in the form of the second proviso to Rule 6 of the Tripura Scheduled Castes & Scheduled Tribes Reservation Rules, 1992 has been added:

"Provided further that the Scrutiny Committee shall also be competent to cancel a community certificate issued by a competent authority. For arriving at a decision whether the community certificate in question shall be cancelled or not, the Scrutiny Committee shall follow the procedure prescribed in Rule 7A hereinafter along with reports/records obtained from the competent authority"

Rule 7A of the Tripura Scheduled Castes & Scheduled Tribes Reservation Rules, 1992 has provided the Constitution, Powers and Functions of the Scrutiny Committee elaborately in consonance with Kumari Madhuri Patil and Laveti Giri. Thus the enquiry by the State Level Scrutiny Committee is co-terminus to the inquiry by the issuing authority. In this regard it is to be pointed out that by the said 2nd Amendment Rules, 2007 no power has been retained with the State Government for purpose of cancellation of the status certificate on subsequent verification. Having held so, we are of the considered opinion that the decision rendered in Gobinda Deb Barma Vs. State of Tripura & Ors., reported in (2014) 1 TLR 585 that the Scrutiny Committee constituted by the State Government is only authorized to cancel the Caste Certificate once issued in favour of a person, is not the correct enunciation of law.

(iii) Whether for not supplying the additional documents as requisitioned, the Departmental Enquiry is vitiated?

20. The petitioner has not placed the relevant materials on record so far his grievance in respect of non-furnishing of the additional documents is concerned. The primary burden lies with the delinquent officer to demonstrate that the documents so requisitioned is relevant. Hence, he is to furnish outlines of the content. Unless the relevance is accepted by the Inquiring Authority, the delinquent officer does not have any indefeasible right to requisition the additional documents beyond what is catalogued with the memorandum of charge. Had the Inquiring Authority determined the relevance of the additional documents and those were not supplied to the petitioner, the petitioner could well have raised an objection as to the fairness of the proceeding. We have not come across any averment to that extent, far the less about the documents. As the petitioner has been apprised that

those documents have been destroyed by flood, no one can expect their retrieval or production. In the circumstances, we are unable to accept that for not supplying the additional documents the Departmental Proceeding has been vitiated.

(iv) Whether by not supplying the findings of the Inquiring Authority, the petitioner has suffered any detriment?

21. In [Union of India and others Vs. Mohd. Ramzan Khan](#), the questions that squarely fell for consideration before the apex court was whether it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the Inquiry Officer's report along with the notice to make representation against the penalty in the context of the 42nd amendment of the Constitution or whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. In reply to those questions, the apex court held that whenever the Inquiry Officer is other than the disciplinary authority and the report of the Inquiry Officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground.

22. Ramzan Khan has been re-stated by the numerous decisions of the apex court including the (1994) 1 MLJ 12 (SC) In B. Karunakar, it has been observed that:

"It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offend Arts. 14 and 21. It is well settled law that principle of natural justice are integral part of Art. 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with purifying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Govt./management that the report is not evidence adduced during such enquiry envisaged under proviso to Art. 311(2) is also devoid of substance. It is settled law that Evidence Act has no application to the enquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with Indian Evidence Act, though the essential principle of fair play envisaged in the Evidence Act are applicable. What was meant by "evidence, in the proviso to Art. 311(2) is the totality of the material

collected during the enquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed, by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both."

[Emphasis supplied]

23. Now, it is well-known fact that Rule 15 of the CCS(CCA) Rules, 1965 has been amended and re-structured following the letter and spirit of Ramzan Khan by providing that it is the Disciplinary Authority who shall forward or cause to be forwarded the copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant. The element of detriment therefore has been obliterated by the statutory provisions as reproduced. Such principle has got approval in B. Karunakar where it has been stated without equivocality that when reliance is sought to be placed by the Disciplinary Authority on the report of the Inquiry Officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both. Hence, non-supply of the inquiry report has denied the petitioner the safeguard as provided by Rule 15(2) of the CCS(CCA) Rules, 1965. It appears that the impugned order dated 01.04.2005, Annexure-"J" to the writ petition, had been passed without supplying the copy of the inquiry report and also without affording him the opportunity of making representation in terms of Rule 15(2) of the CCS(CCA) Rules, 1965. As such, the impugned order dated 01.04.2005 is liable to be interfered with and, accordingly, it is interfered with and set aside. As consequence thereof, the impugned Memorandum dated 13.05.2003, Annexure-"D" to the writ petition and the appellate order dated 23.08.2006, Annexure-"L" to the affidavit-in-rejoinder filed by the petitioner, are set aside and quashed.

24. As it has been held that reasonable opportunity was not afforded to the petitioner while passing the impugned order dated 05.07.2002, Annexure-R/7 to the counter-affidavit, the Sub-Divisional Magistrate, Sadar, West Tripura, shall re-commence the proceeding for verification of the status certificate of the petitioner, being No. 1413/F.XII-2/SDO/SDR/TW/82, dated 29.07.1982, Annexure-"A" to the writ petition, after supplying the copies of the documents that he would propose to rely on for passing the final order as well as by affording the petitioner

opportunity to lay evidence in support of his claim that he does belong to "Jaliakaibarta" community, recognised as the Scheduled Caste in the State of Tripura. The Sub-Divisional Magistrate, Sadar, West Tripura, shall complete such proceeding within a period of 4(four) months from the date of supplying a copy of this order by the petitioner, without fail. The respondent No. 4 is made responsible for issuing necessary direction for recommencing and completing the verification procedure by the Sub-Divisional Magistrate, Sadar, West Tripura, within the stipulated time. For this purpose, the petitioner shall also supply an additional copy to the respondent No. 4, the Director for Welfare of Scheduled Caste & OBCs, Govt. of Tripura, Agartala.

25. Even though we have quashed the impugned order of termination, but in our considered opinion it would not be proper to give direction for reinstatement of the petitioner before completion of the verification procedure/inquiry in respect of his status. Whether the petitioner shall be reinstated or not, would be subject to the result of the verification procedure/inquiry as to the status of the petitioner. If after the verification/inquiry it is found that the petitioner does belong to the "Jaliakaibarta" community, which is recognised as the Scheduled Caste in the State of Tripura, the petitioner shall be reinstated w.e.f. 01.04.2005 and, he shall be entitled to all pecuniary and service benefits. But, if it is found after verification procedure/inquiry that the petitioner does not belong to the "Jaliakaibarta" community or any other community recognised as the Scheduled Caste in the State of Tripura, it shall be communicated to the appointing authority of the petitioner forthwith. Having received such communication, if any, the appointing authority shall terminate the petitioner without any further notice, in terms of the provisions of Rule 7A(9) of the Tripura Scheduled Castes & Scheduled Tribes Reservation Rules, 1992. To dispel any confusion, we would like to make it clear that the provisions of Rule 7A(9) of the of the Tripura Scheduled Castes & Scheduled Tribes Reservation Rules, 1992 shall equally be applicable in respect of an enquiry conducted by the authority who has issued the Scheduled Caste or the Scheduled Tribe Certificate to anyone after affording reasonable opportunity in the manner as provided in Tripura Scheduled Castes & Scheduled Tribes Reservation Rules, 1992. No formal Disciplinary Proceeding shall be required for taking action when it would be found that the status certificate, based on which the appointment has been made, is false or improperly issued.

26. With this observation and direction, this writ petition stands allowed to the extent as indicated above. There shall be no order as to costs in the circumstances of the case.