

(1994) 06 GAU CK 0017

Gauhati High Court (Imphal Bench)**Case No:** Civil Rule No. 218 of 1994

Salam Usha Sinha

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: June 6, 1994**Citation:** (1994) 2 GLR 337**Hon'ble Judges:** H.K. Sema, J**Bench:** Single Bench**Advocate:** M.T. Nandakumar Singh, for the Appellant; Government Advocate, for the Respondent**Final Decision:** Allowed

Judgement

H.K. Sema, J.

Petitioner is permanent resident of Khurkhul village in the State of Manipur. Khurkhul village is a recognised village where the members of Scheduled Caste "Lois" are resided. Petitioner was born at Khurkhul village on 2.7.57. She married to one Shri Ngangbam Teban Singh of Khurkhul village on 13.6.86 according to the custom of "Lois" after obtaining the approval of the elders of "Lois" community.

2. The petitioner's husband Shri Ngangbam Teban Singh is a member of Scheduled Caste "Lois". A Certificate from Pradhan, Khurkhul Gram Panchayat to the effect that the Petitioner married to Shri Ngangbam Teban Singh of Scheduled Caste "Lois" according to the custom of "Lois" after due observation of all formalities and after obtaining the approval of "Lois" community was issued. (Annexure-2)

3. Petitioner applied to the District Magistrate Imphal for issuance of certificate that the Petitioner belongs to Scheduled Caste "Lois" and that the Petitioner had family, ordinarily resides in the village Khurkhul, District Imphal. The District Magistrate after holding necessary enquiry and verification by one Shri Kh. Leirijao, Parliamentary Secretary (Sports) and also local M.L.A., issued a Scheduled Caste certificate that the Petitioner belongs to "Lois" community of Scheduled Caste by a

certificate dated 4.7.87 (Annexure-3). The said certificate came to be cancelled by subsequent order dated 7.11.87 passed by the learned District Magistrate. (Annexure-5)

4. The impugned order dated 7th November, 1987 runs as under:

No. DC (I)/1/253/Con/86. Whereas a caste certificate in the favour of Salam Usha Sinha w/o Ngangbam Teban Singh of Khurkhul of Imphal District was issued on 4.7.87 as she claimed to belong to the Lois Community on the identification and verification by the concerned Circle M. L.A.

Whereas on further verification it was revealed that she did not belong to the said Lois Community.

I, District Magistrate, hereby cancel the caste certificate issued in her favour on 4.7.87. However, Smt. Salam Usha Sinha will be given the opportunity to prove her claim of belonging to Lois Community (SC).

(Emphasis Supplied)

Given under my hand and seal this 7th day of November, 1987."

5. Against the impugned order aforesaid, Petitioner has filed several representations seeking justice without any result. Hence the present petition.

6. I have heard Mr. T. Nandakumar, learned Counsel for the Petitioner as well as Mr. K.I. Singh, learned Senior Government Advocate for the respondents.

7. In this writ petition, the impugned order quoted above is challenged amongst others, on several grounds:

(1) for that, the District Magistrate, Imphal passed the impugned order dated 7.11.87 (Annexure-5) in violation of the principle of natural justice.

(2) for that, the District Magistrate Imphal passed the impugned order dated 7.11.87 without giving any opportunity of being heard to the petitioner.

(3) for that, the District Magistrate, Imphal passed the impugned order dated 7.11.87 arbitrarily and whimsically.

8. Respondents have filed counter. In para 3 clause (iii) of the counter, it is averred that; "As per the Government of India instructions/decisions that no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of Scheduled Caste or Scheduled Tribe merely because he or she married a person belonging to a Scheduled Caste or Scheduled Tribe." According to the Respondent, therefore, Petitioner cannot be deemed to belong to Schedule (sic). The Government of India's instructions issued vide its letter under Ministry of Home Affairs (No. 35/1/72-RU/SCT. V) dated 2.5.75 is quoted in paragraph 9(5) of the counter to say that, no person who was not Scheduled Caste or Scheduled Tribe by

birth will be deemed to be a member of Scheduled Caste or Scheduled Tribe merely because he or she married a person belonging to Scheduled Caste or Scheduled Tribe. Be that as it may, this Court is not called upon to decide this issue.

9. The main question that requires for consideration in this writ petition is that, whether the impugned order dated 7.11.87 passed by the learned District Magistrate, Imphal is violative of the principle of natural justice. The Respondents in their counter denied violation of the principle of natural justice. The following reasons have been taken by the Respondents in para 9 of the counter. (I) There is no question of violation of principle of natural justice when the certificate illegally issued in violation of the principles/guidelines/instructions has been cancelled so that it may not cause a wrong procedence. It may also prevent illegal demands in future of many others in similar situation, The impugned order dated 7.11.1987 has also allowed opportunity to prove her claim by way of post decisional hearing. But at the moment, it says on further verification it was revealed that she did not belong to the said LOIS community. (Emphasis Supplied).

10. The requirement of opportunity of being heard by the rule of natural justice is a pre-decisional opportunity and not a post decisional opportunity. Any order which is likely to be detrimental to the interest of the Petitioner must be passed after a reasonable opportunity of hearing, so that the Petitioner had an opportunity to explain its case, defend himself and satisfy himself that he has been heard before he is condemned. In this view, giving post decisional opportunity would negate the principle of the rule of natural justice and defeat the purpose for which it is made. It would be an act of putting the cart before the horse.

11. In view of my findings on the point of the principle of natural justice, it may not be necessary for roe to go into the other arguments advanced by the counsel and rulings cited by counsel of both sides.

12. In the result, the impugned order dated 7.11.87 passed by the learned District Magistrate being violative of the principle of natural justice is hereby quashed and set aside. Considering the facts and circumstances of the case, it is open to the Respondents to pass any order as deem fit and proper after affording a reasonable opportunity of being heard, if so advised.

With the aforesaid direction, this petition is allowed. No order as to costs.