

(2007) 10 CAL CK 0049

Calcutta High Court

Case No: W.P.S.T. No. 15 of 2004

Sk. Khalilur Rahaman
and Others

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Oct. 12, 2007

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Banking Regulation Act, 1949 - Section 45
- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 14, 16, 226, 227

Citation: (2007) 4 CHN 983 : 113 CWN 462

Hon'ble Judges: Bhaskar Bhattacharya, Acting C.J.; Kishore Kumar Prasad, J

Bench: Division Bench

Advocate: Kashi Kanta Moitra, Alok Kumar Ghosh and Srikanta Moitra, for the Appellant; Biswadeb Roy Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

This mandamus-appeal is at the instance of a writ petitioner and is directed against the order dated 6th December, 2004 passed by a learned Single Judge of this Court thereby rejecting a writ application filed by the appellant by which he challenged the order dated 28th October, 2004 passed by the Sub-Divisional Officer and the Caste-Certificate-Issuing-Authority, Balurghat, Dakshin Dinajpur, in Cancellation Proceeding No. 17 of 2003 by which the Scheduled Tribe certificate granted earlier to the appellant was recalled.

2. There is no dispute that the present appellant obtained a Scheduled Tribe certificate issued by the appropriate authority being the respondent No. 4 herein on 23rd August,

2002 and on the basis of such certificate, he was qualified in the West Bengal School Service Commission Examination, Northern Region and was selected for the post of Assistant Teacher under the Scheduled Tribe category.

3. Subsequently, on the basis of a complaint lodged before the respondent No. 4 a show-cause notice was issued to the appellant why the certificate granted to him should not be cancelled. It appears that the appellant along with some others challenged the procedure adopted by the respondent No. 4 in the cancellation proceeding by filing a writ application and the said writ-application was disposed of by a learned Single Judge of this Court by directing the respondent No. 4 to pass a reasoned order.

4. Subsequently, by order dated 22nd January, 2004 the respondent No. 4 cancelled the certificate earlier granted to the appellant and challenging such order, the appellant, in the past, filed a writ application being W.P. No. 3075 (W) of 2004 and by order dated 24th September, 2004, a learned Single Judge of this Court set aside the said order and directed the respondent No. 4 to dispose of the said cancellation proceeding afresh after giving opportunity of hearing to the appellant.

5. Pursuant to the order given by this Court in the previous writ application, the appellant appeared before the respondent No. 4 and by order dated 28th October, 2004, the respondent No. 4 again cancelled the Scheduled Tribe certificate earlier granted to the appellant.

6. Being dissatisfied, the appellant filed a fresh writ application before a learned Single Judge but this time the learned Single Judge refused to interfere with the order passed by the respondent No. 4 and consequently, dismissed the writ application.

7. Being dissatisfied, the appellant has come up with the present mandamus appeal.

8. After hearing the learned Counsel for the parties and after going through the order passed by the respondent No. 4 which was impugned in the writ application out of which the present appeal arises, we find that the concerned respondent while cancelling the certificate had mainly relied upon the following facts:

(a) Except the grandfather (father's uncle) of the appellant, no one of his family possessed the caste certificate and that one of his uncle, namely Sri Birendranath Mahata, although is a teacher in a Junior High School, he even did not possess such certificate.

(b) The appellant could not answer satisfactorily why he did not receive any grant during his education period when according to him he belonged to the Scheduled Tribe community.

(c) According to the appellant, his grandfather (father's uncle) received grant from the college in the year 1974 and that the appellant lived with his said grandfather, but he also

could not satisfy why his uncle although a teacher, did not obtain caste certificate when his grandfather possessed the same.

(d) Although the appellant is a resident of a Panchayat area, he obtained the Scheduled Tribe certificate from a municipal area by furnishing false information and by forging the ration card of Dwipendra Nath Mahata.

(e) Even though in his so-called father's uncle's certificate, he was described as one of Bedia community which is a Scheduled Tribe, the authenticity of the certificate is doubtful as Bedia community was enlisted as a Scheduled Tribe in the year 1976 and before that, such community was enlisted as Scheduled Caste. Dwipendra Nath Mahata, therefore, could not obtain a lawful certificate of Scheduled Tribe in the year 1974 and as such, the certificate itself was a fake and fabricated one.

9. It appears from the documents produced by the learned Advocate for the State-respondent that certain old deeds were produced before the concerned authority showing that Dwipendra Nath Mahata is a member of Bedia community. There is no dispute that Bedia community is a Scheduled Tribe from 1976 and prior to that such community was enlisted as Scheduled Caste. Before us also, a fresh document was filed which is the registered sale-deed showing that Dwipendra Nath Mahata was really the father's uncle of the appellant. The deed of 1951, already on record, shows that the father of Dwipendra Nath Mahata has been described as one of Bedia community.

10. On consideration of the entire materials-on-record we find that the respondent No. 4 was influenced by the fact that the ration card of Dwipendra Nath Mahata was a forged one and further, there was no explanation given by the appellant why none of the members of his family possessed such certificate and why the petitioner himself did not avail of any financial grant during his period of education from the Government although such grant was available to a Scheduled Tribe student.

11. We are of the view that merely because other members of the family did not avail of the benefit of the Scheduled Tribe certificate, such fact, by itself, cannot be a ground of rejecting the claim of the appellant if he really belongs to such community as the Constitution of India has conferred upon him the right to get some benefits if he belongs to the Scheduled Tribe.

12. We further find that the respondent No. 4 recalled the certificate also on the ground that the appellant forged the ration card that was submitted in support of the claim that Dwipendra Nath Mahata was his father's uncle.

13. It may be that a person belonging to the Scheduled Tribe for the purpose of strengthening his case used a forged document and if any such forged or fabricated document is used, the respondent No. 4 is entitled to take penal action against him and he should face prosecution as mentioned in the concerned rules itself; but if the applicant is really a person belonging to Bedia community which is a Scheduled Tribe, simply

because he used forged and fabricated documents, such fact cannot be a ground of recalling the certificate unless the authority comes to the conclusion that he failed to prove that he really belonged to such community.

14. We further find that in the previous writ application, this Court directed the respondent No. 4 to give opportunity of fresh hearing but the respondent No. 4 solely relied upon the documents which were earlier produced by the appellant. As some new relevant documents are produced before us, we are of the view that the respondent No. 4 should give fresh opportunity of hearing to the appellant for the purpose of proving that he is a member of Bedia community. Only because a person has two places of residence, one in a municipal area and the other in a Panchayat area, that fact cannot be a ground of rejection of his claim.

15. Similarly, the certificate granted to Dwipendra Nath Mahata cannot be labelled as a fake or fabricated one simply because it was granted in the year 1974 whereas the Bedia community was enlisted as a Scheduled Tribe in the year 1976. If the certificate is not found to be a forged one but was granted by the competent authority, it was a mistake on the part of the concerned officer to certify a member of Bedia community in the year 1974 as a Scheduled Tribe and for that reason, the certificate cannot be ignored when on adjudication the certificate-holder was found to be a member of Bedia community. The fact that the petitioner during his student-carrier did not take any benefit as a member of Scheduled Tribe, is no ground for refusal of the certificate if he proves that he is really a member of the Scheduled Tribe.

16. We, therefore, direct the respondent No. 4 to give a fresh opportunity of hearing and the appellant will be free to adduce further evidence including the deeds produced in this appeal before the respondent No. 4 and the respondent No. 4 on consideration of all those materials will come to a conclusion whether the appellant had established that he belonged to Bedia community.

17. We make it clear that the respondent No. 4 will be free to start criminal prosecution against the appellant if he really produced any forged or fabricated documents in the past for the purpose of getting such benefit, such as, the ration card and the Scheduled Tribe certificate issued to Dwipendra Nath Mahata. But in spite of that, if he is found to be a member of Bedia community, the respondent No. 4 is bound to issue the Scheduled Tribe certificate in his favour. For committing a crime, a person, otherwise entitled to get certificate declaring him as a member of Scheduled Tribe, cannot be denied such benefit though he will face prosecution for such offence and the consequential punishment, if found guilty.

18. Since the matter is pending for a long time, we direct the respondent No. 4 to dispose of the proceedings within three months from the date of communication of this order.

19. We, thus, allow the appeal and set aside the order passed by the learned Single Judge as the same is virtually a non-speaking one and at the same time, we also set aside the order passed by the concerned respondent recalling the earlier certificate on the grounds mentioned above.

20. In the facts and circumstances, there will be, however, no order as to costs.

Prabuddha Sankar Banerjee, J.

21. I agree.