

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE ANIRUDDHA ROY

WPA/653/2024

SMT. NAZREEN BANU AND ANOTHER ... PETITIONERS

VS.

THE ANDAMAN AND NICOBAR
ADMINISTRATION AND OTHERS ... RESPONDENTS

For the petitioner : Ms. Anjili Nag, Sr. Adv.
Mr. Adarsh Ilango

For the respondents : Ms. Babita Das

Reserved on : February 27, 2025

Judgment on : February 27, 2025

ANIRUDDHA ROY, J.

1. The last order dated **January 21, 2025**, as wrongly typed out, should be read as **February 21, 2025** in place and stead of January 21, 2025 (as wrongly typed out).
2. This is a hearing of the writ petition upon direction for filing affidavits. Affidavit-in-opposition has been filed by the respondents. Ms. Anjili Nag, learned senior counsel appearing for the petitioners submits that, considering the urgency involved in this matter, her clients shall not file any affidavit-in-reply and shall proceed on the basis of the existing records.

3. This writ petition has been considered previously on several occasions. The last order dated February 21, 2025, as corrected above, speaks for itself showing urgency in the matter. The urgency is that the petitioner no.2 is an aspirant for the entrance examination for NEET as a **Scheduled Tribe candidate** and the last date of submission of her application is **March 01, 2025**, when the petitioner no.2 shall have to produce the Scheduled Tribe certificate along with her application.

FACTS:

4. The petitioner no.1 is the mother and the petitioner no.2 is the daughter, who is the aspirant for the NEET entrance examination.

5. The grievance of the petitioners is that, despite the application being submitted through online mode on **September 5, 2024**, **Annexure P-5 at page 51** to the writ petition, for obtaining the Scheduled Tribe certificate. The application was not considered and was kept pending. At this juncture, this petition was filed.

6. On February 21, 2025 (as corrected), this Court passed an order, *inter alia*, directing the respondent no.4, the jurisdictional Tehsildar, to decide the issue on the basis of the application submitted by the petitioner and to pass a reasoned order and the writ petition was directed to appear today under the heading "Special Fixed Matters", in view of the urgency involved therein.

7. Pursuant to and in terms of the said direction of this Court, the Tehsildar passed his reasoned order on **February 26, 2025** as some typographical errors were there, the order was corrected and accordingly the corrected reasoned order was passed on **February 27, 2025**. Copies of these orders have been placed before this Court by the learned counsel appearing for the respondents. The learned counsel for the petitioners has also admitted that these are two orders passed by the Tehsildar. Copies of the said two orders dated February 26, 2025 and February 27, 2025 are taken on record.

8. The brief facts, which are inescapably required to be stated, are that the petitioner no.2 when submitted her application on September 05, 2024 through online process **Annexure P-5 at page - 51** to the petition, a certificate was made part of that in that prescribed format of the application. The content of the said certificate is available at the bottom of **page -51** to the writ petition which, *inter alia*, states that the certificate was to be issued (through Village Headman/Tribal Council) Car Nicobar. The certificate shows that the petitioner no.2 bearing the names of her parents, was certified as a bonafide tribal of Car Nicobar Islands. The said declaration/certificate bears the **signatures** of the **Head of Tuhet, Village Headman** and of the **Secretary** of the **Tribal Council**, Car Nicobar. The said format of application was the prescribed format through which one has to apply for obtaining the Scheduled Tribe certificate.

9. Tehsildar considered the case of the petitioner no.2 on the basis of the said application dated September 05, 2024 **at page 51** to the writ petition and passed the orders dated February 26, 2025, which was corrected on February 27, 2025.

10. It appears to this court that, the petitioner was refused to grant Schedule Tribe certificate and the relevant observations from both the said orders as one of such pleas is quoted below:

***“And Whereas,** The Tribal Council has submitted a letter vide No.TC/CN/2024-25/117 dated 21 December, 2024 which is reproduced as below:-*

“With reference to the application of Smt Nazreen Banu W/o Shri Arun Kumar Rai (Non-Tribal) applied for ST of their daughter Kumari Muskan. The husband of Nazreen Banu is a non-tribal therefore her daughter is not to be considered as the tribal by overlooking the fact. I withdraw my recommendation for the issue of ST certificate.

Therefore, the issue for applying ST Certificate cannot be considered.”

11. The second plea of rejection was that the petitioner no.1, being the mother of the petitioner no.2, though belongs to Schedule Tribe community but married with father of the petitioner no.2, who belongs to forward community and since the petitioner no.2 was brought up in forward community without any acquaintance with the tribal community, the application was rejected.

12. Ms. Babita Das, learned counsel appearing for the respondents has also produced the said document dated **December 21, 2024** issued by the Chairman of the Tribunal Council, Car Nicobar before this Court in course of the hearing, copy has also been made over to

Ms. Anjili Nag, learned senior counsel appearing for the petitioners and the same is taken on record.

13. On perusal of the said communication dated December 21, 2024 issued by the Chairman of the concerned Tribal Council to the Deputy Commissioner, DC Office, Car Nicobar, it appears that the recommendation for issuing the Scheduled Tribal certificate in favour of the petitioner No.2 was withdrawn unilaterally. The relevant content from the communication dated **December 21, 2024** is quoted below:-

“With reference to the application of Smt Nazreen banu W/o Shri Arun Kumar Rai (Non-Tribal) applied for ST of their daughter Kumari Muskan. The husband of Nazreen Banu is a non-tribal therefore her daughter is not to be considered as the tribal by oversighting the fact. I withdraw my recommendation for the issue of ST certificate.

Therefore, the issue for applying ST Certificate cannot be considered.

Thanking you.”

SUBMISSIONS:

14. Ms. Anjili Nag, learned senior counsel appearing for the petitioners submits in course hearing for the first time this document dated December 21, 2024 was made over to the learned counsel for the petitioners and the petitioners are still not aware of the same.

15. The communication even does not show that copy was marked to the petitioners. She submits that this unilateral cancellation of the recommendation made in favour of the petitioner no.2 for issuing

Schedule Tribe Certificate without granting any opportunity of hearing to the petitioner is bad in law and whatever steps taken thereunder following the same are also bad in law.

16. *Per contra* Ms. Babita Das, learned counsel appearing for the respondents submits that, to decide an individual whether he/she is actually belonged to the Scheduled Tribe community or not and whether he/she is eligible to receive certificate to be granted by the appropriate authority, various factors are to be taken into consideration.

17. In the instant case, the record shows that the petitioner no.2 come from sound financial family background and belong to forward community. She submits that the certificate made at **Page 51** to the writ petition by the Head of the Village and was signed by the Secretary of the Tribal Council was mistakenly done by overlooking the factors, which are required to be considered before issuing such certificate and hence immediately after realizing the same, the Chairman of the Tribal Council, through his communication dated December 21, 2024 had withdrawn the recommendation made in favour of the petitioner no.2. Since the recommendation has been withdrawn and the petitioner no.2 does not belong to the Scheduled Tribe community nor she was accepted by the tribal community, the application of the petitioner no.2 for obtaining Scheduled Tribe certificate was rightly rejected by the Tehsildar.

18. Referring to the said two reasoned orders of the Tehsildar dated February 26, 2025 as corrected on February 27, 2025, learned counsel Ms. Babita Das submits that, they are well versed, reasoned and were passed upon considering all the necessary factors and materials before the Tehsildar. The said orders were passed after granting ample opportunity of hearing to the petitioners.

19. Since the recommendation was withdrawn by the Chairman, Tribal Council, there is no infirmity in the said two orders dated February 26, 2025 and February 27, 2025.

20. In support of her contention, learned counsel for the respondents has relied upon the decision of the Hon'ble Supreme Court ***In the matter of:- Rameshbhai Dabhai Naika vs. State of Gujarat and others reported at (2012) 3 Supreme Court Cases 400.***

21. Ms. Babita Das, by placing reliance specifically on paragraph **54 and 55** of the report, in the matter of ***Rameshbhai Dabhai Naika (supra)*** submits that the determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in a complete disregard of attending facts of the case. She further submits that petitioner no.2 has to lead evidence to establish that she was brought up by her mother as a Scheduled Tribe.

22. The petitioner no.2 being the daughter of a forward class father has been brought up in the forward class society and never was connected with the tribal society. She was never treated as member of the community of which her mother belongs to being the Scheduled Tribe community.

23. In the light of the above, the learned counsel for the respondents submits that the writ petition should be dismissed and the orders of the Tehsildar dated February 26, 2025 as corrected on February 27, 2025 should not be interfered with.

24. *Per contra* Ms. Anjili Nag, learned senior counsel appearing for the petitioners, in her reply, referring to the statements made in paragraphs 6, 8 and 9 of the writ petition submits that, all along, the petitioner no.2 was brought up in the midst of the tribal community.

DECISIONS:

25. After considering the rival contentions of the parties and upon perusal of the materials on record, at the outset, this Court reiterates that the Constitution of India itself has provided and protected certain rights of the Scheduled Tribes. Since the Constitution of the country has recognized the particular class being Scheduled Tribe and their rights are protected under the Constitution, the recognition of an individual, if he/she belongs to Scheduled Tribe community gets his/her certain rights protected under the Constitution.

26. Some of the relevant provisions from the Constitution of India are accordingly referred to, *inter alia*, **Articles 15(4), 16(4), 19(5), 23, 34, 275(1), 330, 332, 338 and 342** read with, *inter alia*, the **Fifth Schedule** to the Constitution.

27. Once the Scheduled Tribe community has been recognized with protection of their rights under the Constitution of India, an individual when applies for his/her Scheduled Tribe certificate, it is the right of such an individual to be considered in accordance with law and if ultimately he/she succeeds in the process, it is his/her constitutional right to receive Scheduled Tribe certificate.

28. It is the bounden duty of the State Authority/executive to consider such application, if submitted by an individual for obtaining Scheduled Tribe certificate in the prescribed procedure of law and then, if the law permits, it is an obligation of the state authority/executive to issue such Scheduled Tribe certificate.

29. The declaration available at the bottom of **page -51** to the writ petition on the face it shows that, the appropriate authorities including the Secretary of the concerned Tribal Council had issued the said declaration. The said declaration has never been challenged, neither questioned by any authority until the time, the application was submitted by the petitioner no.2 on September 05, 2024.

30. The law presumes when the appropriate authorities have issued declaration in the prescribed format, they have made the declaration upon being satisfied with all the relevant factors which

were essentially required to be considered for making the said declaration. The law further presumes that the authorities have acted in accordance with law and after following the prescribed procedures of law, have issued and made the said declaration in favour of the petitioner no.2.

31. On a careful reading of the said declaration, it appears to this court that, the necessary fact finding enquiries have duly been made by such authorities and then only the said declaration was issued. No contemporaneous material has been produced before this court by the respondents to controvert the finding of the appropriate authorities with regard to their satisfaction before issuing such declaration. It is also not alleged that the said declaration was obtained by the petitioners by practicing fraud upon the appropriate authorities.

32. The respondents have not relied upon before this Court any provisions of law that, on the basis of the said declaration having been issued by the appropriate authorities, the jurisdictional Tehsildar had an authority to verify and examine the said declaration on the basis of the available materials on which the declaration was issued by the authorities. It has also not been argued on behalf of the respondents by citing any provision of law or otherwise that the jurisdictional Tehsildar has an authority to re-examine the fact finding enquiry made by the appropriate authority on the basis

whereof such appropriate authorities have issued the said declaration.

33. The two grounds on which the Tehsildar rejected the grant of certificate in favour of the petitioner no.2 was the observation and finding of the Chairman of the Tribal Council dated December 21, 2024 which has unilaterally withdrawn the recommendation made in favour fo the petitioner no.2 solely on the ground that the father of the petitioner no.2 is a non-tribal.

34. When a declaration was made by the appropriate authority recommending the petitioner no.2 and found her to be eligible to receive the Scheduled Tribe certificate, a valuable right was created in favour of the petitioner no.2 for obtaining the necessary certificate. Such right has also been recognized by the Constitution of India. Such right cannot be taken away unilaterally in the manner and mode it has been done merely by issuing the said communication dated December 21, 2024.

35. The recommendation was withdrawn without granting any opportunity of hearing to the petitioner no.2 and behind the back of the petitioners, without any notice. Just by exercising an executive authority by issuing the said communication dated December 21, 2024, the recommendation made in favour of the petitioner no.2 should not be and cannot be withdrawn, without following due process of law. Such an unilateral action on the part of the executive in issuing the said communication dated **December 21, 2024** is not

only bad in law but also illegal and wrongful in the eye of law. The constitutional right should not be taken away without exercising the established procedure of law.

36. Granting Scheduled Tribe certificate is an executive action following the relevant rules and regulations framed for such purpose. Admittedly, in the facts of the instant case, when the petitioner no.2 applied for obtaining Scheduled Tribe certificate at **page 51** to the writ petition, a certificate or declaration was issued in her favour by the Head of the Village, by the Head of the Tuhet and the Secretary of the concerned Tribal Council. Such declaration also bears the seal and signature of the Secretary of the jurisdictional Tribal Council.

37. Hence, this Court is of the considered opinion that the said decision of the Chairman of the Tribal Council dated **December 21, 2024** is liable to be **set aside** and accordingly stands **set aside** and **quashed**.

The next plea taken by the Tehsildar is that, since the petitioner no.2 was born out of wedlock of Scheduled Tribe and forward class father, she does not belong to the Scheduled Tribe community and she has never been accepted by the Scheduled Tribe community cannot sustain after the necessary declaration was issued in the prescribed format as would evident from **page 51** to the writ petition as discussed above in detail. The said declaration issued under the prescribed format is presumed to be issued after carrying out all the necessary fact finding enquiries and formalities.

38. ***In the matter of :- Rameshbhai Dabhai Naika (supra)***, the appellant therein lost his tribal certificate and the Fair Price Shop allotted to him on that basis. In the light of such fact, the Hon'ble Supreme Court had observed as under:-

56. In the case in hand the tribal certificate has been taken away from the appellant without adverting to any evidences and on the sole ground that he was the son of a Kshatriya father. The orders passed by the High Court and the Scrutiny Committee, therefore, cannot be sustained. The orders passed by the High Court and the Scrutiny Committee are, accordingly, set aside and the case is remitted to the Scrutiny Committee to take a fresh decision on the basis of the evidences that might be led by the two sides. It is made absolutely clear that this Court is not expressing any opinion on the merits of the case of the appellant or the private contesting respondent."

In the instant case, the fact is not such. Admittedly, the declarations made by the appropriate jurisdictional authorities are there in the prescribed format at **page 51** to the writ petition. Such declaration could not have been and cannot be withdrawn merely by issuing an executive communication dated December 21, 2024 on the reasons, as already narrated above. Therefore, the ratio decided ***In the matter of :- Rameshbhai Dabhai Naika (supra)*** shall not apply in the facts and situations of the instant case.

39. Since the said declaration having been there, at **page 51** to the writ petition, there was no further requirement to adduce any evidence by the petitioner no.2 to establish that she belongs to a Scheduled Tribe community, as the same was never challenged.

40. Insofar as the document relied upon by the respondents, **Annexure R-1 at page 8** to the affidavit-in-opposition, the same neither discloses the name of the petitioner no.1 nor the petitioner no.2. The law on the subject prescribe that several factual factors are required to be considered to decide whether an individual can be considered as Scheduled Tribe or not. Merely because only either of the father or mother being non-tribal, one cannot be denied, the Scheduled Tribe certificate.

41. The law is also clear, as laid down by the Hon'ble Supreme Court ***In the matter of: Rameshbhai Dabhai Naika (Supra)***. The moment the declaration was issued appearing at the bottom of **page -51** to the writ petition in the prescribed format, the law presumes that all the factual events necessarily to be considered having been considered by the appropriate authorities including the Secretary of the concerned Tribal Council, the declaration was issued.

42. In view of the foregoing reasons and discussions, the orders passed by the Tehsildar dated **February 26, 2025** as corrected on **February 27, 2025** stand **set aside** and **quashed**.

43. Considering the urgency involved in the writ petition, as already narrated above, the jurisdictional Tehsildar, being the respondent no.4, is directed to issue the necessary Scheduled Tribe certificate in favour of the petitioner no.2 positively within **24 working hours** from the date and time of communication of this

judgment and order **but not later than** the **closing of working hours** on **March 01, 2025**.

44. With the above observations and directions, **WPA/653/2024** stands **allowed**, without any order as to costs.

(**ANIRUDDHA ROY, J.**)