

# **THE HIGH COURT OF TRIPURA AGARTALA**

**WP(C.) NO.131 OF 2006**

**Bhupati Bhusan Deb Barma,**  
S/O Late Jitendra Ch. Deb Barma,  
R/O 222 Milanagar,  
Salt Lake, Kolkata-700105,  
At present residing at  
Joynagar Road No.3,  
C/O Sri Bibhuti Bhusan Deb Barma,  
Agartala, P.S.-West Agartala,  
District-West Tripura.

..... **Petitioner**

- Vs -

**1. The State of Tripura,**  
(To be represented by the  
Commissioner & Secretary,  
Tribal Welfare Department,  
Government of Tripura,  
Secretariat Complex,  
West Tripura, Agartala.

**2. The State Level Scrutiny Committee,**  
(To be represented by its  
Member Secretary,  
Director of Welfare for Schedule Tribes,  
Government of Tripura),  
Agartala

**3. The Chairman,**  
State Level Scrutiny Committee,  
(The Commissioner & Secretary  
Tribal Welfare Department,  
Government of Tripura,  
Secretariat Complex, Agartala).

**4. The Member,**  
State Level Scrutiny Committee,  
Director, Tribal Research Institute,  
Government of Tripura,  
Agartala.

**5. The Director of Welfare for**  
Scheduled Tribes,  
Government of Tripura,  
Agartala.

**6. The District Magistrate & Collector,  
West Tripura.**

..... *Respondents.*

**BEFORE  
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. P. Datta, Advocate  
For the respondents : Mr. T. Datta Majumder, G.A.  
Date of hearing : **17.11.2013 & 18.11.2013**  
Date of delivery of Judgment & order : **29.11.2013**  
Whether Fit for Reporting : **YES**

**JUDGMENT & ORDER**

This writ petition under Article 226 of the Constitution of India is filed challenging order dated 27.01.2006(Annexure-13 to the writ petition) issued by the State Level Scrutiny Committee(for short, SLSC), constituted by the Government of the State of Tripura to deal with review/cancellation, etc. of Scheduled Caste/Scheduled Tribes(SC/ST) certificates, whereunder the Scheduled Tribe certificate issued in the name of the petitioner dated 29.10.1977(Annexure-1 to the writ petition) has been cancelled holding that the petitioner does not belong to Scheduled Tribe community(*Tripuri*) of the State of Tripura.

**2.** Heard learned counsel, Mr. P. Datta for the petitioner and learned G.A., Mr. T. Datta Majumder for the State respondents.

**3.** The petitioner, *inter alia*, contended that he is a permanent resident of the State of Tripura, a member of the

Scheduled Tribe community(*Tripuri*) of the State of Tripura, and his forefathers also belonged to the Scheduled Tribe community (*Tripuri*). Additional District Magistrate & Collector, West Tripura District, Agartala on 29.10.1977 issued a Caste Status Certificate(ST Certificate) in the name of the petitioner and copy of that certificate annexed with the writ petition as Annexure-1. He also stated that he was born on 05.01.1942 in the V.M. Hospital, Agartala and that his father was also working in the judicial department of the State of Tripura and was having with a caste certificate of Scheduled Tribe. In the year 1995 notices were issued by the District Administration, West Tripura District to the petitioner, alleging that he did not belong to the Scheduled Tribe community and he submitted show cause reply. Subsequently, he received another notice, dated 2.7.2004 issued by the Inquiring Officer of the Special Vigilance Cell, Agartala asking him to attend the office of the Vigilance Cell with his original Scheduled Tribe certificate, and accordingly he submitted his reply by registered post on 10.8.2004. The notice and reply annexed with the writ petition as Annexure-7 and 8. Thereafter, he received show cause notice dated 17.12.2004 issued by the Member Secretary of SLSC along with copy of verification report of Vigilance Cell for furnishing his reply, and accordingly he submitted his show cause reply, copy of which marked as Annexure-12. But after submission of show cause reply no date was fixed by the SLSC for hearing and no scope was given to the petitioner for adducing evidence in support of his contention that he belongs to Scheduled Tribe community(*Tripuri*).

**4.** It is alleged in the writ petition that the report submitted by the Vigilance Cell was vague and there was no substance in the statements of the witnesses, namely Ajoy Roy, Jayanta Barman and Srikanta Krishna Roy. The SLSC without considering the authenticity and genuineness of the statements of those witnesses and simply taking into consideration the report of the Vigilance Cell, and without affording any opportunity to the petitioner to adduce evidence, cancelled the caste certificate of the petitioner by impugned order dated 27.01.2006, causing serious civil and penal consequences and, hence, the petitioner challenged the impugned order and prayed for quashing the same.

**5.** Respondents by filing counter affidavit contended that the petitioner does not belong to *Tripuri* community of the State of Tripura. His forefathers also do not belong to the said community. As per the direction of the Apex Court, in the case of ***Kumari Madhuri Patil & Anr. v. Addl. Commissioner, Tribal Development & Ors.***, reported in **(1994) 6 SCC 241**, and as per the provisions of the Tripura Scheduled Caste and Scheduled Tribes Reservation Rules, 1992(for short, SC & ST Rules), as amended time to time, prescribed thereunder, the petitioner was asked to show cause as to why the caste certificate issued in his name should not be cancelled, and considering the report of the Vigilance Cell and the show cause reply submitted by the petitioner, the SLSC decided genuinely that the petitioner does not belong to Schedule Tribe community of the State of Tripura since the petitioner failed to prove his social status as a Scheduled Tribe, and, accordingly,

cancelled the same. There is no illegality or impropriety in the decision taken by the SLSC and, hence, the writ Court is not required to interfere in the order.

**6.** Learned counsel, Mr. Datta appearing for the petitioner has submitted that pursuant to show cause notice dated 8.7.2005(Annexure-10 to the writ petition) the petitioner submitted his reply(Annexure-12 to the writ petition). In the show cause reply the petitioner clearly and categorically stated that he belonged to Scheduled Tribe community of the State of Tripura and that the enquiry report is false and fabricated and the right accrued in favour of the petitioner cannot be taken away based on such a false and fabricated report submitted by the Vigilance Cell. It is also submitted by learned counsel, Mr. Datta that after the show cause reply submitted by the petitioner on 27.7.2005, no date was fixed by the SLSC calling upon the petitioner to cross-examine the witnesses, whom the Vigilance Cell relied on and also calling upon the petitioner to adduce evidence in support of his case. While such opportunity was not given, the order canceling the caste status certificate of the petitioner is liable to be quashed for violation of the principles of natural justice.

**7.** Learned G.A., Mr. Datta Majumder countering the submission of learned counsel, Mr. Datta, has submitted that Annexure-10 is the second show cause notice issued by the SLSC to the petitioner and along with the show cause notice, enquiry report of the Vigilance Cell, statements of the witnesses, all were

communicated and the petitioner has submitted a cryptic show cause reply only criticizing the report of the Vigilance Cell and stated nothing to give him any opportunity further to adduce any evidence or to cross-examine the inquiring officer of the Vigilance Cell or the witnesses who were examined by the inquiring officer of the Vigilance Cell. Under such circumstances, the SLSC was not bound to give further opportunity to the petitioner and drag the issue. Notice to show cause is a reasonable opportunity, given to the petitioner of being heard. Unless the petitioner opts for cross-examining the witnesses and unless he prays for adducing evidence, SLSC was not obliged to fix the matter again and drag it unnecessarily.

It is also contended by learned G.A., Mr. Datta Majumder that as propounded in the case of **Director of Tribal Welfare, Government of A.P. v. Laveti Giri & Anr.** reported in **(1995) 4 SCC 32**, burden lies on the petitioner to prove that he belongs to ST community. Referring to the case of **Lilly Kutty v. Scrutiny Committee, SC & ST & Ors.** reported in **(2005) 8 SCC 283**(para 12 and 13), it is submitted by learned G.A. that SLSC is an administrative body and it will not be proper to expect that SLSC also will function like a court of the judiciary. Since the SLSC has passed the order considering the materials before it and since the petitioner did not pray for affording scope to adduce evidence, such order cannot be a subject of judicial scrutiny. This Court is not required to sit and decide the matter as an appellate authority if it is found that there were materials before the SLSC for arriving at a

decision for cancellation of the caste certificate. The writ Court need not interfere in the decision and the writ petition is liable to be dismissed.

**8.** It is an undisputed fact that a caste certificate in the name of the petitioner was issued by the competent authority on 29.10.1977(annexure-1). It is mentioned in the caste certificate that the petitioner belongs to *Tripuri* community and the petitioner claimed his status as genuine. It is also an admitted fact that several show cause notices were issued from the office of the District administration asking the petitioner to show cause as to why the caste certificate issued in his name should not be cancelled and the petitioner submitted reply to those show cause notices. At the instance of SLSC, the Vigilance Cell initiated an enquiry against the petitioner and it is an admitted fact that the inquiring officer of Vigilance Cell issued notice to the petitioner(Annexure-7 to the writ petition) asking him to attend the office of the Vigilance Cell on 19.07.2007 along with the original Scheduled Tribe certificate and according to the petitioner he submitted reply to the notice. Thereafter, the Vigilance Cell submitted report to the SLSC and considering the report of the Vigilance Cell SLSC issued show cause notice dated 17.12.2004(Annexure-9 to the writ petition) and 08.07.2005(Annexure-10 to the writ petition). In the show cause notice dated 08.07.2005 it was clearly stipulated that the petitioner failed to submit show cause reply pursuant to the show cause notice dated 17.12.2004, and therefore the second show cause notice issued to the petitioner along with a copy of the verification

report of the Vigilance Cell for his reference and he was asked to submit reply within seven days. The petitioner submitted his reply to the show cause notice on 27.07.2005(Annexure-12 to the writ petition). The reply of the petitioner to the show cause notice since found to be very crucial for decision of the writ petition, is reproduced as under:

"To 222, Milannagar,  
The Member Secretary Salt Lake  
State Level Scrutiny Committee Kolkata-700105  
Directorate of Welfare for Scheduled Tribes

*Respected Sir,*

*This is to confirm acknowledgment of your letter no.7800-01/F.4(73)/TW/R.CELL/2005 dated 08.07.2005 without any prejudice to my rights.*

*This is to put on record again that our forefather had been an inhabitant of the State of Tripura and I have been enjoying the rights and privileges since my birth as guaranteed by the constitution of Govt. of India and the same had been duly recognized by the various Statutory Authorities of the Govt. of Tripura. The enquiry report enclosed along with your above referred letter is not only falls, fabricated, illmotivated and unlawful but also a deliberate attempt to deprive me from the rights and privileges guaranteed by the constitution of India.*

*Kindly note, any exparte decision shall construe denial of natural justice and denial of my long-standing rights and interests since birth.*

*It has already been brought to your kind notice that I have been suffering from chronic cardiac problems coupled with insulin dependent diabetes. You*

would appreciate; such harassment is affecting adversely to my health and hence request you to drop the issue.

With kind regards,

Yours faithfully,

Dated the 27<sup>th</sup> July, 2005 (Bhupati Bhushan Debbarma)

Copy to the Commissioner, Tribal Welfare(Chairman) for favour of kind information please.

(Bhupati Bhushan Debbarma)"

**9.** There is nothing on record that after submission of the above show cause reply by the petitioner, any date was fixed by the SLSC for further hearing of the matter. Thereafter the impugned order canceling the Scheduled Caste certificate was issued on 27.01.2006, almost after six months from the date of submission of the show cause reply. Respondent also failed to place on record any material to show that during the period from 27.06.2005 to 27.01.2006 any further hearing on the matter was taken up by the SLSC or that any opportunity was given to the petitioner to cross-examine the witnesses or to adduce any evidence by the petitioner.

**9.1.** In the circumstances, learned G.A. was asked to produce the original records of the SLSC in respect of the case of the petitioner and that record was placed by learned G.A. on 19.11.2013. The record has been examined in the open Court and returned to the learned G.A. Indisputably, there is nothing in the said record to show that any opportunity was given to the petitioner to cross-examine the inquiring officer of the Vigilance Cell and/or

the witnesses, whose statements were recorded by the vigilance officer in course of inquiry. There is also nothing in the record to show that any opportunity was given to the petitioner to adduce any evidence in support of his claim.

**9.2.** In Exbt.12, the show cause reply, the petitioner simply criticized the report of the Vigilance Cell but neither proposed to adduce any evidence nor proposed to cross-examine the inquiring officer of the Vigilance Cell or the witnesses, who were examined by the inquiring officer of the Vigilance Cell. The question therefore, arises as to whether the SLSC was legally required or not to further afford opportunity to the petitioner to cross-examine the inquiring officer or the witnesses and/or to adduce evidence in support of his case.

**10.** Admittedly, by filing the show cause reply the petitioner disputed the vigilance report in respect of his social status certificate and under such circumstances, in my considered opinion, it was necessary for the SLSC, at least to afford opportunity to him to adduce his evidence in support of his claim that he belonged to Scheduled Caste community.

**11.** The Supreme Court in the case of ***Kumari Maduri Patil*** (supra), in para 13 of the judgment laid down the procedure to be followed while verification of a caste certificate. In paragraphs 13,14 and 15 of the judgment, the Court has observed—

**"13.** *The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has 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 Directorate concerned.*

**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 of 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 overall 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, daity, 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 Chairperson 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-a-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.*

**14.** *In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for*

*elective posts or offices under the State or the Union or elections to any local body, legislature or the Parliament.*

**15.** *As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.*

**14.** *Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.*

**15.** *The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to*

*evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and record a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the committee ultimately recorded the finding. Each case must be considered in the backdrop of its own facts.”*

**12.** The State legislature made the Tripura Scheduled Caste and Scheduled Tribes Reservation Rules, 1992 as amended time to time, prescribing there-under the law relating to cancellation of Scheduled Caste or Scheduled Tribe Certificates.

Rule 6 reads as follows:-

**[ 6. Cancellation of Scheduled Caste or Scheduled Tribe certificate ]**

*An authority who issued a Scheduled Caste Certificate or Scheduled Tribe certificate to any one may, at a subsequent stage cancel it, if after an enquiry and after giving the party concerned an opportunity of being heard, it finds that the person to whom the Community 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, the issuing authority shall obtain the views*

*of the concerned Block Level or Nagar Panchayat Level or Municipal Level Scheduled Castes Welfare Sub-Committee and in cancelling a Scheduled Tribe certificate, the issuing authority shall obtain the views of the Sub-Divisional Level 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.*

*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.].*

**13.** Rule 7A has been incorporated following the directions issued by the Apex Court in the case of Kumari Madhuri Patil (*supra*). Rule 7A reads as follows:-

**"[7A Constitution, Powers and Functions of the Scrutiny Committee.**

*(1) At the State Level there shall be two Scrutiny Committees as follows -*

*(a) For verification of community status of Scheduled Caste Certificate holders, the Scrutiny Committee shall consist of :-*

*(i) The Secretary-in-charge of Department for Welfare of Scheduled Castes, Other Backward Classes and Minorities - Chairman.*

*(ii) The Director for Welfare of Scheduled Castes and Other Backward Classes*

-Member-Secretary

(iii) Joint Secretary or Deputy Secretary of the Law Department]

- Member

[(iv) Additional Director or Joint Director or Deputy Director for Welfare of Scheduled Castes & Other Backward Classes -

- Member

(b) For verification of community status of Scheduled Tribe certificate holders, the Scrutiny Committee shall consist of :-

(i) The Secretary-in-charge of the Tribal Welfare Department

- Chairman

(ii) The Director for Welfare of Scheduled Tribes

-Member-

Secretary

(iii) The Director, Tribal Research Institute

- Member

(iv) Joint Secretary or Deputy Secretary of the Law Department]

- Member

[(2) Director of Vigilance shall constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors and Sub-Inspectors to investigate into the community status and claims as may be required.

(3) The Investigating Officer 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. He should personally verify and collect all the facts of the social status claimed by the certificate holder or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the certificate holder in relation to their caste etc. or such other persons who have knowledge of the community status of the certificate holder and submit a report to the Director of Vigilance

*who will verify the correctness of the report and transmit it to the Member-Secretary of the Scrutiny Committee concerned 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 castes or tribes or tribal communities concerned etc.*

(4) *The Member-Secretary of the Scrutiny Committee concerned, on receipt of the report from the Director of Vigilance if finds the claim for community status is not genuine or doubtful or spurious or falsely or wrongly claimed, the Member-Secretary concerned shall issue show-cause notice supplying a copy of the report of the vigilance officer to the community certificate holder by a registered post with acknowledgement due or through the head of the institution or office concerned in which the certificate holder 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 receipt of the notice. In case, the certificate holder seeks an opportunity of hearing and claims an inquiry to be made in that behalf, the Member-Secretary on receipt of such representation or reply shall convene the meeting of the committee and the Chairperson of the Committee shall give a reasonable opportunity to the certificate holder and in case the certificate holder is a minor to the parent or guardian to adduce all evidences in support of his claim. A public notice by beat of drum or any other convenient mode may also*

be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may also be given to him or it. After giving such opportunity in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the certificate holder or opponent and pass an appropriate order with brief reasons in support thereof.

*Provided that in case a certificate holder engages a legal practitioner to represent his case before the Scrutiny Committee, the Director for Welfare of Scheduled Castes and Other Backward Classes or the Director for Welfare of Scheduled Tribes as the case may be, may engage a lawyer.*

*Provided further that before passing a final order, the Committee shall also take into consideration the local enquiry report of the Sub-Divisional Magistrate and opinion of the Sub-Committee concerned.*

(5) *In case the report is in favour of the certificate holder 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 sub-rule (4) shall be followed.*

(6) *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, the Committee*

*shall pass an order cancelling the]<sup>1</sup> [certificate issued and confiscate the same. The Committee shall communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the certificate holder and in case the certificate holder is a minor to his parent or guardian.*

*(7) 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 office or post is getting expired, the certificate holder be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the community status certificate already issued, on an affidavit duly sworn by the parent or guardian or certificate holder 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.*

*(8) In case, the certificate obtained or community status claimed is found to be false, the parent or guardian or certificate holder as the case may be, shall be prosecuted for making the false claim. If the prosecution ends in a conviction and sentence of the accused, it shall be regarded as an offence involving moral turpitude, a disqualification for elective posts.*

*(9) As soon as the findings is recorded by the Scrutiny Committee holding that the certificate obtained was false and the certificate is cancelled and confiscated, it shall be communicated to the head of the Educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the*

*appointment. The head of the educational institution responsible for making the admission or the appointing authority, shall cancel the admission or appointment as the case may be without any further notice to the certificate holder and debar him from further study or continue in office in a post ]"*

**14.** In the case of **Director of Tribal Welfare, Government of A.P. v. Laveti Giri & Anr.** reported in **(1995) 4 SCC 32**, the Supreme Court has held that the burden of proof of social status is always on the person who professes it to seek constitutional socio-economic advantages. It is no part of the duty of the State to disprove or otherwise. Referring to the guidelines enunciated in **Kumari Maduri Patil** (supra), the Apex Court issued some further direction in respect of constitution of the Vigilance Cell and further directed to take serious action if the social status certificate is found to be false. In paragraph 8 of the judgment the Apex Court held thus:-

**"8.** While reiterating the above guidelines to be workable principles, it is high time that the Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and corner the benefits reserved for the real tribals etc. etc., so that the menace of fabricating the false records and to gain unconstitutional advantages by plain/spurious persons could be prevented. Lest they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in

*the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39."*

**15.** While the burden of proof that the petitioner belonged to 'Tripuri' community absolutely lies on him, the Scrutiny Committee would give reasonable opportunity to the petitioner to adduce evidence in support of his claim even if the petitioner did not specifically stated so in his show cause reply. The inquiring officer of the Vigilance Cell, as I find, examined three witnesses and based on those statements as well as further enquiry in the earlier place of residence of the petitioner, the vigilance report was submitted. Out of those three witnesses, one witness, namely Jayanta Barman, is the son of the petitioner. The petitioner neither in his show cause reply nor even in his writ petition stated anything about the statement of his son in respect of his social status. From the statement of his son, it reveals that his son disclaimed the status of the Scheduled Tribe whereas the petitioner is claiming the status of Scheduled Tribe. Be that as it may, the principle of natural justice stipulates that reasonable opportunity should be given to cross-examine the witnesses, who made adverse statements against the petitioner and also further opportunity should be given to adduce evidence on behalf of the petitioner. There is nothing on record to show that such opportunity was given to the petitioner.

**16.** Obviously the rules of natural justice includes cross-examination of the witnesses relied by the administrative authority/quasi judicial authority. Denial of which is a serious

violation of principles of natural justice. Opportunity to lead evidence in defence is another salient feature of the principles of natural justice.

**17.** Needless to reiterate, "*audi alterem partem*" means, no one should be a Judge of his own case and nobody should be condemned unheard. Here giving an opportunity of being heard does not mean issuing Show Cause Notice and then to take action with or without taking into consideration the Show Cause reply. It means a reasonable opportunity of being heard in respect of the allegation made against the person concerned affording all opportunities to adduce evidence in support of his defence. Reasonable opportunity means – (i) opportunity to adduce relevant evidence, (ii) evidence to be taken in presence of the affected party, (iii) full opportunity to cross examine the witness, (iv) no admission of any material without affording opportunity to explain it.

A statement recorded behind and back of the petitioner cannot be treated as a substantive evidence/material against the person concerned unless, the delinquent is given an opportunity to cross-examine that person if the delinquent so desires.

**18.** Relying on the decision in ***Union of India V. T.R. Varma*** reported in ***AIR 1957 SC 882*** the Constitution Bench of the Supreme Court, in the case of ***State of M.P. Vs. Chintaman Sadashiva Vaishampayan*** reported in ***AIR 1961 SC 1623*** has held—*stating it broadly and without intending to be exhaustive it*

*may be observed that rules of natural justice require that a party should have the opportunity of adducing of relevant evidence of which he relies, that the evidence of the opponents should be taken in his presence, and that he should be given the opportunity of cross examination of the witness examined by other party, and that no material should be relied on against him without he is being given an opportunity of explaining them. It is hardly necessary to emphasize that the right to cross examine the witnesses who gave evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the inquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that inquiry had not been held in accordance with the rules of natural justice.*

The law laid down by the Constitutional Bench has been followed and holds the field till now.

**19.** Indisputably, in his show cause reply the petitioner neither claimed to cross-examine the inquiring officer or the witnesses who were examined by the inquiring officer, nor the petitioner claimed to adduce any evidence in support of his claim. The petitioner also did not challenge the statement of his son while his son clearly stated that they belong to *Laskar* community and not *Tripuri* community. Though the petitioner did not claim to cross-examine and to adduce evidence, in the given facts and circumstances, where the petitioner challenged the report of the Vigilance Cell and insisted by claiming his social status as a

Scheduled Tribe, the SLSC would oblige to offer him reasonable opportunity to adduce evidence in support of his claim. Since no opportunity was afforded to him to prove his claim, it is nothing but a denial of reasonable opportunity. It is true that the *quasi-judicial* authority or the administrative authority, discharging an administrative function, cannot be expected to act in the same standard as it is conducted in a judicial forum. What is expected, is, affording of such reasonable opportunity of being heard, which includes cross-examination of the witnesses of other side and giving opportunity of adducing all evidence. The SLSC, indisputably, did not afford any opportunity.

**20.** It is also a settled law that the Court shall not ordinarily sit as an appellate authority and scrutinize the materials, what is considered by the SLSC. If there was material before the SLSC for arriving at a decision, even if a contrary decision can be arrived at based on the same evidence, the Court is not ordinarily required to substitute its decision in place of the decision of the SLSC but where the opportunity which was supposed to be given to the delinquent, has not been given and where the decision is bound to have severe serious civil and penal consequences, the Court has to interfere in such a decision to ensure the administration of justice.

**21.** In view of the discussions made above, the writ petition is allowed. Order dated 27.01.2006 passed by the SLSC canceling the caste status certificate in the name of the petitioner is set aside and quashed. The matter is remanded back to the SLSC to decide it

afresh, affording opportunity to the petitioner as prescribed in ***Kumari Maduri Patil*** (supra) and as prescribed in the Tripura Scheduled Caste and Scheduled Tribes Reservation Rules.

**22.** Parties are to bear their own cost.

**23.** With the above observation and direction this writ petition stands disposed of.

**JUDGE**