

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 21320 of 2021

Susanta Ghosh

Vs.

The State of West Bengal and others

For the petitioner	:	Mr. Anil Kr. Chatterjee, Mr. Dinesh Pani
Hearing concluded on	:	28.07.2023
Judgment on	:	02.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner's application for being granted Other Backward Classes (OBC) Certificate was rejected by the respondent-Authorities, prompting the petitioner to prefer the instant challenge.
2. The Block Development Officer (BDO) concerned is the first authority and the Sub-Divisional Officer (SDO) is the appellate authority under the statute, both on whom affirmed the order of rejection.
3. The petitioner has contended that none of the authorities adverted duly to the several documents produced by the petitioner in support of his claim and merely relied on a report, no copy of which was served on the petitioner.
4. Affidavits were exchanged in the present writ petition, although the respondent-Authorities chose to abstain from the final hearing on

repeated occasions, for which the writ petition was taken up for hearing *ex parte*.

5. The enquiry report, on the basis of which the BDO took the call of rejecting the petitioner's application, has been relied on by the respondents themselves and has been annexed at page 7 of the affidavits-in-opposition.
6. The same is extremely cryptic. The second paragraph thereof, which is the only paragraph to be considered in the context, states that, at the time of legal enquiry, it was revealed that the applicant's family is a permanent resident of the area and as per verbal declaration of the neighbours and relatives, some of whom had been named, it was revealed that the applicant's family belongs to General Caste community and their sub-caste is "Sadgope".
7. The note-sheet annexed at the next page of the opposition contains comments of a dealing assistant and merely indicates that, as per enquiry report from the BDO, Domjur, the sub-caste of the applicant was asserted to be clearly "SADGOPE", which is a General Caste. Hence, as per the enquiry report of BDO, the review may not be considered.
8. It is surprising that when the rights asserted by a person to fall under a Constitutional category is being considered, such a cryptic "enquiry report" is placed on record, which forms the very basis of rejection of such claim.
9. Mere enquiry from a few persons in the locality is nothing more than an eye-wash, particularly in view of several documents having been

produced by the petitioner including certificates by certain authorities and other documents in support of his claim, which have not been considered at all.

- 10.** The matter then went up to the appellate authority, that is, the Additional District Magistrate (DEV) Howrah, who, *vide* order dated November 24, 2021, affirmed the observation of the BDO.
- 11.** The appellate authority merely recorded that there was no concrete evidence found in favour of the appeal in connection with the rejection of the OBC caste certificate application of the petitioner; hence, the appeal of the petitioner was rejected and disposed of.
- 12.** It is unhappy that the said authorities, who decide valuable Constitutional rights of persons, are so cryptic in their consideration of such claims. Not a single document produced by the petitioner and annexed in the present writ petition was considered by the authorities, nor was any fruitful hearing given to the petitioner. No opportunity is found to have been given to the petitioner to produce his documents in support of his claim.
- 13.** The petitioner places reliance on a co-ordinate Bench judgment in *WP No.5547 (W) of 2018 [Smt. Madhumita Mondal Vs. The State of West Bengal & Ors.]*, which is fully applicable to the present case insofar as the basic tenor of the same is concerned.
- 14.** Although the rejection in the said case is more cruel, insofar as the authority had ignored a certificate issued by the Panchayat on the ground that the same was in Bengali vernacular, which is not the case in the instant litigation, the authorities in the present case have also,

like the said case, not cared to specify the documents which were required to be produced by the petitioner in support of his claim.

- 15.** Sufficient materials have been produced with the writ petition by the petitioner to create a cloud as to whether mere classification as a member of the “Sadgope” community could justify rejection of the petitioner’s claim to come under the OBC category, since the said community may come within different castes, including OBC.
- 16.** Thus, the considerations by both the authorities were extremely cryptic. The BDO as well as the appellate authority shirked their responsibility and refused to act in accordance with law in rejecting the petitioner’s application without giving the petitioner an opportunity to produce relevant documents and to deal with the field enquiry report.
- 17.** Hence, WPA No.21320 of 2021 is allowed, thereby setting aside the impugned rejection of the petitioner’s claim for OBC certificate and remanding the matter back to the concerned Block Development Officer for a fresh consideration of the application of the petitioner. The BDO shall, within six weeks from the date of the communication of this order to the BDO, undertake a fresh enquiry, by calling for a report afresh and giving the petitioner and/or his duly authorized representative an opportunity of producing all documents in support of the petitioner’s claim and to deal with the enquiry report by furnishing a copy of the same to the petitioner and/or his representative.

18. Upon such opportunity being given, the BDO shall decide the issues afresh within the time as stipulated above, in accordance with law.
19. Thereafter, the BDO shall pass a reasoned order as to why the claim of the petitioner is either entertained or rejected.
20. It is made clear that, whichever way the BDO goes, it will be open to either of the parties to prefer a challenge against the BDO's decision before the appellate authority. None of the authorities-in-question shall be influenced in manner on merits by any of the observations made herein, but will undertake a fresh enquiry in accordance with law as directed above.
21. There will be no order as to costs.
22. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)