

GAHC010269512024



2025:GAU-AS:6403-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/77/2024

1.KALBARI EDUCATED UNEMPLOYED YOUTH SOCIETY,
REPRESENTED BY ITS PRESIDENT SRI RANJIT BASUMATARY, AGE-41
YEARS, S/O LT. GULAP BASUMATARY, VILL AND P.O.-KALBARI,
P.S.- TAMULPUR, DIST- BAKSA, BTAD, ASSAM, PIN-781367.

2: SUBESWAR SWARGIARY,
S/O SITA RAM SWARGIARY,
SECRETARY OF KALBARI EDUCATED UNEMPLOYED YOUTH SOCIETY,
VILL AND P.O.-KALBARI P.S.-TAMULPUR DIST- BAKSA,
BTAD ASSAM PIN-781367.

.....**Petitioners**

-Versus -

1.THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF TRIBAL AFFAIRS, NEW DELHI-110001.

2:THE STATE OF ASSAM,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI-781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF TRIBAL AFFAIRS,
DISPUR, GUWAHATI-781006.

4:THE ALL ASSAM TRIBAL SANGHA,
REPRESENTED BY ITS GENERAL SECRETARY SRI ADITYA KHAKHLARI,
TRIBAL REST HOUSE SOLAPUR, P.O. AND P.S.-PALTAN BAZAR,
GUWAHATI-781008.

5:THE DISTRICT COMMISSIONER OF BAKSA DISTRICT
AT MUSHALPUR P.O. AND P.S.-MUSHALPUR,
DIST- BAKSA, ASSAM, PIN-781372.

6:THE DISTRICT COMMISSIONER, TAMULPUR DISTRICT,
AT TAMULPUR, P.O. AND P.S.-TAMULPUR, BTC, ASSAM.

7:THE ADDL. DISTRICT MAGISTRATE TAMULPUR DISTRICT
AT TAMULPUR, BTC, ASSAM, PIN-781367.

.....**Respondents**

- BEFORE -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE**

For the Petitioner(s) : Mr. A. Dasgupta, Senior Advocate assisted by Mr. S. Chauhan, Advocate.

For the Respondent(s) : Mr. R.K.D. Choudhury, Deputy Solicitor General of India for respondent No.1.

: Mr. D.K. Sarmah, Additional Senior Government Advocate, Assam for respondent Nos.2, 3, 5, 6 & 7.

: Mr. P. Hazarika, Advocate for respondent No.4.

Date of Hearing : 21.05.2025.

Date of Judgment : 21.05.2025.

JUDGMENT & ORDER (ORAL)

[Vijay Bishnoi, CJ]

Heard Mr. A. Dasgupta, learned Senior Counsel assisted by Mr. S. Chauhan, learned counsel for the petitioners. Also heard Mr. R.K.D. Choudhury, Deputy Solicitor General of India for respondent No.1; Mr. D.K. Sarmah, learned Additional Senior Government Advocate, Assam for respondent Nos.2, 3, 5, 6 and 7 and Mr. P. Hazarika, learned counsel for respondent No.4.

2. This petition, in the design of Public Interest Litigation (PIL), is filed by the petitioners claiming the following reliefs:

“It is, therefore; prayed that Your Lordship may be pleased to issue Rule, call for the records, call upon the respondents to show cause as to why the Respondents No-2 to 7 shall not stop issuing ST(P) certificates to the persons of Sarania community, not yet notified under the Constitution of India and also to show cause as to why instruction issued vide letter dated 10/03/2024 and 27/06/2024 to issue ST(P) certificates shall not be set aside and quashed and after showing cause, after perusal of records, after hearing the parties be pleased to direct the respondent No-2 to 7 as follows :-

- (i) Prohibit the All Assam Tribal Sangha from identifying and recommending persons for issuance of ST(P) certificates and to follow the direction given by Hon’ble Supreme Court in case of Kumari Madhuri Patil in case is issuance of Social Status certificates to ST(P) people,*
- (ii) Set aside and quash the instruction dated 16/03/2024 issued vide No E- 344859/175 and instruction dated 27/06/2024 issued vide No- E 344859/262 issued by Govt. of Assam Dept. of Tribal Affairs,*
- (iii) Direct the issuing authority to grant ST(P) certificates on strict verification by way of online system and not depending upon the recommendation/verification of all Assam Tribal Sangha ,*
- (iv) Direct the respondents not to issued ST(P) certificates to members of Sarania Community which is not a notified ST(P) Class of people,*
- (v) Direct the respondents to follows the Judgement and order passed by the Hon’ble Gauhati High Court in the PIL Case No.30/2019 order dt. 01/03/2023,*
- (vi) That all certificates issued to Sarania Kachari, a non-notified community pursuance to above mentioned government letters declare that all such certificates are invalid, void, cannot be used in claiming constitutional and legal benefits/ reservations, and/or give such relief as your Lordship may deem fit and proper,*

Till disposal of this PIL the respondents may be directed not to issue ST(P) certificate to any non-notified community specially members of Sarania Kachari people by changing/altering/adding their surname/title and/or pass such other order(s) as your Lordship may deem fit and proper:”

3. It appears that though in the opening para of the prayer, the

petitioners have mentioned regarding issuance of instruction by the State Government vide letter dated 10.03.2024, but the said instruction was issued vide letter dated 16.03.2024.

Be that as it may, this Court, vide order dated 07.03.2025, has expressed its reservation in granting relief to the petitioners as prayed for in the PIL petition because in the opinion of the Court, no blanket order can be issued restraining the respondent authorities from issuing ST(P) certificate to any individual belonging to a particular community. The Court has also observed that if the petitioners are aggrieved by issuance of ST(P) certificate in favour of any individual belonging to any particular community, they are free to challenge the same before appropriate authority authorized to verify the genuineness of such certificate. On that day, the learned counsel for the petitioners prayed for some time to complete his instructions. Later on, on 17.03.2025 again, some time was also sought for by the learned counsel for the petitioners.

4. The petitioners are essentially aggrieved with the instructions issued by the State Government vide letters dated 16.03.2024 and 27.06.2024 (Annexures 21 & 22 of the PIL petition), whereby All Assam Tribal Sangha and its District units have been authorized to make recommendations for issuance of caste certificates for Scheduled Tribes in Assam, after recording its satisfaction regarding case identity of the applicant and his/her parents, including family history, land records etc., verifying that the applicant actually belongs to the "Kachari" or "Bodo" tribe by birth, practice, ethnic originality, then such recommendation shall be considered for the purpose of issuance of caste certificate.

5. It is noticed that the State of Assam has already issued Guidelines

through Office Memorandum dated 08.08.2022, laying the standard procedures for issuance of Scheduled Castes, Scheduled Tribe and Other Backward Classes/More Other Backward Classes Certificates.

6. As per the said Guidelines, an applicant desirous to have a certificate declaring himself/herself as a member of Scheduled Caste, Scheduled Tribe, Other Backward Class or More Other Backward Class, has to move an application in prescribed proforma through online mode by paying requisite fee. It is mentioned in the Office Memorandum dated 08.08.2022 that the caste certificate would ordinarily be issued within 30 days with a further extension of 15 days and in case of any extension, the reasons of such delay need to be recorded in writing.

7. The procedure for granting certificate is also prescribed in the Office Memorandum which provides that the applicant has to submit online application form and attach either the Caste/Tribe Certificate of the father of the applicant or an identification certificate issued by the authorized Caste/Tribe organization. The Office Memorandum further provides that the Deputy Commissioner of the concerned district where the applicant is a resident shall scrutinize the application and when the caste certificate of the father of the applicant, if enclosed, is found to be genuine and bonafide, the Deputy Commissioner concerned may issue the caste certificate to such applicant. It is further provided that in case of any doubt on the authenticity of the caste certificate of the applicant's father, the Deputy Commissioner shall cause an enquiry of the caste certificate through the authorized Caste or Tribe Organizations. It is further provided in the Office Memorandum that in case of any doubt on an identification certificate issued by the Caste/Tribe Organization then the Deputy

Commissioner will cause an enquiry through the Circle Officer which would be limited to ascertaining the caste identity and not for production of data/documents such as NRC papers etc.

8. It is further mentioned in the Office Memorandum that any applicant who shall apply for caste certificate on false caste/tribe/community status would invite penal provisions and the Deputy Commissioner may file FIR if there is detection of such false/fraudulent documents.

9. Essentially the grievance raised by the petitioners in this PIL petition is in respect of authorization of All Assam Tribal Sangha and its District Units to make recommendations for issuance of caste certificate. It is noticed that earlier also, the petitioner Society filed a PIL petition, being PIL No.30/2019 and the Division Bench of this Court, has disposed of the said PIL petition vide order judgment and order dated 01.03.2023.

10. In PIL No.30/2019, a similar concern was raised by the petitioners in respect of a Notification dated 22.06.2009, wherein the President/Vice President of All Assam Tribal Sangha and the District Units of Assam Tribal Sangha were authorized to identify the status of Scheduled Tribes Communities and to issue Schedule Tribes (P) and Scheduled Tribes (H) certificates in Assam.

However, the Division Bench of this Court, taking note of the Notification dated 22.06.2009, observed that if the President/Vice President of All Assam Tribal Sangha and District Unit of Assam Tribal Sangha are authorized to identify the status of the Schedule Tribes communities and, on the basis of that if caste certificates are issued then the said process cannot be said to be contrary to any provisions of any other law. However, the Division Bench has

clarified that any certificate issued by the President/Vice President of All Assam Tribal Sangha and District Unit of Assam Tribal itself will not be treated as final material for the authority concerned and the said authority shall also make application of their mind based on the material that may be available for issuing the certificates.

11. The relevant observations made by the Division Bench of this Court in the judgment dated 01.03.2023 are reproduced hereunder:-

“7. It is stated that although the notification dated 22.06.2009 had authorized the President/Vice President of All Assam Tribal Sangha and District Unit of Assam Tribal Sangha to identify the status of the Scheduled Tribes communities and to issue certificates to ST (P) and ST (H) in Assam but the respondents in the WPT and BC Department, which is subsequently renamed as Tribal Affair (P) Department had sought to involve the All Assam Tribal Sangha in the matter of issuing the certificates inasmuch as the All Assam Tribal Sangha have better knowledge from the field level as to which person may belong to ST (P) and ST (H) communities and therefore, their expert knowledge in the field is being utilized in the nature of a preliminary enquiry in the process of issuing certificates.

8. Considering the aforesaid clarification given by the WPT and BC Department, which is subsequently being renamed as Tribal Affair (P) Department, we are of the view that the said process, if adopted, would not be contrary to any provisions of any other law, if the exercise is limited to the extent of making a preliminary enquiry as to which person would belong to the Tribal communities for being entitled to a certificate of their status but at the same time we also provide that the contents of the preliminary enquiry that may be made through the All Assam Tribal Sangha shall not be construed to be the final material for the Deputy Commissioner or Deputy Collector or the Revenue Sub-Divisional Officer for issuing the certificates and such authorities shall also make their own application of mind based upon the materials that may be available for issuing the certificates.”

12. In view of above, we are of the view that even if the State Government, vide letters dated 16.03.2024 and 27.06.2024, has authorized the All Assam Tribal Sangha and its District Units to make recommendations for

issuing caste certificates for Scheduled Tribes in Assam, it cannot be said that only the said Tribal Sangha and its District Units have been authorized to issue the caste certificates for Scheduled Tribes in Assam. It is also to be noticed that in the Office Memorandum dated 08.08.2022, it is specifically mentioned that the Deputy Commissioner of the concerned district where the applicant is a resident shall scrutinize the application and when the caste certificate of the father of the applicant, if enclosed, is found to be genuine and bonafide, the Deputy Commissioner concerned may issue the caste certificate to such applicant. It is also to be noticed that in the Office Memorandum dated 08.08.2022, it is specifically mentioned that in case of any doubt on the authenticity of the caste certificate of the applicant's father, the Deputy Commissioner shall cause an enquiry of the case certificate through the authorized Caste and Tribe Organizations and in case of any doubt on an identification certificate issued by the Caste/Tribe Organisation, the Deputy Commissioner will cause an enquiry through the Circle Officer.

13. In view of the fact that the matter regarding issuance of a caste certificate for Schedule Tribe in Assam has already been adjudicated by this Court earlier in PIL No.30/2019 filed by the petitioner society and this Court has held that the recommendation made by the All Assam Tribal Sangha and its District Units can be taken into consideration prior to issuance of Schedule Tribe Certificate, we do not find any merit in the challenge of the petitioners to the letters dated 16.03.2024 and 27.06.2024 issued by the State Government. Hence, no relief can be granted to the petitioners in this PIL petition and the same is, therefore, dismissed.

However, we make it clear that the authorities who are authorized to

issue caste certificates in respect of Scheduled Castes, Scheduled Tribes, Other Backward Classes/Most Other Backward Classes are required to strictly follow the procedures laid down in the Office Memorandum dated 08.08.2022.

JUDGE

CHIEF JUSTICE

Comparing Assistant