

Sr. No.6
Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

WP(C) 1460/2024 along with connected matters

GUJJAR BAKERWAL ASSOCIATION GANDERBAL

...Appellant(s)/Petitioner(s)

Through: Mr. Syed Faisal Qadri, Sr. Advocate  
Mr. Shahbaz Sikander, Advocate

**Vs.**

DIVISIONAL COMMISSIONER KASHMIR AND ORS.

...Respondent(s)

Through: Mr. D. C. Raina learned Advocate General with  
Mr. Mubeen Wani, Dy. AG  
Mr. Azharul Amin, Advocate  
Mr. Umar Rashid, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.**

**ORDER**  
**26.07.2024**

1. The instant petition has been preferred on behalf of Gujjar Bakerwal Association Ganderbal through its president Mohd Ibrahim Chichi which association according to the petitioner is duly registered and has been created by the various members of the Scheduled Tribe Community living within the jurisdiction of District Ganderbal, whose prime object and purpose is the upliftment of the members of the Scheduled Tribe Community by ensuring the benefits in the form of various schemes formulated by the Government for betterment of the community.
2. Petitioners through the medium of the instant writ petition are seeking writ in the nature of mandamus commanding the respondents to produce entire record before this Court relating to the grant of Scheduled Tribe Certificates issued by respondent 5 to 7 w.e.f. 10.02.2023 from the date of order passed by the respondent No.1 came into existence, besides seeking quashment of the certificates issued by respondent No. 6 and 7 in favour of the private respondents.
3. The petitioner through the instant petition has also prayed writ in the nature of prohibition, restraining the respondents and directing them to refrain from issuing any other certificate by invoking Section 16 of the Reservation Act till the matter is adjudicated upon by this Court.

4. This Court vide order dated 08.07.2024 directed the learned counsel appearing on behalf of the respondents Mr. Mohsin Qadri, to report instructions with respect to the subject matter of the petition on the date fixed and pursuant thereto on 10.07.2024, when the case was taken up, learned Sr. AAG, was directed to keep the record available on the next date of hearing with respect to the certificates issued to the beneficiaries from 10.02.2023 till date.

5. When the case was taken up on 15.07.2024, there was an endeavour on part of this Court to clinch the controversy in question and, accordingly, a direction was issued to all the learned counsel appearing on behalf of the parties to file response in all the petitions.

6. Today, when the case was taken up, it was noticed that order passed by this Court dated 15.07.2024, has not been complied with in its letter and spirit and reply in all the petitions has not been filed and learned counsel on behalf of the private respondents Mr. Azharul Amin, seek further time to comply the aforesaid order and even the reply has not been filed on behalf of official respondents in all the petitions which are clubbed with the instant petition.

7. An urgency has been expressed by Mr. Faisal Qadri, learned counsel appearing on behalf of the petitioner to hear the matter and in the aforesaid backdrop learned Advocate General appearing on behalf of the respondents, has been requested to apprise this Court about the specific stand of the Government with particular reference to the communication issued by the Government of Jammu and Kashmir by way of policy through Department of Tribal Affairs dated 10.02.2023, whereby, it has been proposed to initiate an inquiry by the Secretary J&K Board for Welfare of ST/GB which was required to be completed at an earliest to ascertain, whether the certificates in question has been issued adhering to Gotra/Sub Castes of Scheduled Tribes notified by the Government of Jammu and Kashmir and consequently, the Revenue Department Officials have been advised to submit the required record during the visit of Board for verification.

8. The record further reveals that through the medium of the aforesaid communication, the order under reference dated 03.02.2023 has been directed to be kept on hold as the case involves policy matter with regard to granting of ST certificates in absence of clear revenue

record/prescribed documents and, in view of the procedural lapses mentioned therein itself.

9. It has also been made clear through the medium of the aforesaid communication which is subject matter of the instant petition that in case of any ST certificate(s) required to be issued in the meanwhile, for cases involving such shortfalls in the revenue records or instances of applicants' caste/gotra not mentioned in the designated records, a direction was issued to submit the case files to the Board for its opinion, online, which shall be conveyed not later than one week after submission of the record for perusal.

10. The Government by way of policy mentioned supra through the Department of Tribal Affairs has made it clear that any ST certificate issued by Tehsildar(s) in absence of prescribed documents as notified by the Government shall be the personal responsibility of the Tehsildars.

11. Since, an issue has been raised in the instant petition by the petitioners that the direction issued by the Government through the medium of the aforesaid communication by way of a policy is being flouted with impunity by the Deputy Commissioner Ganderbal and Tehsildar Ganderbal. The record reveals that the certificates are being issued by the concerned Tehsildar and direction has been issued by the Deputy Commissioner Ganderbal by virtue of order dated 28.01.2023 which is reproduced as under:-

*“In view of the above, the appeal is accepted and impugned Order dated 27.12.2022 passed by Tehsildar Ganderbal, is hereby set aside with the directions that the Competent Authority (Tehsildar, Ganderbal) shall issue Schedule Tribe Certificate to the appellants within a period of seven (07) days. Further, it is also directed that all such applications be disposed off on the touchstone of relevant provisions of the Act & Rules/ Circulars/ Guidelines discussed herein above within the stipulated time period and issue certificates after scrutiny and verification contemplated by the Act and Rules provided of course the application(s) are found fit for acceptance in terms of Rule 21 of the Reservation Rules, 2005.*

*Interim orders, if any, shall stand vacated and the file be consigned to records after due completion of formalities.”*

12. Accordingly, the petitioner association was constrained to file the instant petition and has sought following relief:-

- (a) Issue a Writ of Mandamus commanding the respondents to produce the entire records before this Hon'ble Court relating to grant of Scheduled Tribe certificates issued by Respondents 5 to 7 with effect from 10.02.2023 i.e., from the date an order passed by Respondent No. 1 came into existence.*
- (b) Issue a Writ of Certiorari quashing the impugned reservation certificates bearing No. JK-REV-SCT/2024/Btt6l dated 08.06.2024, JK-REV-SCT/2024/tLL39 dated 01.07.2024 & JK-REV-SCT/2024/tt50 dated 08.06.2024 issued by Respondent No. 6 & 7 in favour of Respondents 8 to 10.*
- (c) Issue a writ of prohibition, prohibiting the respondent No 5 to 7 and directing them to refrain from issuing any further certificates under scheduled Tribe Category by invoking Section 16 of the Reservation Act of 2004 till the matter is adjudicated upon by the Hon'ble Court finally.*

13. In the aforesaid backdrop, this Court deems it proper to request learned Advocate General to apprise this Court whether the policy formulated through the medium of the aforesaid communication is being followed in its letter and spirit or in breach and also apprise this Court with respect to the steps taken by the Government in furtherance of the said policy.

14. Let the instructions as desired be conveyed to this Court orally or in writing, by or before the next date of hearing.

15. List on 30.07.2024.

**(WASIM SADIQ NARGAL)**  
**JUDGE**

**SRINAGAR**  
**26.07.2023**  
Aadil