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

Case No. : WP(C)/3674/2026

GAURAV UPADHYAY
SON OF LATE SHYAM SUNDAR UPADHYAY, RESIDENT OF GOVERNMENT
QUARTER NO. B-II/ZONE-II, ASSAM POLICE HOUSING COMPLEX,
ULUBARI, GUWAHATI 781007, KAMRUP METROPOLITAN, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF TRIBAL AFFAIRS PLAIN,
JANATA BHAWAN, DISPUR, GUWAHATI - 781006, ASSAM.

2:THE STATE LEVEL SCRUTINY COMMITTEE
REPRESENTED BY ITS CHAIRPERSON
DEPARTMENT OF TRIBAL AFFAIRS PLAIN
GOVERNMENT OF ASSAM
BLOCK-D
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI 781006
ASSAM.

3:THE DIRECTOR
TRIBAL AFFAIRS PLAIN
GOVERNMENT OF ASSAM
RUKMININAGAR
GUWAHATI781006
ASSAM.

4:THE SUPERINTENDENT OF POLICE
C.I.D.

ASSAM
ULUBARI
GUWAHATI-781007
ASSAM.

5:THE COMMISSIONER
DEPUTY KAMRUP METROPOLITAN
HENGARABARI
GUWAHATI-781036
ASSAM.

6:SMT LEENA DOLEY
APS
PRESENTLY SERVING AS SENIOR SUPERINTENDENT OF POLICE
SRIBHUMI DISTRICT
ASSAM
RESIDENT OF HOUSE NO. 54
BELTOLA COLLEGE ROAD
BONGAON
P.O. BELTOLA
P.S. BASISTHA
GUWAHATI - 7810287
ASSAM.

7:MS DIVYANA A LAHAN
DAUGHTER OF LATE NILUTPAL LAHAN
RESIDENT OF HOUSE NO. 54
BELTOLA COLLEGE ROAD
BONGAON
P.O. BELTOLA
P.S. BASISTHA
GUWAHATI - 781028
ASSAM

For the Petitioner(s) : Mr. I. Chowdhury, Sr. Advocate
Mr. R. Das, Advocate

For the Respondent(s) : Mr. D. Nath, Sr. Govt. Advocate
Mr. R. Dhar, Standing Counsel
Mr. A.A. Mir, Advocate
Mr. H.K. Nath, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 27.07.2026

Issue notice making it returnable on 07.10.2026.

2. Mr. R. Dhar, the learned Standing Counsel appears on behalf of the Respondent Nos. 1, 2 and 3; Mr. D. Nath, the learned Senior Government Advocate appears on behalf of the Respondent Nos. 4 and 5 and Mr. A.A. Mir, the learned counsel on caveat appears on behalf of the Respondent Nos. 6 and 7 and accepts notice.

3. Extra copies of the writ petition be served upon the respective counsels by 28.07.2026.

4. This is the second round of litigation wherein the entitlement of the Scheduled Tribe Certificate to the Respondent No. 7 is before this Court.

5. The materials on record show that the Respondent No. 7 was born on 10.01.2006. At the time when the Respondent No. 7 was 6 years old, her father, who belonged to the OBC category, expired, and thereupon the Respondent No. 7 has been brought up by the Respondent No. 6, who admittedly belongs to the Miri (Mising) community, a community recognized as a Scheduled Tribe in the State of Assam.

6. On account of an alleged incident that the Respondent No. 7 was sexually molested by the Petitioner on 31.12.2019, an FIR was filed which was registered as All Women P.S. Case No. 5/2020 under Section 354 of the Indian Penal Code, read with Section 10 of the Protection of Children from Sexual Offences Act, 2012. Subsequent thereto, a prayer was made by the Investigating Officer before the learned Court of the Sub-Divisional Judicial Magistrate No. 1, Kamrup (Metro) at Guwahati, whereupon an order was passed on 07.01.2020, thereby allowing the addition of Section 354(A) of the Indian Penal Code and Section 3(1)(xi)(W)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act of 1989").

7. The Petitioner thereupon challenged the caste certificate issued to the Respondent No. 7. Resultantly, the caste certificates issued to the Respondent No. 7 as well as her brother were cancelled by the Deputy Commissioner, Kamrup (Metro) vide an order dated 22.09.2020. The said cancellation was challenged by the Respondent Nos. 6 and 7, along with her brother, by filing a writ petition, which was registered and numbered as WP(C) No. 4204/2020. Subsequent to the issuance of notice in WP(C) No. 4204/2020, the order of cancellation dated 22.09.2020 was withdrawn. Resultantly, WP(C) No. 4204/2020 was withdrawn as

infructuous.

8. The Petitioner thereupon challenged the criminal proceeding initiated against the Petitioner, which was registered as All Women Police Station Case No. 5/2020, in a writ petition being WP(C) No. 4523/2020. The learned Coordinate Bench of this Court vide an order dated 21.10.2020 directed that until such time as the question of validity of the Scheduled Tribe certificate issued to the Respondent No. 7 was decided by the Competent Authority, the provisions of the Act of 1989 shall not be applied in All Women Police Station Case No. 5/2020.

9. This order dated 21.10.2020 was put to challenge by the Respondent Nos. 6 and 7 in Writ Appeal No. 190/2020. The said Writ Appeal was disposed of vide an order dated 21.01.2021 without interfering with the order passed by the learned Coordinate Bench on 21.10.2020. However, certain directions were issued to the Screening Committee to decide the validity of the caste certificates issued in favour of the Respondent No. 7 and her brother within a period of 15 days from the date on which the certified copy of the order dated 21.01.2021 was placed before the Screening Committee.

10. The record reveals that pursuant thereto, an inquiry was held and an order was passed by the Screening Committee, i.e.,

the Respondent No. 2 on 29.09.2021. The said order dated 29.09.2021 was put to challenge before this Court in WP(C) No. 8024/2022.

11. This Court, vide the judgment and order dated 03.10.2024, set aside the order dated 29.09.2021 and remanded the matter back to the Respondent No. 2 for deciding afresh only on the issue pertaining to whether the Respondent No. 7 and her brother have been accepted by the other people outside the community of the Respondent No. 6 as belonging to the ST community. While passing the said judgment and order dated 03.10.2024, this Court duly took into consideration the *locus standi* of the Petitioner. However, taking into account that, on the basis of the directions passed by the learned Division Bench in Writ Appeal No. 190/2020, the Petitioner herein had challenged the caste certificate of the Respondent No. 7, this Court did not proceed further on that aspect.

12. Be that as it may, the judgment and order dated 03.10.2024, passed in WP(C) No. 8024/2022, was put to challenge before the learned Division Bench of this Court in Writ Appeal No. 5/2025. The learned Division Bench of this Court, vide the judgment and order dated 25.11.2025, set aside the judgment passed by this Court dated 03.10.2024 in WP(C) No. 8024/2022 and remanded the matter back to the Respondent

No. 2 to reconsider the issue in a holistic yet calibrated manner, without being guided or prejudiced by the observations made by this Court in the concluding portions of the judgment and order dated 03.10.2024, or else the fact-finding function of the SLCSC would stand trenched upon impermissibly. This Court finds it very pertinent to reproduce paragraph Nos. 30 to 34 of the judgment and order dated 25.11.2025 in W.A. No. 5/2025 passed by the learned Division Bench of this Court hereinbelow:

“30. Speaking of the contention of the appellant that the victim is asserting ST status solely to prosecute him under the SC/ST Act, 1989 is legally irrelevant. The caste status depends upon the facts of birth, upbringing and assimilation but the purpose for which a certificate is needed, is wholly immaterial.

The motive argument, therefore, does not aid the appellant. It only underlines the need for the SLCSC to conduct a strictly unbiased enquiry.

*31. Thus, we hold that the reasons given by the learned Single Judge for doubting the correctness of the order passed by the SLCSC may be correct; for there are many lapses including inadequate reasoning and incorrect application of the principles/ test laid down in **Rameshbhai Dabhai Naika** (supra), justifying the remand but it was not appropriate to restrict the scope of the enquiry after remand.*

*32. The proper remedy, therefore, in our opinion, is a fresh, unfettered reconsideration by the SLCSC on all relevant factors, consistent with **Kumari Madhuri Patil** (supra), **Rameshbhai Dabhai Naika** (supra), **Ayaaubkhan Noorkhan Pathan** (supra) and **Navneet Kaur Harbhajansing Kundles***

(supra).

33. We, thus, set aside the impugned judgment, and remand the matter to the SLCSC to reconsider the issue in a holistic yet calibrated manner, without being guided or prejudiced by the observations made by the learned Single Judge in the concluding portion of the impugned judgment, or else, the fact finding function of the SLCSC would stand trenched upon impermissibly.

34. The SLCSC shall, without wasting time, decide the issue in a holistic manner, within a period of 60(sixty) days, to be counted from the date of receipt or production of a certified copy of this judgment before the SLCSC by any one of the parties.”

13. From a perusal of the above-quoted paragraphs, it is apparent that there was a specific direction passed by the learned Division Bench upon the Respondent No. 2 to carry out the reconsideration on all relevant factors consistent with the judgment passed by the Supreme Court referred to therein. Further to that, the said decision was directed to be taken within a period of 60 days therefrom.

14. The record further reveals that an order was passed by the Respondent No. 2 on 27.03.2026. A mere cursory glance at the order dated 27.03.2026 passed by the Respondent No. 2 apparently shows that the directions passed by the learned Division Bench in the judgment and order dated 25.11.2025 in Writ Appeal No. 5/2025, have not been complied with. The said

order dated 27.03.2026 was passed without applying the law laid down by the Supreme Court in the various judgments, reference of which the learned Division Bench made and directed to be looked into and applied were adhered to. Perfunctorily, the Respondent No. 2 without assigning any reasons reiterated its earlier order dated 29.09.2021.

15. The record reveals that pursuant thereto, the Respondent No. 2 realized its mistake that the directions passed by the learned Division Bench in the judgment and order dated 25.11.2025 in Writ Appeal No. 5/2025 were not taken into consideration while passing the order dated 27.03.2026 and, accordingly, on 06.04.2026, the order dated 27.03.2026 was recalled, thereby directing the Vigilance Cell to submit the report afresh by 27.04.2026. Subsequent thereto, after taking due evidence, the Speaking Order was passed on 30.06.2026, which has been challenged in the present proceedings.

16. This Court specifically enquired with the learned Senior Counsel appearing on behalf of the Petitioner on the question of *locus standi* of the Petitioner, more particularly in view of the judgment passed by the Supreme Court in the case of ***Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra & Others*** reported in **(2013) 4 SCC 465**.

17. The learned Senior Counsel for the Petitioner submitted that the Petitioner is compelled to again challenge the impugned order dated 30.06.2026, inasmuch as if the said Scheduled Tribe certificate issued to the Respondent No. 7 is not put to challenge, the criminal proceedings initiated being All Women Police Station Case No. 5/2020, wherein Charge Sheet has been submitted against the Petitioner, the Petitioner would be proceeded under the Act of 1989.

18. This Court enquired with Mr. A.A. Mir, the learned counsel who appears on behalf of the Respondent Nos. 6 and 7 on caveat, as to whether charges have been framed against the Petitioner under the Act of 1989.

19. The learned counsel for the Respondent Nos. 6 and 7 submitted that no charges have been framed under the Act of 1989.

20. Under such circumstances, this Court keeps the maintainability of the writ petition open, which shall be decided on the next date, more particularly in view of the observations made by the learned Division Bench in the judgment and order dated 25.11.2025 passed in Writ Appeal No. 5/2025 at paragraph No. 30.

21. The learned Senior Counsel appearing on behalf of the

Petitioner submitted that the Respondent No. 2 had no jurisdiction to review its order dated 27.03.2026 and as such the impugned orders dated 06.04.2026 and 30.06.2026 are without jurisdiction. The learned Senior Counsel sought for stay of the impugned order dated 30.06.2026 passed by the Respondent No. 2.

22. This Court has given an anxious consideration and had perused the materials on record, including the directions passed by the learned Division Bench of this Court in the judgment and order dated 25.11.2025 in Writ Appeal No. 5/2025.

23. There was a specific direction passed upon the Respondent No. 2 by the learned Division Bench in the judgment and order dated 25.11.2025 to reconsider the matter in the light of the judgments passed by the Supreme Court, reference to which were made.

24. This Court as already observed hereinabove is prima facie of the opinion that the order dated 27.03.2026 was not passed in terms with the directions passed by the learned Division Bench in the judgment and order dated 25.11.2025 in Writ Appeal No. 5/2025.

25. This Court has also perused the order dated 30.06.2026 and, prima facie, is of the opinion that the same has been done

by a fact-finding authority in consonance with the directions passed by the learned Division Bench.

26. This Court had also considered the submission of the learned Senior Counsel for the Petitioner on the aspect pertaining to the jurisdiction of the Respondent No. 2 to review its order dated 27.03.2026. This Court is prima facie of the opinion that the said submission is misconceived for the reason that there is a difference between an exercise of the review jurisdiction and a power to recall. It is settled principles that if a mistake had been committed thereby prejudicing parties, the Authority has the power to make good by rectifying its mistake. A perusal of the judgment and order passed by the learned Division Bench clearly shows that the Respondent No. 2 has been conferred with a serious responsibility to carry out the enquiry as regards the legitimacy of claim of the Respondent No. 7 to be issued the Scheduled Tribe Certificate. This responsibility ought to have been exercised in a proper manner and more so when specific directions were issued by the learned Division Bench. The Respondent No. 2, though late, realized that a mistake was committed. The correction of the mistake by recalling the order dated 27.03.2026 by the order dated 06.04.2026, cannot be said prima facie to come within the scope of review. Rather, it prima facie appears to be an exercise of the power of recall.

27. Considering the above, this Court is not inclined to stay the order dated 30.06.2026 passed by the Respondent No. 2.

28. The Respondents herein are directed to bring on record their stand by filing affidavits on or before 18.09.2026.

29. Liberty is given to the Petitioner to file reply thereagainst on or before 30.09.2026.

30. Taking into consideration that the delay in disposal of the present dispute would not be beneficial to either the Petitioner or the Respondent No. 7, an attempt shall be made to take up the present proceedings for final disposal on the next date.

31. The observations made in the present order are prima facie and shall not affect the final adjudication of the present proceedings.

JUDGE

Comparing Assistant