



GAHC010050002022

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

Case No. : WP(C)/1867/2022

GAURAV UPADHYAY
S/O. LT. SHYAM SUNDAR UPADHYAY, R/O. SILPUKHURI, GUWAHATI,
ASSAM, PIN-781003.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR-781006,
ASSAM.

2:THE SECRETARY
TO THE GOVT. OF ASSAM
WPT AND BC DEPTT.
DISPUR
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER

KAMRUP (M)
GUWAHATI-01.

4:THE CRIMINAL INVESTIGATION DEPTT.

ASSAM POLICE
ULUBARI
GUWAHATI-781005.

5:THE PRESIDENT

ALL ASSAM TRIBAL SANGHA
TRIBAL REST HOUSE
SOLAPAR



PALTANBAZAR
GUWAHATI-781008.

6:SMT. LEENA DOLEY
W/O. LT. NILOTPAL LAHAN
R/O. E/VI
ZONE II
POLICE QUARTERS
DR. B.K. KAKATI ROAD
ULUBARI
GUWAHATI-781007.

7:THE STATE LEVEL CASTE SCRUTINY COMMITTEE
ASSAM REP. BY ITS CHAIRMAN
OFFICE OF THE COMMISSIONER AND SECY. GOVT. OF ASSAM
WPT AND BC DEPTT.
DISPUR
GUWAHATI-06

Advocate for the Petitioner : MR. N J KHATANIAR

Advocate for the Respondent : GA, ASSAM

Date of hearing : 13.09.2022

Date of judgment : 16.09.2022

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

JUDGMENT AND ORDER (CAV)

Heard Mr. KN. Choudhury, learned senior counsel assisted by Mr. NJ Khataniar, learned counsel for the petitioner. Also heard Mr. K Goswami, learned senior counsel assisted by Mr. J Borah, learned counsel for the respondent No. 6, Mr. R Dhar, learned counsel for the respondent No. 2 as well as Mr. JK Goswami, learned counsel for the respondent Nos. 1, 3 and 4. No one appears



for the respondent No. 5.

2. The maintainability of the writ petition is being decided. The issue is whether a writ of mandamus will lie, in the absence of violation of any of the petitioner's legal or fundamental right.

3. The petitioner was the Superintendent of Police of Karbi Anglong, while the respondent No. 6 was the Superintendent of Police CID in the Assam Police at the relevant time.

The petitioner has prayed for a direction to be issued to the respondent authorities, to initiate Disciplinary Proceedings and Criminal Proceedings against the respondent No. 6/informant and other persons, involved in obtaining the Schedule Tribe (Plains), ST (P), certificate in favour of the daughter of the respondent No. 6, in terms of the judgment of the Apex Court in *Kumari Madhuri Patil & Another Vs. Addl. Commissioner, Tribal Development & Others*, reported in (1994) 6 SCC 241. The further prayer of the petitioner is that the respondent No. 6 should be prosecuted for commission of an offence under Section 191, 193 and 195 IPC, i.e., for giving false evidence and fabricating false evidence, for obtaining the ST (P) certificate for her daughter.

4. The petitioner's counsel submits that on the basis of FIR dated 04.01.2020, submitted by the respondent No. 6 alleging that the petitioner had outraged the modesty of the daughter of the respondent No. 6, All Woman Police Station Case No. 05/2020 under Section 354 IPC read with Section 10 of the POCSO Act, 2012 was registered against the petitioner.

5. The petitioner's counsel submits that in view the respondent No. 6 stating that her daughter belonged to the ST (P) category, Section 354(A) IPC r/w 3(1) (XI)(W)(i) & (W)(ii) of SC ST (Prevention of Atrocities) Act, 1989 was sought to be added to the All Woman P.S Case No. 05/2020. However, vide order dated 21.10.2020 passed by this Court in WP(C) No. 4523/2020, it was directed that the provisions of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "1989 Act") should not be applied to the All Women Police Station Case No. 5/2020, till the validity of the ST(P) certificate issued to the daughter of the respondent No. 6 was decided by the competent authority. Thereafter, the State Level Scrutiny Committee, constituted in terms of the judgment of the Apex Court in *Kumari Madhuri Patil (supra)*, came to a finding by its Speaking Order dated 24.09.2021, that though the daughter of the respondent No. 6, who was allegedly molested by the petitioner was the offspring of a marriage between a tribal (respondent No. 6) and a non-tribal father, who belonged to the "Other Backward Class", who had expired in the year 2012, there was no evidence that the daughter of the respondent No. 6 suffered social, economic and educational disability. As such, the State Level Scrutiny Committee held that the daughter of the respondent No. 6 did not belong to the Schedule Tribe (Plains) community of Assam.

6. The petitioner's counsel submits that in view of the Speaking Order dated 24.09.2021, the ST (P) certificate issued to the daughter of the respondent No. 6, by the office of the Deputy Commissioner, Kamrup (Metro), was cancelled. He also submits that the provisions of the 1989 Act were accordingly not applied by the Police in the All Women Police Station Case No. 5/2020. He submits that as



the ST (P) certificate had been obtained by the respondent No. 6 in favour of her daughter by fraudulent means, action should be taken against the respondent No. 6, in terms of the judgment of the Apex Court in *Kumari Madhuri Patil (supra)*. Further, she should be prosecuted for commission of an offence involving giving false evidence and fabricating false evidence.

7. The petitioner's counsel has thereafter taken this Court to the various documents wherein it shows that the children of the respondent No. 6 have been shown to be categorized under the General category, eg: the form for admission to schools. He submits that the finding of the Scrutiny Committee that there was no evidence that the daughter of the respondent No. 6 suffered from any social, economical or educational discrimination clearly shows that the respondent No. 6 had applied for the ST(P) certificate, in favour of her daughter, only for the purpose of implicating the petitioner under a stringent provision of law, i.e., the 1989 Act. The petitioner's counsel submits that as the respondent No. 6 had committed offences under Sections 191/193/195 of the IPC, the Registry of this Court should file a complaint to the State respondents, to register a case against the respondent No. 6, as the State respondents are not registering any case against the respondent No. 6. The learned counsel submits that the High Court not only has the power to issue a writ of mandamus, but is bound to exercise such power, where the Government fails to exercise its discretion conferred upon it by a statute and compel the performance of the said discretion. In support of his submission, the learned counsel has relied upon the case of the Apex Court in *Hari Krishna Mandir Trust vs. State of Maharashtra*, reported in (2020) 9 SCC 356.

8. The learned senior counsel for the petitioner also submits that a writ of

mandamus is enforceable, even though no right of the petitioner has been violated, inasmuch as, a mandamus is a command to direct any person, Corporation, inferior Court or Government, requiring him or them to do some particular thing which pertains to his or their office and is in the nature of a public duty. In support of his submission, the learned senior counsel has relied upon the Judgment of the Apex Court in *Director of Settlements, A.P. & Others Vs. M.R. Apparao & Another*, reported in (2002) 4 SCC 638.

9. Mr. K. Goswami, learned senior counsel for the respondent No. 6, on the other hand submits that no false statement was made by the respondent No. 6, while applying for the ST (P) certificate in favour of her daughter. He submits that the daughter of the respondent No. 6 was born out of the marriage of the respondent No. 6, who belonged to the ST (P) category along with her deceased husband, who belonged to the OBC category. He submits that the husband of the respondent No. 6 expired on 04.10.2012 and since then, the respondent No. 6 has been looking after her 2 (two) minor children. He submits that his 13 (thirteen) years old daughter was molested by the petitioner on 31.12.2019, at his official residence in Diphu Karbi Anglong, when they went to attend the Birthday party of the elder son of the petitioner.

10. The learned senior counsel for the respondent No. 6 submits that a perusal of the Speaking Order dated 24.09.2021 clearly shows that no false statement had been made by the respondent No. 6, while applying for the ST (P) certificate for her daughter. He also submits that the State Level Scrutiny Committee did not make any finding that the respondent No. 6 had committed any fraud or had made any false statement, while applying for the ST (P)

certificate for her daughter. He accordingly submits that there is no question of the respondent No. 6 being prosecuted under Section 191, 193 & 195 IPC or in terms of the judgment of the Apex Court in *Kumari Madhuri Patil (supra)*.

11. The learned senior counsel for the respondent No. 6 submits that the present writ petition not being maintainable, the same has to be dismissed. He submits that a writ of mandamus can be prayed for, only in respect of a person whose legally enforceable right has been violated. In the present case, no legal right of the petitioner has been violated and as such, the petitioner cannot file the present writ petition. In support of his submission, the learned senior counsel has also relied upon the judgment relied upon by the petitioner's counsel, i.e., *Director of Settlements, AP & Others Vs. M.R. Apparao & Another (Supra)*.

12. The learned senior counsel for the respondent No. 6 also submits that the writ petition should be dismissed as the petitioner had hidden a relevant fact from this Court, i.e., that the petitioner had been granted pre-arrest bail on 07.01.2021 and as such, the rigors of Section 18 of the 1989 Act was not felt by the petitioner. No prejudice was caused to the petitioner on the basis of the ST (P) certificate issued to the daughter of the respondent No. 6. He submits that as per the judgment of the Apex Court in the case of *Hitesh Verma vs. State of Uttarakhand*, reported in (2020) 10 SCC 710, the 1989 Act has been enacted to enable persons belonging to the Schedule Caste/Schedule Tribe to assert their rights and to also keep a check and deter crimes against them, by persons belonging to the Non-Scheduled Caste/Non-Scheduled Tribe. He submits that in terms of the judgment of the Apex Court in the case of *SP Chengalvaraya Naidu*

vs. *Jagannath*, reported in (1994) 1 SCC 1, non-mentioning of important facts and non-production of documents tantamounts to playing a fraud upon the Court. He further submits that there was no false statement made by the respondent No. 6 at any time and in fact, the application submitted by the respondent No. 6, while applying for the caste certificate for her daughter had been recommended by the President of the All Assam Tribal Sangha, which is reflected in the ST (P) certificate issued by the office of the Deputy Commissioner, Kamrup (Metro).

13. Mr. R. Dhar, learned counsel appearing for the respondent No. 2 submits that Charge-sheet has already been filed against the petitioner, in connection with All Woman P.S. Case No. 05/2020, wherein the I.O. has found a prima-facie case under Section 354 IPC read with Section 10 of the POCSO Act, 2012 against the petitioner. He also submits that the writ petition is not maintainable, as no legally enforceable right of the petitioner has been violated.

14. I have heard the learned counsels for the parties.

15. The FIR submitted by the respondent No. 6 is as follows:-

“With reference to the above, I would like to submit an FIR against accused person Sri Gaurav Upadhyay, IPS, Superintendent of Police, Karbi Anglong, Assam, who molested my 13 year old daughter, Ms Divyana A Lahan, on 31/12/2019 at his official residence in Diphu, Karbi Anglong.

On 31/12/2019, as invited by the accused person and his wife, after attending office, I alongwith my 13 year old daughter and 9 year old son proceeded to official residence at Diphu to attend the birthday party of his elder son. We reached around 9.45 pm and attended the party which was organized in the garden lawn of his residence. During the party, the accused person invited me and two children to see his office in the tower building which was located adjacent to the garden lawn. We went to the office room and when I had gone to the

washroom, the accused person forcibly kissed my daughter on her lips twice. Each time she pushed him away. My 9 year old son was witness to this incident.

After a short while, we went to the Hotel Hambi, Diphu, where our accommodation for the night was arranged by the accused person. The accused person came to drop us off to the hotel. On reaching the suite booked for us, he told my daughter that he wants to show a video to her and while showing the video, the accused person first put his hand on her stomach from behind and then on her breasts. She removed his hands but he again tried to touch her breasts. Then she got up and said that she was sleepy and didn't want to see the video. I said goodbye to the accused person and asked my daughter also to say bye. When I went into the bedroom looking for my son, then the accused person again tried to kiss her on the mouth forcefully but she pushed him away and closed the door.

The next day when we were getting ready to go over to the accused person's house for lunch, my daughter told me about all the above incidents of the previous night, which were not in my knowledge. I called the accused person to the hotel and confronted him, upon which he admitted that he had done so in a state of inebriation. We then left Diphu for Guwahati.

In view of the above, I request you to kindly take necessary action against the accused person as per law. Further, it is also requested not to disclose the name of my daughter, being a minor or to provide any such information to any person/media, which might lead to disclosure of her name, as mandated by law."

16. In the case of *Kumari Madhuri Patil & Another Vs. Addl. Commissioner, Tribal Development & Others*, reported in (1994) 6 SCC 241, the Apex Court has stream-lined the procedure for issuance of a social status certificate, their scrutiny and approval, in paragraph 13 of the said judgment. Paragraph 13 (14) of the said judgment provides that 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. Paragraph 13 (14) of the said judgment is reproduced below:-



“13(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 Parliament.”

17. On a perusal of the ST (P) certificate dated 21.08.2020 issued by the office of the Deputy Commissioner, Kamrup (Metro), it is seen that the issuance of the certificate had been recommended by the President of the All Assam Tribal Sangha. As the application made by the respondent No. 6 for issuance of a caste certificate in favour of her daughter was not a part of the writ petition, this Court had directed the respondent No. 6 to produce the same. The same has been produced and a copy has also been furnished to the other side. On perusal of the same, it is seen that the respondent No. 6 had mentioned the fact that her deceased husband belonged to the OBC (Ahom) caste and that after his death on 04.10.2012, the respondent No. 6 had been bringing up her two children as a single parent, with the active support of her mother and three siblings, as per the custom and way of life of the Miri community. The application for issuance of a caste certificate made by the respondent No. 6, also states that the judgment of the Supreme Court in *Rameshbhai Dabhai Naika vs. State of Gujarat and Ors.* should be considered by the Deputy Commissioner, Kamrup (Metro), while considering issuance of a caste certificate to the daughter of the respondent No. 6. In *Rameshbhai Dabhai Naika vs. State of Gujarat and Ors.*, reported in *2012 3 SCC 400*, the Apex Court has held that children of Scheduled Caste/Tribe single mothers and forward caste fathers, can take the caste of their mothers, if such child is brought up by the mothers, who belong to the community and faced the same deprivations, indignities, humiliations and handicaps as the other members of the community. The application of the

respondent No. 6 has also referred to judgments of the Bombay High Court, Gauhati High Court and Madras High Court in support of her prayer for issuance of a ST (P) certificate for her daughter.

18. Though the counsel for the petitioner has tried to convince this Court that the attempt by the respondent No. 6 to influence the Deputy Commissioner, Kamrup (Metro) to issue a caste certificate, by considering the judgments of the Apex Court and the High Court was a mischief played by the petitioner, this Court is of the view that no criminal offence has been committed, in the respondent No. 6 trying to take the help of the decisions of the Supreme Court and the High Courts, if the respondent No. 6 is of the view that those decisions support her case. The ultimate decision to be taken is in any event in the hands of the Deputy Commissioner, who issues the caste certificate and the attempt by the respondent No. 6 to take the help of the decisions of the Supreme Court and the High Court to her advantage, cannot tantamount to giving false evidence. Even while hearing arguments in Court, counsels have relied upon various judgments in support of their arguments which may not be relevant. The same would not mean that they are giving false evidence. Further, the different stands taken by the respondent No. 6, while filling up school admission forms and praying for a ST (P) certificate for her daughter at a later stage without making any false statement, only reinforces the fact that a person can change his/her mind and views as time progresses.

19. The issue as to whether the daughter of the respondent No. 6 was deprived or was facing the same deprivations/handicap, as other members of the Miri community, has already been decided by the Scrutiny Committee. There is nothing in the Scrutiny Committee report to the effect that the respondent No. 6 had submitted any false evidence or had fabricated any document. The

only reason for coming to a decision that the daughter of the respondent No. 6 did not belong to the ST community of Assam by the Scrutiny Committee, was due to the finding that education and amenities were available and accessible to her, which was not available and accessible to the members of the community to which the respondent No. 6 belonged. This finding by the Scrutiny Committee, in no way suggests or proves that the respondent No. 6 had played a fraud or submitted false evidence or had fabricated documents, for the purpose of issuance of an ST (P) certificate in favour of her daughter by the Deputy Commissioner, Kamrup (Metro).

20. With respect to the submission made by the Senior counsel for the petitioner that the Registry of this Court should file a complaint to the Authorities, due to the offence committed by the respondent No. 6 under Sections 191/193/195 of the IPC, this Court is of the view that the said submission is not sustainable, in view of the fact that there is nothing to show that the respondent No. 6 has made a false declaration or fabricated false evidence in any judicial proceeding or before this Court.

21. In the case of *Director of Settlements, AP & Others Vs. M.R. Apparao & Another (Supra)*, the Apex Court has held at paragraph 17 that one of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a right of mandamus. The extract of paragraph No. 17 of the above judgment is reproduced below as follows:-

“17.A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (*Kalyan Singh v. State of U.P.*). The duty that may be enjoyed by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law....”

22. In the case of *Rai Shivendra Bahadur (Dr.) V. Governing Body of the Nalanda College*, the Apex Court has held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce.

23. In the case of *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Others*, reported in (2013) 4 SCC 465, the Apex Court has held that a writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the applicant that there has been a breach of statutory duty on the part of the authorities. It also held that the Court can enforce the performance of a statutory duty, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. Thus, the existence of such a right is a condition precedent for invoking the writ jurisdiction of the Courts and that legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infractions of such right and approaches the Court for relief as regards the same. The Apex Court held that a legal right means an entitlement arising out

of legal rules. The expression, 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury. A person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized. The Apex Court has in paragraph Nos. 9 & 10 of the above judgment stated as follows:-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffered from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be define as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized."

24. In the present case, the petitioner has not been able to show that his legal

right had been adversely affected or jeopardised because of the daughter of the respondent No. 6 being issued an ST (P) certificate. The provisions of the SC & ST (Prevention of Atrocities) Act, 1989, were never incorporated in the Police case and the rigors of the same never applied or felt by the petitioner. The ST (P) certificate has also been cancelled in terms of the Speaking Order issued by the Government of Assam.

25. The petitioner's counsel has taken a stand that there was a legal duty on the part of the State for taking action against the respondent No. 6 in terms of paragraph 13(14) of the Apex Court judgment in *Kumari Madhuri Patil (Supra)*, even though no legal right of the petitioner has been infringed. On considering the above submission, this Court is of the view that action under paragraph No. 13 (14) in *Kumari Madhuri Patil (Supra)* would only arise if the caste certificate was obtained by making a false claim which would be relatable to fraud, false statements or fabricating documents. Further, children can take the caste of their mothers in terms of the judgment of the Apex Court in *Rameshbhai Dabhai Naika (supra)*. Also, on a consideration of the facts of the case, this Court finds that the petitioner has not been able to show that some legal right of his had been infringed, so as to enable him to file the present writ petition asking for a writ of mandamus. In the opinion of this Court, the prayer of the petitioner, praying for performance of a legal duty by the State, has to be first preceded by violation of an existing right of the petitioner and/or enforcement of his legal right, in terms of the Judgment of the Apex Court in *Director of Settlements, A.P & Others (Supra)*.

26. Though, the petitioner's counsel has tried to make out a case that the

petitioner has a legal right to insist on the performance of a legal duty in view of the daughter of the respondent No. 6 being fraudulently issued an ST (P) certificate, this Court is of the view that the petitioner cannot pray for a writ of mandamus, for the prosecution of the respondent No. 6, unless some legal right of the petitioner has been infringed upon and/or he has some existing enforceable right. Further, there is nothing in the Speaking Order issued by the Scrutiny Committee, to show that the ST (P) certificate issued to the daughter of the respondent no.6, had been made on the basis of some fraud, false statement or fabricated documents made by the respondent No. 6.

27. In the case of *State of Kerala Vs. Smt. A. Lakshmikutty & Others*, reported in (1986) 4 SCC 632, the Apex Court has held that the legal right to enforce the performance of a duty must be in the applicant himself. Paragraph 34 of the above judgment is reproduced as follows:-

*“34. We must refer to the case of [Mani Subrat Jain v. State of Haryana](#) which was relied upon by learned counsel for the State Government. It is well-settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. Applying the principles stated in *Halsbury's Laws of England*, 4th edn., vol. 1, paragraph 122, this Court observed that a person whose name had been recommended for appointment as a District Judge by the High Court under [Art. 233\(1\)](#) had no legal right to the post, nor was the Governor bound to act on the advice of the High Court and therefore he could not ask for a mandamus. It was observed:*

"It is elementary though it is to be restated that no one can ask for a mandamus without a legal right."

28. Though the petitioner's counsel has submitted that a writ of mandamus

can lie, only if it is shown that the authorities were required to perform a legal duty, this Court is of the view that in terms of the various judgments of the Apex Court mentioned in the foregoing paragraphs, a writ of mandamus can only be issued in case of violation/ infringement of any of the petitioner's right and/or enforcement of some existing enforceable right of the petitioner, and not due to some expectation of the petitioner.

In the case of *Official Liquidator Vs. Dayanand & Others*, reported in (2008) 10 SCC 1, the Apex Court has held at paragraph 105, that the existence of legitimate expectation may have a number of different consequences, and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. It has also relied upon the decision of the *House of Lords in Council of Civil Service Unions Vs. Minister for Civil Service*, reported in 1985 AC 374, wherein it has been held that an aggrieved person was entitled to judicial review, if he could show that a decision of the public authority affected him of some benefit or advantage, which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons. Thus, in terms of the Judgment of the Apex Court in *Official Liquidator (Supra)*, it is clear that the petitioner would have to show that he had been permitted to enjoy some benefit of advantage in the past, which was taken away without hearing him. The same is however not the issue in the present case.

29. It should also be noted that this is not a perfect world. Many things which



the State and its instrumentalities are expected to perform as a legal duty and have to in terms of statutes are not being done. If persons are allowed to file writ petitions, praying for a writ of mandamus in respect of alleged breach of legal statutory duties, without having any corresponding enforceable legal right on the part of the applicant, the Courts would be a chock-a-block with cases, having nothing to do with the applicants. The same could/would lead to busybodies filing a deluge of writ petitions, which would not be in consonance with the judgments of the Apex Court in *Director of Settlements, A.P. & Others Vs. M.R. Apparao & Other (supra)* and *Ayaaubkhan Noorkhan Pathan (supra)*.

30. As can be seen from the discussion made in the fore-going paragraphs, the provisions of the 1989 Act have not been added to the All Woman Police Station Case No. 05/2020 and as such, the rigors of the provision of the 1989 Act were not felt by the petitioner. Further, the ST (P) certificate issued to the daughter of the respondent No. 6 was cancelled. This Court is of the view that as no legal or fundamental right of the petitioner has been violated and as there is no existing enforceable right of the petitioner, a writ of mandamus cannot be issued to the State respondents, for initiating any criminal or departmental proceeding against the petitioner.

31. In view of the reasons stated above, this Court does not find any ground to exercise its discretion in this case. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant