

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.21804 of 2015
and
M.P.No.1 of 2015

S.Thangapandi

... Petitioner

Vs.

1. The Government of Tamil Nadu
rep by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.
2. The Tamil Nadu State Level Scrutiny Committee,
rep by its Chairman,
The Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.
3. The Superintendent of Post Offices,
Tirunelveli Division, Palayankottai.

... Respondents

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the second respondent in its proceedings No.7591/CV-II/2009 dated 5.4.2010 and quash the same.

For petitioner : Mr.A.R.Gokulnath

For Respondents : Mr.N.Sakthivel,
Government Advocate

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Questioning the legality and validity of the proceedings No.7591/CV-II/2009 dated 5th April, 2010 of the second respondent Committee, the petitioner has filed the instant petition, seeking for quashing the same.

2. The facts in brief as projected by the petitioner are that the petitioner belongs to Hindu Malaikuravan community, which is recognised as scheduled tribe community. The petitioner has obtained a community certificate to that effect from the Tahsildar, Tirunelveli, the then competent officer on 4th November, 1988. On the basis of the said certificate, the petitioner was appointed as EDDA/MC at Seethaparapanalur Branch post office in 1979. The community certificate dated 4th November, 1988 (supra) was subsequently cancelled by the District Collector, Tirunelveli on 7th July, 1994 without verifying the facts. The correctness of the said order was questioned in the writ petition, being W.P.No.16407 of 1994. The learned Single Judge of this court allowed the writ petition by quashing the said order, directing the Collector, Tirunelveli to examine afresh on the basis of the reports of the Revenue Divisional Officer and pass appropriate orders, by order dated 10th July, 2001.

3. Pursuant thereto, the earlier community certificate dated 4th November, 1988 was again cancelled by order dated 1st May, 2003 by the District Level Vigilance Committee. Challenging the said order, one more writ petition, being W.P.No.229 of 2005 was filed by the petitioner. A division bench of this court by order dated 25th March, 2009 directed the petitioner to approach the State Level Scrutiny Committee for reconsideration and proper disposal. The State Level Scrutiny Committee, second respondent herein, confirmed the order dated 1st May, 2003 passed by the District Level Vigilance Committee. Thus, this petition.

4. The learned counsel appearing for the petitioner submits that the State Level Scrutiny Committee is obliged to conduct proper enquiry after giving opportunity of hearing to the petitioner. The Supreme Court in the matter of Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development & Others¹ laid down that if the

¹ (1994) 6 SCC 241

vigilance committee submits an adverse report against the applicant, the petitioner / applicant is entitled to a copy of the report with a fresh opportunity to explain and place his case before the State Level Scrutiny committee. In the case on hand, according to the learned counsel for the petitioner, the District Level Vigilance committee's report was accepted without affording an opportunity of hearing to the petitioner for placing the entire facts before the Committee. Thus, the impugned proceedings dated 5th April, 2010 deserves to be quashed.

5. On the other hand, Thiru N.Sakthivel, learned Government Advocate appearing for the respondents contents that the second respondent re-examined all documents produced by the petitioner and also examined carefully and independently the vigilance report. The Committee had also enquired individuals belonging to the community in respect of the customs, cultural aspects and traditional occupation also. The decision was taken on the basis of the examination and enquiry and as such, no interference is warranted.

6. We have carefully examined the rival contentions advanced by the learned counsel for the parties and perused the pleadings and documents appended thereto.

7. On perusal of the impugned proceedings as well as counter affidavit, it is not clear as to whether the matter was referred to the vigilance committee, as contemplated by the Supreme Court in Kumari Madhuri Patil (supra). The Supreme Court has clearly laid down that each directorate, i.e., State Level Scrutiny committee, should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. It is also required that the Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer is required to personally verify and collect all the facts of the social status claimed by the candidate. If the claim of the applicant is found not genuine or doubtful by the vigilance officer, the Director concerned should issue a show cause notice, supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned, in which the candidate studied, calling upon the candidate to file a reply or representation and conduct enquiry thereafter and a decision can be taken only thereon.

8. The said guidelines was referred to with approval in Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and Anr.², Baswant Vs. State of Maharashtra & Ors.³, Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Ors.⁴, and G.M., Indian Bank Vs. R.Rani⁵.

9. In the case on hand, it is noticed that the Committee has examined the report without affording an opportunity to the petitioner concerned for filing reply or representation to the report submitted by the District Level Vigilance committee. It is not clear as to whether the vigilance committee has been constituted as per the guidelines of the Supreme Court (supra).

10. For the reasons mentioned herein-above, the impugned proceedings dated 5th April, 2010 is unsustainable in the eye of law. We, accordingly, set aside the same and remit back the matter to the State Level Vigilance Committee / second respondent herein to consider afresh in accordance with the guidelines and take proper decision on its own merit, as early as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

11. Resultantly, this writ petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary,
The Government of Tamil Nadu
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

2 (1995) 4 SCC 32

3 JT 2000 (10) SC 280

4 (2004) 9 SCC 481

5 (2007) 12 SCC 796

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2. The Chairman,
The Tamil Nadu State Level Scrutiny Committee,
The Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

3. The Superintendent of Post Offices,
Tirunelveli Division, Palayankottai.

+lcc to Mr.A.R.Gokulnath, Advocate, S.R.No.46664
+lcc to the Government Pleader, S.R.No.47278

W.P. No.21804 of 2015

GJ(CO)
CA(24/09/2015)



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