

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE DR. JUSTICE P. DEVADASS

W.P. Nos.28530, 24891, 31844 of 2015
and
Cont. P. No.2415 of 2015

K. Mahalingam Petitioner in all the WPs and Contempt
Petition

Vs.

1. State Level Scrutiny Committee
represented by the Chairman & Secretary to Government
Adi Dravidar and Tribal Welfare Department
Secretariat, Chennai 600 009
 2. The Chairman
Chennai Port Trust
Administrative Office
Rajaji Salai, Chennai 600 001
 3. The Deputy Superintendent of Police
Vigilance Cell SC/ST, Chennai Region, II Floor
Singaravelar Maaligai
Chennai 600 001
- ... Respondents in W.P. Nos.28530
and 24891 of 2015

1. The Chairman
Chennai Port Trust
Administrative Office
Rajaji Salai, Chennai 600 001
2. State Level Scrutiny Committee
represented by the Chairman & Secretary to Government
Adi Dravidar and Tribal Welfare Department
Secretariat, Chennai 600 009

3. The Deputy Superintendent of Police
Vigilance Cell SC/ST, Chennai Region, II Floor
Singaravelar Maaligai, Chennai 600 001

...Respondent in WP.31844/15

Mr. P. Annamalai, I.A.S.
Chairman & Secretary to Government
State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Secretariat
Chennai 600 009

... Respondent in Contempt Petition

Prayer in W.P. No.28530 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records in the order bearing proceedings No.18643/CV-2/2014-7 dated 12.08.2015 passed by the first respondent committee and quash the same.

Prayer in W.P. No.24891 of 2015:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the first respondent to refer the claim of the petitioner regarding his community status to the third respondent for a report and forbearing the first respondent from holding any inquiry into the community status of the petitioner in the absence of a report of the third respondent.

Prayer in W.P. No.31844 of 2015:

Writ Petition filed under Article 226 of the Constitution of India forbearing the first respondent from issuing any order of termination of the petitioner as Dy. CME (Works), Chennai Port Trust on the basis of the order bearing Proceedings No.18643/CV-2/2014-7 dated 12.08.2015 issued by the second respondent Committee.

Prayer in Contempt Petition No.2415 of 2015:

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, seeking to punish the respondent for contempt of Court by wilfully disobeying the order dated 12.08.2015 passed by this Court in W.P. No.24891 of 2015.

For petitioner in
all the WPs and : Mr. M. Radhakrishnan
Contempt Petition

For RR 1 & 3 in
all the WPs and : Mr. N. Sakthivel
for respondent in Government Advocate
Contempt Petition

For R2 in : Mr. P. Srinivasan
all the WPs

COMMON ORDER
(delivered by SATISH K. AGNIHOTRI, J.)

With consent, all the three writ petitions and the Contempt Petition are taken up for final disposal.

2. In view of the fact that the petitioner is one and the same person in all the writ petitions and contempt petition and the relief sought in the writ petitions are inter-twined, this batch of cases is considered and decided by this common order.

3. W.P. No.28530 of 2015 has been filed assailing the proceedings of the first respondent, viz., the State Level Scrutiny Committee dated 12 August 2015, whereby and whereunder, the petitioner's application for verification of his Kurumans (ST) community certificate, has been turned down and also, a direction has been issued to the District Collector, Vellore, to cancel the petitioner's community certificate.

4. W.P. No.24891 of 2015 has been filed seeking a writ of mandamus directing the first respondent, viz., the State Level Scrutiny Committee, to refer the petitioner's claim regarding his community status to the third respondent, viz., the Deputy Superintendent of Police, Vigilance Cell-SC/ST, for a report and forbearing the State Level Scrutiny Committee from holding any inquiry into the petitioner's community status in the absence of a report of the third respondent.

5. W.P. No.31844 of 2015 has been filed seeking a writ of mandamus forbearing the first respondent, viz., Chennai Port Trust, from terminating the petitioner's services on the basis

of the proceedings of the State Level Scrutiny Committee dated 12 August 2015.

6. The Contempt Petition has been filed on the ground that the respondent has not complied with the order dated 12 August 2015 passed by this Court in W.P.No.24891 of 2015.

7. In W.P. No.24891 of 2015, the petitioner has sought a direction not to proceed with the enquiry, until a report is submitted by the Vigilance Cell as constituted for conducting enquiry and submitting a report in respect of his social status.

8. On 12 August 2015, in W.P. No.24891 of 2015, this Court, recording the observation made by the Supreme Court in *Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and Others*¹, observed that the enquiry can proceed only after receipt of the Vigilance Cell report, if any. It was also observed that if the report of the Vigilance Cell is in favour of the applicant, no further enquiry is necessary and in the event, the report of the Vigilance Cell turns against the applicant, a copy of the said report be submitted to the applicant calling upon him to make a representation and participate in the subsequent enquiry.

9. It appears that the first respondent, ignoring the observation made by this Court, as aforesaid, issued a notice to the petitioner to participate in the enquiry.

10. In the meantime, the petitioner preferred the contempt petition being Contempt Petition No.2415 of 2015, alleging that the order dated 12 August 2015 passed in W.P. No.24891 of 2015 was wilfully disobeyed.

11. In the circumstances, in the contempt petition, the Chairman, State Level Scrutiny Committee has filed affidavit dated 04 November 2015, as under:

"3. It is further submitted that when it is a clear cut case of not genuine, the case need not be referred to Vigilance Cell. But, the petitioner had resorted for time gaining tactics and on suppression of facts before this Hon'ble Court has prayed for Vigilance enquiry and report."

¹ (1994) 6 SCC 241

12. The Chairman, State Level Scrutiny Committee has filed an additional affidavit dated 30 November 2015 clarifying the stand of the State Level Scrutiny Committee as under:

"4. It is submitted that the petitioner has filed a W.P. No.24891 of 2015, before this Hon'ble High Court against the act of State Level Scrutiny Committee for calling him for an inquiry for verifying the communal status of him. The Hon'ble Court in its order dated 12.08.2015 and directed the respondent to follow the procedure prescribed that after application is made for verification of genuineness of Scheduled Tribe community, the committee, not being the adjudicating authority, is obliged to refer the matter to the Vigilance Cell, so constituted. Further enquiry can proceed only after the receipt of Vigilance Cell report, if need be.

5. It is submitted that as per the orders of Hon'ble High Court of Madras in W.P. no.24891 of 2015 and C.P. No.2415 of 2015 dated 12.08.2015 and 05.11.2015, the State Level Scrutiny Committee hereby keeps its proceedings No.18643/CV-2/2015-7 dated 12.08.2015 in abeyance already issued by it against Thiru K. Mahalingam and the matter is referred to Vigilance Cell, Chennai Region vide Letter No.18643/CV2-14 dated 25.11.2015 and on receipt of the Vigilance Cell Report of Chennai Region, decision will be taken."

13. Since the State Level Scrutiny Committee has decided to refer the matter to the Vigilance Cell and thereafter, on receipt of the report, proceed further with the petitioner's application for grant of community certificate, we are not inclined to make any further observation in the matter. We accept the explanation submitted by the Chairman, State Level Scrutiny Committee, as aforestated and dispose of the writ petition being W.P. No.24891 of 2015 and close the contempt petition being Contempt Petition No.2415 of 2015.

14. In the meantime, the State Level Scrutiny Committee proceeded with the verification of the community certificate dated 28 June 1977 issued by the Tahsildar, Tiruppattur, Vellore District, the then competent officer and by proceedings dated 12

August 2015, held that the community certificate issued by the said competent officer to the petitioner was not genuine and directed the District Collector to cancel the Kurumans (ST) community certificate issued to the petitioner earlier. Assailing the said order, the petitioner subsequently filed writ petition W.P.No.28530 of 2015.

15. Meanwhile, the petitioner has filed one more writ petition being W.P.No.31844 of 2015 seeking a writ of mandamus forbearing Chennai Port Trust from issuing termination order to him on the basis of proceedings dated 12 August 2015 passed by the State Level Scrutiny Committee.

16. We have examined the facts of the case from all angles and also perused pleadings and counter affidavits filed by the authorities.

17. Indisputably, the stand of the Chairman, State Level Scrutiny Committee, as stated hereinabove, was that no Vigilance enquiry is necessary, if, on the face of it, it is found that the community certificate issued to the petitioner by the Tahsildar was not genuine, as stated in the affidavit dated 04 November 2015 filed in the contempt petition. Subsequently, the said averment was withdrawn in the affidavit dated 30 November 2015 filed in the contempt petition, wherein, it was stated that the order dated 12 August 2015 passed in the absence of Vigilance enquiry is kept in abeyance and the matter has been referred to the Vigilance Cell on 25 November 2015. It is further stated that decision on verification of the community certificate dated 28 June 1977 issued by the then competent officer shall be taken thereafter in accordance with law, after affording an opportunity of hearing to the petitioner, if need be.

18. The petitioner's apprehension is that on the basis of the proceedings dated 12 August 2015 issued by the State Level Scrutiny Committee, the Chennai Port Trust may proceed against him for termination of service inasmuch as he was appointed in service on the basis of community certificate issued by the Tahsildar, the then competent officer.

19. In view of the fact that the order dated 12 August 2015 has been withdrawn by the State Level Scrutiny Committee, it may safely be held that no decision is taken by the State Level Scrutiny Committee on the verification of the community

certificate issued by the then competent officer. Accordingly, the Chennai Port Trust is directed not to proceed with the matter, till a proper order is passed by the State Level Scrutiny Committee.

20. The Chairman, State Level Scrutiny Committee, had initially taken a stand that no Vigilance enquiry is needed, if, on the perspective of the State Level Scrutiny Committee, the document is not genuine. It is eloquent that it is not for the State Level Scrutiny Committee to come to a particular conclusion on the basis of documents alone. The decision taken by the State Level Scrutiny Committee itself, to dispense with the Vigilance enquiry, on the basis of its perspective or understanding, is contrary to the scheme, as propounded by the Supreme Court in *Kumari Madhuri Patil* (supra), which was subsequently referred to with approval in *Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and another*², *Baswant Vs. State of Maharashtra and others*³, *Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others*⁴ and *G.M., Indian Bank Vs. R.Rani*⁵.

21. We are not inclined to examine as to whether the intention of the Chairman was deliberate or unintentional. However, we make it clear that the Chairman as well as the other Members of the State Level Scrutiny Committee, being public officers, are under an obligation to strictly comply with the guidelines laid down by the Supreme Court as well as the directions issued by the High Court. Taking a contrary view is certainly tantamount to defiance of the order passed by the Courts. This appears to be the first occasion, wherein, such a view has been taken by the Chairman and other Members of the State Level Scrutiny Committee. In such view of the matter, we refrain ourselves from passing any other observation, except giving a warning that no action should be taken by the authorities who are discharging their functions as public officers in the welfare State, which may amount to defiance of the judicial mandate.

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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22. With the above direction and observations, W.P. Nos.24891, 28530 and 31844 of 2015 are disposed of and Contempt Petition No.2415 of 2015 is closed. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Chairman & Secretary to Government
State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Secretariat
Chennai 600 009
2. The Chairman
Chennai Port Trust
Administrative Office
Rajaji Salai
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3. The Deputy Superintendent of Police
Vigilance Cell SC/ST, Chennai Region, II Floor
Singaravelar Maaligai
Chennai 600 001

W.P. Nos.28530, 24891, 31844 of 2015
and
Cont. P. No.2415 of 2015

VS (CO)
CA(16/12/2015)

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