

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.12.2015

DATE OF DECISION: 21.12.2015

CORAM:

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

W.P. Nos.30368 and 31973 of 2015 and M.P. Nos.1 & 2 of 2015

G. Venkitasamy Petitioner in WP No.30368 of 2015

V. Balasubramaniam Petitioner in WP No.31973 of 2015

Vs.

The Chairman
State Level Scrutiny Committee
and Secretary to Government
Adi Dravidar and
Tribal Welfare Department
Namakkal Kavingar Maaligai
Fort St. George
Secretariat,
Chennai - 600 009 Respondent in both the WPs

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records of the respondent in its proceedings No.16414/CV-4(2)/2011-13 and proceedings No.16814/CV-4(2)/2011-16 dated 30.06.2015(received on 29.07.2015) and quash the same.

For petitioner in
both the WPs Mr. V. Vijay Shankar

For respondent in
both the WPs Mr. N.Sakthivel,
Government Advocate

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

These writ petitions are filed questioning the justifiability of the separate proceedings of the respondent, viz., State Level Scrutiny Committee dated 30 June 2015, whereby and whereunder, the respondent, finding that the community

certificates issued to the petitioners are not genuine, has recommended to the District Collector, Coimbatore and the UCO Bank and State Bank of India, respectively, who are the petitioners' employers, to take stringent criminal action against the petitioners.

2 The issue involved in both the writ petitions being common, both the writ petitions are considered and decided by this common order

3 The facts leading to the filing of the instant writ petitions are that the petitioners, claiming to be belonging to Hindu Konda Reddis (ST) community got such community certificates on 07 February 1980 and 26 July 1977 respectively. On the strength of such certificates, while the petitioner in W.P. No.30368 of 2015 got employment in UCO Bank as Clerk in 1982, the petitioner in W.P. No.31973 of 2015 got employment in State Bank of India as Clerk-cum-Cashier in 1978. On their attaining the age of superannuation on 31 May 2011 and 31 March 2011 respectively, they were allowed to retire.

4 In the case of the petitioner in W.P. No.30368 of 2015, in the meantime, his community certificate was cancelled by the 2 Member-District Level Vigilance Committee, Coimbatore vide order dated 18 May 2002. Feeling aggrieved, the petitioner appealed to the respondent Committee and also filed W.P. Nos.10786 and 10787 of 2001, which were disposed of by a common order dated 15 June 2001, directing the respondent Committee to dispose of the appeals and also restraining the employer-bank from passing any final order regarding the petitioner's removal from service, subject to the result of the appeals. After a reasonably long period, the respondent Committee referred the matter for enquiry by the Vigilance Cell, which conducted discreet enquiry and submitted a report to the respondent Committee on 20 January 2015. The same was forwarded to the petitioner by the respondent Committee vide letter dated 31 March 2015 and the petitioner was also directed to furnish his explanation to the same. Accordingly, the petitioner submitted his explanation dated 18 April 2015, highlighting that the Vigilance report was a biased one, inasmuch as it was prepared based on impermissible discreet enquiry. In his explanation, the petitioner further requested the respondent Committee to eschew the Vigilance report, hold proper enquiry after affording him a reasonable opportunity of hearing and supplying him the entire statement/evidence gathered by the Vigilance Cell. The petitioner was directed to appear for enquiry on 08 June 2015. However, the petitioner could not appear for enquiry on health grounds and hence, requested the respondent Committee to fix another date. Notwithstanding the petitioner's request, the respondent Committee passed the impugned proceedings, as aforestated. Hence, the writ petition in W.P. No.30368 of 2015.

5 In the case of the petitioner in W.P. No.31973 of 2015, after over two decades of his appointment, the District Level Vigilance Committee summoned him for enquiry. Questioning the jurisdiction of the said Committee to issue enquiry notice and also the constitution of the said Committee, the petitioner filed a writ petition being W.P. No.14031 of 2001, which was allowed by order dated 26 July 2005, however, granting liberty to the appropriate Committee to take up verification. After over seven years, the respondent Committee, without referring the matter to the Vigilance Cell, unilaterally cancelled the petitioner's community certificate vide order dated 28 November 2013, which was put to challenge in W.P. No.1687 of 2014, wherein, the impugned proceedings of the respondent Committee was quashed, holding that enquiry by the Vigilance Cell was mandatory. Thereafter, the Vigilance Cell, conducting discreet enquiry, submitted its report to the respondent Committee, which was forwarded by the respondent Committee to the petitioner vide letter dated 12 January 2015, directing him to furnish his explanation. Accordingly, the petitioner submitted his explanation dated 03 February 2015 stating therein, as stated by the other petitioner. This petitioner also was directed to appear for enquiry on 08 June 2015. Accordingly, he appeared for enquiry and wanted the respondent Committee to order fresh enquiry by Vigilance Cell, which was declined and the respondent Committee proceeded to pass the impugned proceedings, as aforesaid. Hence, the writ petition in W.P. No.31973 of 2015.

6 Mr. V. Vijay Shankar, learned counsel for the petitioners would contend that the impugned proceedings dated 30 June 2015 holding that the community certificates held by the petitioners are not genuine, suffer from various infirmities. Firstly, the Vigilance Cell is required to conduct a transparent enquiry, after affording an opportunity to all concerned and not in a discreet manner. Secondly, the applicants are entitled to a copy of the Vigilance report, along with the documents which formed the basis for the Vigilance report. In the cases on hand, the enquiries were conducted in a discreet manner and the petitioners were supplied only a copy of said reports without enclosing the relevant documents. The petitioners have specifically requested for supply of all the relevant documents, which were denied and the enquiry proceeded without affording an effective opportunity of hearing to the petitioners. It is also contended that the respondent Committee has not adverted to several documents, as enclosed, while rejecting the community certificates, holding that the same were not genuine.

7 The learned counsel for the petitioners would further submit that the Supreme Court, in Kumari Madhuri Patil and another vs. Addl. Commissioner, Tribal Development and Others¹,

1 (1994) 6 SCC 241

had clearly mandated that the Vigilance Cell should consist of Senior Deputy Superintendent of Police in over-all charge and such number of police Inspectors to investigate into the social status claims. The Committees constituted herein are One-Man Committees without making investigation into the social status claims. The Vigilance Cell has also failed to examine the anthropological and ethnological traits of the social community to which the applicants belong. The impugned proceedings have not adverted to the explanations submitted by the petitioners in response to the show cause notices issued to them.

8 Relying on the observation made by the Supreme Court in *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and Others*², the learned counsel for the petitioners would contend that the petitioners are entitled to cross examine the witnesses who were examined by the Vigilance Cell on the basis of statements given by them. In the absence of documents/depositions/statements which are required to be supplied to the petitioners, the petitioners could not have placed their cases properly and cross examined the said witnesses. It is not necessary all the time that all the witnesses who were examined by the Vigilance Cell are true to their statements and have no personal animosity towards the applicants.

9 In oppugnation, Mr. N. Sakthivel, learned Government Advocate appearing for the respondent Committee would contend that the petitioner in W.P. No.30368 of 2015 remained absent on the date of hearing i.e., on 29 January 2014. The respondent Committee referred the matter to the Vigilance Cell, which submitted its report dated 09 March 2015. A copy of the Vigilance Cell report, together with a show case notice, was issued to the petitioner in response to which he submitted his reply dated 20 April 2015. However, he remained absent for the enquiry held on 08 June 2015. Hence, after a conscious analysis of the available records, the respondent Committee came to the conclusion that the petitioner has failed to establish his claim of belonging to the said community.

10 Qua the petitioner in W.P. No.31973 of 2015, according to the learned Government Advocate, he remained absent on the date of hearing. He was given a copy of the report of the Vigilance Cell vide communication dated 12 January 2015 and he also submitted his reply to the show cause notice on 04 February 2015. One more opportunity was given to him to appear and put forth his case on 08 June 2015. Though he participated, he did not produce any supporting document to establish his claim to be belonging to Hindu Konda Reddis (ST) community. The other members of the community were examined, whose depositions were

2 (2013) 4 SCC 465

properly examined before coming to the conclusion that he has failed to establish his claim of belonging to the said community.

11 We have heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

12 On consideration of the documents, it is eloquent that there are deficiencies in the enquiry conducted by the respondent Committee. Firstly, indisputably, the petitioners were given copies of the Vigilance Cell report, unaccompanied by other documents, which formed the basis for recommendation of the Committee. Secondly, the enquiry conducted by the Vigilance Cell was in a discreet fashion.

13 Concededly, as fairly submitted by the learned Government Advocate, the petitioners were given copies of the Vigilance Cell report, but, the relevant documents which formed the basis for coming to a conclusion, were not supplied to them. It is also not established that the petitioners' request to supply them the required documents, was acceded to or examined, when the said documents were quite relevant for the purpose of identification and adjudication of their social status.

14 The petitioner in W.P. No.30368 of 2015 had supplied the following documents:

i True copy of sale deed dated 19.1.1978 executed by Mr. M. Arumugam in favour of the petitioner's father P. Gurusamy.

ii True copy of the sale deed dated 29.03.1979 executed in favour of the petitioner's uncle Mr. S.K. Rajagopal.

iii Sale deed dated 30.05.1977 executed in favour of the petitioner's uncle Mr. S.G. Natarajan.

iv True copy of the sale deed dated 11.12.1983 executed in favour of the petitioner's nephew Mr. P. Ganesan.

v True copy of sale deed dated 26.10.1978 executed in favour of Mr. K. Kathiresan, the petitioner's uncle.

vi True copy of Konda Reddy Caste Certificate dated 07.03.1974 of the petitioner's brother Mr. G. Selvaraj.

vii True copy of sale deed executed on 13.7.1932 in favour of the petitioner's forefather Rangareddy.

viii True copy of sale deed dated 20.05.1977 executed to the petitioner's uncle Velappa Reddy.

ix True copy of sale deed executed to the petitioner's uncle Mr. Subramani.

15 Likewise, the petitioner in W.P. No.31973 of 2015 had supplied the following documents:

i Registered sale deed of 1966 in which the petitioner's cousin brother Thammana Reddiar is described as belonging to the Konda Reddis community.

ii Registered deed dated 09.06.1924 in which witnesses who signed the deed are the petitioner's father's great grandfather.

iii 31.10.1977 registered sale deed in which the petitioner's father Venkata Reddy is described as belonging to the Konda Reddis community.

iv Letter dated 13.7.1982 in which the Tahsildar, Pollachi, after detailed enquiry, confirms that the petitioner's family belongs to the Konda Reddis community.

v Census extract of the year 1981 in which in the village of Solanur of which the petitioner's native village Palanigoundanpudur is a hamlet population of STs is shown.

vi Statements of several villagers from different communities in support of the petitioner's claim.

16 The aforestated documents submitted by the petitioners are old documents and in fact, some of those documents which date back to pre-independence era, have a high probative value. None of these documents were adverted to either by the Vigilance Cell or the respondent Committee. The same need to be examined and adverted to properly in the Vigilance Cell report as well as in the final orders passed by the State Level Scrutiny Committee.

17 The grant of social status certificate to a person is not a mere formality. It is to be borne in mind that both denial of social status certificate to a genuine person and grant of such certificate to a fake person, are unconstitutional.

18 The makers of the Indian Constitution, recognising the social and economic status of a particular community in India, had made provisions for grant of certain preferential treatment under Articles 15(4), 16(4), 341 and 342 of the Constitution of India. If a request for community certificate is rejected in a casual and mechanical manner without proper investigation, the very purpose of Constitutional objective would become otiose. Thus, it is expected that all the authorities involved in the process of identification, investigation and grant of social status certificate (in common parlance, called as "community certificate") need to be sensitised the importance of such certificate. Thus, a detailed enquiry, as considered and laid down by the Supreme Court, is required to be adhered to. Even if a single link is missed, it may lead to unexpected result, which may amount to violation of Constitutional objective and goal.

19 The objective of the Constitution is enshrined in the Preamble. The underlying principle is to secure (i) justice - social, economic and political, (ii) liberty of thought, expression, belief, faith and worship, (iii) equality of status and of opportunity and (iv) to promote among them all, fraternity. Thus, even a simple miss in the process of proper identification may defeat the basic object of the Constitution in its fullness.

20 The Supreme Court, noticing the defect in the mechanism to identify proper community, considered the issue at length in Kumari Madhuri Patil (supra) and laid down the procedure as under:

"13. x x x x x x x x x x x x For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-

castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate 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. 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 should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then

submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue 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 is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of

the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

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.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

21 The State Government has issued several Government Orders in consonance with the paramaters, as aforesated, laid down in Kumari Madhuri Patil (supra) referred to and approved

subsequently in Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and Anr.,³ Baswant Vs. State of Maharashtra & Ors.,⁴ Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Ors.,⁵ and G.M., Indian Bank Vs. R.Rani⁶.

22 A proper, systematic and effective enquiry to ascertain the social status of an applicant is of paramount importance for more than one reason. It has clearly been held by a Constitution Bench of the Supreme Court in State of Maharashtra vs. Milind and Others⁷ that it is not open to the State Government or Courts or Tribunals or any other authority to make, amend or alter the list of Scheduled Tribes or Scheduled Castes specified in the notification issued under the provisions of the Constitution of India. The Court cannot take up a roving enquiry and as such, it is for the competent authority to investigate and identify a community, adhering to all the fundamentals of enquiry.

23 The Revenue Department of the State had also come out with procedure and guidelines qua issuance of community certificates accordingly and the relevant portion of the same reads as under:

"2. The procedure to be followed in the grant of various certificates are as follows:

1. COMMUNITY CERTIFICATE

I GENERAL: In the year 1988, the system of issuing permanent community certificate has been introduced for the reduction of unnecessary pressure on the persons and also on the revenue machinery. This is valid for securing admission in all educational institutions and other professional institutions and also for employment. The students can be given priority but the permanent community certificate need not be sent with the application, but can be produced at the time of interview. This system of issuing permanent community certificates will apply to the institutions in Tamil Nadu coming under the control of the State Government. It will not have any binding on the institutions of Government of India, its undertakings and other State Governments. The certificate required by the applicants for purpose of employment in Central Government offices should be

3 (1995) 4 SCC 32

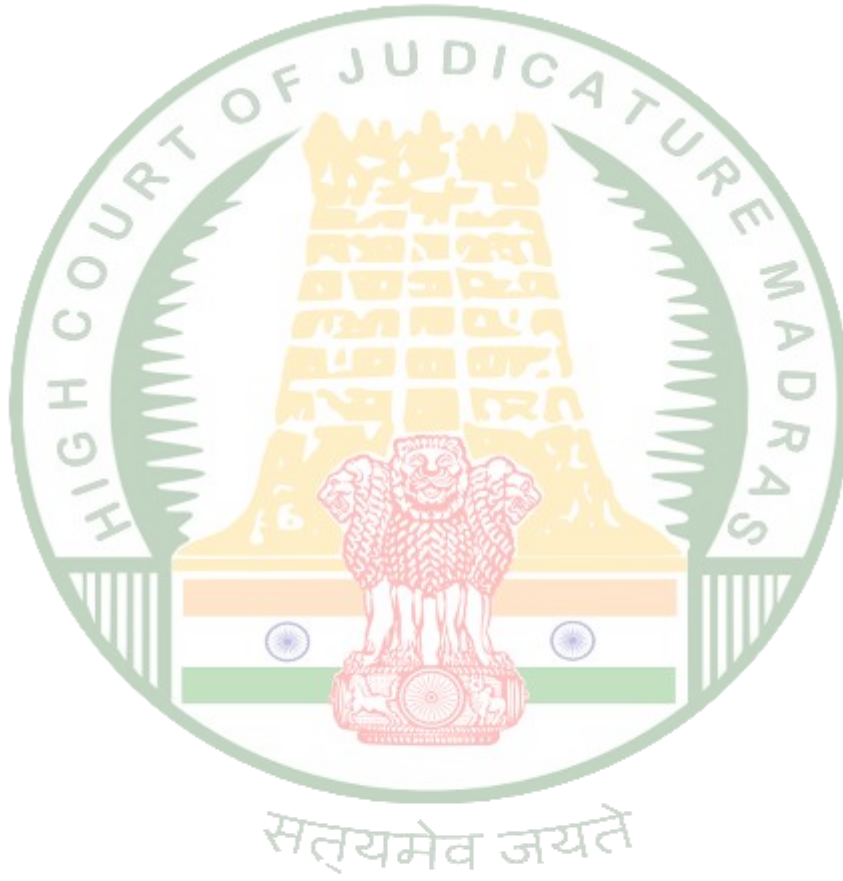
4 JT 2000 (10) SC 280

5 (2004) 9 SCC 481

6 (2007) 12 SCC 796

7 (2001) 1 SCC 4

issued in the form prescribed by the Government of India for this purpose (G.O. Ms.No.1509, Revenue dated 27.11.1991).



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II PROCEDURE:

1 The applicant can make the request to the Tahsildars with or without the recommendation of the Revenue Inspectors/Village Administrative Officers. If it is without the reports of the Revenue Inspectors/Village Administrative Officer, the Tahsildar can send the papers to either one or both of them for report.

2 No court fee stamp need be affixed on the requests for issue of community certificates. (Vide G.O. Ms.No.97, Revenue dated 15.02.1994).

3 Whenever applications are received for community certificates, a printed acknowledgment card should be given indicating therein the probable date on which the applicant should collect the community certificate from the Tahsildar concerned (Government Lr. (Ms) No.1341, Revenue dated 22.07.1988).

4 The Tahsildar may also fix a time when the certificate shall be issued either by him or by the Deputy Tahsildar. At any cost, it should not exceed 15 days for all communities except Schedules Tribe. For Schedules Tribe, the maximum limit is 30 days (vide Citizens Charter).

5 A register with 14 columns should be maintained in the form prescribed in G.O. Ms.No.2240, Revenue dated 30.11.88, which would show the dates of receipt of application and issue of certificates. These registers should be kept permanently by the Tahsildars and the Village Administrative Officers.

6 The list of applicants for Schedules Caste/Schedules Tribe can be published in the notice boards of Taluk and Panchayat Union Offices and Panchayats and Chavadi in the Village concerned inviting objections from the public before enquiry is made.

7 The community can be determined with reference to the documents registered, community certificates obtained earlier by the parents/relatives, school certificates of the person concerned or of parents, open enquiries in the village including the members of the local body verification of their habits, personal enquiry of the applicant, etc.

8 The community can also be decided based on the places of residence of the applicant's father or grand father, place where permanent properties lie, besides its value, mother tongue, place of education, his marriage, period of stay of their parents in Tamil Nadu and Outside Tamil Nadu. (Letter (Ms) No.2510, Social Welfare Department dated 23.9.1986).

9 No certificates based on the certificates issued by the Community or Caste Sangam should be given. There should be an independent enquiry. (Govt. Lr. No.4806/96-3, BC 7 MBC dated 5.8.1996).

10 No certificate for the communities not included in the lists approved by the Government should be issued. (Govt. Lr. No.11823/BC/92-5, BC & MBC dated 29.10.1992).

11 The certificate to the following communities should be approved/signed personally by the officers noted against them:

Backward Class	Deputy Tahsildars (Headquarter Deputy Tahsildar or Zonal DeputyTahsildar).
Most Backward Classes	Deputy Tahsildars
Scheduled Castes	Tahsildar
Scheduled Tribes	Revenue Divisional Officer/District Adi Dravidar Welfare Officer/Sub-Collector & PA (G) to the Collector of Chennai only.
Other Backward Classs	Not below the rank of Taluk Tahsildar

(G.O. Ms.No.2906, Revenue dated 4.11.1981
G.O. Ms.No.2137, AD & TW dated 11.11.1989
G.O. Ms.No.28, BC/MBC, dated 19.07.1994
G.O. Ms.No.1888, Revenue, dated 10.11.1983
G.O. Ms.No.31, Ad & TW dated 4.3.99)

12 Office copies of the certificates issued should be available in the file.

13 The entries in the register maintained in Taluk Office should be verified and attested by the issuing authority.

14 Under column 8 of the Special Register, the serial numbers of the community has to be filled up. (CRA's Lr. No.Q2/48652/89 dated 17.1.1999) (G.O. Ms.No.2240, Revenue dated 30.11.88).

15(a) Extracts of Registers should be sent to the Commissioner of Revenue Administration every year.

15(b) The extracts of Special Registers in the Commissioner of Revenue Administration's office should be computerised in the Revenue Administration Department itself at least for one year after the receipt of completely scrutinised date from the District Collectors. After computerisation of this date, the relevant software package may be sent to the Collectors concerned. (Govt. Lr. No.7603/W1, 89-4, Revenue, dated 31.3.1989).

24 In Ayaaubkhan Noorkhan Pathan (supra), wherein, the issuance/verification of the caste certificate was under examination, the Supreme Court held as under:

"30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.

46. In view of the above discussion and considering the seriousness of the allegations, as the Scrutiny Committee has already conducted an inquiry in relation to this matter, and the only grievance of the appellant is that there has been non-compliance with the principles of natural justice, and the fact that the applications filed by him were not decided upon, we direct that before the submission of any report by the Scrutiny Committee, his application for calling the witnesses for cross-examination must be disposed of, and the appellant must be given a fair opportunity to cross-examine the witnesses, who have been examined before the

Committee. We further direct the Scrutiny Committee to pass appropriate orders in accordance with the law thereafter. In case the Scrutiny Committee has already taken a decision, the same being violative of the principles of natural justice, would stand vitiated."

25 In *Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Others*⁸, broad parameters were laid down for the purpose of verification and examination of documents in support of the claim of applicants, as follows:

"22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the

affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

26 The issue qua discreet enquiry was considered by a Division Bench of this Court in V. Jaganathan vs. The District Collector, Collectorate, Trichy and Others⁹ and it was held as under:

"6 There is no dispute that this Court has held in more than one occasion that the authorities are not permitted to conduct discreet enquiry, without affording opportunity to the petitioner. Even otherwise, if any enquiry is conducted, copy of those proceedings/materials are to be supplied to the person concerned in order to make further representation or meet the said conclusion arrived in the said enquiry."

27 The State Government, in G.O. (Ms.) No. 106, Adi Dravidar and Tribal Welfare (CV I) Department dated 15 October 2012, has specified that on receipt of report from the Vigilance Officer, if it is found that the claim for social status is "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the State Level Scrutiny Committee should issue show cause notice supplying a copy of the report of the Vigilance Officer to the candidate.

28 The report indicated in the aforesaid Government Order is not explicit. When the Supreme Court, had categorically held, as aforesaid, that the applicants are entitled to cross

⁹ (2004) 3 MLJ 272

examine the witnesses and also are entitled to documents which form the basis for Vigilance report, it is clarified that the Vigilance report must enclose all the relevant documents which form the basis of such report, while supplying the same to the applicant with a show cause notice.

29 From the aforestated analysis, it is manifest that the authorities are required to investigate, identify and conduct the enquiry in the following manner:

i The authority competent to issue the community certificate, on receipt of the application, shall investigate the application in an open and transparent fashion, affording opportunity of hearing.

ii The candidate shall have full liberty to explain the documents placed by him or collected by the investigating agency and he shall have opportunity to cross examine the witnesses, if required. The entire exercise shall be completed at the earliest, preferably, within a period of three months.

iii On receipt of the community certificate issued by the competent authority, the candidate or any other party interested therein may refer the matter to the State Level Scrutiny Committee for verification.

iv On receipt of the application for verification, the State Level Scrutiny Committee shall refer the matter to the Vigilance Cell for enquiry.

v The Vigilance Cell, as constituted, shall investigate into the social status claim of the applicant, visiting the local place of residence and original place from which the candidate hails and usually resides. The Vigilance Officer, assisted by the Inspector of Police, shall verify all the documents and collect relevant facts in an open and transparent manner from all the relevant places such as school, locality, etc. and persons such as parents and close relatives and also examine the school officials, parents/guardians and other close relatives of the concerned caste. The Vigilance Cell shall also record the anthropological and ethnological traits and rituals, customs, mode of marriage and other ceremonies of the community

claimed by the candidate. Thereafter, on receipt of explanation from the candidate, on a proper examination of the same, a reasoned report shall be submitted to the State Level Scrutiny Committee.

vi The State Level Scrutiny Committee, on receipt of the Vigilance Cell report, if it is found adverse, shall issue a show cause notice to the candidate with a copy of the report and all the documents submitted by the Vigilance Cell to the concerned candidate, calling upon him to file his reply/explanation/representation and also express his intention to examine witnesses, if necessary. In the event, the report supports the claim of the candidate, the State Level Scrutiny Committee shall not proceed further, but, to pass the order.

vii The State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within a period of two weeks.

viii Such verification shall be completed within a period of two months, after receipt of the Vigilance Cell report, preferably, by day-to-day proceedings [See paragraph 13(9) of Kumari Madhuri Patil (supra)].

30 All the authorities involved in the process shall adhere to the aforesaid parameters, which are supplemental to the guidelines laid down by the Supreme Court in Kumari Madhuri Patil (supra) and Anand (supra) in their letter and spirit.

31 As mentioned hereinabove, the impugned proceedings suffer from infirmities of holding a discreet enquiry and also not conducting the enquiry, strictly as per the required parameters and are in violation of principles of natural justice.

32 As a sequel, the impugned proceedings dated 30 June 2015 are set aside and the respondent Committee is directed to conduct a fresh enquiry from the stage of submission of Vigilance Cell report, after issuing a fresh show cause notice with all the documents annexed therewith. The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

The writ petitions stand allowed in the above terms sans costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

The Chairman
State Level Scrutiny Committee
and Secretary to Government
Adi Dravidar and Tribal Welfare Department
Namakkal Kavingar Maaligai
Fort St. George
Secretairat, Chennai - 600 009

+2ccs to Mr.V. Vijayshankar, Advocate, S.R.No.69322, 69323
+1cc to the Government Pleader, S.R.No.69251

CA(CO)
EU(04/01/2016

W.P. Nos.30368 and 31973 of 2015

सत्यमेव जयते

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