

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.11.2016

Delivered on: 17.11.2016

Coram

The Honourable Mr. Justice HULUVADI G. RAMESH
and
The Honourable Mr. Justice V. PARTHIBAN

W.P. No. 30862 of 2014 and
MP No.1 of 2014

G. Appusamy

.. Appellant

Vs.

The Chairman,
State Level Scrutiny Committee,
and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Secretariat, Chennai-09. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the proceedings of the respondent in its proceedings No.7259/ADW5/2011-10 dated 5.9.2014 and quash the same.

For Appellant : Mr. V. Vijay shankar

For Respondent : Mr. S. Pattabhiraman, GA

JUDGMENT

P. PARTHIBAN, J.

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Certiorari, seeking to quash the proceedings of the respondent/State Level Scrutiny Committee vide No.7259/ADW5/2011-10 dated 5.9.2014 in and by which, the respondent Committee held that the petitioner does not belong to "Kondareddis" Scheduled Tribe community and consequently, cancelled the Scheduled Tribe Community Certificate produced to the petitioner on 30.07.1965.

2. The petitioner claims that he belongs to 'Kondareddis' caste which is scheduled tribe community and in support of his said community status, he had obtained a certificate as early as on 30.07.1965 from the then Tahsildar, Bhavani. On the basis of his community status, the petitioner was appointed as Instrument

Cleaner in the Department of Telecom and on completion of 39 years of service, he retired from service on attaining the age of superannuation with effect from 30.11.2010.

3. According to the petitioner, while he was in service, his community certificate was subjected to verification by the then 2 Member District Level Committee, which on verification, had cancelled his certificate. Against which, the petitioner had filed a writ petition in W.P.No.14852 of 2003 before this Court and the same was allowed in favour of the petitioner. Thereafter, it appears another enquiry was conducted by the District Level Vigilance Committee in 2010 since the then District Level Committee was not found to be proper and competent committee as per the directions of the Hon'ble Supreme Court in respect of verification of community status of scheduled tribes. In such circumstances, the petitioner once again approached this Court by way of another writ petition in W.P.No.4860 of 2010. It is to be noted that the State Level Scrutiny Committee was constituted by the Government of Tamil Nadu, by G.O.Ms.No.108, dated September, 2007 which was the competent committee for verification of claims of the persons belonging to the scheduled tribe community. The above said G.O. was passed in furtherance of the directions of the Hon'ble Supreme Court. Taking into account of the above development, this Court disposed of the above said writ petition 4860 of 2010 by order dated 10.3.2010, giving liberty to the State Level Scrutiny Committee to carry out the verification of the petitioner's community status. According to the petitioner, without following due process of law and without proper enquiry, the State Level Scrutiny Committee had come to the conclusion that the petitioner did not belong to 'Kondareddis' community. An order was passed on 07.01.2011 to that effect. Consequent upon which, the community certificate applied by the petitioner came to be cancelled. The petitioner once again constrained to approach this Court by way of filing another writ petition in W.P.No.9262 of 2011, challenging the proceedings of the State Level Scrutiny Committee and this Court, by order dated 20.10.2012, allowed the writ petition by quashing the proceedings principally on the ground that the principles of natural justice had been violated and consequently, directed the respondent to furnish copies of the reports of the Sub Collector as well as the Anthropologist and to consider the documents submitted by the petitioner in proper perspective and pass appropriate orders thereupon.

4. After the above order passed by this Court, the Government has constituted a Vigilance Cell vide G.O.Ms.No.106 dated 15.10.2012 in terms of the directions of the Hon'ble Supreme Court and this Court. Pursuant to the same, the matter was referred to the Vigilance Cell for conducting enquiry in the petitioner's native village. However, according to the petitioner, Vigilance Cell had conducted enquiry behind the back of the petitioner and gathered the information and material

without notice to the petitioner and submitted its report to the State Level Vigilance Committee. In pursuance of the same, the State Level Scrutiny Committee issued a show cause notice to the petitioner on 20.5.2014 enclosing a copy of the report of the Vigilance Cell dated 27.11.2013 and also the earlier report of the Sub Collector, dated 23.7.1999. However, the report of the Anthropologist was not furnished to the petitioner, despite specific direction of this Court in the earlier proceedings.

5. In response to the above show cause notice, the petitioner submitted his objections on 13.6.2014 stating that no reliance should be placed on the report of the Vigilance Cell since the investigation conducted by the Vigilance Cell was not transparent and no notice was given to him and as such, the report was to be eschewed in full. In the reply to the show cause notice, the petitioner has contended that the discreet enquiry conducted by the Vigilance Cell behind the back of the petitioner was not in terms with the G.O.Ms.No.106, dated 15.10.2012, wherein, a detailed procedure has been laid down to be followed by the Vigilance Cell while conducting such enquiry. The petitioner has further contended that there is enough documentary evidence in support of his community status and requested the Committee to set aside the report of the Vigilance Cell and order re-enquiry to enable the petitioner to present his case effectively before the Vigilance Cell in order to bolster his claim that he belongs to Kondareddis community.

6. On receipt of the reply to the show cause notice, the respondent Committee passed the impugned order on 5.9.2014, holding that the claim of the petitioner was not genuine and hence, the community certificate issued to him on 30.7.1965 was not proper and therefore, the same was cancelled. As against the impugned proceedings of the respondent Committee, the petitioner is before this Court with another round of litigation.

7. A counter affidavit has been filed on behalf of the respondent Committee, inter alia, stating that pursuant to the orders of this Court in W.P.No.9262 of 2011, dated 30.10.2012, the petitioner was called for enquiry on 3.4.2013 before the State Level Scrutiny Committee, which decided to refer the case to the Vigilance Cell, Salem region. Thereafter, the matter was referred to the Vigilance Cell, Salem, which after conducting the enquiry, submitted a report to the Government stating that the petitioner belongs to Hindu-Namadhari Reddi and he does not belong to Hindu-Kondareddis community. On receipt of the same, the State Level Committee called the petitioner for enquiry on 28.2.2014, on which date, the petitioner was absent. Thereafter, again the petitioner was called for enquiry on 2.5.2014 and issued a show cause notice along with documents on 20.5.2014, for which, the petitioner gave his reply, requesting the respondent Committee to set aside the report of the Vigilance Cell and sought for re-enquiry to be conducted by the Vigilance Cell. Thereafter, the petitioner was once again

called for enquiry by the respondent Committee on 20.7.2014. The Anthropologist enquired the individual about the unique customs, cultural aspects and traditional occupation of subject community and recorded the same and made meticulous observations of the petitioner's anthropological features and after thorough analysis, the Anthropologist categorically held that the petitioner does not belong to 'Kondareddis' Scheduled Tribe community. Based on the said report of the Anthropologist, the respondent Committee issued the subject order cancelling the community certificate of the petitioner and it is without any bias, but on merits after following the procedure contemplated. With these averments, the respondent sought for dismissal of the writ petition as devoid of merits.

8. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

9. On behalf of the petitioner, it is contended that the impugned order was passed without following the procedure envisaged in the G.O./instructions and directions of the Hon'ble Supreme Court and this Court and therefore, the same liable to be set aside. The learned counsel for the petitioner relied upon a decision of this Court reported in "(2016) 1 MLJ 606 (G.Venkitasamy and another versus The Chairman, State Alevel Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department)" which has laid down the following procedure as enumerated in para 29, which reads as under:

"29. From the afore stated 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 and another vs. Addl. Commissioner, Tribal Development and Others, (1994) 6 SCC 241.]

10. From the above, it could be seen that the role of the Vigilance Cell has been clearly specified as to what procedure to be followed while conducting the enquiry in order to prove the community status of the claimant. The thrust of the direction is that at every stage of the enquiry, there shall be openness and transparency so that the claimant's case is not

prejudiced at all. The role of the Vigilance Cell assumes greater importance and significance for the reason that once the report of the Vigilance Cell is in favour of the claimant/candidate, there was practically nothing left for the State Level Scrutiny Committee to proceed further, but to pass orders on the report. In case of adverse report, a show cause notice needs be issued to the candidate to provide him an opportunity to give his reply /explanation/representation and to examine witnesses if he desires. In the instant case, from the records, it appears that no such transparency and openness in the enquiry conducted by the Vigilance Cell and relying upon such report by the respondent Committee has gravely prejudiced the claim of the petitioner. To say the least, the manner in which, the Committee has proceeded is in complete negation of the directions passed by this Court in the above mentioned paragraph in its decision cited supra and also the procedure envisaged in the various G.Os. issued on this aspect.

11. While disposing of the writ petition, it is required to be observed that time and again the orders passed by the State Level Scrutiny Committee came under challenge on one ground or the other, finding fault with the procedure adopted by the respondent Committee while verifying the caste status of the candidate concerned. The Committee has been entrusted with the important role of verifying the caste status and any decision by the committee will have far reaching implications for the candidate either positively or negatively. Such being the task assigned to the respondent Committee, it is needless to mention that the Committee must carefully follow the mandatory procedures giving little scope for the Courts to intervene in such matters. It is high time the Committee developed its understanding in regard to all the fundamental principles of natural justice which have been mandated through the Government Orders/instructions as well as directives of the Hon'ble Supreme Court and this Court. The Committee must ensure that proper procedure is followed in all cases so that the interest of both administration and candidate will be safeguarded one way or the other. Otherwise, the determination of caste status status will always remain in a state of fluidity with frequent intervention by the Courts. Therefore, the Committee is called upon to ensure that proper procedure is followed in every case so that the determination of caste status attains finality at some stage leaving no room for any uncertainty for years together.

12. In the instant case, as already held above, since there was no transparency and openness in the enquiry conducted by the Vigilance Cell and the impugned order passed by the respondent Committee by relying upon the report of the Vigilance Cell is in complete negation of the directions of this Court as well as the procedure envisaged in the various G.Os, this Court is of the view that the impugned order passed the respondent Committee, is not sustainable and accordingly, it is set aside.

With the above observations, the Writ Petition is allowed. No costs. Consequently, connected MP is closed. The respondent Committee is directed to hold enquiry afresh from the stage of submission of fresh Vigilance Cell report after following the directions of this Court as extracted in foregoing paragraph and after issuing a fresh show cause notice with all the documents annexed therewith and pass appropriate orders as expeditiously as possible.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To
The Chairman,
State Level Scrutiny Committee,
and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George,
Secretariat, Chennai-09.

+1 cc to Mr.V.Vijay sankar,advocate,sr.66551
+1 cc to Government Pleader,sr.67064.

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