

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2016

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

W.P. No. 7492 of 2015

G.Srinivasan

.. Petitioner

Vs.

1. The Chairman,
State Level Scrutiny Committee
and Scretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Malligai Fort St.George,
Secretariat, Chennai-09.

2. The Executive Director (Southern Region),
Air India Limited,
Airlines House,
Meenambakkam, Chennai-27.

3. The General Manager (Personnel),
Air India Limited,
Airlines House,
Meenambakkam, Chennai-27.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, to call for the records of the first respondent in its proceedings No.20141/CV-4/2008-16, dated 27.2.2015 and quash the same.

For Petitioner : Mr. V.Vijay Shankar

For Respondents : Mr.P.Karthikeyan, GA for R1
Mr.N.G.R.Prasad for R3 & R2

ORDER

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This Writ Petition has been filed by the petitioner, seeking to quash the proceedings No.20141/CV-4/2008-16, dated 27.2.2015 of the first respondent, in and by which, the Scheduled Tribe

Community Certificate of the petitioner obtained from the Tahsildar, Omalur on 30.06.1985 was held 'not genuine'.

2. According to the petitioner, he belongs to 'Konda reddis' community, which is classified as a Scheduled Tribe and he was also issued with a Community Certificate by the Tahsildar on 30.6.1985. He joined service in Indian Airlines which later merged with Air India and after several promotions, at present, he was working as Assistant Accounts Officer (Finance). Earlier, the District Level Vigilance Committee, Salem had cancelled his community certificate, which was challenged by the petitioner in W.P.No.41068 of 2006, which was disposed of by this Court on 1.4.2008, directing the State Level Scrutiny Committee to make verification in this regard. In April, 2013, the petitioner was summoned for enquiry by the first respondent Committee. Later, the matter was referred to the Vigilance Cell. According to the petitioner, the Vigilance Cell conducted discreet enquiry without notice to him and submitted a report to the first respondent Committee, holding that the petitioner does not belong to 'Konda reddis' community. Based on the said report, the first respondent committee issued notice dated 4.7.2014. Later, the first respondent summoned the petitioner for enquiry on 6.11.2014, however, it appears that the petitioner did not attend the enquiry since according to him, he met with an accident. Thereafter, the first respondent issued the impugned proceedings dated 27.2.2015. The grievance of the petitioner is that without prior notice and without giving him adequate opportunity of hearing, the first respondent, by impugned proceedings, cancelled his community certificate.

3. Learned counsel for the petitioner would contend that as on the date of enquiry fixed on 6.11.2014, the petitioner met with an accident and since he was hospitalized, he could not attend the enquiry and sent information by letter dated 6.11.2014, however, the first respondent Committee, without affording sufficient opportunity in order to cross examine the witnesses examined by the Committee and to counter the statements given by the witnesses, passed the impugned proceedings and there was no transparency in the enquiry conducted by the Committee and no documents relied upon the Committee were furnished to the petitioner.

4. It is also 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.]

5. 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.

6. In view of the above, since the petitioner was not afforded with sufficient opportunity before passing the impugned proceedings 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 proceedings passed the respondent Committee, is not sustainable and accordingly, the impugned proceedings, dated 27.2.2015 is set aside. The first

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 if need be after obtaining Anthropological report and pass appropriate orders as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is disposed of.
No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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1.The Chairman,
State Level Scrutiny Committee
and Scretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Malligai Fort St.George,
Secretariat, Chennai-09.

+1 cc to M/s.N.G.R.Prasad Advocate sr 62724
+1 cc to M/s.V.Vijay Shankar Advocate sr 62797

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