

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.17293 of 2013

P.Sundaramurthy

..Petitioner

Vs

1.The Chairman

State Level Scrutiny Committee
and Secretary to State Government
Adi-Dravidar & Tribal Welfare Department
Secretariat, Chennai-600 009

2.The Member Secretary

State Level Scrutiny Committee
& Director of Tribal Welfare of
State Government
Chepauk, Chennai-600 005

3.Member

State Level Scrutiny Committee
& Director of Tribal Research Centre
M.Pallada
Nirgiris District, Tamil Nadu

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents proceedings No.1295/CV III/2011 dated 06.05.2013 and quash the same and consequently direct the respondents to pass necessary orders as the petitioner belongs to "Kattu Nayaken" Community.

For Petitioner : Mr.K.P.Chandrasekaran

For respondents : Mr.S.Pattabirman, Govt.Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate, appearing for the respondents and perused the counter affidavit filed by the 1st respondent.

2. Based on the community certificate, the petitioner had applied to the Tamil Nadu Public Service Commission for recruitment to the post in Group I services examination, 2009, under the reservation quota meant for Scheduled Tribes. The Deputy Secretary, Tamil Nadu Public Service Commission, has referred the matter to the State Level Scrutiny Committee for verification and report. In the enquiry before the State Level Scrutiny Committee, the petitioner appeared on 04.11.2011 and 25.01.2012 along with documents to substantiate his claim as Hindu "Kattunayakan". During the enquiry, on examination of the customs, habitual life style, language and cultural activities of the Kattunayakan community, the State Level Scrutiny Committee, opined that he had not proved beyond reasonable doubt that he belongs to Schedule Tribe "Kattunayakan" community. The State Level Scrutiny Committee also pointed out other infirmities in the community certificate issued by the Tahsildar. A show cause notice also has been issued on 02.02.2012 to the petitioner asking to substantiate his claim. However, thereafter on examination of original records and oral statement of the individual and the views of the Anthropologist, the committee observed that the individual has failed to produce any records prior to the year 1950 in support of the community claim and thereby, cancelled the certificate issued to the petitioner. Challenging the said order dated 06.05.2013, the present Writ Petition is filed.

3. The contention of the learned counsel for the petitioner is that the State Level Scrutiny Committee although verified the records connected with the petitioner's community, had not obtained any vigilance report, in this regard and therefore, in the absence of vigilance report submitted before the State Level scrutiny committee, the cancellation of community certificate cannot be said to be in order.

4. In the counter affidavit filed by the first respondent, it is stated that the State Level Scrutiny Committee, after verification of all the records connected with the case and on consideration of the anthropologist report and being not satisfactory with the records in favour of the petitioner's claim, opined that the petitioner has not produced any record to prove that he belongs to Kattunayakan community.

5. We have gone through the entire materials produced before this court and we are of the view that there is no mention anywhere in the proceedings of the respondents with regard to securing the vigilance report. It is relevant herein to follow the judgment of a Division Bench of this Court in W.P.Nos.30368 and 31973 of 2015 dated 21.12.2015, dated 21.12.2015 in the case of G.Venkitasamy Vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, wherein, this court directed the respondents

therein to adhere the following guidelines while issuing community certificate.

" 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 and another vs. Addl. Commissioner, Tribal Development and Others, (1994) 6 SCC 241 and Anand Vs. committee for Scrutiny and Verification of Tribe Claims and Others (2012) 1 SCC 113 in their letter and spirit."

6. For the aforesaid reasons, we hereby direct the respondents who already dealt with the verification of "Kattunayakan (ST) community", shall complete the above said exercise after scrutiny and verification and shall do the needful and pass necessary orders within three months from the date of receipt of a copy of this order. The Writ Petition is disposed of with the above direction. No costs.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

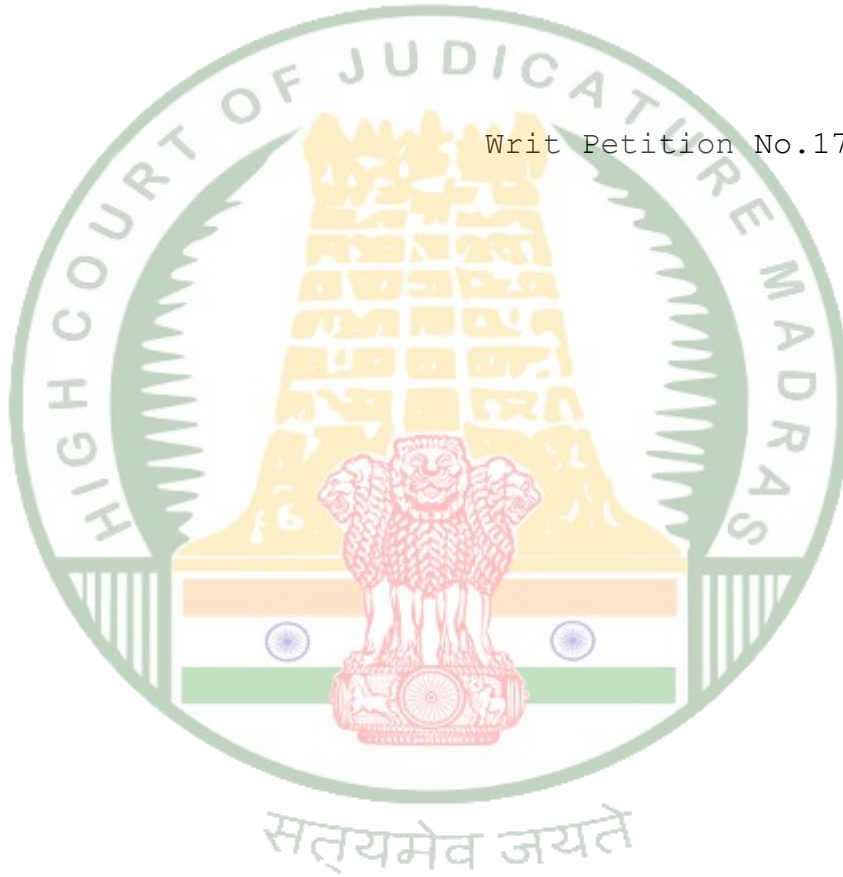
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rj(co)
krd 9/1

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