

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.27858 of 2013 and M.P.No.1 of 2013

M.A.Lalitha

.. Petitioner

Vs.

1. The Chairman,
Tamil Nadu State Level Scrutiny Committee
and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-9.

2. The Chairman,
Chennai Port Trust,
Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the proceedings of the 1st respondent in Proceedings No.546/ADW5/2013-7 dated 25.09.2013 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.R.Prathapkumar for R1
Mr.P.M.Subramaniam for R2

O R D E R

The Writ Petition has been filed challenging the proceedings of the 1st respondent in Proceedings No.546/ADW5/2013-7 dated 25.09.2013 and to quash the same.

2. The facts of the case are as follows:

(a) The petitioner belongs to Konda Reddis Community which is a Scheduled Tribe as per the Constitution Scheduled Tribes Order, 1950 and a Certificate to that effect was issued to her on 16.03.1981 by the concerned Thasildar. The petitioner was

appointed as LDC in the Chennai Port Trust, viz., the 2nd respondent herein and she got further promotions and lastly, worked as Superintendent in which capacity she attained superannuation on 30.04.2012.

(b) While so, during December, 1993, the Collector, Madras, without holding proper enquiry, cancelled the Community Certificate of the petitioner. In this regard, she approached this Court by filing W.P.No.2764/1994 and the same came to be admitted and interim stay of the Collector order was also granted. Finally, the said Writ Petition was disposed of by this Court by order dated 12.01.2001, directing the petitioner to prefer an appeal to the State Level Scrutiny Committee which alone was competent to make verification. Accordingly, the petitioner preferred an appeal to the State Level Scrutiny Committee i.e., the 1st respondent herein on 23.01.2001. But, till date, the same is pending without any progress.

(c) Meanwhile, the petitioner retired from service of the 2nd respondent on attaining the age of superannuation on 30.04.2012. The 2nd respondent issued an order permitting the petitioner to retire on superannuation, but ordered for provisional pension only. According to the 2nd respondent, other terminal benefits, such as, pension, gratuity, leave encashment etc. will not be released as verification of her community status was pending with the Committee.

(d) Aggrieved over the same, the petitioner approached this Court by filing W.P.No.30779/2012 challenging the decision of the 2nd respondent withholding the terminal benefits payable to the petitioner in which the State Level Scrutiny Committee was also made as a party. By final order dated 18.06.2013, a Division Bench of this Court allowed the said Writ Petition, holding that there was no power for the Port Trust to withhold the terminal benefits payable to the petitioner. The Bench also passed severe strictures on all the revenue authorities including the District/State Level Vigilance Committee observing that there was inordinate delay in the conduct of the verification proceedings and also directed the State Level Scrutiny Committee to verify and pass suitable orders in accordance with law regarding the community certificate of the petitioner. Further, the Bench has also directed that a cost of Rs.5,000/- should be paid to the petitioner by the State Level Scrutiny Committee for the unfair and unjust act of the Committee. In addition to the same, the Bench has specifically directed that irrespective of the result of the verification regarding her community status, the 2nd respondent is bound to pay the terminal benefits including pension, gratuity and other benefits etc. to the petitioner. In this regard, though several

representations have been sent by the petitioner, till date, there was no response from the 2nd respondent.

(e) Meanwhile, suddenly, a notice from the 1st respondent was received by the petitioner to appear for enquiry on 14.08.2013. Since the petitioner could not attend in person due to the sickness of her mother, on behalf of her, the petitioner's sister attended the enquiry, who was told that fresh date of enquiry would be intimated for enquiry. But, the petitioner received the impugned order dated 25.09.2013 by which the 1st respondent Committee has cancelled her Community Certificate. A perusal of the same would go to show that without holding any enquiry and without referring the matter to the Vigilance Cell, the enquiry has been abruptly closed. Though the reports of the Revenue Divisional Officer and Collector were relied upon, no copies were furnished to the petitioner. Hence the present Writ Petition.

3. Relying upon a decision of this Court in G.Venkitasamy and another vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department reported in (2016) 1 MLJ 606, the learned Counsel for the petitioner would submit that there is no proper compliance of the impugned order dated 25.09.2013 cancelling the community certificate of the petitioner and the same has to be reconsidered.

4. Learned Additional Government Pleader appearing for the 1st respondent would submit that of course, it is true that there is no verification conducted by the Vigilance Cell as submitted by the petitioner and as such, to that extent only, the petitioner is entitled for reconsideration of the impugned order.

5. This Court also heard the learned Counsel appearing for the 2nd respondent and We have also perused the records including the decision of the Bench of this Court relied on by the learned Counsel for the petitioner reported in (2016) 1 MLJ 606 cited supra.

6. In the case relied on by the learned Counsel for the petitioner in G.Venkitasamy and another vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department reported in (2016) 1 MLJ 606, this Court has given certain guidelines as to how the

enquiry has to be conducted, more particularly, in paragraph 29 and 30, which read as under :

'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 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.

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 v. Additional Commissioner, Tribal Development and Others (supra) and Anand v. Committee for Scrutiny and Verification of Tribe Claims and Others (supra) in their letter and spirit.'

7. Here, in the case on hand, a perusal of the entire records would go to show that as has been given in the guidelines, first of all, no opportunity whatsoever has been given to the petitioner to put forth her claim. Secondly, as held by this Court, before passing the impugned order thereby cancelling the Community Certificate of the petitioner, the State Level Scrutiny Committee has to refer the matter to the Vigilance Cell for enquiry. Thereafter, receiving the report from the Vigilance Cell, the impugned order has to be passed. But such guidelines have not been adhered to by the 1st respondent before issuing the impugned order. In view of all the above, the impugned order is liable to be set aside.

8. Accordingly, the impugned order of the 1st respondent dated 25.09.2013 is set aside. The 1st respondent, namely, the Tamil Nadu State Level Scrutiny Committee is directed to refer the matter to the Vigilance Cell for enquiry within a period of two weeks from the date of receipt of a copy of this Order and after receiving a report from the Vigilance Cell, the 1st respondent is directed to pass orders as per the guidelines issued by this Court in G.Venkitasamy and another vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department reported in (2016) 1 MLJ 606 cited supra.

9. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu State Level Scrutiny Committee
and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-9.
- 2.The Chairman,
Chennai Port Trust,
Chennai.

+1cc to Mr.P.M.Subramaniam, Advocate Sr.67376
+1cc to the Government Pleader Sr.67934

W.P.No.27858 of 2013

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