

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.11.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 35507 OF 2016
CONTEMPT PETITION NO. 2431 OF 2016
AND

W.M.P. NO. 30540 OF 2016

W.P. NO. 35507 OF 2016

T.Chozhavendan ... Petitioner

- Vs -

1. State of Tamil Nadu
rep. By the Principal Secretary
to Government, Home Dept. (Courts-I)
Secretariat, Chennai 600 009.
2. The Secretary
Tamil Nadu Public Service Commission
Chennai 600 002.
3. State Level Scrutiny Committee
rep. By the Chairman &
Secretary to Government
Adi Dravidar & Tribal Welfare Dept.
Secretariat, Chennai 600 009.
4. The Deputy Superintendent of Police
Vigilance Cell SC/ST, Salem Region
Room No.109, Collectorate of Salem
Salem 636 001. ... Respondents

CONT. PTN. NO. 2431 OF 2016

T.Chozhavendan ... Petitioner

- Vs -

Mr. P.Annamalai, I.A.S.
Principal Secretary/Chairman
State Level Scrutiny Committee
Dept. of Adi Dravidar & Tribal Welfare
Secretariat, Chennai 600 009.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the order in Proceedings No.14957/CVIII/2015 dated 27.9.2016 passed by the 3rd respondent - Committee and quash the same and direct the 3rd respondent - Committee to declare that the petitioner belongs to 'Kurumans' (Scheduled Tribe).

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the respondent for wilfully disobeying the order dated 5.8.2016 passed by this Court in W.P. No.27402 of 2016.

For Petitioner : Mr. M.Radhakrishnan in both petitions
For Respondents: Mr. P.S.Sivashanmuga Sundaram,
Spl. G.P.
For RR-1, 3 & 4 in both the petitions

RESERVED ON	24.10.2016
PRONOUNCED ON	17.11.2016

COMMON ORDER

HULUVADI G.RAMESH, J.

This writ petition is directed against the cancellation order passed by the 3rd respondent in its impugned proceedings dated 27.9.2016, whereby the community certificate issued to the petitioner dated 1.6.95 certifying that he belongs to 'Kurumans' Schedule Tribe Community was cancelled by the 3rd respondent, viz., the State Level Scrutiny Committee.

2. The brief facts of the case, as is evident from the affidavit filed by the petitioner, is culled out hereunder :-

On the basis of a Scheduled Tribe Community Certificate issued to the petitioner by the Revenue Divisional Officer, Dharmapuri way back in the year 1995, the petitioner was provisionally selected for the post of Civil Judge (Junior Division) by the 2nd respondent. While applying for the said post, the petitioner had submitted the said community

certificate certifying that the petitioner belonged to 'Kurumans' Scheduled Tribe community. The 2nd respondent, though provisionally selected the petitioner, however, referred the community certificate of the petitioner to the 3rd respondent. Based on the said reference, enquiry was initiated and the 4th respondent concluded the enquiry and certified that the certificate produced by the petitioner was a genuine one, which the petitioner came to know through an application filed under the Right to Information Act. In spite of the said report submitted by the 4th respondent, since the 3rd respondent did not pass any orders, the petitioner filed W.P. No.27402 of 2016 for a direction on the 3rd respondent to pass orders. This Court, vide its order dated 5.8.2016, directed the 3rd respondent to pass orders on the basis of the report submitted by the 4th respondent.

3. In spite of the above order passed by this Court dated 5.8.2016, the 3rd respondent proceeded with a fresh enquiry and, therefore, the petitioner was constrained to file W.P. No.33054 of 2016 praying to forbear the 3rd respondent from proceeding with the enquiry. Though notice was ordered, however, pending the writ petition, the 3rd respondent passed the impugned order cancelling the community certificate dated 1.6.95, in spite of the fact that the 4th respondent - Vigilance Cell had sent a report confirming the claim of the petitioner that he belongs to 'Kurumans' Scheduled Tribe community. Aggrieved by the said order, the present writ petition has been filed.

4. The contempt petition has been filed by the petitioner praying to punish the respondent for wilfully disobeying the order passed by this Court in W.P. No.27402 of 2016 dated 5.8.2016. It is averred by the petitioner that though this Court had passed a direction in the said writ petition directing the 3rd respondent that in the absence of any adverse remark in the report, the State Level Scrutiny Committee shall not proceed further, but to pass the order, however, the respondent, in wilful disobedience of the order, conducted the enquiry and passed the impugned order, which is challenged in the above writ petition and, therefore, for wilful disobedience the respondent should be punished.

5. Learned counsel appearing for the petitioner submitted that the order passed by this Court in W.P. No.27402 of 2016 has not been complied with in letter and spirit. This Court, referring to the order passed in W.P. Nos.30368 and 31973 of 2015 dated 21.12.2015, the State Level Scrutiny Committee was directed to issue genuineness report based on the Vigilance report, more particularly, clause (vi), which stipulates that if

there is any adverse entry in the report affecting the petitioner, show cause notice needs to be issued and enquiry conducted, else, the Scrutiny Committee shall not proceed further, but pass order, if there being no adverse finding in the Vigilance report. It is submitted by the learned counsel appearing for the petitioner, that the Vigilance report has approved the genuineness of the community certificate issued to the petitioner and, therefore, it is the bounden duty of the State Level Scrutiny Committee to issue genuineness certificate to the petitioner, which the State Level Scrutiny Committee had failed to do. But, the 3rd respondent has embarked upon a roving enquiry into the genuineness of the certificate, in utter disregard to the order passed by this Court in W.P. No.27402 of 2016 and, therefore, the 3rd respondent has committed a contemptuous act, in utter disregard to the directions of this Court and, therefore, needs to be punished. Further, the impugned order having been passed in utter violation of the order passed by this Court, more particularly clause (vi) of the said order, as stated above, the impugned order is liable to be set aside and the 3rd respondent should be directed to approve the genuineness of the certificate produced by the petitioner.

6. Learned counsel appearing for the petitioner relied on the judgment of the Apex Court in Dayaram - Vs - Sudhir Batham & Ors. (2012 (1) SCC 333) to justify his contention that the guidelines laid down in Kumari Madhuri Patil's case continues to hold the field till it is replaced by a suitable legislation. There being no legislation made in this regard, the guidelines have to survive and the Supreme Court laid down that if the Vigilance Report is in favour of the individual, no further action need be taken. It is therefore submitted by the learned counsel for the petitioner that the enquiry conducted by the 3rd respondent is per se bad in law and, therefore, the same is liable to be set aside.

7. Per contra, learned Special Government Pleader appearing for the respondents countered the stand of the petitioner stating that though documents have been collected by the Vigilance Cell to arrive at its finding, however, it has not adhered to the proforma and the guidelines as propounded by the Supreme Court in Kumari Madhuri Patil's case, while arriving at its finding. Since the Vigilance Cell had not adhered to the guidelines and the proforma as stated above, the State Level Scrutiny Committee had to call for all the records and documents and examine the same before passing the order. It is the further submission of the learned Special Government Pleader that the petitioner as also his siblings have been issued with 'Kurumba' - Most Backward Community Certificate way back in the year 1985. Similarly, most of the petitioner's relatives as

also the father of the petitioner have also been issued with 'Kurumba' - Most Backward Community Certificate. However, suppressing the previous certificate issued to the petitioner, the petitioner had applied for 'Kurumans' - Scheduled Tribe Community Certificate. Therefore, it is the submission of the learned Special Government Pleader that the petitioner having already been issued with a Most Backward Community Certificate way back in the year 1985, cannot, once again, in the year 1995, claim his community to be that of Scheduled Tribe, which is nothing but suppressing his caste for availing a benefit, which is bestowed upon the lower strata of society and, therefore, the 3rd respondent has rightly rejected the claim of the petitioner and, therefore, it is not open to the petitioner to contend that the order passed by this Court has not been complied with.

8. Learned Special Government Pleader submitted that the judgment of the Apex Court relied on by the learned counsel for the petitioner would not in any way come to the aid of the petitioner. The Supreme Court has held that where the Vigilance report is in favour of the candidate and is found to be genuine and true, no further action need be taken except in certain circumstances. It is submitted by the learned Special Government Pleader that the Vigilance Report having not taken into account very many material records, which aid in establishing the community of the individual, the said report cannot be said to be dependable or in any way genuine, as non-consideration of material records hits at the base of the Vigilance Report making it a weak piece of document on which reliance can be placed to determine the genuineness of the certificate issued to the individual.

9. Heard Mr.Radhakrishnan, learned counsel appearing for the petitioner and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for the respondents and perused the materials available on record as also the documents on which reliance has been placed by the parties and the decisions relied on by the learned counsel for the parties.

10. It is the contention of the petitioner that this Court, placing reliance on the judgment in W.P. Nos.30368 and 31973 of 2015 dated 21.12.2015 had directed the State Level Scrutiny Committee to follow the guidelines set out therein, while issuing genuineness report based on the Vigilance Report. Much emphasis is placed on clause (vi) of the guidelines, which, for better clarity, is extracted hereunder :-

"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 the 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."

11. It is the stand of the petitioner that there being no adverse entry in the report and the Vigilance report having authenticated the genuineness of the community certificate of the petitioner obtained way back in the year 1995, it is incumbent upon the 3rd respondent to issue genuineness report, which the 3rd respondent has failed to do, inspite of the categorical directions of this Court. However, the said stand is countenanced by the learned Special Government Pleader by placing reliance on the guidelines issued by the Supreme Court of India in Kumari Madhuri Patil's case (1994 (6) SCC 241), wherein, the Supreme Court has summarised the list of documents/evidences required to authenticate the community of the candidate under scrutiny. For better appreciation, the guidelines of the Supreme Court of India as to the evidences/report that are required to be submitted for finding out the veracity of the community of a candidate, as extracted in the counter of the 2nd respondent, is quoted hereinbelow :-

"i. Extract of Birth Register of the individual and his parents.

ii. Copy of the Elementary/Primary School Admission Register/Record Sheet of the individual and individual's father and mother (if studied in school).

iii. Secondary School Leaving Certificate of the individual's and his parents copy of S.S.L.C. Book (if studied in School)

iv. School Transfer Certificate of the individual's and his parents (if studied in school)

v. Community Certificate issued to the individual by the Revenue Authority.

vi. First Page of Service Register of the

individual's father/mother if employed/retired

vii. Community Certificate issued to the individual's father/mother

viii. Sale deed if any executed prior to the year 1950 wherein community is expressly mentioned

ix. Any record/evidence to defend the individual's claim of the community status

x. Family tree for proof of blood relationship duly authorised by Revenue Authorities

xi. Along with the report regarding the cultural aspects and customs of the individual, particularly, anthropological traits, deity, rituals, mode of marriage, death ceremonies, method of burial of dead bodies and customs of the individual with the help of an anthropologist."

12. As is evident from the counter affidavit filed by the 2nd respondent, the verification report submitted by the Deputy Superintendent of Police, Scheduled Castes/Scheduled Tribes Vigilance Cell, Salem Region, discloses that the report doesn't cover all the vital documents/evidence listed above, as mandated by the Supreme Court. The Vigilance report had not furnished the following documents, which is the substratum for ascertaining the community of a particular individual and as mandated by the Supreme Court :-

"i. Extract of Birth Register of the individual's parents

ii. Copy of the Elementary/Primary School Admission Register/Record Sheet of the individual's father and mother (if studied in school). Secondary School Leaving Certificate of the individual's and his parents copy of S.S.L.C. Book (if studied in school)

iii. School Transfer Certificate of the individual's parents (if studied in school)

iv. Community Certificate issued to his parents."

13. Certain of the documents, as quoted above, which goes to prove the community of the candidate have not been placed on record to substantiate the view arrived at in the vigilance report with regard to authenticating the certificate produced by

the petitioner and, therefore, in the quest of following the guidelines issued by the Supreme Court in letter and spirit, the State Level Scrutiny Committee had embarked on the enquiry by calling for the necessary documents to arrive at a substantive finding and having satisfied itself with all the necessary documents, available, at its disposal, had negated the claim of the petitioner with regard to the genuineness of the certificate issued to him.

14. A perusal of the impugned order reveals that the 3rd respondent has conducted an exhaustive enquiry to find out the community of the petitioner. The order reveals that as early as in the year 1985, the petitioner and his siblings have obtained a certificate certifying them as belonging to 'Kurumba' - Most Backward Community. The school records of the father of the petitioner also reveals that he belongs to 'Kurumba' - Most Backward Community. So also many of the other relatives have obtained 'Kurumba' - Most Backward Community Certificate. The impugned order also reveals that many of the relatives of the petitioner, at a later point of time, in order to secure Government jobs, had secured 'Kurumans' - Scheduled Tribe Community Certificate, suppressing the Kurumba' - Most Backward community certificate already obtained by them. Further, the impugned order also dwells into the Anthropologist's report, which categorically states that the the petitioner does not belong to 'Hindu - Kurumans' - Scheduled Tribe Community.

15. The impugned order has exhaustively dealt with all the documents as set forth in the guidelines issued by the Supreme Court, which is extracted in the counter of the respondent and which has not been taken into consideration in the vigilance report, thereby, the vigilance report is not a complete one as per the guidelines mandated by the Supreme Court. In such circumstances, when the Vigilance Report is bereft of certain details which are necessary for establishing the community of an individual, the course adopted by the 3rd respondent in embarking upon an enquiry into the community of the petitioner cannot be said to be against clause (vi) of the guidelines issued by this Court in W.P. Nos.30368 and 31973 of 2015 dated 21.12.2015. Further, para-4 of the order in W.P. No.27402 of 2016 in which reference has been drawn to the order passed by this Court in W.P. Nos. 30368 and 31973 of 2015 dated 21.12.2015 makes it clear the subsequent clauses of the said order, viz., clause (viii) of para-29 and para-30 clearly reveals that the above guidelines are in addition to any other parameters laid down in Kumari Madhuri Patil's case. When the Supreme Court in Kumari Madhuri Patil's case has categorically laid down the parameters to be followed while establishing the community of an individual, the failure of the Vigilance Cell to go through the

documents mandated for establishing the community would in effect nullify the Vigilance report and, therefore, the course adopted by the 3rd respondent in trying to ascertain the details, which are necessary for establishing the community of an individual cannot be found fault with. Further, it cannot also be said that the 3rd respondent has failed to follow the guidelines issued by this Court in W.P. No.27402 of 2016, when in fact the 3rd respondent had proceeded to follow the guidelines enunciated by the Supreme Court in Kumari Madhuri Patil's case along with the guidelines issued by this Court in W.P. No.27402 of 2016.

16. Insofar as the decision in Dayaram's case (supra), relied on by the learned counsel for the petitioner, as rightly contended by the learned Special Government Pleader, the said decision laid stress on the effect of depriving the genuine Scheduled Castes or Scheduled Tribes of the benefits conferred on them by the Constitution, which has been dealt with in Kumari Madhuri Patil's case (supra). The Supreme Court went on to hold that genuine candidates were denied admission to educational institutions or appointments to posts under the State for want of social status certificate and ineligible and spurious candidates put a monkey wrench in the enquiries conducted by the Scrutiny Committee to thwart the legitimate rights of the Scheduled Castes and Scheduled Tribes Community. The Supreme Court further held that at the time of admitting in the educational institutions, fraud is played for the purpose of gaining social mileage. Therefore, to curb the said activities guidelines were issued by the Supreme Court to safeguard the legitimate rights of the Scheduled Castes and Scheduled Tribes Community. The relevant portion of the order, for better clarity, is extracted hereinbelow :-

"6. In Madhuri Patil, a two Judge Bench of this Court found that spurious tribes and persons not belonging to scheduled tribes were snatching away the reservation benefits given to genuine tribals, by claiming to belong to scheduled tribes. This Court found that the admission wrongly gained or appointment wrongly obtained on the basis of false caste certificates had the effect of depriving the genuine scheduled castes or scheduled tribes of the benefits conferred on them by the Constitution. It also found that genuine candidates were denied admission to educational institutions or appointments to posts under the State, for want of social status certificate; and that ineligible or spurious candidates who falsely gained entry resorted to dilatory

tactics and created hurdles in completion of the inquiries by the Scrutiny Committee, regarding their caste status. It noticed that admissions to educational institutions were generally made by the parents, as the students will be minors, and they (parents or the guardians) played fraud in claiming false status certificate.

7. This Court was therefore of the view that the caste certificates issued should be scrutinised with utmost expedition and promptitude. To streamline the procedure for the issuance of caste (social status) certificates, their scrutiny and approval, this Court issued fifteen directions, relevant portions of which are extracted below:

* * * * *

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.

* * * * *

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."

(Emphasis supplied)

17. It would be trite to say that the procedure adopted by the State Level Scrutiny Committee is perfectly permissible, on a harmonious reading of clause 7 of the guidelines shown above. Stress has been given by the Supreme Court that where the report or the particulars given are procured or found to be false or fraudulently obtained, procedure as envisaged needs to be followed for ascertaining the genuineness of the certificate. The petitioner had, way back in the year 1985, was possessed of a 'Kurumba' - Most Backward Community certificate. But, later, in the year 1995, he had applied and got a certificate as

'Kurumans' - Scheduled Tribe community, which the petitioner claims as his community. However, on scrutiny of the relevant materials, it has been found by the Scrutiny Committee that even the father of the petitioner was belonged to 'Kurumba' - Most Backward Community certificate as is evident from the school records. That being the case, this Court fails to understand as to how the petitioner can claim that he belongs to Scheduled Tribe community, when his father belongs to Most Backward community. In the above factual scenario, prudence takes precedence, in that it can safely be concluded that the second community certificate obtained in the year 1995 by the petitioners requires scrutiny so as to safeguard the constitutional guarantees, which have been provided to the deprived lot. In the above backdrop, the State Level Scrutiny Committee had taken into consideration all the records, including the records, which have not been gone into by the Vigilance Cell, and had come to the ultimate conclusion that the claim made by the petitioner so as to have a march over the other individuals by projecting himself as a Scheduled Tribe community is only a bogus and false claim. Therefore, more than coming to the aid of the petitioner, the abovesaid decision leans more on the side of the respondents, as the decision lays stress on the State Government to give effect to the constitutional objectives, which are intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes and to weed out the unscrupulous elements, who try to gain social mileage by obtaining such fraudulent community certificates.

18. For the reasons abovesaid, it cannot be said that the act of the State Level Scrutiny Committee is contemptuous, as it has followed the directions issued by this Court as well as the Supreme Court and further adhering to the constitutional objectives. Further, the action of the State Level Scrutiny Committee in conducting an enquiry and perusing the records/documents, as mandated by the Supreme Court, is a just act and it cannot be said to be bad, as infraction of the above guidelines would go against the constitutional mandate. Further, the relevant documents/materials, which are required to be looked into for arriving at the genuineness of the certificate having not been done judiciously by the Vigilance Cell, the State Level Scrutiny Committee has taken upon itself the said task of ascertaining the additional details/documents for arriving at its conclusions. Therefore, the act of the State Level Scrutiny Committee in checking the genuineness of the community certificate issued to the petitioner in the absence of a full-fledged report by the Vigilance Cell cannot be termed to be illegal and, therefore, no interference is called for with the well considered order passed by the State Level Scrutiny Committee.

19. Accordingly, the writ petition as also the contempt petition, being devoid of merits, are dismissed. Consequently, connected miscellaneous petition is also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

GLN

To

1. The Principal Secretary
to Government, Home Dept. (Courts-I)
Government of Tamil Nadu
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+2 ccs to Mr.M.Radhakrishnan Advocate sr 66387

W.P. NO. 35507 OF 2016
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