

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-12-2016

CORAM

THE HONOURABLE MR.JUSTICE NOOTY RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.42667 OF 2016
& W.M.P.NO.36592 OF 2016

V.M.DORAISAMY

...Petitioner

Vs

The Director of Tribal Welfare,
Chepauk,
Chennai - 600 005.

...Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the notice in R.C.No.TD/B2/781/2015 dated 09.11.2016 on the file of the respondent, quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.P.S.Shiva Shanmugasundaram
Special Govt. Pleader

सत्यमेव जयते
O R D E R

[Order of the Court was made by NOOTY RAMAMOHANA RAO, J]

This writ petition is directed against the Show Cause Notice drawn on 09.11.2016 by the Director of Tribal Welfare, Member Secretary, State Level Scrutiny Committee, calling upon the writ petitioner to show cause as to why the Scheduled Tribe community certificate issued in his favour based upon his claim that he is a member belonging to Hindu Konda Reddy community should not be cancelled for the reasons set out therein.

2. We had the benefit of hearing Shri S.Doraisamy,

learned counsel appearing for the writ petitioner at great length. Learned counsel has elaborated that under the guise of verifying the genuineness of the claims of members belonging to Scheduled Caste and Scheduled Tribe, great amount of hardship is being caused and to avoid all such pitfalls, the State Government has, from time to time, taken very effective measures.

3. Learned counsel has drawn our attention to the decision taken by the State Government contained in their G.O. (2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007 and the latest G.O.Ms. No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012. It is only appropriate to notice that the State Government has an obligation to promote the welfare and well-being of the members belonging to the Scheduled Caste and Scheduled Tribes. It is a well recognized principle that only when certain welfare measures on a pro-active basis are extended to the members belonging to Scheduled Caste and Scheduled Tribes, the great disparity in between the various communities forming part of the larger society would get bridged and unless the divide in between the Scheduled Caste and Scheduled Tribes and other communities is not minimized to the barest, the aim to achieve a homogeneous society having uniform developmental advantage would not become a reality.

4. In the process, the State Government has also got an ancillary obligation to ensure that the benefits which are exclusively meant for Scheduled Caste and Scheduled Tribe are not misappropriated by those who do not actually belong to the Scheduled Caste or Scheduled Tribe. In such cases, the problem has two potential dimensions,

(i) Preventing the progress of genuine members of Scheduled Caste and Scheduled Tribes so that the gap which the State is intending to fill up will remain for too longer a period and

(ii) A person who is not otherwise entitled to a benefit would knock away the same unjustly. Therefore, to achieve these twin objectives, as far as possible, a transparent procedure, both for the purpose of granting a social status certificate in favour of Scheduled Caste and Scheduled Tribe and also while cancelling the certificates improperly issued earlier is required to be put in place. Consequently, through the orders contained in G.O.(2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007, two different Committees known as -

- (i) District Level Vigilance Committee and
- (ii) State Level Scrutiny Committee

have been formed. The District Level Vigilance Committee is headed by the District Collector as its Chairman while the District Adi Dravidar and Tribal Welfare Officer acts as its Member Secretary. The functions assigned to the District Level Vigilance Committee is to scrutiny the genuineness of the community certificates issued as 'Scheduled Caste' and to pass appropriate orders. Similarly, the State Level Scrutiny Committee is constituted under the Chairman of Secretary to the Adi Dravidar Tribal Welfare Department. The Director / Commissioner, Tribal Welfare is made as Member Secretary of this State Level Scrutiny Committee. Fortunately, both the Committees an anthropologist is also made a Member. The functions of the State Level Scrutiny Committee are to scrutinize the genuineness of the Community Certificates issued as Scheduled Tribes and to pass final orders.

5. As it is too well known, the Scheduled Tribes have certain specific anthropological features and adopt certain forms and rituals which are peculiar and specific to the respective tribal communities. The Director of Tribal Welfare Department, in his position as the Head of the Department and the Anthropologist, by his presence in the Committee will properly focus their attention on the claims made and the materials gathered in support and against the said claims. Since the Committee is headed by a Senior Level Administrative Officer occupying the rank of Secretary to the Government, a fair and balanced approach would be adopted by the Committee while taking the decision concerned.

6. The State Government had again given a fresh look to the issue and passed orders through G.O.(Ms) No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012. In paragraph 5 of the said G.O., Vigilance Cells have been formed at Regional level. For the entire State, four regions have been carved out -

- (1) Chennai Region
- (2) Salem Region
- (3) Tiruchirapalli Region and
- (4) Madurai Region

7. In paragraph 10 of the above said G.O., the

functions of the Vigilance Cells have been detailed. It will be relevant to notice that the Vigilance Committee has to finalize its report and place it before the Committee concerned and thereafter it is the Committee which must take appropriate decision. As we have already noticed through G.O.(2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007, a District Level Committee have been constituted to deal with all claims relating to Members belonging to Scheduled Caste whereas for the entire State, one State Level Scrutiny Committee has been constituted to deal with the claims belonging to the Members of the Scheduled Tribes. In other words, while the claims of the members belonging to the Scheduled Caste are liable to be ascertained and vouchsafed at the District Level itself, a similar exercise for the whole of the State can be carried out in so far as Scheduled Tribes are concerned before the State Level Scrutiny Committee only.

8. Shri S.Doraisamy, learned counsel would urge before us that the present Show Cause Notice has been drawn by the Director in his individual capacity as the Head of the Department of Tribal Welfare. There was no mention made that the provisional conclusion has been drawn by the State Level Scrutiny Committee. The Director, being only a Member Secretary of the State Level Scrutiny Committee, should not have drawn the provisional conclusion entirely on his own. He therefore urges that the impugned Show Cause Notice is liable to be treated as issued without necessary authority and hence deserves to be set aside.

9. The learned counsel has also placed reliance upon two judgments rendered by this Court which dealt with WP No.29359 of 2016 and 33089 of 2016.

10. While we concede that once the State Level Scrutiny Committee has been constituted and it has been entrusted with the task of scrutinizing the material gathered, both in favour and against the claim made by an individual and then determine as to whether one truly belongs to Scheduled Tribe Community or otherwise, it goes without saying that any such final decision must necessarily be taken only by the State Level Scrutiny Committee. No individual member thereof is entitled to act independently and take any such decision. But however, a perusal of the impugned Show Cause Notice dated 09.11.2016 discloses at the end, the following -

Quote =

Director of Tribal Welfare,
Member Secretary SLSC

= Unquote

11. From the above, one can easily infer that the Director of Tribal Welfare, being the Member Secretary of the State Level Scrutiny Committee has issued the impugned Show Cause Notice only in that capacity and not in his individual capacity, acting as a Director of Tribal Welfare, Government of Tamil Nadu. However, to put things beyond any pale of doubt or controversy, we direct the explanation which the writ petitioner might prefer to place in response to the impugned Show Cause Notice, has to be considered only by the State Level Scrutiny Committee and if the petitioner seeks to be accorded personal hearing, a brief personal hearing, not exceeding thirty (30) minutes may be accorded to him so that whatsoever little doubt still persists in the mind of the writ petitioner as to the whether Director of the Tribal Welfare is acting independently or in his capacity as the Member Secretary of the Committee or not, would become far more clearer.

12. The anxiety of the writ petitioner as well as this court is one and the same. The process of ascertainment of the claim of the writ petitioner as belonging to the member of the Scheduled Tribe should be determined at the earliest. Therefore, instead of quashing the Show Cause Notice only on one technical ground or the other including the one that, it has been drawn by the Director in his individual capacity acting as such, but not acting in the capacity as the Member Secretary of the State Level Scrutiny Committee, we permit the writ petitioner to place his response/reply to the Show Cause Notice on or before 26.12.2016, before the Director of Tribal Welfare cum Member Secretary, State Level Scrutiny Committee. Within 30 days thereafter, the multi member State Level Scrutiny Committee shall take appropriate decision, if necessary, after providing a reasonable opportunity of personal hearing of not exceeding 30 minutes duration on any working day, in case such a request is solicited by the writ petitioner in his response.

13. Before we part with this case, we must necessarily record that the Director of Tribal Welfare, being the Head of the Department, we are pained to notice, has used certain expressions which have left some apprehension in the mind of the writ petitioner. He used the following expressions in para 2 of the impugned Show Cause Notice.

Quote =

I am to state that, after careful examination of the Vigilance Cell Report, I have come to a decision why your
.....
..... should not be cancelled for the following

reasons :-

= unquote

14. We hope and trust that no one would have reached the status of Director of Tribal Welfare Department overnight. A Show Cause Notice is only supposed to convey the provisional / tentative conclusion drawn in the matter. It is required to be couched in very clear and ambiguous terms and words. Even by a mistake, it shall not communicate any final decision arrived at, as any such communication of a final decision would tantamount to the entire exercise becoming an empty formality. The final decision is the result of consideration of the objections/materials placed in response to the show cause notice drawn. Any officer functioning as a Head of the Department such as the Director of Tribal Welfare ought to have known this basic principle and we only hope that the present incumbent will not repeat such an erroneous approach henceforth.

15. We are not quashing the impugned Show Cause Notice only for the aforesaid mentioned reasons though in the both the judgments upon which the learned counsel has placed reliance, this court has quashed those Show Cause Notices. Since we are very clearly of the opinion that it is the multiple member State Level Scrutiny Committee which is the final decision making authority and the Director of Tribal Welfare is only one of the members of the said Committee who incidentally also acts as its Member Secretary and consequently he has to first convene the meeting of the State Level Scrutiny Committee and act upon the course of action approved by the Committee, beyond that, he cannot take any decision independently. Hence, it would only be in fitness of things to allow that Committee to take an appropriate final decision.

16. We also draw additional support to our view that by the very presence of the Secretary to the Government, as the Chairman of the Committee - the Secretary to the Government occupies a superior rank than that of the Head of the Department namely the Director of Tribal Welfare - We are, therefore confident that the State Level Scrutiny Committee will show an appropriate consideration to the materials gathered so far which may weigh against the writ petitioner and at the same time, it would weigh very appropriately the material which the petitioner might place in respect of his claim and then arrive at a fair and proper conclusion based upon the reasons to be recorded. After all, reasons act as the live links between the intellectual exercise and the end product.

17. We hope and trust that henceforth all proceedings would be conducted by the State Level Scrutiny Committee with absolute transparency and its Member Secretary, while drawing the Show Cause Notices would appropriately word the Show Cause Notices, clearly reflecting the decision of the Committee.

18. Accordingly, the Writ Petition stands disposed of at the admission stage, after hearing the Special Government Pleader Shri P.S.Shiva Shanmuga Sundaram. No costs. Consequently, connected W.M.P is closed.

Sd/-
Assistant Registrar

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Sub-Assistant Registrar

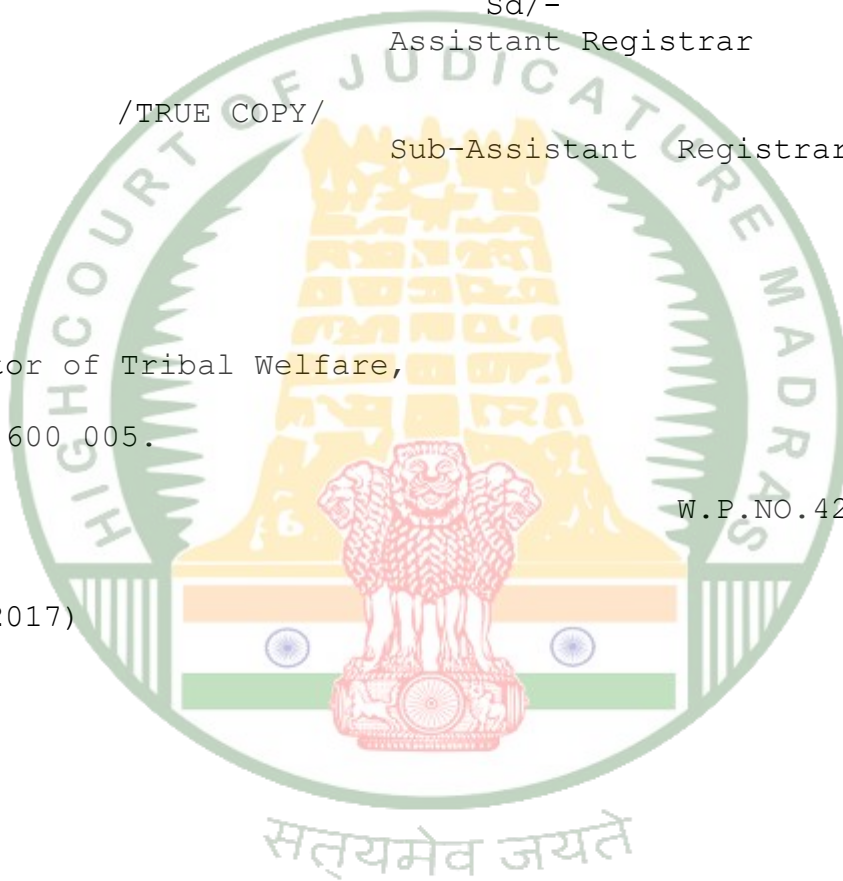
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To

The Director of Tribal Welfare,
Chepauk,
Chennai - 600 005.

W.P.NO.42667 OF 2016

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