

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.10635 of 2017

G.Radhakrishnan

.. Petitioner

Vs

The Tamil Nadu State Level Scrutiny Committee,
Rep. by its Chairman and Secretary,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Fort St. George
Chennai – 600 009.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records of the respondent in its Proceedings No.13898/CV4(1)/2013-7, dated 05.12.2016 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.S.N.Parthasarathy
Government Advocate

ORDER

(Order of this Court was made by *M.V.MURALIDARAN,J.*)

Calling into question the proceedings dated 05.12.2016 of the respondent, in and by which the respondent recommended the

District Collector, Chennai and the Director, Advanced Training Institute at Guindy, functioning under the Directorate of Employment and Training, Ministry of Labour, Government of India, to take criminal action against the petitioner for having obtained a Scheduled Tribe Community Certificate by defrauding the Constitution and consequently, cancelled the "Kammara" Scheduled Tribe Community Certificate and Form of Caste Certificate issued to the petitioner, the present writ petition is filed.

2. The facts in a nutshell are as under: According to the petitioner, he belongs to Kammara Community, which is a Scheduled Tribe Community, and a community certificate to that effect was issued to him by the Tahsildar. He was appointed in the Central Training Institute in the year 1971 in an unreserved vacancy.

3. It is averred that even though by virtue of the Government orders, the verification proceedings of the communal status was transferred to the respondent herein, on the basis of a report of the Vigilance Cell, the Director, Tribal Welfare, issued notice to the petitioner on 17.10.2016 proposing to cancel the community certificate issued to him.

4. Being aggrieved, the petitioner filed W.P.No.41468 of 2016

and this Court, by order dated 25.11.2006, held that the show cause notice issued by the Director, Tribal Welfare, was without jurisdiction and directed the respondent herein to verify the communal status of the petitioner in accordance with law and the guidelines laid down by the Supreme Court in *Kumari Madhuri Patil and another v. The Additional Commissioner, Tribal Development and others*, (1994) 6 SCC 241.

5. It is averred that pending the above writ petition (W.P.No.41468 of 2016), by representation dated 15.11.2016 addressed to the Director, Directorate of Tribal Welfare, the petitioner sought copies of statements and report and also permission to cross-examine the persons from whom statements were obtained by the Vigilance Cell. However, it is pleaded that the same did not evoke any response.

6. Thereafter, the respondent issued summons dated 24.11.2016 requiring the petitioner to attend the enquiry on 29.11.2016, of course referring to the show cause notice dated 17.10.2016 issued by the Director of Tribal Welfare. The petitioner, by letter dated 28.11.2016, sought time to produce the order passed by this Court on 25.11.2016 setting aside the show cause notice dated 17.10.2016.

7. When things stood thus, it is alleged that the respondent without issuing a fresh show cause notice as directed by this Court on 25.11.2016, has passed the impugned order dated 05.12.2016, solely by placing reliance on the report of Vigilance Cell. Hence, the present writ petition for the relief stated supra.

8. The learned counsel appearing on behalf of the petitioner submits that the bare bones of principles of natural justice have not been followed while passing the impugned order. He added that the documents relied upon by the respondent/Committee and formed the basis for the vigilance report were not furnished to the petitioner and he was not afforded an opportunity to cross-examine the witnesses examined by the authorities.

9. He further pleaded that neither the Vigilance Cell nor the State Level Scrutiny Committee conducted an independent assessment of the anthropological and ethnological traits, customs and practice, which is mandatory, and, therefore, the findings of the respondent are liable to be set aside.

10. On the contrary, the learned Government Advocate appearing on behalf of the respondent submitted that the respondent

passed the impugned order after following the procedure contemplated in law and conducting thorough enquiry and, therefore, the same does not warrant interference.

11. We have heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mr.S.N.Parthasarathy, learned Government Advocate for the respondent and perused the documents available on record.

12. First off, we would like to note that pending writ petition, this Court, by order dated 17.08.2017, directed the learned Special Government Pleader appearing on behalf of the State Level Scrutiny Committee to hand over a copy of the report of the Vigilance Cell along with all documents attached thereto as well as the report regarding anthropological and ethnological aspects to the learned counsel for the petitioner on or before 18.08.2017, to enable the petitioner to show the prejudice caused to him due to the non supply of the said documents.

13. In compliance of the above said order, the respondent supplied all the documents to the petitioner and on receipt of the same, the petitioner filed an additional affidavit dated 01.11.2017 specifically pleading that the report of the Vigilance Cell indicates that statements have been obtained from the Village Administrative Officer

and several other people, but, in any event, the petitioner was not given an opportunity to cross-examine any of the witnesses, whose evidence was relied upon by the respondent. It is also pleaded that enquiries were made by the Vigilance Cell in Maligaipattu Village, from which area the petitioner or his ancestors do not hail from.

14. The primordial plea of the learned counsel for the petitioner is that the impugned proceedings have been passed in gross violation of the principles of natural justice.

15. It is beyond any cavil that the finding recorded by the respondent in the impugned order and the direction issued to the Director, Advanced Training Institute at Guindy, functioning under the Directorate of Employment and Training, Ministry of Labour, Government of India, certainly impinges upon the civil rights of the petitioner. The affected should be appraised is a cardinal constitutional creed flowing from Article 14 of the Constitution of India and unless the affected appraised there is no compliance of principles of natural justice and fair play in action. A decision-making authority is duty bound to disclose any and every adverse material collected by it before using them against a person and an adverse decision is taken, and if it is not done the order made by such authority will be vitiated only on that count. Bearing in mind this trite

principle, let us analyse the factual aspects of the case on hand.

16. It cannot be gainsaid that under G.O.(Ms.) No. 106, Adi Dravidar and Tribal Welfare (CV 1) Department, dated 15.10.2012, the Government has constituted Vigilance Cell and modified the functions of the Committees ordered in G.O.(2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007, to verify the certificate issued to a person. In the context of the Government Order thus passed, before taking final decision, the State Level Committee shall have the benefit of report from the Vigilance Cell. Wherever any such report is given, the same shall be furnished to the individual concerned in compliance of principles of natural justice. In the said Government order, it is emphatically specified that anthropological and ethnological traits should be thoroughly examined, but such examination as prescribed, prima facie, was not done in the case on hand as is evident from the report of the Vigilance Cell.

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17. The Supreme Court in *Kumari Madhuri Patil* case, referred supra, held as under:

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC

candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe,

tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or

city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the

candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

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.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-today 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.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as

expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

18. The issue as to whether the 15 guidelines given in the case of *Madhuri Patil* (supra) were valid and whether it amounts to legislation was referred by the two Judges Bench of the Apex Court to a larger Bench. The reference was answered by the three Judges Bench of the Apex Court in the case of *Dayaram v. Sudhir Batham*, (2012) 1 SCC 333. In effect, the Supreme Court held that the directions issued in *Madhuri Patil's case* were intrinsic to the fulfilment of the fundamental rights of the backward classes of citizens and were issued to preclude denial of such fundamental rights. It noted that the directions given in the case of *Madhuri Patil* were working satisfactorily for decades. Therefore, the guidelines laid down in *Madhuri Patil case*, supra, hold the field and the action of the authorities should hew to the same.

19. In the case of *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & Ors.*, (2013) 4 SCC 465, wherein the issuance/verification of caste certificate was under consideration, the Supreme Court, after referring to a plethora of decisions, held that not only should the opportunity of cross examination be made available, but it should be one of effective cross examination, so as to meet the requirement of principles of natural justice. In the absence of such opportunity, it cannot be held that the matter has been

decided in accordance with law, as cross examination is an integral part and parcel of the principles of natural justice.

20. It is well settled that principles of natural justice have to be respected by quasi-judicial or administrative authorities while taking action if they adversely affect the interest of a person or that the action involves criminal or civil consequences. Obviously, the rules of natural justice include cross examination of the witnesses relied by the administrative authority/quasi-judicial authority and denial of the same is a serious violation of principles of natural justice. Opportunity to lead evidence in defence is also another salient feature of the principles of natural justice.

21. In the instant case, the petitioner was not furnished with all the documents referred to in the report of the Vigilance Cell, which formed the basis for the finding rendered by the respondent at the first instance, to wit, before passing an order against him. He was neither granted an opportunity to cross-examine the witnesses. We are, therefore, of the firm view that the order impugned in this writ petition has been passed in gross violation of the elementary principles of natural justice.

22. Accordingly, we allow the writ petition and set aside the

impugned order in Proceedings No.13898/CV4(1)/2013-7, dated 05.12.2016 passed by the respondent, with the following directions:

i. The matter is remanded to the State Level Scrutiny Committee for fresh consideration.

ii. It is made clear that in case the State Level Scrutiny Committee seeks to rely on such statements, necessarily opportunity should be afforded to the petitioner to cross examine those witnesses. The cross examination should be conducted in the presence of the State Level Scrutiny Committee and such cross-examination should be an effective one. The State Level Scrutiny Committee must ensure the presence of the witnesses, so as to enable the petitioner to cross examine them on the very same day. In any case, the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.

iii. If the Committee is of the view that the issue can be decided even without reference to the deposition given by the witnesses, there is no need for summoning them. In such event, the Committee shall give an opportunity to the petitioner to produce documents in support of his claim and thereafter, decide the matter on merits and as per law.

iv. The petitioner is directed to co-operate with the State Level Scrutiny Committee for an early disposal of the matter.

In case, the petitioner is prolonging the matter on one pretext or the other, it is open to the State Level Scrutiny Committee to decide the matter on the basis of available materials.

v. The above said exercise shall be completed within a period of three months from the date of receipt or production of a copy of this order.

vi. There will no order as to costs.

(C.T.S., J.) (M.V.M.,J.)
17.11.2017

vs

Index : Yes/No
Speaking order/Non-speaking order

To

The Chairman and Secretary,
The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Fort St. George
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