

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 08..08..2017
Order Pronounced on : 18..08..2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

Writ Petition No.12013 of 2015
and

M.P.No.1 of 2015

M.Obiliappa

..... Petitioner

-Versus-

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Adi Dravida & Tribal Welfare Department,
Fort St. George, Chennai 600 009.
- 2.The District Collector and Chairperson,
District Level Vigilance Committee,
[To Verify Community Certificate issued to SC/ST]
Krishnagiri District.
3. Mrs.V.Shyamala
4. The Deputy Superintendent of Police,
SC / ST Vigilance Cell,
Salem Region, Collectorate,
Salem-1.

सत्यमेव जयते

..... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent in Na.Ka.No.20144/2013/L3 and to quash the order of the 2nd respondent dated 09.08.2014 passed therein and consequently, direct the 2nd respondent to cancel the community certificate No.6357917 C.No.627/2011 dated Nil.09.2011 issued to the 3rd respondent by the Tahsildar, Hosur.

For Petitioner : Mr.R.Ganesh Kumar
For Respondents : Mr.M.Elumalai, Government
Advocate for R1 and R2

Mr.Venkatasubban for
M/s.Sarvabhauman
Associates for R3

ORDER

P.D.AUDIKESAVALU, J.

The petitioner unsuccessfully contested against the third respondent for the election conducted in the year 2011 for the post of the President of Perandapalli Village Panchayat. The said post had been reserved for persons belonging to Schedule Castes. According to the petitioner, he belongs to Arunthathiyar community, which is notified as a Scheduled Caste. It is the contention of the petitioner that the Community Certificate of the Third Respondent dated Nil.09.2011 issued by the Tahsildar, Hosur, as belonging to Adi Dravida Caste, which has been notified as a Scheduled Caste, was false. At the behest of the petitioner, the said certificate of the 3rd respondent had been sent for verification to the District Level Vigilance Committee, Krishnagiri District in terms of G.O.(2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 issued by the Government of Tamil Nadu, in pursuance of the directions issued by the Hon'ble Supreme Court of India in Kumari Madhuri Patil v. Additional Commissioner, Tribal Welfare Department [AIR 1994 SC 94]. The District Level Vigilance Committee confirmed the community certificate of the petitioner by order dated 09.08.2014, which is impugned by the petitioner in this writ petition. Placing reliance on the judgment of the Hon'ble Supreme Court of India in Ayaubkhan Noorkhan Pathan v. State of Maharashtra, [(2013) 4 SCC 465], the petitioner contends that he falls within the category of 'aggrieved persons' to question the order under challenge though he is a stranger to those proceedings.

2. The second and third respondents have filed a detailed counter affidavit opposing the writ petition.

3. Heard both sides and also perused the records produced by the District Vigilance Committee.

4. It is not in dispute that the father of the third respondent viz., R.Vijayakumar, belongs to Bajanthri Community and that on his marriage with Santhamma belonging to Adi Dravida caste, which has been classified as Scheduled Caste, the third respondent, viz., Shyamala is an off-spring. Relying on the caste of her mother, the third respondent had obtained a Scheduled Caste Community Certificate as belonging to Adi Dravida community from the Tahsildar, Hosur.

5. Assailing the order of the District Level Vigilance Committee confirming the Scheduled Caste Community Certificate of the petitioner, it is vehemently contended by the learned counsel for the petitioner that the inquiry by the Vigilance Cell in terms of clause 10(iii) of G.O.(Ms) No.106, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 15.10.2012 has not been carried out at the original place from which the third respondent hails. It is noticed from the contents of the report dated 20.02.2014 (signed on 03.03.2014) of the Deputy Superintendent of Police, SC / ST Vigilance Cell, Salem Division, Salem, in this case that he had made an inquiry at Kolar Gold Field, where the third respondent hails regarding the caste of her parents and had gathered information to the effect that the father of the petitioner belonged to barbar community and that her mother belonged to Adi Dravida caste. Hence, the contention of the learned counsel for the petitioner in this regard appears to be factually incorrect and cannot be countenanced.

6. It is next contended by the learned counsel for the petitioner that there is no finding in the impugned order regarding the disability of backwardness suffered by the petitioner. It requires to be stated that the anthropologist, viz., Mrs.S.Sumathi, Professor, Department of Anthropology, University of Madars, who was the one of the Members of District Level Vigilance Committee, in her report, going by the life history method as well as the documents submitted, firmly opined that the individual had substantially been following the customs practiced on her mother's side and that her anthropological and ethnographic research fortified her claim as belonging to Adi Dravida Community. In this context, a reference may be made to the decision of the Hon'ble Supreme Court of India in Rameshbhai Dabhai Naika v. State of Gujarat, [(2012) 3 SCC 400] wherein after referring to the earlier decisions on the subject, it has been held as follows:

"54. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal

the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.

55. In an intercaste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the scheduled caste/scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well." (emphasis supplied)

In the present case, the District Vigilance Committee has, arrived at a categorical finding that the third respondent had been brought up by her mother who belonged to Adi Dravida caste and has been following the traits of that caste. In the absence of any contrary evidence placed before the District Level Vigilance Committee to that effect it cannot be gainsaid that the third respondent is not entitled to claim the status of a scheduled caste by virtue of her having been brought by her mother.

7. That apart, the learned counsel for the petitioner also referred to certain other contentions that the revenue authorities in the State of Karnataka had held against the third respondent in respect of her caste status which are presently subject matter of the proceedings before the High Court of Karnataka at the instance of the third respondent. Suffice it to state here that the genuineness of certificate of the scheduled

caste community of the third respondent issued by the Tahsildar, Hosur, is the subject matter of the impugned order passed by the District Vigilance Committee and hence, it is only those materials placed on record before that Committee which would be required to be considered, and that it would be alien to take into account the proceedings in the High Court of Karnataka which are not germane for the purpose of deciding the matter in issue in this case.

8. The learned counsel for the petitioner further submitted that the legal proceedings had been initiated challenging the election of the third respondent on various grounds including the Scheduled Caste Status of the Third Respondent, which had been decided in favour of the third respondent by the Principal District Judge, Krishnagiri, in E.O.P.No.110 of 2011, by order dated 10.02.2015, and the same is the subject matter of revision preferred by the petitioner before this Court in C.R.P.No.4694 of 2015. It only needs to be observed that the genuineness of the Scheduled Caste Community Certificate of the third respondent could not be gone into those proceedings and could be decided only by the District Level Vigilance Committee, which is the Competent Authority to determine such matters and dependant upon the decision of the District Level Vigilance Committee on the Scheduled Caste Status of the Third Respondent, that issue would have to be decided in the Election Petition. Needless to add here that the other grounds of challenge to the election of the third respondent in the Election Petition would have to be decided on their own merits in accordance with law.

9. In fine, the writ petition is dismissed as without any merits. No costs. Consequently connected MP is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

kmk / rns

To

1.The Secreary to Government,
Adi Dravida & Tribal Welfare Department,
Fort St. George, Chennai 600 009.

WEB COPY

2. The District Collector and Chairperson,
District Level Vigilance Committee,
[To Verify Community Certificate issued to SC/ST]
Krishnagiri District.

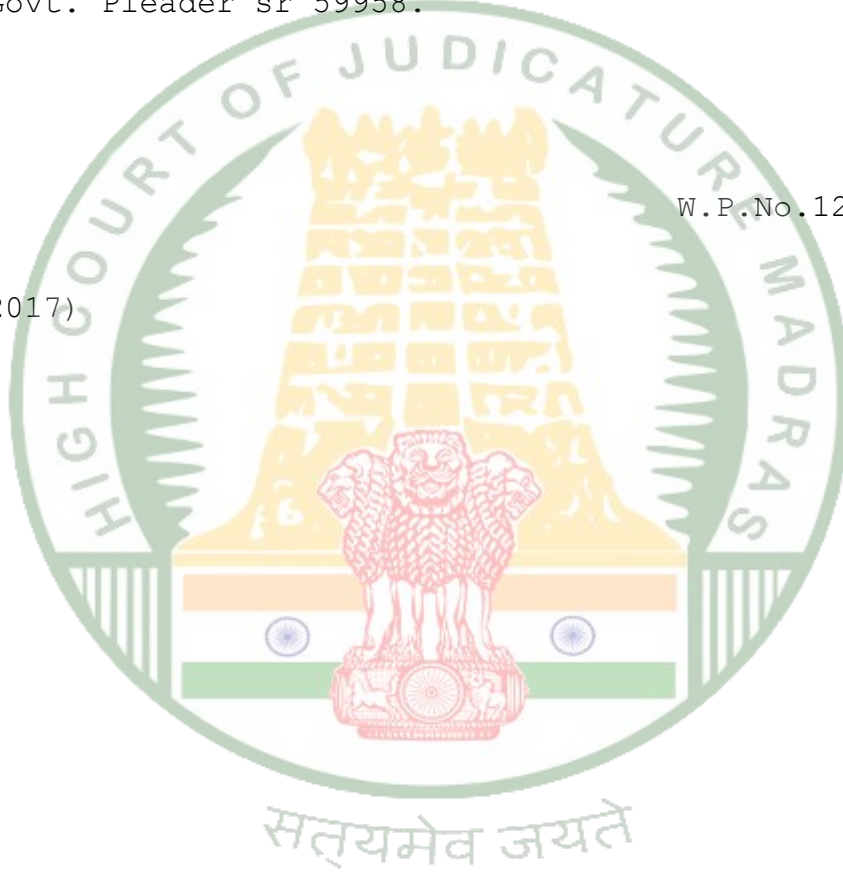
3. The Deputy Superintendent of Police,
SC / ST Vigilance Cell,
Salem Region, Collectorate,
Salem-1.

+1 CC to Mr.R. Ganesh Kumar, Advocate sr 59374

+1 Cc to Govt. Pleader sr 59958.

W.P.No.12013 of 2015

GJ(CO)
sp(06/09/2017)



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