

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	23/08/2017
PRONOUNCED ON	30/08/2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKEVALU

W.P.No.21015 of 2017 &
W.M.P.No.21907 of 2017

G.Vivek

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Fort St. George, Chennai-600 009.

2.The Director Adi Dravidar Welfare,
Chepauk,
Chennai-600 005.

3.The District Adi Dravidar & Tribal Welfare Officer,
Villupuram District,
Villupuram.

4.The District Collector-cum-Chairman,
District Level Vigilance Committee,
Nagapattinam District,
Nagapattinam.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari, to call for the records relating
to the order issued by the fourth respondent in
Na.Ka.No.2957/2011/K4, dated 14.07.2017 and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.M.Elumalai
Government Advocate for R1 to R4

ORDER

[Order of the Court was made by P.D.AUDIKESSAVALU, J.]

The case of the Petitioner is that he was born to Thiru. Gnana Arputham and Tmt. Padmavathi on 10.04.1967, who belonged to the Adi Dravidar caste, and were originally Hindu by religion and had subsequently converted to Christianity, and that the Petitioner who was born out of their wedlock, was initially named as G.Lazer. It is his further claim that after becoming a major, due to his attachment over the Hindu Religion to which his family had originally belonged to, he re-converted himself to Hinduism and changed his name to G.Vivek, which was notified on 14.12.1988 in the Gazette of Tamil Nadu. Thereafter, on his representation, the Petitioner had been issued a Scheduled Caste Community Certificate dated 20.01.1999 by the Tahsildar, Sirkazhi Taluk, showing that he belonged to the Hindu Adi Dravidar Community. On the strength of the aforesaid Community Certificate, the Petitioner was selected and appointed to the post of Secondary Grade Teacher in Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu, by order dated 18.01.2001

and subsequently promoted to the post of B.T. Assistant on 05.05.2008.

2. The aforesaid Community Certificate of the Petitioner was forwarded for verification of its authenticity to the District Level Vigilance Committee, Nagapattinam, which by proceedings dated 26.09.2016 held that though he claims that he belonged to Hindu Adi Dravidar Community, he was professing Christianity and rejected his claim citing that reason. Challenging the said rejection, the Petitioner filed a Writ petition bearing W.P No. 41147 of 2016 before this Court in which by order dated 28.04.2017, a finding was rendered that the enquiry regarding the genuineness of the Scheduled Tribe Community Certificate of the Petitioner was not properly conducted and he was not given sufficient opportunity to participate in the enquiry and cross examine the witnesses and the order dated 26.09.2016 passed by the District Level Vigilance Committee was set aside with a direction to conduct fresh enquiry by giving fair opportunity to the petitioner to put forth his contentions and verify the documents produced by him to prove the genuineness of his claim and complete such exercise within a period of 8 weeks from the date of receipt of a copy of that order. The District Level Vigilance Committee, Nagapattinam, has thereafter conducted a fresh enquiry and passed an order dated 14.07.2017

holding that the Petitioner is a Christian and does not belong to Hindu Adi Dravidar Community and hence, the Community Certificate dated 20.01.991 procured by him from the Tashildar, Sirkazhi as belonging to Hindu Adi Dravidar Community is false and not genuine, which is impugned in this Writ Petition.

3. When the matter came up for admission before this Court on 07.08.2017, Mr. M. Elumalai, Learned Government Advocate took notice on behalf of the Respondents and the Fourth Respondent has filed a Counter Affidavit during the hearing on 21.08.2017. With the consent of both sides, the Writ Petition has been taken up for final disposal at the admission stage itself.

4. Heard Mr. G.Sankaran, the Learned Counsel appearing for the Petitioner and Mr. M. Elumalai, the Learned Government Advocate, on behalf of the Respondents and perused the materials placed on record.

5. The Learned Counsel for the Petitioner, at the very outset, submitted that the fresh enquiry conducted by the District Level Vigilance Committee in pursuance of the order dated 28.04.2017 in W.P.No. 41147 of 2016 passed by this Court, is not in accordance with the instructions contained in the relevant Government Orders on the

subject. In this backdrop, it has been noticed from the impugned proceedings that conspicuously there was no inspection by the Vigilance Cell of the District Level Vigilance Committee as contemplated in Clause 10(ii) and (iii) of G.O. (Ms.) No. 106, dated 15.10.2012 issued by the Government of Tamil Nadu, which read as follows:-

“(ii) On receipt of the application from the employer/ recruiting agency for verification of the genuineness of the Community Certificate of the individual the District Level Vigilance Committee/State Level Scrutiny Committee to refer the case to the respective Vigilance Cell where the Community Certificate was issued to the individual by the competent authority for verification of the community status of the individual.

(iii) On receipt of the reference from District Level Vigilance Committee/State Level Scrutiny Committee, the Inspector of the Vigilance Cell 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 also should 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 District Level Vigilance Committee/State Level Scrutiny Committee together with all particulars of as envisaged in the proforma, in particular 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 concerned castes or tribes or tribal communities etc.,”

On that premise, it is contended that in the absence of the aforesaid Vigilance Report, the entire proceedings before the District Level Vigilance Committee gets vitiated.

6. It is not disputed by the Respondents that inspection by the Vigilance Cell had not taken place in the proceedings before the District Level Vigilance Committee and an affidavit dated 23.08.2017 has been filed by the Third Respondent, viz., District Adi Dravidar and Tribal Welfare Officer, Nagapattinam *cum* Secretary, District Level Vigilance Committee in this Writ Petition stating that if vigilance enquiry is required in this case, the matter may be remitted back for fresh disposal to the District Level Vigilance Committee.

7. The requirement of inspection by the Vigilance Cell has been stipulated in the aforesaid Governmental Order, pursuant to the direction Nos. 5 and 6 in para 13 of the decision of the Hon'ble Supreme Court of India in **Kumari Madhuri Patil and another -vs- Addl. Commissioner Tribal Welfare** [(1994) 6 SCC 241], which is extracted below:-

“(5) Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall 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 pro forma, 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/Additional Secretary as Chairperson 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.”

The direction Nos. 1 to 15 issued in para 13 in **Kumari Madhuri Patil and another -vs- Addl. Commissioner Tribal Welfare** [(1994) 6 SCC 241], have been held by a Three Judge Bench of the Hon'ble Supreme Court of India in **Dayaram -vs- Sudhir Batham** [(2012) 1 SCC 333] as having been validly made in the exercise of powers under Articles 142 and 32 of the Constitution for the laudable purpose to ensure that only genuine Scheduled Caste and Scheduled Tribe candidates secure the benefits of the reservation and the bogus candidates were kept out, and such directions have been issued to fill the vacuum till legislature chose to make an appropriate law. Hence, there cannot be any doubt that the inspection by the Vigilance Cell is a valuable primary mechanism devised for factually verifying the correctness of the claim for Scheduled Caste community status of the Petitioner, and as such, the requirement of the report of such inspection by the Vigilance Cell in the proceedings before the District Level Vigilance Committee has to be held as mandatory in nature and neither any exception could be taken to it, nor it is possible to dispensed with the same. Resultantly, the necessity to remit the matter back once again to the District Level Vigilance Committee for

fresh enquiry to be conducted scrupulously in accordance with the procedure prescribed under the relevant Governmental Orders, has appallingly become inevitable in this case.

8. At this juncture, it also has to be pointed out that while following the binding judicial decisions on the subject, the District Level Vigilance Committee, having regard to the facts of the instant case where the Petitioner claims to have converted from Christianity to Hinduism, is bound to return specific factual findings on that aspect as held in para 34 of the decision of the Hon'ble Supreme Court of India in ***K.P. Manu -vs- Chairman, Scrutiny Committee for Verification of Community Certificate*** [(2015) 4 SCC 1], which reads as follows:-

"34. In our considered opinion, three things that need to be established by a person who claims to be a beneficiary of the caste certificate are:

(i) there must be absolutely clear cut proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Castes) Order, 1950;

(ii) there has been re-conversion to the original religion to which the parents and earlier generations had belonged; and

(iii) there has to be evidence establishing the acceptance by the community.

Each aspect according to us is very significant, and if one is not substantiated, the recognition would not be possible.”

In the same breadth, the settled legal position as reiterated in **Anand -vs- Committee for Scrutiny & Verification of Tribe Claims & others** [(2012) 1 SCC 113] has to be remembered that the burden of proving the caste claim is upon the applicant, who has to produce all the requisite documents in support of his claim, that the Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the applicant and that in case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim.

9. In fine, the Writ Petition is disposed with the following directions:-

(i) the impugned order bearing Na.Ka.no. 2957/2011/K4, dated 14.07.2017 passed by the Fourth Respondent/District Level Vigilance Committee, Nagapattinam, is set aside and the matter is remitted back to that Committee for fresh disposal; and

(ii) the District Level Vigilance Committee, Nagapattinam shall, after affording full opportunity of hearing to Petitioner, including production of documents and examination of witnesses, if any, pass reasoned orders on merits in accordance with law following the requirements set out in the relevant Governmental Orders and binding judicial decisions on the subject (and particularly those indicated supra) and expeditiously complete the verification of the Scheduled Caste community status of the Petitioner and in any event, on or before 30.11.2017, and immediately thereafter communicate the decision to the Petitioner and file a report of compliance before the Registrar (Judicial) of this Court.

There shall be no order as to costs and the connected miscellaneous Petitions are closed.

Before parting with this case, it is suggested that as a sequel to G.O.Ms.No.(1), Adi Dravidar and Tribal Welfare Department, dated 02.01.2009, the Government of Tamil Nadu may issue an appropriate circular communicating the legal principles set out in the decision of the Hon'ble Supreme Court of India in ***K.P. Manu -vs- Chairman, Scrutiny Committee for Verification of Community Certificate [(2015) 4 SCC 1]***, dealing with claims for Community Certificates from

re-converts to Hinduism relying on the Caste of their forefathers and ancestors, for the benefit of the District Collectors and other Members of the District Level Vigilance Committees in the Districts and other Officers dealing with the subject in the Government, before whom such matters frequently arise for consideration.

(M.V., J.) (P.D.A., J.)

30/08/2017

Index : Yes.

Internet : Yes.

Speaking Order

sd/rns

Note: Issue order copy today (30.08.2017)



WEB COPY

To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Fort St. George, Chennai-600 009.
- 2.The Director Adi Dravidar Welfare,
Chepauk,
Chennai-600 005.
- 3.The District Adi Dravidar & Tribal Welfare Officer,
Villupuram District,
Villupuram.
- 4.The District Collector-cum-Chairman,
District Level Vigilance Committee,
Nagapattinam District,
Nagapattinam.

Copy to:

- (i) The Registrar (Judicial),
Madras High Court,
Chennai.
- (ii) The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

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M.VENUGOPAL, J.
and
P.D.AUDIKESAVALU, J.

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Pre Delivery Order made in
W.P.No.21015 of 2017 &
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