

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

The Hon'ble Mr.JUSTICE C.T.SELVAM
and
The Hon'ble Mr.JUSTICE M.V.MURALIDARAN

W.P.No.33423 of 2017

and

WMP.No.36913 of 2017

C.Sanjeevi

.. Petitioner

-vs-

- 1.The Tamilnadu State Level
Scrutiny Committee,
Rep. By its Chairman and Secretary
to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai - 600 009.
- 2.The Deputy Superintendent of Police,
Office of the Deputy Superintendent
of Police, Room No.109,
SC/ST Vigilance Cell,
Salem Region, Collectorate,
Salem - 636 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the entire records of the first respondent's proceedings in Letter No.19089/CV4/2012-6 dated 31.5.2016 and the consequential proceedings in C.No.66/DSP/SC/ST Vigilance Cell/Salem Region/2016 dated 25.7.2017 of the second respondent and quash the same and to consequently forbear the respondents from reopening the enquiry/re-verification pertaining to the community certificate of the petitioner in the light of the orders passed by the Hon'ble Supreme Court in Civil Appeal No.5935 of 1997 dated 22.08.1997 and that of the order passed by this Hon'ble Court in W.P.No.36600 of 2006 dated 14.07.2010.

For Petitioner : Mr.L.Chandrakumar

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

O R D E R

(Order of the Court was made by M.V.Muralidaran,J.)

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records of the first respondent in Letter No.19089/CV/2012-6, dated 31.5.2016 and the consequential proceedings in C.No.66/DSP/SC/ST Vigilance Cell/Salem Region/2016, dated 25.7.2017 of the second respondent, to quash the same and consequently, forbear the respondents from re-opening the enquiry/re-verification pertaining to the community certificate of the petitioner in the light of the orders passed by the Hon'ble Supreme Court in Civil Appeal No.5935 of 1997 dated 22.08.1997 and that of the order passed by this Hon'ble Court in W.P.No.3660 of 2006 dated 14.7.2010.

2. The facts in a nutshell are as follows: The petitioner is a native of Kolathur village of Mettur Taluk and he belongs to "Konda Reddi" community, a Scheduled Tribe, notified under Serial No.12, Part XIV of the Constitution of Schedule Tribes Order, 1950. The petitioner's forefathers originally hailed from Godawari District, Andhra Pradesh. Due to the invasion of Mughals, they migrated to Tamil Nadu and Karnataka. Before the independence, Kolathur village was part of Kollegal Taluk of Karnataka, erstwhile Mysore Princely State. After bifurcation of Mysore State, Kolathur village became part of Bhavani Taluk and subsequently brought under Mettur Taluk of Salem District. According to the petitioner, Mettur Tahsildar, after conducting thorough enquiry had issued a community certificate dated 23.10.1975 in favour of the petitioner stating that he belongs to "Konda Reddis" community. Petitioner's sisters and close relatives were also issued with "Konda Reddis" community certificates.

3. Case of the petitioner is that he joined in Postal Department on 6.8.1979 under Scheduled Tribe quota. While the petitioner was working, the Superintendent of Post Offices, Salem West Division, vide proceedings dated 10.10.1984 had withdrawn the facility of treating the petitioner as Scheduled Tribe and treated him as "Other Community". Aggrieved by the said proceedings, the petitioner had filed O.A.No.343 of 1997 before the Central Administrative Tribunal, Chennai. By an order dated 16.6.1999, the Central Administrative Tribunal, Chennai, allowed the said Original Application holding that the community certificates issued prior to 11.11.1989 are valid and the status given to the petitioner as Schedule Tribe had legal force. After the order passed by the Central Administrative Tribunal, Chennai, the petitioner's status was treated as Scheduled Tribe and till date, the petitioner's social status remains as Scheduled Tribe and now he is working as L.S.G.(PA) in Erode Head Post Office.

4. When things stood thus, the first respondent, by his letter dated 31.5.2016 directed the Deputy Superintendent, SC/ST Vigilance Cell, Salem Region to conduct an enquiry in respect of the community certificate issued in favour of the petitioner. Based on the letter of the first respondent, the second respondent issued a communication dated 15.6.2016 calling upon the petitioner to appear before him for enquiry. The petitioner sent reply to the said communication. Despite, considering the reply, the second respondent has issued a communication dated 25.7.2017 calling upon the petitioner to appear before him for an enquiry. Aggrieved by the said communication, the petitioner has filed the present writ petition.

5. The learned counsel appearing for the petitioner submits that the petitioner had been issued with "Konda Reddis" community certificate on 23.10.1975 and he was appointed as Postal Clerk in the Postal Department under Scheduled Tribe quota on 6.8.1979. The learned counsel further submitted that on 31.5.2016, the first respondent directed the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Region to conduct an enquiry qua the community certificate issued to the petitioner. Based on the direction of the first respondent, the second respondent has sent letter dated 15.6.2016 calling upon the petitioner to appear before him. The said letter has been duly replied by the petitioner by enclosing relevant documents to show that the petitioner belonged to "Konda Reddis" community. Without considering the same, the second respondent had issued the communication dated 25.7.2017 calling upon the petitioner to appear before him for an enquiry.

6. The main grievance of the petitioner is that the proceedings of the second respondent compelling the petitioner to produce the birth certificate as well as the school records pertaining to him and his parents after nearly five decades is unsustainable. If the respondents are allowed to once again re-verify the status, it would tantamount to re-writing the findings and dictum of law settled by the judicial forum, which would not only result in multiplicity of proceedings, but also unsettle the settled issue.

7. We have heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner and Mr.S.N.Parthasarathy, learned Government Advocate appearing for the respondents and perused the materials available on record.

8. The point that arises for consideration in this petition is whether the respondent authorities are right in directing the petitioner to produce the birth certificate as well as the school record pertaining to him and his parents etc., after five decades.

9. On a perusal of the typed set of documents, we find that by the letter dated 31.5.2016, the Secretary to Government, Adi Dravidar and Tribal Welfare, directed the Director, Tribal Welfare, Chennai and the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Region to conduct an enquiry and to verify the genuineness of Hindu Konnareddis Scheduled Tribe Community certificate issued to the petitioner. Accordingly, the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Region has issued the communication dated 25.7.2017 to the petitioner calling upon him to produce the extract of birth certificates of his parents; 10th mark sheet and transfer certificate of his parents; first page of the service register of his parents, if they are working in Government service; community certificates of his parents; sale deeds, if any; proof showing the community the petitioner belongs to and the relationship certificate issued by the Revenue officials to the relatives of the petitioner.

10. During the course of arguments, the learned counsel for the petitioner has produced the copy of the community certificate issued in favour of the petitioner on 28.10.1975 by way of additional typed set of papers. On perusal of the same, we find that the Tahsildar, Mettur had issued the community certificate to the petitioner on 28.10.1975 stating that the petitioner (K.R.Chinnasamy) belongs to Konda Reddies community, which is classified as Scheduled Tribe. In the said community certificate, the Village Munsif has also signed. On the backside of the community certificate, the Village Munsif has certified that the petitioner, who is the son of Chinnasamy, residing at Kolathur village, Mettur Taluk, Salem District belongs to "Konda Reddi" community.

11. To rebut the contentions raised in the writ petition, the respondent authorities have not filed any counter. The respondent authorities have failed to show that the community certificate dated 28.10.1975 issued to the petitioner is not valid and the same has been obtained by misrepresentation.

12. In his petition, the petitioner averred that the Superintendent of Post Offices, Salem West Division vide letter dated 18.10.1984, suddenly withdrew the facility treating the petitioner as Scheduled Tribe alleging that there is no Konda Reddis community in Salem District and informed that the social status of the petitioner was treated as "Other Community". Aggrieved by the said letter, the petitioner filed O.A.No.343 of 1997 before the Central Administrative Tribunal, Chennai. The said Original Petition was tried along with two other Original Petitions viz., O.A.Nos.341 & 342 of 1997. By the order dated 16.6.1999, the Central Administrative Tribunal, Chennai directed the respondents therein not to take away the benefits given to the applicants therein on the basis

of the ST community certificate produced by them. Thereafter, taking the social status of the petitioner as Scheduled Tribe, the petitioner is working in the Postal Department.

13. It appears that when the petitioner's daughter was denied issuance of community certificate, she filed W.P.No.36600 of 2006 before this Court. By an order dated 14.7.2010, a Division Bench of this Court directed the first respondent therein to issue community certificate to the petitioner to the effect that she belongs to "Konda Reddi community", which is a notified Scheduled Tribe, within a period of two months from the date of receipt of a copy of this order. As against the order of the Division Bench in W.P.No.36600 of 2006, the respondents therein have not filed any appeal and the said order become final.

14. A perusal of the letter dated 16.9.1991 of the Secretary to Government, Adi Dravidar and Tribal Welfare (AD II) Department, shows that the community certificates issued to the Scheduled Tribe Communities by the Tahsildars prior to 11.11.1989 will be valid. It is to be noted that the petitioner has been issued with the community certificate on 28.10.1975 mentioning that he belongs to "Konda Reddis" community, which is classified as Scheduled Tribe.

15. In R.Kandasamy v. Chief Engineer, Madras Port Trust, reported in (1997) 7 SCC 505, the Hon'ble Supreme Court held that "community certificate issued to the Schedule Tribes by Tehsildars up to 11.11.1989 is valid".

16. Since the community certificate dated 28.10.1975 issued to the petitioner is prior to 11.11.1989, prima facie, we find that the same is valid in law, when there is no rebuttal evidence/documents to disprove the said certificate.

17. The social status given to the petitioner as Scheduled Tribe has been directed to be verified by the respondent authorities nearly after 42 years from the date of issuance of the certificate and 38 years from the date of his appointment. The respondent authorities have failed to produce any documents to show that the petitioner has obtained the community certificate dated 28.10.1975 by fraud, false representation. When the community certificate (dated 28.10.1975) was issued by the competent authority (Tahsildar), it cannot now be said that the said community certificate is not valid. As held by the Supreme Court in Kandasamy case supra, the certificate issued to Scheduled Tribes by Tehsildars up to 11.11.1989 is valid.

18. The petitioner joined in the Postal Department in the year 1979 and is now working as L.S.G. (PA) in Erode Head Post Office. According to the petitioner, "Konda Reddis" community certificates were issued not only to the petitioner, but also to the entire family of the petitioner as well as his close

relatives. The respondent authorities have not stated or produced any proof to show that those who have issued with "Konda Reddis" community certificates were also issued letter/communication calling upon them to produce the documents. What prompted the first respondent in sending the communication to the Director of Tribal Welfare, Chennai as well as the Deputy Superintendent of Police, Vigilance Cell to verify the genuineness of the community certificate issued to him has not been established. In other words, the lapse in the community certificate of the petitioner, which instigated the respondent authorities to verify his social status is not stated.

19. The first respondent, in his communication simply stated that as per the orders of the Hon'ble Supreme Court in *Kumari Mahdhuri Patil v. Additional Commissioner, Tribal Development and others*, JT 1994 (5) SC 488, the Director of Tribal Welfare, Chennai has been requested to issue a show cause notice to the individual, if he/she found the claim for social status to be not genuine or doubtful or spurious or falsely or wrongly claimed. However, the said authority has not placed on record any material to show that he found the claim of the petitioner as not genuine or spurious. Further, no fraud, forgery or misrepresentation of obtaining the community certificate by the petitioner has been stated in the impugned proceedings dated 31.5.2016 of the first respondent. Further, there is no proof from the Postal Department showing that by obtaining false community certificate, the petitioner is working in the said Department.

20. In view of the order passed by the Central Administrative Tribunal, Chennai, supra, the communal status of the petitioner has reached finality. Neither any change of circumstances nor any complaint regarding the genuineness of the community certificate issued in favour of the petitioner has been produced by the respondent authorities. Therefore, we find that the proceedings of the respondent authorities calling upon the petitioner to appear for an enquiry and to produce documents stated therein are not in accordance with law. As rightly contended by the petitioner, if the respondent authorities are allowed to once again to re-enquire/re-verify the social status of the petitioner, it would tantamount to rewriting the findings and the dictum of law settled by the judicial forum. Moreover, based on the social status given to the petitioner, he is serving in the Postal Department and also based on the community certificate issued to him, certain other rights have been conferred on him. No valid reason for verification of the community certificate of the petitioner has been given in the impugned proceedings by the respondent authorities.

21. It may be noted at this juncture that on the strength of the community certificate issued to the petitioner, this Court, by order dated 14.7.2010 passed in W.P.No.36600 of

2006, directed issuance of community certificate to his daughter. The said factor further fortifies the plea of the petitioner that his family members, sisters and relatives are holding valid community certificates, which remain unchallenged till date.

22. The impugned proceedings of the respondent authorities calling upon the petitioner to produce the birth extract and school record sheet of his and parents and also relationship certificate issued by the Revenue officials etc., nearly after five decades, is arbitrary and unsustainable in law and the same are liable to be quashed.

23. In the light of the above discussions, the writ petition is allowed and the impugned proceedings of the respondent authorities are quashed. No costs. Consequently, connected W.M.P.No.36913 of 2017 is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Chairman and Secretary to Government,
Tamilnadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai - 600 009.

2.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Room No.109, SC/ST Vigilance Cell,
Salem Region, Collectorate,
Salem - 636 001.

+ 2 ccs to Mr. N. Naganathan, Advocate Sr.92219
+ 1 cc to Mr. Government Pleader Sr.92472

W.P.No.33423 of 2017

and

W.M.P.No.36913 of 2017

SAI (CO)
EU(20/02/2018)