

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 14-02-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1645 of 2016

V.Chitra ... Petitioner

-vs-

- 1.The State of Tamil Nadu,
represented by its Secretary to Government,
Rural Development and Panchayat Department,
Fort St.George,
Chennai-9.
- 2.The District Collector,
Villupuram District,
Villupuram.
- 3.The District Level Caste Scrutiny Committee,
represented by the District Collector,
Villupuram District,
Villupuram.
- 4.The District Adi Dravida and Tribal Welfare Officer,
Villupuram.
- 5.Dr.V.Pragaghy,
Member,
District Level Caste Scrutiny Committee of
Villupuram District,
Lecturer and Anthropologist,
Language and Culture Center,
Puducherry.
- 6.S.Annamalai

7.The State Election Commission,
rep.by its Secretary,
208/2, Jawaharlal Nehru Road,
Arumbakkam (Opp.to Koyambedu Bus Stand),
Chennai-600 106.

8.The Deputy Superintendent of Police,
SC/ST Vigilance Cell,
Chennai Division,
Office of the District Collector,
Chennai District,
Chennai-600 001.

... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus to call for the records relating to the issue of the proceeding of the third respondent in Na.Ka.M11/19372/2013, dated 16-12-2015, quash the same and further forbear the respondents from in any manner cancelling the Community Certificate of the petitioner as Hindu Thomban.

For petitioner : Mr.P.Srinivas

For respondents 1 to 5 & 8: Mrs.A.Srijayanthi,
Spl.Govt.Pleader.

For respondent 6 : Mrs.Hema Sampath,
Senior Counsel,
for Mr.P.Saravanan

For respondent 7 : Mr.B.Nedunchezhiyan

सतयमेव जयते
O R D E R

(Order of the Court was made by Nooty.Ramamohana Rao,J.)

This Writ Petition is instituted, challenging the legality and sustainability of the order passed on 16.12.2015, by the third respondent- District Level Caste Scrutiny Committee, Villupuram. The writ petitioner also sought for an injunction to restrain the respondents from cancelling the Community Certificate issued to her, recognising her as a member, belonging to Hindu Thomban community.

2. The writ petitioner claims that she belongs to Hindu Thomban community, which is recognised as a Scheduled Caste in the State of Tamil Nadu. It is the claim of the writ petitioner

that members of Thomban community are a very backward community without the benefit of any formal education. It is also the claim of the writ petitioner that the main avocation of the Thomban community is to rear pigs and sell their meat in the market, making of hair combs using horns of bulls, poaching of wildlife animals in forests for selling their meat in the market etc. It is also her case that when the office of the Panchayat President of Solambattu Village has been reserved for Scheduled Caste community (General), she has successfully contested the election and won the office of the Panchayat President. It is at that stage, objections have been raised that the writ petitioner does belong to 'Reddiar' community and that she does not belong to Scheduled Caste community at all. From then onwards, the troubles started for her with regard to her social status claim. Based upon a complaint launched by the unsuccessful candidate, the District Level Scrutiny Committee started making inquiries into the social status claim of the writ petitioner. The sixth respondent then approached this Court and instituted W.P.No.10536 of 2012 for conducting an inquiry into the genuineness of the Community Certificate, which the present writ petitioner has produced. That Writ Petition was disposed of by this Court on 20.06.2012, directing the District Level Scrutiny Committee to consider the same on merits and after providing an opportunity to the writ petitioner to finalise the inquiry within a period of three months. Following a formal notice of hearing, the writ petitioner appeared before the District Level Scrutiny Committee on 25.10.2012 and produced material in support of her claim. On 25.10.2012, the anthropologist had made a field inquiry in the village and the villagers seemed to have disclosed that the writ petitioner did not belong to Thomban community. Based upon this finding, the writ petitioner was declared as not belonging to Hindu Thomban community and the certificate produced by her in that regard was not a genuine one. Against the said order, dated 25.10.2012, the writ petitioner has filed W.P.No.31519 of 2012. That Writ Petition came to be decided on 14.12.2012, holding that non-supply of the report of the anthropologist and the failure to consider the case of the writ petitioner objectively were bad and, accordingly, remitted the matter back for consideration afresh. It is, thereafter, a note prepared by the anthropologist has been made available to the writ petitioner on 20.02.2013, but, however, no proceedings are stated to have actually taken place on that day. The orders passed on 20.02.2013 have been received by the petitioner only on 01.05.2013 and, thereafter, the writ petitioner has filed W.P.No.13790 of 2013. That Writ Petition came to be decided by this Court on 27.08.2013, imposing costs of Rs.30,000/-, payable by the members of the Scrutiny Committee. It is, thereafter, the inquiry proceeding was conducted on 05.08.2015 and the proceedings, dated 16.12.2015, have been received by the writ petitioner on 02.01.2016.

Challenging the validity of the said proceedings, the present Writ Petition has been filed.

3. Heard Sri P.Srinivas, learned counsel for the writ petitioner; Smt.A.Srijayanthi, learned Special Government Pleader, appearing for the State; and Smt.Hema Sampath, learned Senior Counsel appearing for sixth respondent; and also Sri B.Nedunchezhiyan, learned counsel for seventh respondent-Election Commission.

4. Sri P.Srinivas, learned counsel for the writ petitioner, would strenuously urge that determination of social status claims of members belonging to Scheduled Castes and Scheduled Tribes is a serious issue, having far-reaching consequences and ramifications. It should not be handled so lightly and without providing a fair or reasonable opportunity and without properly analysing and appreciating the material available to vouch for the claim, orders, such as, impugned order, dated 16.12.2015, are passed by the Committee and, hence, for the sheer mechanical approach adopted by the Scrutiny committee while dealing with the genuineness of the claims made by the members belonging to Scheduled Castes and Scheduled Tribes, any such order is liable to be interdicted. Learned counsel Sri P.Srinivas submits that there is any amount of material which the writ petitioner has produced both before the Vigilance Cell as well as the District Level Scrutiny Committee and without even examining the voluminous material produced by the writ petitioner and also without applying mind to the quality of evidence produced by the writ petitioner, a perverse finding has been drawn that the writ petitioner does not belong to Hindu Thomban community.

5. Per contra, Smt.A.Srijayanthi, learned Special Government Pleader; and Smt. Hema Sampath, learned Senior Counsel for the sixth respondent, would urge that it is not merely enough for one to make a claim that he or she belongs to a particular community and any such claim has to be established by leading proper material and, in the absence of any such acceptable material, findings of fact recorded cannot be brushed aside.

6. There can hardly be any doubt that ascertainment of social status of an individual, particularly those belonging to Scheduled Castes and Scheduled Tribes, is not only a serious business, but a very important task. Unless one carefully scrutinises the claim and the material produced in support thereof, a reasonable satisfaction that one does or for that matter one does not belong to the community to which the claim is made cannot be arrived at. Any decision either declaring a particular candidate as belonging to a particular community or

one does not belong to that particular community has serious consequences to flow with far-reaching ramifications. The benefits, which are meant to be utilised by the members belonging to Scheduled Caste and Scheduled Tribes, would no longer, thereafter, become available, if one is declared as not belonging to a particular community.

7. In the above background, after noticing that a proper mechanism should be put in place for purposes of verifying the claims of members belonging to Scheduled Castes and Scheduled Tribes, the Supreme Court, in *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development*, has brought home the necessity to put in place a proper scrutiny committee. Pursuant to the said judgment of the Supreme Court in *Kumari Madhuri Patil's* case, reported in 1994 (6) SCC 241, the State of Tamil Nadu, through their Government Order (2D) No.18, Adi Dravidar and Tribal Welfare Department, dated 01.04.1997, constituted District Level Vigilance Committee at the District level and State Level Scrutiny Committee at the State level for purposes of verifying the genuineness of the community claims of the members belonging to Scheduled Castes and Scheduled Tribes. The guidelines for effective discharge of the functions entrusted to such Committees have been spelt out. Certain modifications were also made in that regard through G.O.(Ms) No.21, Adi Dravidar and Tribal Welfare, dated 20.05.1999. Subsequently also, the State Government have examined for the purpose of updating the guidelines and, accordingly, passed comprehensive orders through their G.O.(2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007. The Government constituted District Level Vigilance Committee headed by the District Collector and the District Adi Dravidar and Tribal Welfare Officer, as its Member Secretary, and an Anthropologist, as its Member. The State Level Scrutiny Committee has been constituted under the Chairmanship of the Secretary to Government, Adi Dravidar and Tribal Welfare Department, and the Director/Commissioner, Tribal Welfare, to act as its Member Secretary, and an Anthropologist is associated with the said Committee, as its Member, as well. The District Level Vigilance Committee is required to scrutinise the genuineness of the community certificates issued to the members of Scheduled Castes and pass appropriate final orders. The State Level Scrutiny Committee would scrutinise the genuineness of the community certificates issued as Scheduled Tribes. The working guidelines for effective functioning of these two Committees have been spelt out in the Annexure to the said G.O.(2D) No.108, dated 12.09.2007. Paragraph 2 of the guidelines has spelt out the detailed procedure to be followed. Towards the end of Paragraph 2 thereof, it is concluded as under :

"2.... 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."

Thus, a summary inquiry, duly adhering to the principles of natural justice, too has been contemplated, for and by the Committees.

8. In the instant case, such a procedure has been followed before issuing the impugned order by the District Level Committee. The criticism launched against the impugned order by the learned counsel for the writ petitioner Sri P.Srinivas is that the District Level Committee has merely adopted the report submitted by the Vigilance Cell, headed by a Police Officer, and the District Level Committee has not made any independent study of its own and has not considered the matter on merits objectively.

9. We are afraid, the contention of the learned counsel for the writ petitioner cannot be accepted, for, what has been contemplated to be undertaken by the District Level Scrutiny Committee was to ascertain the genuineness of the claim made as a member belonging to Scheduled Tribe. Therefore, the initial burden is lying on the individual, who is making such a claim. Once the initial burden gets discharged, the burden shifts to prove the contra on to the State Government/District Level Scrutiny Committee or the complainant, if any, for that matter.

10. In the case on hand, it is brought out that the anthropologist has conducted an independent inquiry and his findings are also made known to the petitioner. Similarly, the findings of the Vigilance Cell contained in its report are also made available to the petitioner. It is, therefore, hard for one to believe that no fair or reasonable opportunity has been afforded to the writ petitioner. In our opinion, at every stage, an opportunity of hearing to explain the position of the petitioner has been held out.

11. The writ petitioner tried to place reliance upon as many as 71 documents in support of her claim. The list of 71 documents has been adverted to in a representation submitted to the District Collector-cum-Chairman, District Level Scrutiny Committee, a copy of which has been placed at Page No.312 of the Paper Book and the translated version thereof at Page No.330. The list of documents, which have been enumerated as above, have been perused by us. There was a reference at Serial No.62 and 63 to certain sale deeds/documents of the year 1911 and 1932. While considering those documents, a finding was recorded during

the scrutiny, that those documents of the year 1911 and 1932 certainly relate to some persons, who are described as belonging to Hindu Thomban community. But, however, the writ petitioner has failed to establish her relationship with those persons, whose names have been mentioned in those ancient documents of the years 1911 and 1932. Unless the writ petitioner is able to establish with relevant material her relationship with the individuals, whose names find mentioned in the documents of the years 1911 and 1932, it will not be possible for one to arrive at a finding that the writ petitioner does belong to Hindu Thomban community. There is also one another circumstance, which is coming to the fore. The husband of the writ petitioner appears to have studied at the Panchayat Union Elementary School, Nedumanur. When the School Transfer Register has been scrutinised, it is recorded that the husband of the writ petitioner belonged to 'Reddiar' community, whereas, the certificate which he has obtained on 11.10.2012 tried to show that he belongs to Hindu Thomban community. In view of the grave divergence of the contents of the Transfer Certificate Register of the school and the certificate issued on 11.10.2012, the Scrutiny Committee fell back upon the material gathered by the Committee itself, as it is safe to place reliance upon, and, therefore, it had no hesitation to hold that the writ petitioner does not belong to Hindu Thomban Community. This apart, the certificate obtained on 11.10.2012 by the writ petitioner's husband bears his current signature, whereas, the certificate ought to have borne the signature of a student of VI Standard, which would be quite different from the signature, which is normally affixed by a fifty year old individual. A mere look at the certificate, which is placed at page 36 of the Paper Book reflects that the signature appended thereon is made by the husband of the writ petitioner in recent times, but not at the relevant time when he was a VI Standard student in the school and, hence, it does not inspire much confidence in our minds, for its acceptance.

12. The Scrutiny Committee has also relied upon the statements made by several individuals. They were all of the opinion that the father of the writ petitioner belongs to 'Reddiar' community. It is hardly in doubt that 'Reddy' community did not belong to Backward Class or Scheduled Caste in the composite State of Madras or even earlier thereto in the Presidency of Madras. 'Reddy' community was considered to be a Forward Community, holding vast extents of lands, carrying on agricultural operations on a large scale, establishing business houses and industries, undertaking civil engineering contracts etc. Over a period of time, they started to be recognised as 'Reddiar' community, in those parts of the country, while they still continue to be referred to as 'Reddy' community in those parts, which earlier formed part of the composite State of

Madras, after their bifurcation as well. In these circumstances, it is difficult for us to arrive at an independent finding that the writ petitioner belongs to Hindu Thomban community.

13. In a judicial review exercise under Article 226 of the Constitution of India, this Court is not so much concerned with the decision arrived at by the administrative agency, but, it is essentially concerned with the decision making process.

14. The decision making process, in the instant case, is in strict compliance with the principles of natural justice and every opportunity has been afforded to the writ petitioner. The material, which is sought to be relied upon by the Committee, has been made available to the writ petitioner. The writ petitioner could not bring forth any credible material to the contra. The area of interference or the grounds of interference in a certiorari proceedings are further limited. We cannot substitute our opinion to that of the administrative decision making body, unless the decision has been arrived at perversely. Perversity is a recognised ground, warranting interference with the administrative decision, but, the test for determining perversity is that no reasonable body of men would have arrived at the decision/conclusion, to which the administrative body has arrived at. In the absence of any material, which is of some ancient nature and value to demonstrate that, over a long period of time, the members of the family of the writ petitioner were known or recognised as belonging to Hindu Thomban community, we cannot describe the conclusion or the decision of the administrative body in holding the writ petitioner as not belonging to Hindu Thomban community to be a perverse finding of fact.

15. We are, therefore, of the opinion that no ground is made out, warranting any interference with the order impugned. We, accordingly, dismiss this Writ Petition, but, however, without costs. Consequently, the connected W.M.P.No.1414 of 2016 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dixit

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Department,
Fort St.George,
Chennai-9.
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- 3.The District Level Caste Scrutiny Committee,
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- 5.Dr.V.Pragaghy,
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Villupuram District, Lecturer and Anthropologist,
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- 7.The Deputy Superintendent of Police,
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Office of the District Collector,
Chennai District, Chennai-600 001.

+1cc to Mr.P. Srinivas, Advocate, S.R.No.10030
+1cc to Mr.P. Saravanan, Advocate, S.R.No.9825
+1cc to Mr. Nedunchezhiyan, Advocate Sr.No.10132
+1cc to the Government Pleader, S.R.No.9719

kj (CO)
md(13/03/2017)

W.P.No.1645 OF 2016