IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2017
Delivered on : 18.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.38419 of 2015, 5093 of 2016,
M.P.Nos.1 and 2 of 2015,
WMP Nos.4429 and 4430 of 2016

T.Prabakaran ...Petitioner in both the WPs

vs.

The Chairman
State Level Scrutiny Committee
and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Fort St.George, Secretariat,
Chennai - 9. ..Respondent in both the WPs

PRAYER: W.P.No.38419 of 2015 filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus, calling for the records of the respondent in its proceedings No.14810/CV-2/2013-14 dated 02.11.2015 and quash the same consequently direct the respondent to hold that petitioner belong to Hindu Kattu Nayakan (Schedule Tribe) Community.

W.P.No.5093 of 2016 filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus, calling for the records of the respondent in its Letter No.14810/CV-2/2013-20 dated 25.01.2016 and quash the same consequently direct the respondent to confirm the petitioner's community status as Hindu Kattu Nayakan (Schedule Tribe) Community.

For Petitioner : Mr.V.Vijayshankar
(in both the WPs)

For Respondents : Mr.K.Venkatramani
Additional Advocate General
Assisted by Mr.A.Kumar, Spl.G.P.
(in both the WPs)

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C O M M O N O R D E R

K.K. SASIDHARAN,J.

The challenge in the writ petition in W.P.No.38419 of 2015 is to the order, dated 2 November, 2015 on the file of the Tamil Nadu State Level Scrutiny Committee, cancelling the Scheduled Tribe Certificates obtained by the petitioner on 17.07.1981 and 07.05.1982. The challenge in the subsequent writ petition in W.P.No.5093 of 2016 is against the letter dated 25 January, 2016, whereby and where under, the Adi Dravidar and Tribal Welfare Department, directed the Deputy Superintendent of Police, Vigilance Cell, Madurai Region, to verify the genuineness of the Scheduled Tribe Certificates obtained by the petitioner and send a detailed report for taking a decision with regard to his community status.

Conspectus of Facts:

2. The petitioner obtained a Community Certificate from the jurisdictional Tahsildar on 17 July 1981 certifying that he belongs to "Kattu Nayakan" community, which is notified as a Scheduled Tribe. The petitioner, on the basis of the said Community Certificate joined the service of Bank of Baroda, in a reserved post. The certificate produced by the petitioner was sent for verification. The District Collector, Pudukkottai, through his letter, dated 2 September, 1997 informed the Bank that the petitioner does not belong to "Kattu Nayakan" community. The said letter was challenged by the petitioner in W.P.No.619 of 1999. The letter was quashed and a direction was issued to the District Level Vigilance Committee to undertake the verification process with regard to the community status claimed by the petitioner. In the mean time, the State Level Scrutiny Committee was constituted to verify the community status of Scheduled Tribes.

3. The petitioner, on attaining the age of superannuation retired from service on 31 May 2015. The Bank forwarded his Community Certificate for verification to the State Level Scrutiny Committee. The Scrutiny Committee, after enquiry, cancelled the Community Certificates of the petitioner. The order was challenged in W.P.No.38419 of 2015.

4. Subsequently, the State Level Scrutiny Committee issued a notice to the petitioner, dated 18 December, 2015 proposing to disagree with the findings recorded by the Vigilance Cell. Even though the petitioner submitted his detailed explanation justifying the report submitted by the Vigilance Cell, the State Level Scrutiny Committee decided to call for a fresh report from the Vigilance Cell. The letter dated 25 January, 2016 calling upon a report from the Vigilance Cell, Madurai Region, is the subject matter in W.P.No.5093 of 2016.

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Submissions:

5. The learned counsel for the petitioner contended that the Vigilance Cell, which was constituted, pursuant to the direction in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development and others [(1994) 6 SCC 241], conducted a detailed enquiry and arrived at a finding that the petitioner belongs to "Kattu Nayakan" Community. Even though such a positive report was filed, the State Level Scrutiny Committee cancelled the Community Certificates of the petitioner. Thereafter, with a view to justify the action in cancelling the certificates, the State Level Scrutiny Committee called upon the Vigilance Cell to submit a fresh report after investigation. The learned counsel contended that the Scrutiny Committee is not empowered to ignore the report submitted by the Vigilance Cell or to take a second report. The learned counsel further contended that the Courts have time and again held that the report of the Anthropologist is a vital piece of evidence to decide the community status. Since Anthropologist and the District Vigilance Committee concluded earlier that the petitioner belongs to Scheduled Tribe, it is not open to the State Level Scrutiny Committee to arrive at a different finding or to call for a fresh report from the Vigilance Cell.

6. The learned Additional Advocate General, while justifying the order and the subsequent proceedings contended that the Vigilance Cell earlier conducted enquiry and submitted its report. The State Level Scrutiny Committee having found prima facie materials indicating that the petitioner does not belong to "Kattu Nayakan" Community, called for a fresh report from the Vigilance Cell for the purpose of taking an independent decision. According to the learned Additional Advocate General, the State Level Scrutiny Committee was well within its right to call for a report from the Vigilance Cell.

Analysis:

7. The petitioner obtained a Community Certificate from the Headquarters, Deputy Tahsildar, Keeranur, indicating his caste status. Subsequently, he obtained another certificate from Tahsildar, Puduckottai, on 7 May 1982, indicating that he belongs to "Kattu Nayakan", which is a notified Scheduled Tribe. It is also a matter of record that the appointment of the petitioner as an employee of Bank of Baroda was on the strength of his Scheduled Tribe Community Certificate. To put it otherwise, the petitioner was appointed against a vacancy earmarked for Scheduled Tribes.

8.The District Collector, Pudukkottai, in the year 1997, arrived at a finding that the petitioner does not belong to "Kattu Nayakan" Community. The order passed by the Collector was

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set aside by this Court resulting in initiating fresh proceedings to verify the community status of the petitioner. Though the order was passed by the Collector, Pudukkottai, in the year 1997, the fact remains that further action was not taken to verify the community status of the petitioner for years together. It was only after his superannuation on 31 May, 2015, the Bank forwarded the Community Certificates for verification to the State Level Scrutiny Committee.

9. Before the State Level Scrutiny Committee, the petitioner contended that his close relatives were declared as Scheduled Tribes. The petitioner placed reliance on the report submitted by the Vigilance Cell, earlier. According to the petitioner, the Vigilance Cell has already arrived at a conclusion that be belongs to "Kattu Nayakan" Community. The petitioner further contended that the report of the Vigilance Cell is conclusive evidence with regard to his community status and as such, no further enquiry is permissible.

10. The State Level Scrutiny Committee was not prepared to accept the Vigilance Report at its face value. The Committee directed the petitioner to produce supporting documents to prove his community status. The Scrutiny Committee, ultimately arrived at a finding that there were no acceptable materials to show that the petitioner belongs to "Kattu Nayakan" Community. The Committee, therefore, directed cancellation of the Community Certificates issued to the petitioner.

11. The Scrutiny Committee, after cancelling the Community Certificates, called upon the Deputy Superintendent of Police, Vigilance Cell, Madurai to submit a fresh report after conducting investigation. The letter seeking a report was issued during the currency of the writ petition in W.P.No.38419 of 2015 challenging the order passed by the Scrutiny Committee cancelling the Community Certificates.

12. The petitioner has raised a core question as to whether it is open to the State Level Scrutiny Committee to call for a second report from the Vigilance Cell.

13. The learned counsel for the petitioner by placing reliance on the judgment of the Division Bench in G.Venkitasamy v. The Chairman, State Level Scrutiny Committee and Secretary to Government [(2016) 1 CTC 647] contended that in case, the report of the Vigilance Cell is in favour of the petitioner, the State Level Scrutiny Committee is bound to pass orders declaring the community status.

14. The question regarding the evidentiary value of the enquiry report submitted by the Vigilance cell was indicated by the Hon'ble Supreme Court in Kumari Madhuri Patil case (cited

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supra).

15. Sub-para (7) of Para 13 of the judgment in Kumari Madhuri Patil reads thus:-

> "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."

16. The Hon'ble Supreme Court in Kumari Madhuri Patil very clearly stated the procedure to be followed in the matter of verification of community status. The Supreme Court wanted the Directorate to investigate into the social status through Vigilance Cell. The report submitted by the Vigilance Cell after enquiry or investigation is a valuable piece of evidence to determine the social status and as such, the Supreme Court directed constitution of Vigilance Cell consisting of Senior Deputy Superintendent of Police and sufficient number of Police Officers. Since the enquiry report is the determinating factor while deciding the community status, the Government was expected to appoint Senior Police Officers with honesty, integrity and good track record to head the Vigilance Cell and other officers, who would conduct impartial enquiry with regard to the community status.

17. In the ordinary course, the report submitted by the Vigilance Cell must be accepted by the State Level Scrutiny Committee. This view is supported by the observation in Sub-para (7) of Para 13 of the judgment in Kumari Madhuri Patil .

18. The Supreme Court in Kumari Madhuri Patil recognised the right of the Scrutiny Committee to conduct a further investigation. The Supreme Court very clearly stated that in case, the Scrutiny Committee found that the report or the particulars given are false or fraudulently obtained, it is open to the Committee to conduct further enquiry, as envisaged in sub-para (6) of Para 13 of the judgment.

19. The second enquiry on investigation contemplated in Kumari Madhuri Patil is not a routine one. There must be prima facie materials with the Scrutiny Committee to show that the Certificate was procured by fraudulent means or the report was false. The materials collected by the Scrutiny Committee suggesting fraudulent procurement of community status report would not normally be subjected to judicial review. Such a preliminary finding is given only to conduct further enquiry by the Vigilance Cell. Therefore, it cannot be said that the State Level Scrutiny Committee is not empowered to conduct a second

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enquiry or investigation through Vigilance Cell to test the community status, inspite of the prima facie materials collected to doubt the veracity of the report submitted by the Vigilance Cell earlier.

20. The Vigilance Cell on an earlier occasion conducted investigation and submitted a report favourable to the petitioner. The petitioner is placing reliance on the said report as the basic material to prove his community status. The State Level Scrutiny Committee disregarded the said report and cancelled the Community Certificates of the petitioner.

21. The proceedings of the State Level Scrutiny Committee, directing second enquiry by the Vigilance Cell does not contain any material suggesting that the petitioner procured the report by fraudulent means. There is no question of conducting second enquiry as a matter of course. There should be basic materials with the State Level Scrutiny Committee to direct investigation once again. In the subject case, no such materials are forthcoming.

22. The petitioner is claiming community status conferred by the Constitution. The benefits earmarked by the Constitution to the Scheduled Tribes should go to the deserving members of the community. The Courts have got a duty to see that only eligible people are given "Scheduled Tribe" Community certificates. The enquiry conducted by the State Level Scrutiny Committee must be to find out the truth as to whether a particular person belongs to the reserved community, so as to enable him to claim the benefits attached to such status.

23. The State Level Scrutiny Committee, in the subject case, placed reliance on certain materials. Those materials were not furnished to the petitioner. Similarly, the Scrutiny Committee has not recorded any reason disagreeing with the findings recorded by the Vigilance Cell earlier. We are therefore of the view that the issue requires fresh consideration by the State Level Scrutiny Committee.

24. The impugned order and the letter addressed to the Vigilance Cell are set aside.

25. The State Level Scrutiny Committee, is directed to verify the report submitted by the Vigilance Cell earlier, in the light of the materials available on record. The Committee must record a finding as to whether a second report should be called for through the District Level Vigilance Committee. In case, there are no materials to suggest that the report was false or it was obtained fraudulently, the earlier report should be given due weight. Similarly, in case, the Committee is having materials suggesting fraudulent procurement of report,

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the same shall be indicated in the proceedings calling upon the Vigilance Cell to submit a fresh report.

26. The State Level Scrutiny Committee is directed to consider the matter afresh in the light of the legal position indicated above and take a decision on merits and as per law. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

27. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-II)

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Sub-Assistant Registrar

To

The Chairman
State Level Scrutiny Committee
and Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Fort St.George, Secretariat,
Chennai - 9.

+2 Ccs to Mr. Vijaya Shankar, Advocate sr 23568,23570
+2 Ccs to Govt. Pleader sr 23565,23544

W.P.Nos.38419 of 2015 &
5093 of 2016

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