

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.07.2017

Coram

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

W.P.No.37612 of 2016 and
W.M.P.Nos.32244 & 32245 of 2016

M.Katturaja

.. Petitioner

Vs.

1.Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai - 9, rep by its
Chairman.

2.The District Collector,
Dindigul District, Dindigul.

3.The Secretary,
Coffee Board, Government of India,
No.1, Dr.Ambedkar Veedhi,
Bangalore - 1.

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of Certiorari
calling for the records relating to the proceedings of the Tamil
Nadu State Level Scrutiny Committee in Proceedings
No.9884/CVIII/2013 dated 16.09.2016 on the file of the 1st
Respondent quash the same.

For Petitioner : Mr.S.Doraisamy
For R1 & R2 : Mr.K.V.Dhanapalan
Special Government Pleader
For R3 : Mr.V.Sundareswaran

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition
praying for passing of an order by this Court in calling for the
records pertaining to the proceedings of the 1st Respondent/Tamil

Nadu State Level Scrutiny Committee in proceedings No.9884/CVIII/2013 dated 16.09.2016 and to quash the same.

2.It comes to be known that the Petitioner belongs to Malaikkuravan Community which classified as a Scheduled Tribe Community. In all his school records his community, according to him, is entered as 'Malakkuravan (ST) Community'. Moreover, he had obtained a Community Certificate from the Tahsildar, Dindigul on 08.06.1987 that he belongs to 'Malaikkuravan (ST) Community'. His Educational Qualification is a passed in SSLC. That apart, he was selected to the post of Junior Clerk in the year 1989 by the 3rd Respondent/Secretary, Coffee Board, Government of India, Bangalore.

3.The plea of the Petitioner is that his employer viz., the 3rd Respondent had referred his community certificate to the 2nd Respondent on 25.01.1999 for verification, which was, in turn, referred to the Revenue Divisional Officer, Dindigul for field enquiry. In this regard, the Learned Counsel for the Petitioner takes a plea that the Revenue Divisional Officer concerned had conducted a discreet enquiry behind the back of the Petitioner and passed an order to the effect that his claim was not genuine. However, the 2nd Respondent/ District Collector, Dindigul District, Dindigul referred the matter to the 1st Respondent/ Committee.

4.The Learned Counsel for the Petitioner brings it to the notice of this Court that the 1st Respondent/Committee issued a notice for an enquiry to the Petitioner to be held on 20.02.2016. At this stage, it is represented on behalf of the Petitioner that the 1st Respondent/ Committee, instead of referring the matter to the Vigilance Cell, had referred the matter to the Revenue Divisional Officer, Dindigul and at that point of time, the Petitioner made a representation to the 1st Respondent/Committee praying that the matter may be referred to the Vigilance Cell for enquiry keeping in tune with the tenor and spirit of G.O.Ms.No.108, AD & TWD dated 12.09.2007.

5.The Learned Counsel for the Petitioner draws the attention of this Court to the effect that the 1st Respondent/Committee had directed the Revenue Divisional Officer to conduct a spot enquiry and accordingly, sent a report and simultaneously referred the matter to the Vigilance Cell. The Revenue Divisional Officer after conducting an enquiry submitted a report to the Vigilance Cell Officer holding that the Petitioner belongs to 'Malaikkuravan (Scheduled Tribe) Community'. Moreover, the Vigilance Officer had conducted a spot enquiry independently, verified the school records, examined the parents and the relatives and also verified the customs and ceremonies followed by the Petitioner's family. Thereafter, the Vigilance Cell

Officer had forwarded his report dated 18.06.2016 and later the 1st Respondent/ Committee had issued a notice to the Petitioner calling for an enquiry.

6.The Learned Counsel for the Petitioner points out that the Report of the Vigilance Officer dated 18.06.2016 was not furnished to the Petitioner, notwithstanding the fact that the Petitioner submitted number of documents supporting his claim that he belongs to Malaikkuravan (Scheduled Tribe) Community, but the 1st Respondent/ Committee had passed an order on 16.09.2016 by coming to the conclusion that the Petitioner does not belong to Hindu Malaikkuravan (Scheduled Tribe) Community and cancelled his certificate issued by the Tahsildar concerned dated 08.06.1987.

7.The Learned Counsel for the Petitioner emphatically projects an argument that in para 4 of the impugned order of the 1st Respondent/Committee had stated that the Vigilance Officer in his Report dated 18.06.2016 came to the conclusion that the Petitioner belongs to Malaikkuravan (ST) Community and therefore, the 1st Respondent/Committee should not have proceeded with the conduct of an enquiry.

8.To lend credence to the contention that the 1st Respondent ought not to have conducted an enquiry because of the reason that the Vigilance Officer's Report dated 18.06.2016 indicated that the Petitioner belong to Malaikkuravan (ST) Community, the Learned Counsel for the Petitioner relies on the Division Bench Order of this Court dated 21.12.2015 in W.P.No.30368 of 2015, whereby and whereunder, it is observed and held as follows:

"vi. The State Level Scrutiny Committee, on receipt of the Vigilance Cell Report, if it is found adverse, shall issue a show cause notice to the candidate with a copy of the report and all the documents submitted by the Vigilance Cell to the concerned candidate, calling upon him to file his reply/explanation/representation and also express his intention to examine witnesses, if necessary. In the event, the report supports the claim of the candidate, the State Level Scrutiny Committee shall not proceed further, but, to pass the order."

9.Therefore, a forceful submission advanced on behalf of the Petitioner is that the Order of the Division Bench of this Court dated 21.12.2015 in W.P.No.30368 of 2017 was not followed by the 1st Respondent/Committee in true letter and spirit and obviously, there appears to be the departure from it, which is incorrect in the eye of Law.

10.Expatiating his submission, the Learned Counsel for the Petitioner projects an argument that if the 1st Respondent/Committee opines that the Report of the Vigilance Officer dated 18.06.2016 in the subject matter in issue is not correct, then, the 1st Respondent/ Committee should have issued a notice to the Petitioner assigning necessary reasons for differing from the report of the Vigilance Officer dated 18.06.2016 and furthermore, an explanation should have been called for from the Petitioner. However, the 1st Respondent had not resorted to such a course of action of issuing notice to the Petitioner mentioning that the reasons for differing from the Vigilance Officer and therefore, the contention of the Petitioner is that the impugned order of the 1st Respondent/Committee dated 18.06.2016 is liable to be set aside.

11.The Learned Counsel for the Petitioner relies on the Division Bench Order of this Court in W.P.No.30368 of 2017 dated 21.12.2015 wherein it is held that the State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within two weeks and inasmuch as the 1st Respondent/Committee had not furnished the proceedings of the Vigilance Officer to the Petitioner, the impugned order of the 1st Respondent can only be considered to be non est in the eye of Law.

12.Apart from the above, the Learned Counsel for the Petitioner also takes a plea that the Anthropologist had not conducted any individual enquiry and furthermore, the discreet enquiry report of the Anthropologist was also not furnished to the Petitioner. Continuing further, the documents filed by the Petitioner, in support of his claim that he belongs to Malaikuravan Community (ST), were not properly considered and verified by the 1st Respondent. To cite an example, the Learned Counsel for the Petitioner points out that a registered gift deed of the year 1979 was filed by the Petitioner. However, it was mentioned by the 1st Respondent that the said document was an unregistered one and in fact, the registered document bears the No.1984/1979 and the production of registered gift deed [bearing No.1984/1979] ipso facto points out that the 1st Respondent had not applied his mind to the document (s) submitted by the Petitioner in real perspective.

13.Per contra, the Learned Special Government Pleader for Respondents 1 and 2 submits that the 1st Respondent/Committee, at para 5 of its Proceedings, in bearing No.9884/CVIII/2013 dated 16.09.2016, had clearly observed as under:

"5.After receipt of the report of Scheduled Castes/Scheduled Tribes Vigilance Cell, the individual Thiru.M.Katturaja, S/o.Thiru.C.Muthu was instructed to appear

before the State Level Scrutiny Committee for enquiry on 28.07.2016. He appeared for enquiry before the State Level Scrutiny Committee and submitted the following documents:-

- (i) The Head Master, Panchayat Union Elementary School, Chithiankottai has certified that the caste of the individual is mentioned as Hindu "Malaikuravan" when he was admitted in the 1st standard on 04.06.1975.
- (ii) Transfer Certificate of Thiru M.Katturaja Sl.No.59(89-87) admission No.3756 in which the caste is mentioned as Scheduled Tribes i.e. Hindu "Malaikuravan".
- (iii) Hindu "Malaikuravan" Scheduled Tribes Community Certificate issued to Thiru.M.Katturaja, S.o.Thiru. C.Muthu by the Tahsildar, Dindigul bearing No. (K.Dis 2883/87) dated: 08.06.1987
- (iv) Transfer Certificate dated : 26.06.1990 of M.Malarkodi, D/o. Thiru. C.Muthu, who is the sister of the individual, the community is recorded as "Malaikuravan".
- (v) Unregistered gift deed No.1984 document of the year 1979 executed by Thiru.Arumugam to his wife."

and further, made mention of in the impugned order that the Petitioner appeared for enquiry and submitted the documents 1 to 5 mentioned therein and ultimately at para 7, the 1st Respondent had proceeded to state that the Anthropological evidences reveal that the individual's mother tongue is Tamil as against Malayalam. His deity is also not tallying with the cultural aspects of Malaikuravan Community. The Vigilance Cell report also mentions that some of his relatives have obtained Malaikuravan Community Certificate (which is considered as Scheduled Castes) as they were unable to get Scheduled Tribes "Malaikuravan" Community Certificate and that the 1st Respondent/ Committee had studied the records/documents and other evidences and concluded that the individual does not belong to "Malaikuravan" and his claim is a false one.

14.This Court, after meticulously and carefully going through the contents of the impugned order dated 16.09.2016 of the 1st Respondent, is of the earnest view that the Committee while coming to the conclusion that the Petitioner does not belong to Malaikuravan (Scheduled Tribe) Community and when it

had unanimously decided that the Petitioner does not belong to Hindu Malaikkuravan Community and his claim is a false one and as such had cancelled the Malaikkuravan (Scheduled Tribes) Community Certificate dated 08.06.1987 issued by the Tahsildar, Dindigul is not a correct one, in the eye of Law because of the simple reason, the Vigilance Cell Report dated 18.06.2016 was given to the Petitioner only after he made a claim under the R.T.I. Act dated 08.03.2017. In short, the Vigilance Report was given to the Petitioner only on 21.10.2016 and that the impugned order of the 1st Respondent dated 16.09.2016 is well before the furnishing the copy of Vigilance Cell Report to the Petitioner.

15. At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Punjab National Bank and others V. Kunj Behari Misra reported in (1998) 7 Supreme Court Cases 84 at special page 96 & 97, whereby and whereunder, at paragraphs 17 to 19, it is observed as under:

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but

the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

18. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative

reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

16. Moreover, this Court aptly points out the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and another V. Additional Commissioner, Tribal Development and others, (1994) 6 Supreme Court Cases 241 at special page 257, wherein at paragraph 15, it is held as follows:

"15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts."

Also, in the aforesaid decision, at paragraph 16, it is, among other things, observed as under:

"16. ... The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the

Preamble, the Fundamental Rights and the Directive Principles of the Constitution, are achieved.”

17.To a query put to the Learned Special Government Pleader for the Respondents 1 and 2 as to whether a copy of the Vigilance Report was furnished to the Petitioner before the Committee can arrive at a conclusion/decision that he does not belong to Hindu Malaikkuravan (Scheduled Tribes) Community, the Learned Special Government Pleader for the Respondents 1 and 2 fairly submits that the Vigilance Cell Report in question was issued to the Petitioner only after the R.T.I. application dated 08.03.2017 was made on his behalf and in fact, it was only the report of the Vigilance Cell given on 21.10.2016 nearly more or less one month after the impugned order was passed on 16.09.2016.

18.It is to be noted that the term 'Natural Justice' in its abstract moral sense is a form of Justice as distinct from a Statute or Legislation or even a decision by a Court of Law. The basic requirement is that 'No one should Judge his own cause' [Nemo Debet Esse Judex in Causa Propria Sua]. As a matter of fact, the 'Principles of Natural Justice' are not the edicts of a Statute.

19.The unique features of 'Fair Hearing' relates to (1) Issuance of prior Notice; (2) Right to make Representation; (3) Right to be heard. Where any of these essential requisites are found wanting, the decision arrived at by the concerned authority is tainted with, capriciousness, in the considered opinion of this Court.

20.Furthermore, the aim of 'Natural Justice' is to prevent a miscarriage of Justice. In short, the 'Principles of Natural Justice' only supplement the 'Law of Land' and they are not meant to supplant it. The requirement of acting judicially by an administrative authority is primarily meant to act 'Justly' and 'Fairly' and not in a whimsical or arbitrary manner.

21.Added further, this Court, at this stage, aptly points out that the 1st Respondent/Committee at the time of passing the impugned order dated 16.09.2016 had not furnished the copy of Vigilance Report to the Petitioner and sought the necessary explanation from the Petitioner when it had decided to take a contrary, diametrically, symmetrically, logically opposite view taken by the Vigilance Cell Officer to the effect that the Petitioner belongs to Malaikkuravan (Scheduled Tribes) Community. Therefore, it is patently, latently and lucidly clear that the 1st Respondent had not adhered to the rudimentary 'Principles of Natural Justice'.

22.However, in the instant case, at the risk of repetition, this Court points out that the Petitioner was not supplied with

the Vigilance Cell Report dated 18.06.2016, in the absence of the same and also not obtaining his explanations, this Court is of the considered view that the 1st Respondent/Committee had committed an error in proceeding with the enquiry at that stage and ultimately, the view arrived at by the Committee to the effect that the said Committee came to the conclusion that the Petitioner does not belong to Hindu Malaikkuravan (ST) community is per se not correct in the eye of Law.

23. Suffice it for this Court to point out that when the 1st Respondent/Committee had not followed the elementary 'Principles of Natural Justice' in not furnishing a copy of the Vigilance Report dated 18.06.2016, then, its further proceedings and the consequent conclusion arrived at by it, by means of a final order dated 16.09.2016 which in law is of serious consequences hitting on the stomach of the Petitioner, then, the same cannot stand a moment scrutiny in the eye of Law. Viewed in that perspective, this Court comes to an irreparable conclusion that the impugned order dated 16.09.2016 of the 1st Respondent/Committee suffers from legal infirmities, material irregularities and patent illegalities in the eye of Law. As such, the order of the 1st Respondent is set aside by this Court, to prevent an aberration of Justice and to subserve the ends of Justice.

24. In fine, the Writ Petition stands allowed. The order of the 1st Respondent dated 16.09.2016 is hereby set aside. The matter is remanded back to the 1st Respondent/Committee for fresh disposal in the subject matter in issue and that the 1st Respondent/Committee is directed to start its enquiry by issuing necessary proceedings/notice to the Petitioner stating its reasons in a qualitative and quantitative terms as to why they take a different view than the one arrived at by the Vigilance Cell Report dated 16.09.2016. The 1st Respondent is to issue that proceedings as aforesaid to the Petitioner within ten days from the date of receipt of copy of this order. Thereafter, the 1st Respondent, after receiving the explanation or remarks of the Petitioner to the proceedings issued by it, is to look into the same, advert to the pleas raised by the Petitioner in his objections/remarks and to pass a reasoned speaking order on merits in a Just, Fair, with an open mind and that too in a dispassionate and diligent manner, by affording necessary opportunity to the Petitioner by adhering to the Principles of Natural Justice, in the manner known to Law and in accordance with Law. It is open to the Petitioner to file necessary additional documents if need be/situation so warrants. Further, it is abundantly made quite clear that the 1st Respondent shall receive the said additional documents to be filed by the Petitioner and the same shall be taken into account without any hesitation in an impartial manner (of course, subject to proof and relevancy) as the case may be and that too without any

preconceived notion. The said documents may also be considered and adverted to upon in the course of the order to be passed afresh by the 1st Respondent/Committee. The 1st Respondent/Committee shall pass a fresh order assigning necessary reasons in the subject matter in issue within a period of six weeks thereafter. The 1st Respondent/Committee, soon after passing the fresh orders, shall send a Report of Compliance to the Registrar (Judicial) of this Court without fail. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Chairman,
Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai - 9
- 2.The District Collector,
Dindigul District, Dindigul.
- 3.The Secretary,
Coffee Board, Government of India,
No.1, Dr.Ambedkar Veedhi,
Bangalore - 1.
- 4.The Registrar (Judicial)
High Court, Madras.
[For information and
necessary follow up action]

+ 1 cc to Government Pleader Sr.51977
+ 1 cc to Mr.V. Sundareswaran, Advocate SR.52438
+ 1 cc to Mr.S. Doraisamy, Advocate SR.52043

W.P.No.37612 of 2016

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