IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20/09/2017
PRONOUNCED ON	22/09/2017

Coram

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

W.P.No.36069 of 2004 &
W.M.P.No.22551 of 2017

S.Jeyakumar .. Petitioner

Vs.

1. The Tamil Nadu State Scrutiny Committee rep. by its Chairman,
   Secretary to Tamil Nadu Government,
   Adi Dravidar and Tribal Welfare Department,
   Fort St. George, Chennai - 9.

2. The District Level Vigilance Committee,
   Rep. by its Chairman,
   District Collector, Dindugal District.

3. The Chief Commissioner of Income Tax
   (Admn) Chennai-I,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai- 600 034. .. 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 of the first respondent in proceeding No.7577/ADW-II/2002 dated 27.10.2004 confirming the order of the second respondent in Na.Ka.No.17434/2000/H.1 dated 06.03.2002 and quash the same.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader for R1 & R2

Mr.S.Mahesh
For Mr.V.Vijaya Shankar for R3

ORDER

P.D.AUDIKESAVALU, J.

The case of the Petitioner is that his forefathers were Hindus belonging to Adi Dravidar Parayar Community. But subsequently his parents converted to Christianity. Though he was born to parents who were converted to Christianity, he had reconverted to Hinduism by Sudhi ceremony conducted by Aryasamaj at Madurai on 06.02.1990 and thereafter, he has been strictly following Hindu custom and rituals and had stopped going to the Church. Though he had married a Christian he had insisted that the marriage should be registered under the Special Marriage Act, wherein his name has been recorded as a Hindu and his wife later converted to Hinduism. It is further claimed by him that his family is practising Hindu customs and he is accepted as belonging to Hindus by his community people. The Petitioner had been issued a Scheduled Caste Community Certificate dated 02.09.1991 by the Tahsildar, Dindugal Taluk, showing that he belonged to Hindu Adi Dravidar community. On the strength of the aforesaid Community Certificate, the Petitioner had secured appointment in the Income Tax Department on 09.09.1998 as an Upper Division Clerk.

2. The aforesaid Community Certificate of the Petitioner was forwarded for verification of its authenticity to the District Level Vigilance Committee, Dindugal, which by proceedings dated 06.03.2002 relying upon the letter No.81, Adi Dravidar and Tribal Welfare Department, dated 19.09.2000 of the Government of Tamil Nadu, held that a Christianity by birth, on conversion to Hinduism, shall neither be eligible to get Scheduled Caste Certificate nor be eligible to enjoy the benefits of reservation. The appeal preferred by the Petitioner before the State Level Scrutiny Committee against the aforesaid order of the District Level Vigilance Committee was rejected by proceedings No.7577/ADW-II/2002 dated 27.10.2004. Assailing the aforesaid orders of the State Level Scrutiny Committee confirming the order of the District Level Vigilance Committee, the Petitioner has filed the present Writ Petition.

3. Heard Mr.V.Ajoy Khose, learned counsel appearing for the Petitioner and Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for the respondents 1 & 2 and Mr.S.Mahesh, learned counsel appearing for the third respondent and perused the materials placed on record.

4. The learned counsel for the Petitioner submitted that despite the petitioner specifically pleading before the District Level Vigilance Committee as well as the State Level Scrutiny Committee that his forefathers belonged to Adi Dravidar Parayar

Community and practised Hinduism, that his parents alone had converted to Christianity and that he had reconverted to Hinduism and was accepted by the community people practising that religion, it had been erroneously held in the impugned orders that he could not claim as belonging to Hindu Adi Dravidar Community and availed the benefits of reservation solely relying upon the letter bearing No.81, Adi Dravidar and Tribal Welfare Department, dated 19.09.2000 of the Government of Tamil Nadu.

5. A reading of the said letter of the Government of Tamil Nadu would reveal that the instructions therein were based on the judgment dated 25.01.1996 in S.L.P.No.27571 of 1995 passed by the Hon'ble Supreme Court of India reported in S.Swvigaradoss vs. Zonal Manager, F.C.I. [AIR 1996 SC 1182] in which it had been held that a Christian by birth on conversion to Hinduism shall neither be eligible to get Scheduled Caste Community Certificate nor be eligible to enjoy the benefits of reservation. The said letter was the subject matter of challenge before this Court in W.P.No.14769 of 2002 and the Division Bench of this Court by order dated 13.04.2017, reported in Prof.I.Elangovan vs. State of Tamil Nadu, rep. by the Chief Secretary to Government, Chennai and another [(2007) 3 MLJ 209], set aside para 2 of that letter and the authority concerned was directed to issue fresh clarification giving reference to other earlier judgments rendered by the Hon'ble Supreme Court of India that had been discussed therein. In pursuance thereof, the Government of Tamil Nadu by G.O.Ms.No.1, Adi Dravidar and Tribal Welfare Department (CV-1) Department, dated 02.01.2009 has issued the following revised instructions:-

> "The children born to Christian Schedule Caste parents i.e., Christian by birth, converted to Hinduism, Sikhism or Buddhism at a later date and the Scheduled Caste parents embracing Hinduism, Sikhism or Buddhism converted to other religion and subsequently reconverted Hinduism, Sikhism or Buddhism, if they are accepted by their community people, the Revenue Authorities can issue Scheduled Caste Community Certificate to them to become eligible for the constitutional privileges conferred on the Hindu Scheduled Caste (following Hinduism, Sikhism or Buddhism) and order accordingly."

That apart, the Hon'ble Supreme Court of India after referring to the earlier decisions on the subject, has held in K.P.Manu v. Scrutiny Committee for verification of Community Certificate [(2015) 4 SCC 1] at paragraph Nos.47 and 50 that the authorities of the larger Benches in Guntur Medical College v. Y. Mohan Rao [(1976) 3 SCC 411], Kailash Sonkar v. Maya Devi [(1984) 2 SCC

91], S.Anbalagan v. B.Devarajan [(1984) 2 SCC 112] were not brought to the notice of that Court in S.Swvigaradoss vs. Zonal Manager, F.C.I. [(1996) 3 SCC 100: AIR 1996 SC 1182] and resultantly the said ruling was per incuriam. It has been further held in paragraph No.38 of that decision as follows:-

> "38. 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 reconversion 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."

The same view was expressed by the Hon'ble Supreme Court of India in M.Chandra Vs. M.Thangamuthu [(2010) 9 SCC 712], Kodikunnil Suresh Alias J.Monian Vs. N.S.Saji Kumar and others [(2011) 6 SCC 430] and Mohammad Sadique Vs. Darbara Singh Guru [2016 (11) SCC 617] which have been cited by the learned counsel appearing for the Petitioner.

6. In the light of the aforesaid legal position, the impugned orders cancelling the Scheduled Caste Community Certificate of the Petitioner cannot be sustained and it has appallingly become inevitable to set aside the impugned orders and remit the matters back once again to the District Level Vigilance Committee, Dindigul for fresh enquiry to be conducted scrupulously in accordance with the procedure prescribed under the relevant Government Orders including the requirement of inspection by the Vigilance Cell with opportunity for production of documents and examination of witnesses if any, and furnishing a copy of report of the Vigilance Cell with enclosures to the Petitioner.

7. In the result, the impugned order bearing No.7577/ADW-II/2002 passed by the first respondent / State Level Scrutiny Committee, dated 27.10.2004 confirming the order bearing Na.Ka.No.17434/2000/H.1 passed by second respondent / the District Level Vigilance Committee dated 06.03.2002, cancelling the Community Certificate dated 02.09.1991 issued to the

Petitioner, is set aside and the matter is remitted back to the District Level Vigilance Committee, Dindigul, who shall after affording full opportunity of hearing to the Petitioner, 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 expeditiously complete the verification of the Scheduled Caste community status of the Petitioner and communicate the decision to the Petitioner and his employer and file a report of compliance in that regard before the Registrar (Judicial) of this Court on or before 31.12.2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rns
To

1. The Secretary to Tamil Nadu Government,
   Tamil Nadu State Scrutiny
   Committee rep. by its Chairman,
   Adi Dravidar and Tribal Welfare Department,
   Fort St. George, Chennai - 9.

2. The Chairman,
   District Level Vigilance Committee,
   District Collector, Dindugal District.

3. The Chief Commissioner of Income Tax
   (Admn) Chennai-I,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai- 600 034.

Copy To

The Registrar (Judicial)
High Court, Madras

+1cc to Mr.V.Vijaya Shankar, Advocate, S.R.No.69794
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.70231

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CS/23/10/17