



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2017

CORAM:

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

WP.(MD) No.22991 of 2016

and

WP.M.P.(MD) No.16465 of 2016

S.Chidambaram

... Petitioner

-vs-

- 1.The Chairman,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maaligai,
Secretariat,
Chennai
- 2.The Deputy Superintendent of Police,
Adi Dravidar and Tribal Welfare Department,
Vigilance Cell,
Madurai Region,
Madurai.
- 3.The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.
- 4.The Additional Commissioner of Customs,
O/o.the Commissioner of Customs House,
New Harbour Estate,
Tuticorin.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in Proceedings No.14591/CV-2/2012-9, dated 09.09.2016, quash the same.

For Petitioner : Mr.M.Siddharthan

<https://hcservices.ecourts.gov.in/HCServices/>

For Respondents : Mr.S.Chandrasekar

Government Advocate for R1 to R3



Mr.S.Gurumoorthy, learned counsel,
for Respondent - R4

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O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.M.Siddharthan, learned counsel appearing for the writ petitioner, Mr.S.Chandrasekar, learned Government Advocate appearing for the respondents 1 and 3 and Mr.S.Gurumoorthy, learned counsel appearing for the fourth respondent.

2.This writ petition has been filed, challenging the order passed by the first respondent, the State Level Scrutiny Committee constituted by the Government for verifying the genuineness of the Community Certificate issued to the members belonging to Scheduled Tribe community. By the impugned order, the first respondent has stated that the community certificate issued to the petitioner stating that he belongs to Hindu Malaikuravar community is not genuine and accordingly the same was cancelled.

3. The learned counsel for the petitioner would submit that the report of the Deputy Superintendent of Police, Adi Dravidar and Tribal Welfare Department, Vigilance Cell, the second respondent herein, is fully in favor of the petitioner and the said report states that the petitioner belongs Hindu Malaikuravar Scheduled Tribe Community and the certificate obtained by the petitioner is a genuine one. Further it is submitted that in terms of the G.O.Ms.No.106, Adi Dravidar and Tribal Welfare(CV I) Department, dated 15.10.2012, in the event, the vigilance officer found that the certificate is genuine, no further action need to be taken by the first respondent and unless and until, there is a report of any fraud being played, the first respondent should confirm the genuineness of the certificate issued to the petitioner.

4. The learned Government Advocate, by relying the counter affidavit would submit that enquiry has been conducted and it is found that the certificate issued to the petitioner was not genuine for the reasons given by the first respondent in the impugned order which are elaborate reasons, and this court should not interfere with the same. Further it is submitted that the Anthropologist, Member of the State Level Scrutiny Committee personally enquired the petitioner about the unique customs, cultural aspects and traditional occupation of their community and the reports reveals that the individual / petitioner does not speak the Malaikuravar dialect which is one of the evidence for identifying the community. Therefore, it is submitted that the impugned order is legal and valid.



5. After hearing the learned counsel for the parties, we have carefully perused the materials placed on record.

6. We find that the second respondent, Vigilance Officer has certified that the said community certificate issued to the petitioner is genuine. Though such may be a report of the second respondent, in our considered view, the same can not be held to be out rightly binding on the first respondent committee, which has got a duty to verify the genuineness of the community certificate after consideration all factors. The Government in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare(CV I) Department, dated 15.10.2012, in Paragraph No.10 (v) states that, in case the report of the Vigilance Officer is in favour of the candidate and reported to be genuine, the committee will decide. No further action need to be taken except , where the report or the particulars given are procured or found to be false or fraudulently obtained and in the event, it is found be so, the procedure envisaged in para 3 of para 10 of the Government order should be valid. At this stage, it would be relevant to quote the said paragraph of the Government Order.

"10. Functions of the Vigilance Cells

i).

ii).

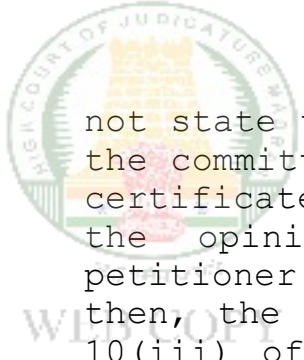
iii) On receipt of the reference from District Level Vigilance Committee / State Level Scrutiny Committee, the Inspector of the vigilance cell would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The Vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste, etc or such other persons who have knowledge of the social status of the candidate and then submit a report to the District Level Vigilance Committee / State Level Scrutiny Committee together with all particular's of as envisaged in the proforma, in particular the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, ceremonies, method of burial of dead bodies etc by the concerned castes or tribes or tribal communities etc.



iv) The District Level Vigilance Committee / State Level Scrutiny Committee, on receipt of the report from the Vigilance officer if it is found that the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the competent committee should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case the candidate seeks for an opportunity of hearing the claims an inquiry to be made in that behalf, the competent committee on receipt of such representation / reply shall convene the committee and the chairman who shall give reasonable opportunity to the candidate / parent / guardian to adduce all evidence in support of their claim. 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.

v) In case the report is in favour of the candidate and reported to be genuine and true, the committees will decide. No further action 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(iii) be followed.

7. In the impugned order, the first respondent has considered the report of the Vigilance Officer and has made an instant examination, found that the signature of the petitioner shows that the petitioner is 'Veduvur' community classified as Scheduled Caste, insofar as Shengottah Taluk is concerned. Apart from that, the report of the Anthropologists has also been referred to. Therefore, the first respondent has found that the report not to be true. In such circumstances, the first respondent cannot be stated to be without any power to pass appropriate orders on merits. The case as projected by the petitioner is on a misreading of clause (v) of para 10 to the Government Order (Supra). The said Government order states that in case, the report is in favour of the candidate and reported to be genuine and true, the committee will decide. The Government Order does



not state that the committee has to positively decide the case and the committee has been empowered to rule on the genuineness of the certificate furnished. In the instant case, the committee was of the opinion that the community certificate issued to the petitioner is false and not genuine. If such is the finding, then, the Committee ought to have followed the procedure in para 10(iii) of the Government order (supra). We find that the said procedure has not been followed. Therefore, on this technical ground alone, we are inclined to issue appropriate direction.

8. In the light of the above, the petitioner is directed to treat the impugned proceedings as show cause notice and submit a detailed representation/explanation to the issues, which have been pointed out against the petitioner. The petitioner is granted two weeks time to comply with the said direction. On receipt of such explanation/representation by the petitioner, the first respondent shall consider the same affording an opportunity of personal hearing to the petitioner and pass fresh orders on merits and in accordance with law, within a period of three months. In the light of the above direction, the fourth department shall not initiate any coercive action against the petitioner till the orders are passed by the first respondent on the above representation/explanation. The first respondent shall take an independent decision uninfluenced by any of the observation made in this order.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To:

1. The Chairman, State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maaligai, Secretariat, Chennai
2. The Deputy Superintendent of Police,
Adi Dravidar and Tribal Welfare Department,
Vigilance Cell, Madurai Region, Madurai.
3. The Revenue Divisional Officer, Tenkasi,
Tirunelveli District.
4. The Additional Commissioner of Customs,
O/o. the Commissioner of Customs House, New Harbour Estate,
Tuticorin.

+One cc to Mr. Siddharthan, Advocate, SR.No.17561

+One cc to Mr. S. Gurumoorthy, Advocate, SR.No.17665

+One cc to The Special Government Pleader, SR.No.18185

Arul/Skm

RL/8C/5P/MR/SAR2/10.4.2017

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24.03.2017