



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P (MD) No.2824 of 2011

and

M.P (MD) No.1 of 2011

N.Ganapathi

... Petitioner

Vs.

1.The State Level Scrutiny Committee,
Rep. By the Chairman and Secretary to Govt.,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai - 600 009.

2.The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Tahsildar,
Nanguneri Taluk,
Tirunelveli District.

4.The Post Master General,
Southern Region,
Madurai -002.

5.The Senior Superintendent,
R.M.S.Madurai Division,
Madurai-001.

... Respondents

(RR4, 5 impleaded vide Court dated 05.02.2014 in M.P (MD) No.1 of 2012)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records relating to the proceedings No.30262/CV-II/2008, dated 23.02.2011 on the file of the State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, the first respondent herein, quash the same.

For Petitioner

: Mr.K.Sreekumaran Nair

For R-1 to R-3

: Mr.V.Muruganandham,
Additional Government Pleader

For R-4 & R-5

: Mr.N.Shanmuga Selvam



ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

This Writ Petition has been filed by the petitioner challenging the order passed by the State Level Scrutiny Committee dated 23.02.2011, by which the Committee held that the petitioner does not belong to 'Kattunayakan' (Scheduled Tribe) Community and rejected his claim and also cancelled the 'Kattunayakan' (Scheduled Tribe) Community Certificate dated 29.11.1972 and 23.12.1977 issued by the Tahsildar, Nanguneri, Tirunelveli District.

2. Mr.K.Sreekumaran Nair, learned counsel appearing for the petitioner submitted that the State Level Scrutiny Committee failed to note that verification of the Community Certificate of the petitioner was made after several years from the date of issuance of the said certificate and by this time, the petitioner had completed 59 years of age. Further, it is submitted that the State Level Scrutiny Committee overlooked the fact that when the petitioner was admitted in the Primary School, his community was shown as 'Kattunayakkan'. But in the S.S.L.C book, a mistake has occurred on account of the Headmaster of the said school, who described the community of the petitioner as 'Naickar'. Further, the learned counsel for the petitioner submitted that the Scrutiny Committee ought to have held that the entry in the S.S.L.C Book is only a mistake. Further, the cancellation of the Community Certificate, which was granted in the year 1972 and 1977 after several decades, is illegal.

3. The learned Additional Government Pleader appearing for the respondents by referring to the counter-affidavit filed by the first respondent sought to sustain the impugned order stating that the impugned order has been passed after observing the principles of natural justice and the petitioner was given opportunity to explain his claim and he appeared before the District Collector and gave his statement and after perusing the records, certificates and documents etc., the conclusion was reached that the petitioner does not belong to Hindu Kattunayakan Scheduled Tribe Community, but belongs to Hindu-Kulava Naickar Community. The learned Additional Government Pleader referred to the earlier round of litigation, wherein a direction was issued to the petitioner to approach the State Level Scrutiny Committee. Further, in the record sheet issued by the Headmaster Panchayat Union Middle School, Padmaneri on 29.11.1972, it is recorded as the petitioner belongs to Hindu(Kulaver) Kattunayakan Community. Further in the S.S.L.C book produced by the petitioner on 11.02.2011, it has been recorded that the petitioner does not belong to Hindu Kattunayakan Scheduled Tribe Community and the order passed by the State Level Scrutiny Committee, is just and valid.



4. Heard the submissions made on either side and perused the materials available on record.

5. Before we consider the correctness of the order passed by the State Level Scrutiny Committee on the facts recorded therein, we are obliged to take note of another legal issue, which came up for consideration before the Division Bench of this Court in **S.Saravanan vs. State Level Caste Scrutiny Committee in W.P(MD) No.14168 of 2011** vide order dated 19.10.2016, wherein challenge was made to the cancellation of the Community Certificate issued to a person stating that he belongs to Hindu Malaikuravan Scheduled Tribe Community. It was canvassed before the Division Bench that as per the decision of the Honourable Supreme Court of India in the case of **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others** reported in **AIR 1995 Supreme Court 94**, a Vigilance Cell has to be constituted for each District and report has to be invited and in the event of not constituting the Vigilance Cell and not receiving report from them, then, the entire decision making process was held to be unsustainable. The Division Bench took note of the earlier judgment in the case of **G.Venkitasamy & Another vs. the Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai-9**, reported in **2016-1-L.W.289** as well as G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department and allowed the writ petition and remitted the matter back to the State Level Scrutiny Committee to proceed further after obtaining Vigilance Cell Report. At this stage, it is beneficial to extract the relevant portion of the said order:

"8. Conducting of enquiry by the Vigilant Cell also came for consideration before the Hon'ble Division Bench of this Court in G.Venkitasamy & Another Vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai-9, reported in 2016-1-L.W.289. The Division Bench, taking into consideration the judgment cited supra as well as G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department in paragraph Nos.29 and 30, has observed as follows:

29. From the aforestated analysis, it is manifest that the authorities are required to investigate, identify and conduct the enquiry in the following manner:

iThe authority competent to issue the community certificate, on receipt of the application, shall investigate the application in an open and



transparent fashion, affording opportunity of hearing.

ii. The candidate shall have full liberty to explain the documents placed by him or collected by the investigating agency and he shall have opportunity to cross examine the witnesses, if required. The entire exercise shall be completed at the earliest, preferably, within a period of three months.

iii. On receipt of the community certificate issued by the competent authority, the candidate or any other party interested therein may refer the matter to the State Level Scrutiny Committee for verification.

iv. On receipt of the application for verification, the State Level Scrutiny Committee shall refer the matter to the Vigilance Cell for enquiry.

v. The Vigilance Cell, as constituted, shall investigate into the social status claim of the applicant, visiting the local place of residence and original place from which the candidate hails and usually resides. The Vigilance Officer, assisted by the Inspector of Police, shall verify all the documents and collect relevant facts in an open and transparent manner from all the relevant places such as school, locality, etc. and persons such as parents and close relatives and also examine the school officials, parents/guardians and other close relatives of the concerned caste. The Vigilance Cell shall also record the anthropological and ethnological traits and rituals, customs, mode of marriage and other ceremonies of the community claimed by the candidate. Thereafter, on receipt of explanation from the candidate, on a proper examination of the same, a reasoned report shall be submitted to the State Level Scrutiny Committee.

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.

Vii. The State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within a period of two weeks.

Viii. Such verification shall be completed within a period of two months, after receipt of the Vigilance Cell report, preferably, by day-to-day proceedings [See paragraph 13(9) of Kumari Madhuri Patil (supra)].

30. All the authorities involved in the process shall adhere to the aforesaid parameters, which are supplemental to the guidelines laid down by the Supreme Court in Kumari Madhuri Patil (supra) and Anand (supra) in their letter and spirit.

9. Admittedly, as per the judgment cited supra, Vigilant Cell has been constituted only subsequent to the present impugned proceedings and G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department., 15.10.2012. Since the Hon'ble Supreme Court of India mandates constitution of Vigilant Cell which came into existence subsequent to the impugned order and in the light of the judgment rendered by the Division Bench in 2016-1-L.W.289, this Court is of the considered view that the impugned proceedings of the respondent warrant interference for the reason that without getting the opinion/report of the Vigilant Cell, conclusion has been arrived to the effect that the Community Certificate issued to the petitioner by the Revenue Divisional Officer is a bogus one.

10. In the result, this writ petition is partly allowed and the impugned proceedings are set aside and the matter is once again remanded back to the respondent, who is directed to conduct fresh enquiry, upon conduct of enquiry in terms of G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department, dated 15.10.2012 and after obtaining Vigilance Cell report and following the procedure contemplated in the said G.O, take a decision in accordance with law within a period of 10 weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner and till such time, it is not open to the petitioner to rely upon the Community Certificates dated 04.05.1988 issued by the Head Quarters Tahsildar, Pattukkottai and the permanent Community Certificate bearing No.3594154 issued by the Revenue



Divisional Officer, Trichirappalli. No costs. Consequently, connected M.P.(MD) No.1 of 2011 is closed."

6. In the present case, the above procedure has not been followed. In fact, this Court has pointed out that the above procedure is required to be followed and even in cases where the decision had already been taken, in all those cases also enquiry has to be conducted. In the absence of the enquiry being conducted, the impugned proceedings has to be held unsustainable and consequently, it may not be necessary to adjudicate the factual matrix leaving it open to the State Level Scrutiny Committee to take a decision.

7. In the result, this Writ Petition is partly allowed and the impugned proceedings are set aside and the matter is remanded back to the first respondent with a direction to conduct fresh enquiry, upon conduct of enquiry in terms of G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV-I) Department, dated 15.10.2012 and after obtaining Vigilance Cell report and following the procedure contemplated in the said G.O, take a decision in accordance with law within a period of 10 weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner and till such time, it is not open to the petitioner to rely upon the Community Certificates dated 29.11.1972 and 23.12.1977 issued by the Tahsildar, Nanguneri, Tirunelveli District. Consequently, connected M.P.(MD) No.1 of 2011 is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1.The Chairman and Secretary to Govt.,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai - 600 009.

2.The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Tahsildar,
Nanguneri Taluk,
Tirunelveli District.



4.The Post Master General,
Southern Region,
Madurai -002.

5.The Senior Superintendent,
R.M.S.Madurai Division,
Madurai-001.

+1cc to The Special Government Pleader, Madurai Bench of Madras
High Court,Madurai.SR.52072

+1cc to Mr.K.Sreekumaran Nair,Advocate,SR.51788

+1cc to Mr.N.Shanmugaselvam,Advocate,SR.51714

W.P (MD) No.2824 of 2011
12.04.2017

PM

KK-SKN-02.05.2017-7P-9C