

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

DELIVERED ON : 21.02.2018

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM

AND

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.30215 of 2017

and

WMP.No.32887 of 2017

V.Ramasamy

.. Petitioner

Vs

1. The State Level Scrutiny Committee,
Rep. by its Chairman,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Bank of Baroda,
Rep. by its General Manager,
Regional Office (Coimbatore),
3rd Floor, No.82, Bank Road,
Coimbatore - 641 018.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the proceedings bearing No.14121/CD-4(2)/2013-7, dated 03.01.2017 of the first respondent and the consequential order bearing No.R.O.CBE/HRM/52/2915, dated 27.01.2017 of the second respondent and to quash the orders passed therein and consequently to direct the second respondent to reinstate the petitioner into services with all consequential benefits arising therefrom.

For Petitioner : Mr.Yogesh Kannadasan

For Respondents: Ms.Thangavadhana Balakrishnan
(for R1)

Additional Government Pleader

Mr.Anand Gopalan (for R2)

for M/s.T.S. Gopalan & Co.

ORDER

(Order of this Court was made by M.V.MURALIDARAN,J.)

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the proceedings bearing No.14121/CD-4(2)/2013-7, dated 03.01.2017 of the first respondent and the consequential order bearing No.R.O.CBE/HRM/52/2915, dated 27.01.2017 of the second respondent and to quash the orders passed therein and consequently to direct the second respondent to reinstate the petitioner into services with all consequential benefits arising therefrom.

2. The facts in a nutshell are as under: It is the case of the petitioner that he belongs to "Kondareddis" community, which is a notified Scheduled Tribe Community. The petitioner was selected by the Banking Services Recruitment Board and appointed in the clerical cadre by order dated 02.01.1990 in the Bank of Baroda, Nambiyur Branch. Such appointment is to a post falling under reserved category, based on the community certificate issued to the petitioner on 13.06.1988 by the Tahsildar, Mambalam-Guindy Taluk.

3. It is stated that as the employer of the petitioner refused to act upon the said appointment order, the petitioner filed W.P.No.8174 of 1989, which was allowed by this Court by order dated 05.12.1989 and thereafter, the order of appointment was given effect to.

4. It is stated that, subsequently, the community certificate of the petitioner was verified by the District Collector, Periyar District, Erode, who ruled against the petitioner by order dated 02.01.1990. However, on a challenge made by the petitioner by way of W.P.No.1714 of 1990, this Court, by order dated 18.08.1999, quashed the said order.

5. It is averred that thereafter the Revenue Divisional Officer, Gobichettipalayam, conducted an enquiry and opined against the petitioner vide his report dated 06.03.2006. Pursuant to the same, it is alleged that the Sub Collector, Gobichettipalayam, conducted a further enquiry behind the back of the petitioner and submitted an adverse report dated 14.04.2007, of course without furnishing a copy to the petitioner. Thereafter, in the year 2015, the Sub Collector, Gobichettipalayam, conducted another enquiry and on consideration of the documents produced by the petitioner, he forwarded a report dated 05.02.2015 to the first respondent. It is alleged that the first respondent, without considering the same, passed the order dated 03.01.2017 cancelling the community certificate issued to the petitioner. It the plea of the petitioner that he obtained the enquiry report dated 05.02.2015

of the Sub Collector under the provisions of the Right to Information Act and even though the entire report supports his claim, ultimately, a doubt was raised qua the petitioner obtaining community certificate from Tahsildar, Mambalam-Guindy Taluk and not applying for issuance of community certificate for his son, and the matter was left for the decision of the first respondent, who ruled against the petitioner.

6. It is averred that the petitioner made a request to the first respondent by letter dated 19.10.2016 to furnish copies of the statements of the villagers said to have been forwarded by the Vigilance Officer and other documents, but only few documents were furnished to him. It is further submitted that the anthropologist's report relied upon by the first respondent was not furnished to him.

7. It is further stated that on receipt of the order of the first respondent, the second respondent, by order dated 27.01.2017, without issuing any notice to the petitioner, terminated the services of the petitioner, who had put in nearly 27 years of service in the second respondent bank.

8. Assailing the said orders, the present writ petition is filed for the relief stated supra.

9. The main plank of the argument advanced by the learned counsel for the petitioner is that the order passed by the first respondent, without furnishing all the relevant documents relied upon by him and without considering all relevant records produced by the petitioner, is illegal and unlawful.

10. He further contended that the enquiry report of the Sub Collector dated 14.04.2007 cannot be given due credence as the same was conducted behind the back of the writ petitioner. He hastened to add that even though the Sub Collector in his subsequent report dated 05.02.2015 forwarded a favourable report to the petitioner, ultimately he entertained a doubt that the petitioner obtained community certificate from Guindy Taluk and that he had not obtained community certificate for his son, and left the issue for the decision of the first respondent, who ruled against the petitioner. According to him, such doubts raised are untenable and unsustainable.

11. He argued that the petitioner's great grandfather is named "Kondareddy" and the Hon'ble Supreme Court in Shweta Kesarinath Shivdikar v. State of Maharashtra and others in Civil Appeal No.6146 of 2008, held that if a person is named in a particular manner indicating his community name, that should be accepted. The same was the view expressed by this Court in Nithyapriya v. The Revenue Divisional Officer, ILR (1998) 1 Madras 468.

12. He also pleaded that when close relatives of the petitioner were issued community certificates to the effect that

they belong to Kondareddis community and such certificates are valid and subsisting as on date, denial of the said benefit to the petitioner is arbitrary and unreasonable.

13. Lastly, he submitted that the order of termination passed by the second respondent, based on the order passed by the first respondent, without issuance of notice or affording an opportunity of hearing, is in gross violation of the principles of natural justice.

14. Per contra, the learned Additional Government Pleader appearing on behalf of the first respondent reiterated the reasons that weighed with the first respondent in passing the impugned order and submitted that the petitioner with a mala fide intention is seeking to enjoy the benefits conferred through the Constitution of India.

15. I heard Mr.Yogesh Kannadasan, learned counsel for the petitioner, Ms.Thangavadhana, learned Additional Government Pleader for the 1st respondent and Mr.Anand Gopal, learned counsel for the 2nd respondent and perused the documents available on record.

16. A perusal of the counter affidavit itself reveals that the petitioner was issued a community certificate to the effect that he belongs to "Kondareddis" community by the Tahsildar, Mambalam-Guindy Taluk on 29.12.1986 and subsequently on 13.06.1988.

17. Qua the competency of the Tahsildar to issue the said community certificates, it is apposite to refer to the decision of the Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein it is emphatically held as under:

"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

18. In the light of the decision, referred supra, the first respondent is bound to take into consideration the community certificate issued to the petitioner by the Tahsildar, who is a competent authority, at the relevant time, to wit, prior to 11.11.1989.

19. In the case on hand, it is the specific case of the petitioner that anthropologist report relied upon by the first respondent has not been furnished to him, apart from some other relevant documents. That apart, it is alleged that the first respondent relied on the report of the Sub Collector dated 14.04.2007, which was conducted behind the back of the petitioner, that too without affording an opportunity to the petitioner. The said fact is not disputed by the first respondent either by way of counter or across the bar.

20. The affected should be appraised is a cardinal constitutional creed flowing from Article 14 of the Constitution of India and unless the affected is appraised there is no compliance of principles of natural justice and fair play in action. A decision-making authority is duty bound to disclose any and every adverse material collected by it before using them against a person and an adverse decision is taken, and if it is not done the order made by such authority will be vitiated only on that count.

21. The Hon'ble Supreme Court in Kumari Madhuri Patil and another v. The Additional Commissioner, Tribal Development and others, (1994) 6 SCC 241, held as under:

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector 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 should also 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 Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned 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 educational institution concerned 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 and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. 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.

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.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-today proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the

parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

22. The issue as to whether the 15 guidelines given in the case of Madhuri Patil (supra) were valid and whether it amounts to legislation was referred by the two Hon'ble Judges Bench of the Apex Court to a larger Bench. The reference was answered by the three Hon'ble Judges Bench of the Apex Court in the case of Dayaram v. Sudhir Batham, (2012) 1 SCC 333. In effect, the Hon'ble Supreme Court held that the directions issued in Madhuri Patil's case were intrinsic to the fulfilment of the fundamental rights of the backward classes of citizens and were issued to preclude denial of such fundamental rights. It noted that the directions given in the case of Madhuri Patil were working satisfactorily for decades. Therefore, the guidelines laid down in Madhuri Patil case, supra, hold the field and the action of the authorities should hew to the same.

23. In the case of Ayaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., (2013) 4 SCC 465, wherein the issuance/verification of caste certificate was under consideration, the Hon'ble Supreme Court, after referring to a plethora of decisions, held that not only should the opportunity of cross examination be made available, but it should be one of effective cross examination, so as to meet the requirement of principles of natural justice. In the absence of such opportunity, it cannot be held that the matter has been decided in accordance with law, as cross examination is an integral part and parcel of the principles of natural justice.

24. It is well settled that principles of natural justice have to be respected by quasi-judicial or administrative authorities while taking action if they adversely affect the interest of a person or that the action involves criminal or civil consequences. Obviously, the rules of natural justice include cross examination of the witnesses relied by the administrative authority/quasi-judicial authority and denial of the same is a serious violation of principles of natural justice. Opportunity to lead evidence in defence is also another salient feature of the principles of natural justice.

25. In the instant case, the petitioner was not furnished with all the documents referred to in the report of the Vigilance Cell, which formed the basis for the finding rendered by the first respondent. He was neither granted an opportunity to cross-examine the witnesses. We are, therefore, of the firm view that the order impugned in this writ petition passed by the first respondent has been passed in gross violation of the elementary principles of natural justice.

26. In *State of Bihar v. Sumit Anand*, (2005) 12 SCC 248, the Hon'ble Supreme Court upheld the order of the High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Hon'ble Supreme Court observed as under:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

27. The Hon'ble Supreme Court as well as this Court, time and again, held that when community certificates issued in favour of close relatives and blood relations by a competent authority subsist, the authorities are bound to consider the same, unless the same are set aside by a higher authority. The proceedings of the first respondent, in our considered opinion, did not give due credence to the documents produced in support of this plea by the petitioner.

28. That apart, in the case on hand, the petitioner's great grandfather is named "Kondareddy" and when support was sought to be drawn from the said fact by the petitioner, the first respondent lightly discarded the same on the premise that it is the person's name and not the name of the community. This Court in Nithyapriya's case, supra, taking note of the fact that the petitioner's grandfather was named as "Peria Konda Reddiar", held that the authorities have very lightly ignored the caste name mentioned in the documents produced. The same is also fact situation in the case on hand.

29. For the foregoing reasons, we allow the writ petition and pass the following order:

i. In view of the fact that the procedure laid down has not been followed and the order of cancellation of community certificate has been issued without following the procedure and in violation of the principles of natural justice, we set aside the order of cancellation of the community certificate dated 03.01.2017.

ii. The order of termination dated 27.01.2017 being passed on illegal order of cancellation of certificate, which has been set aside by us, the order of termination is also set aside. Thus the 2nd respondent is hereby directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order.

iii. The matter is remanded to the State Level Scrutiny Committee for fresh consideration.

iv. It is made clear that in case the State Level Scrutiny Committee seeks to rely on such statements, necessarily opportunity should be afforded to the petitioner to cross examine those witnesses. The cross examination should be conducted in the presence of the State Level Scrutiny Committee and such cross-examination should be an effective one. The State Level Scrutiny Committee must ensure the presence of the witnesses, so as to enable the petitioner to cross examine them on the very same day. In any case, the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.

v. If the Committee is of the view that the issue can be decided even without reference to the deposition given by the witnesses, there is no need for summoning them. In such event, the Committee shall give an opportunity to the petitioner to produce documents in support of his claim and thereafter, decide the matter

on merits and as per law.

vi. The petitioner is directed to co-operate with the State Level Scrutiny Committee for an early disposal of the matter. In case, the petitioner is prolonging the matter on one pretext or the other, it is open to the State Level Scrutiny Committee to decide the matter on the basis of available materials.

vii. The above said exercise shall be completed by the 1st respondent within a period of three months from the date of receipt or production of a copy of this order.

viii. There will be no order as to costs. Consequently, W.M.P.No.32887 of 2017 is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vs
To

The Chairman,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 600 009

Copy to

The Section officer
ER Section, High Court, Madras 104.

+1 CC to Mr. Yogesh Kannadasan, Advocate sr 13534.

+1 CC to M/s.T.S. Gopalan & Co, Sr 13099.

Writ Petition No.30215 of 2017
and
WMP.No.32887 of 2017

BR(CO)
SP(13/03/2018)