

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	22/09/2017
PRONOUNCED ON	08/02/2018

CORAM

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

W.P.No.1042 of 2017
and

W.M.P.Nos.1010, 5492, 6267, 6492, 7462, 7546, 7759, 7760, 7769,
22375, 26063 of 2017

The Akhil Bharathiya Adiwasi Vikas Parishad
Tamilnadu Branch
Represented by its State President
C.Sanjeevi
No.213, R.K.Mutt Road,
Mylapore, Chennai - 04.

...Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep by the Chief Secretary,
Fort St.George, Secretariat, Chennai.
- 2.Mr.P.Annamalai, I.A.S.,
Chairman,
State Level Scrutiny Committee,
And Secretary Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai.
- 3.Tamil Nadu Scheduled Tribe (Malaiyali) Peravai,
Having registered office at
No.15, Second Street,
Kambar Nagar, Chennai - 600 082,
Rep by its President,
V.Marimuthu.
- 4.The Thennindiya Pazhangudi Makkal
Paathukappu Munnetra Sangam,
Regd No.255/2015,
No.213, R.K.Mutt Road,
Mylapore, Chennai - 600 004.
Rep by its Founder-President C.Eraiarul.

5. Dharamapuri District Kurumans Welfare Association,
Regd. No.67/95, Senthil Illam,
No.3/582, Avvai Nagar, Dharmapuri - 636 705,
Rep by its District President,
T.Raju.
6. Thenindiya Scheduled Tribes Irular Munnatra Sangam,
Rep. by its President,
Muthu G. S/o.Gopal, Pallakollai, Avalurpettai (Post),
Melmalayanur Taluk, Villupuram District.
7. Vellore District Kattunaicken Scheduled Tribe Welfare
Association,
Rep by its General Secretary S.Venkatesh,
No.3/392, Ganapathy Nagar,
Tajpura Village, Arcot Taluk,
Vellore District.
8. The National Commission for Scheduled Tribes,
Government of India, Rep by its Secretary,
6th Floor, B Wing, Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.
9. The Secretary to Government,
Government of India,
Ministry of Tribal Affairs,
Shastri Bhawan, New Delhi - 01.
10. The Registrar General and Census Commissioner,
Ministry of Home Affairs,
No.2/A, Mansingh Road,
New Delhi - 110 011.
11. The Commissioner of Tribal Welfare,
Government of Tamil Nadu, Chepauk,
Chennai - 5.

... Respondents

[R3 to R7 are impleaded as per order dated 12.06.2017
by KKSJ & MVMJ in WMP.Nos.6267, 7546, 7462, 7759
& 7760/2017 in W.P.No.1042/2017]

[R8 & R9 impleaded as per order dated 09.08.2017
by MVJ & PDAJ in W.P.No.1042/2017 and WMP.No.22375/2017]

[R10 & R11 suo motu impleaded as per order of this Court
in W.P.No.1042 of 2017]

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus by directing the respondents

to form a separate department for the Tribal Welfare to be headed by a Secretary to re-constitute the State Level Scrutiny Committee to be headed by a Senior Level Officer belonging to the Scheduled Tribe or by a neutral (non SC) official to make verification of the claims of the members of the STs/members of the petitioner association.

For Petitioner: Ms.R.Vaigai, Senior Counsel,
for Mr.V.Vijay Shankar

For Respondents: Mr.R.Venkataramani, A.A.G.,
Asst. by Mr.K.V.Dhanapalan,
for R1 R2 & R11

Mr.M.Muthusamy, for R3
Mr.S.Duraisamy, for R4 & R5
Mr.L.Chandrakumar, for R6 & R7
Mr.Su.Srinivasan, A.S.G.I., for R8

to R10

Ms.B.C.Archana Kalyanai, IFS
Amicus Curiae

O R D E R

(Order of the Court was made by P.D.AUDIKESAVALU, J)

The present writ petition has been filed by Tamil Nadu Branch of Akhil Bharathiya Adiwasi Vikas Parishad, represented by its State President Mr.C.Sanjeevi. Originally the writ petition was filed seeking the relief to replace second respondent, viz., Mr.P.Annamalai, I.A.S from the post of Chariman, State Level Scrutiny Committee and to re-constitute State Level Scrutiny Committee to be headed by senior level officer belonging to Scheduled Tribe or by neutral (non-SC) official to make verification of the claims of the members of the Scheduled Tribe/members of the association of the petitioner.

2.The petitioner by a petition bearing W.M.P.No.26063 of 2017 filed on 13.09.2017 brought to the notice of this Court that the second respondent, viz., Mr.P.Annamalai, I.A.S has been shifted out of the post of Secretary, Adi Dravidar and Tribal Welfare Department and ex-officio Chairman of State Level Scrutiny Committee and as a result thereof, that part of the prayer sought for in this writ petition no longer survives. It was further submitted therein that there was necessity to constitute a separate department for welfare of the Scheduled Tribes and on that basis, by an order dated 14.09.2017, this Court permitted the petitioner to amend the prayer in the writ

petition as follows:

"It is therefore prayed that this Hon'ble Court may be pleaded to issue a Writ of Mandamus or any other appropriate writ or direction in the nature of writ or order by directing the respondents to form a separate department for the Tribal Welfare to be headed by a Secretary to re-constitute the State Level Scrutiny Committee to be headed by a Senior Level Officer belonging to the Scheduled Tribe or by a neutral (non SC) official to make verification of the claims of the members of the Sts/members of the petitioner association and pass such other order or orders as may be deemed fit and render justice."

In view of the aforesaid amendment made to the reliefs sought in this writ petition, the focus in the matter is now confined to the amended prayer.

3. Before proceeding further, it needs to be stated that the respondents nos. 3 to 7 who are associations of certain communities of Scheduled Tribes were impleaded as parties to the writ petition as it had been claimed in their respective applications that they were interested in the reliefs that have been sought by the petitioner in this writ petition. Further, on the petition bearing W.M.P.Nos.22375 of 2017 filed by the petitioner, the 8th and 9th respondents were added as parties to the writ petition. Having regard to the issues involved in this writ petition, this Court suo motu impleaded the 10th and 11th respondents as parties to the writ petition for effectual and complete adjudication of the matter. This Court by an order dated 09.07.2017 had appointed the erstwhile Director of Tribal Welfare, viz., Dr. Archana Kalyanai, I.F.S, now posted as District Forest Officer, Tiruvannamalai as Amicus Curiae to assist the Court.

4. Coming to the relief sought by the petitioner to form a separate department for Tribal Welfare to be headed by Secretary to Government, it has been noticed from the averments made in the affidavit filed in support of the impleading petition bearing W.M.P.No.7546 of 2017 filed by the 6th respondent that its President, viz., C. Irai-arul, had earlier filed a writ petition bearing W.P.No.33032 of 2016 before this Court to direct the Government of Tamil Nadu to consider the representations dated 24.11.2015 and 20.04.2016 made by his Association to create a separate Ministry and separate Department for welfare of the Scheduled Tribe people in the

State of Tamil Nadu, which was dismissed at the admission stage on 21.09.2016 by the Hon'ble First Bench of this Court holding as follows:-

"The petitioner seeks creation of a separate department for the Schedule Tribe population, as distinct from the Schedule Caste population, i.e., instead of common department, calls for separate departments in line with what is stated to be prevalent in other States. The petitioner made representations on 24.11.2015 and 20.4.2016. In fact, the Government of India/first respondent has forwarded the representation made to it to the State Government vide letter dated 2.6.2016.

2. We are of the view that such matters fall completely within the administrative domain of the Government and it is for the State Government to consider whether it would like to have two departments for administrative convenience or continue with the present arrangement.

We are, thus, not inclined to entertain a public interest litigation in this regard. The writ petition is, accordingly, dismissed. No costs."

5. In view of the aforesaid binding decision, we are neither inclined to entertain the claim made by the petitioner for formation of separate department for Tribal welfare to be headed by Secretary to Government, nor do we find any justifiable reason to differ from that view taken. However, it is brought to the notice of this Court that after filing of this writ petition, the Government of Tamil Nadu vide G.O.No.56, Adi Dravidar and Tribal Welfare Department, dated 28.08.2017 has provided additional financial power and autonomy to the Commissionerate of Tribal Welfare, for the welfare of the Scheduled Tribes and the same is placed on record.

6. The question that now remains for consideration is whether the persons belonging to Scheduled Castes could not be appointed as the Chairman of State Level Scrutiny Committee that verifies the Scheduled Tribe Community Certificates?

7. In the affidavit dated 09.01.2016, filed in support of the writ petition, the following facts have been stated, in support of that relief claimed:-

"3.I submit that previously i.e., before year 1989, Thasildhar was the empowered authority to issue community certificates to Scheduled Tribes. The power of verification and cancellation vested with the District Collector. Pursuant to the guidelines issued by the Hon'ble Supreme Court of India in Madhuri Patil's case reported in 1994 (6) SCC 241 the Government of Tamilnadu initially constituted a two member District Level Vigilance Committees for making verification of caste certificates of STs. Later this was changed to a three member District Level Vigilance Committees vide G.O.Ms.No.111 dated 67.7.2005. The guidelines also provided for an appeal to the State Level Scrutiny committee against order of the District Level Vigilance Committee vide. Later, by G.O.Ms.No.108 dated 12.9.2007 the verification of community certificates of Scheduled Tribes was vested on the State Level Scrutiny committee. The position, as with date, is that the State Level Scrutiny committee is the competent body for making verification regarding claims of STs and the orders of the State Level Scrutiny committee are only subject to and amenable to writ proceedings under Article 226 of the Constitution of India.

4.The petitioner submits that ever since the inception of the State Level Scrutiny Committee in September 2007, the State Level Scrutiny Committee has been headed invariably by officers belonging to the Scheduled Caste (SC). Several IAS Officers of the rank of Secretary (all belonging to the SCs) have only held the position of Chairman of the State Level Scrutiny Committee. The post of Chairman, State Level Scrutiny Committee has been hitherto occupied by Mrs.Sivagami, Mr.Selvam, Mr.Kanagaraj, Mr.Jeevarathinam, Mr.Viswanath Shalgoanoar, Mrs.Kannagi Bagyanathan and now Mr.P.Annamalai the 2nd respondent herein. It is submitted that all these officers are IAS officers and belong to the Scheduled Castes Community (SC).

5.The petitioner submits that the State Level Scrutiny Committee is an important committee which is entrusted with the task of verifying the community certificates issued to STs. The experience, over the past 10 years, shows that the heading of the State Level Scrutiny Committee by officers belonging to the SCs, has adversely affected the interest of STs to a very large extent. It is no secret that in Tamilnadu, as in other states, complaints against STs are invariably made by members belonging to the SCs. Hence, it would be adding fuel to the fire, if an SC official

is to head the committee which is entrusted with the task of verification of ST certificates. On account of this, the members of the petitioner association, belonging to different tribal communities such as Kurumans, Kattunaickens, Konda reddis, Malai Kuravan, Sholaga etc are given a biased and step motherly treatment at the hands of State Level Scrutiny Committee. Despite possessing overwhelming documentary evidence and notwithstanding an individual satisfying all the criterion laid down by the Government for establishing social status, the State Level Scrutiny Committee headed by SC officials, deliberately overlooks such voluminous evidence and renders finding against the individuals concerned. As a consequence of such orders, the employer take punitive action and the individual is compelled to knock the doors of this Hon'ble Court. The petitioner association and its members strongly feel that the approach of the State Level Scrutiny Committee is based on preconceived notions and the proceedings are biased, mostly on account of the fact that they are headed by officials belonging to the SC Community.

6.The petitioner association respectfully submits that surprisingly, in the constitution of State Level Scrutiny Committee and District Vigilance Committee, there is no representation at all for STs. Not a single individual belonging to the STs forms part of the State Level Scrutiny Committee or, for that matter, is even employed there. Similarly, in the revenue set up also from the level of Thasildar there is invariably no representation for STs. Even in the vigilance cell too, there is no representation to STs. On the other hand, in so far as SC s are concerned, the situation is just the opposite. Apart from members of the SC s occupying key positions both in the revenue hierarchy and in heading DLVC/SLSC, there is an overwhelming representation for SC s at all levels. This has created a sense of fear and insecurity in the minds of those belonging to the Scheduled Tribes. Past experience, in the form of several orders passed by the State Level Scrutiny Committee has only confirmed this suspicion in the minds of the STs that, when SC officials head the State Level Scrutiny Committee, they would not get justice and their constitutional rights to claim reservation would be jeopardized.

7.It is necessary to submit at this juncture that in most of the other states in India, separate secretariats/department for STs has been created and is functioning. These are invariably headed by officers

belonging to the STs. In states such as Kerala where the population of STs is very less, separate department for STs welfare is functioning. Moreover, the Government of India have recently vide their letter dated October 2016, addressed to the 1st respondent directed that officers belonging to the STs should be nominated as Liason Officer in each department so as to safeguard the interest of STs in each department/organization. Therefore, it may be seen that it is the policy of the Government of India to ensure that STs are taken care of and protected by posting adequate number of officers in each department/organization.

8.The petitioner association respectfully submits that in the back drop of the above, it is essential that STs get a level playing field so that their legitimate claims and aspirations are not affected. It is imperative and mandatory that the State Level Scrutiny Committee which is the competent body to make verification into the claims of STs, is headed either by a ST official or by a neutral (non SC official) so that STs will get injustice. Explaining and highlighting these aspects, petitioner association and several other organizations representing STs, have made representations to the 1st respondent which unfortunately, has not evoked any response."

8.The learned Senior counsel appearing on behalf of the petitioner would submit that since the said averments of the petitioner made in the affidavit filed in support of the writ petition have not been specifically denied in the counter affidavit filed by the first respondent, it should be construed that the same are deemed to have been admitted, relying on the decision of the Hon'ble Apex Court in the case of the Express Newspapers Pvt. Ltd and Others v. Union of India and Others reported in (1986) 1 SCC 133 at paragraph 116, which is extracted below:-

"116.It is somewhat strange that although definite allegation of mala fide on the part of the respondents particularly the Government for the day at the Centre were made with sufficient particulars and though the respondents had ample time to file their affidavits in reply, none of the respondents except respondent no.5,, the Lt. Governor of Delhi and respondent no.5, Land Development Officer have chosen to deny the allegations. The counter-affidavit of respondent no.2 purporting to be on behalf of all the respondents is that the allegations made by the petitioners in

paragraphs 11, 12 and 13 are not 'relevant' to the matter in issue. In C.I. Rowjee & Ors. v. A.P. State Road Transport Corporation, [1964] 4 S.C.R. 330, the Court in a matter arising out of the Motor Vehicles Act, 1939 where certain allegations against the Minister went uncontroverted, had occasion to administer a word of caution. Where mala fide are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. That precisely is the position in the present case, in the absence of any counter-affidavit by any of the respondents. One should have thought that the Minister for Works & Housing should have sworn an affidavit accepting or denying the allegations made by the petitioners. At our instance, M.K. Mukherjee, Secretary, Ministry of Works & Housing has filed a supplementary affidavit. He avers that the impugned notice dated March 10, 1980 of re-entry upon forfeiture of lease issued by the Engineer Officer, Land & Development Office was on the basis of press reports i.e. reports of the press conference held by the It. Governor. Again, there is no attempt on the part of the Union of India, Ministry of Works & Housing to deny the allegations of mala fides on the part of the Government and its functionaries in issuing the impugned orders. On the contrary, he avers that respondent no.1 'adopts the counter- affidavit filed by respondent no.2'. It is not for the parties to say what is relevant or not. The matter is one for the Court to decide. There is nothing before us from which we can say that the allegations in paragraphs 11, 12 and 13 of the petition made by the petitioners are not well-founded. Mala fides on the part of the Government in power or its functionaries would be sufficient to invalidate the impugned notices. Fraud on power vitiates the impugned orders if they were not exercised bona fide for the purpose for which the power was conferred."

9. Though it is true that when a statement made in the affidavit by the petitioner is not specifically denied by the respondent in the counter, it is open to the Court to proceed on the premise that the same has been admitted by applying the principles set out in that regard in Rule 3 of Order VIII of Code of Civil Procedure, it cannot be an absolute rule to which no exception could be taken. As indicated in that decision

itself, the matter actually falls under the realm of judicial discretion and the Court also has to take judicial notice of well known facts of contemporary daily life, more particularly, those which have been recognized in the decisions of the Courts.

10. In this backdrop, it has been noticed from the report dated 04.09.2017 filed by the learned Amicus Curiae that the persons belonging to certain non-tribal communities have been claiming Scheduled Tribe status and their community certificates are under scrutiny before the State Level Scrutiny Committee for verification and the particulars in that regard have been set out in the form of the following tabular statement:-

S.No	Scheduled Tribe Claimed	Actual Community	Present Status	Certificates claimed from
1	Kondareddis	Reddiar, Kolathur, Kondareddy	OC/FC	Salem, Erode, Triuvallur
		Ganjam Reddy	BC	Chennai, Erode, Trichy
2	Kurichchan	Kunjidigars	MBC	Dharmapuri, Krishnagiri
		Kunjiligar	BC	
3	Kurumans	Kurumba	MBC	Dharmapuri, Krishnagiri, Salem, Vellore (Tirupattur), Chennai
4	Kattunayakan	Jogi, Kuluvar, Domban, Oddar, Boyar, Kambalanayakar, Pulkattunayakar, Ambalathar	MBC	Tirunelveli, Thanjavur, Trichy, Cuddalore
		Gavara Naidu, BC	BC	
		Vettaikaran, Sikkari		
		Vadugan (Vaduganayakar)		
5	Malakkuravan	Kuravan, Veduvar	SC	Villupuram, Tuticorin

S.No	Scheduled Tribe Claimed	Actual Community	Present Status	Certificates claimed from
		24 other Kuravans	DNC	
6	Malai Vedan	Veduvār	SC	Madurai, Dindigal
7	Malai Pandaram	Pandaram	MBC	
8	Kammara	Naidu	BC	Chennai, Tiruvallur
9	Kanikaran	Boom Boom Maatukaran		Kancheepuram
10	Sholaga	Thondaman	MBC	Tuticorin

This complaint has been earlier reflected in the decision of this Court in K.Arumugam v. Secretary, Adi Dravidar and Tribal Welfare Department reported in 2001 WLR 638, where it has been stated in paragraph 11 as follows:-

"11.Thus taking advantage of the slight variations in the description of caste names like Kuruman-Kurumbar, Cholagar-Cholaga, Konda Reddy-Reddy, Kattunayakkan-Nayakkar, etc., it is not uncommon that community certificates are obtained so as to claim the reservation and other educational benefits made available to the backward, most backward classes, scheduled caste and scheduled tribe communities. In the light of the continuous abuse of these benefits on the basis of incorrect claims and certificates, the Supreme Court directed the method of issuing and scrutinising all the certificates."

11.It has been pointed out by the learned Amicus Curiae that a committee headed by Shri. B.N.Lokur, then Secretary to Government, Ministry of Law was appointed by Government of India to advice on the proposals received for revision of the existing list of Scheduled Caste and Scheduled Tribes and in paragraph 27 of the report dated 25.08.1965 of that committee, it has been observed as follows:

"27.We found a number of communities in the Schedules of each State, for which no population was returned at the 1961 Census. We have taken out of the lists such communities after verifying, in consultation with the State Governments, that these communities have not in fact come to the notice of the

local administrators. Most State Governments have also agreed that tribes and castes not found in viable number should be removed from the lists. In the case of a Scheduled Tribes, it may be safely assumed that tribal characteristics cease to exist when the number of tribals living in a State is less than 100, the more so if even this small number is spread over several districts. To cite an example, the population returned in the State of Madras for the KONDA REDDI tribe was 8. Of this, 3 were working as labourers in Madras city, while the rest were spread over two other districts. It would be reasonable to infer in such cases that these small groups have got assimilated with the general population; in any case, it would be very difficult administratively to trace these individuals with a view to afford them special assistance. As for education, no hardship is likely to be caused because of the introduction of free and compulsory education."

In the Letter no.12018/2012, dated 20.04.1987 from the Ministry of Welfare, Government of India, New Delhi addressed to the Deputy Secretary to Government of Tamil Nadu, Social Welfare Department, Madras, it has been stated as follows:-

"We do not have any record to show the basis on which the State Government recommended to the President to include the KONDA REDDI as Scheduled Tribes."

That apart, the Government of Tamil Nadu had also noticed that there was a sudden spurt in the families of Kondareddis between the census of 1961 and the census of 1971. The census from the years 1971 to 2011 in respect of Kondareddis in the State of Tamil Nadu is also required to be taken note in this context and the same is extracted below:-

Year	Population
1971	855
1981	31526
1991	30391
2001	19653
2011	9847

The Government of Tamil Nadu in G.O.Ms.No.1139, dated 23.03.1982 had directed that the power to issue Scheduled Tribe community certificates for the persons claiming to belong to Kondareddis

community shall be vested only with the Revenue Divisional Officers in the State, while in respect of other Scheduled Tribe communities, the Tahsildar shall continue to exercise such power. This was the subject matter of challenge before this Court and the Division Bench of this Court by judgment dated 25.07.1984 made in W.A.No.783 of 1982 and 344 of 1983 in the case of K.Viswanathan, President, Salem District Konda Reddis Welfare Association and another v. The Government of India and others reported in 1985 W.L.R 18 had upheld the said Government order. The reasons behind the aforesaid decision of the Government have been extensively discussed in that judgment and it would be useful to extract the relevant portions from the said decision:-

"7.Before the learned Judge the main ground on which the impugned Government Order was sought to be supported was that, after the Scheduled Tribes Order came to be amended by Central Act 108 of 1976, which came into force on 27-7-1977, the Reddiars, especially Oluvu Reddiars, had made attempts to get themselves classified as Konda Reddiars, just to avail themselves of the benefits which were available to scheduled tribes, such as admission to professional colleges or higher education and reservation in appointments, and this was sought to be done by producing community certificates showing that these Oluvu Reddiars were Konda Reddis, and these certificates were procured from the Tahsildars. It is also the stand of the State Government that as a result of similar attempts made by some students of the Reddiar community in Kerala they had succeeded in gaining entry in medical colleges by producing false certificates as belonging to Konda Reddis. The State Government relied on a report of the Director of Harijan and Tribal Welfare, who, on the basis of a study of Konda Reddis and Reddiars in Tamil Nadu, submitted a report to the Government in April, 1980, in which, among others, he reached the following conclusions:

1. It is a fact that Reddiars belonging to most affluent community have been grossly misusing successfully the privileges which should normally and rightly go Kondareddis.
2. Already many Reddiars have got various benefits, i.e., jobs and admission to professional courses against Konda Reddis and punitive action should be taken against them, after calling for reports of Heads of Departments and other appointing authorities, if deemed fit.
3. Based on the instructions of the Government

of India that competent authorities should be instructed to issue certificate only to those belonging to Kondareddis keeping in view their instructions in the matter, suitable instructions may be issued authorising an officer of the Revenue Department not lower in rank than a Deputy Collector to issue certificates after very careful and detailed enquiry.

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11. The learned Judge accepted the stand of the State Government that there were cases where members of the Ruddier community had obtained false certificates to which they were not entitled, and, according to the learned Judge, he was not called upon to ascertain the veracity of the reports or material which had weighed with the State Government. The learned Judge took the view:

"This is not a case of complete dearth of materials or the State acting on a whimsical or arbitrary basis without any rationale or objective to back it."

The judgment of the learned Judge shows that the learned Advocate-General produced before him the relevant files, and on a perusal of those files, the learned Judge observed:

"From them I find that the State Government did receive reports and complaints about persons falsely claiming themselves as belonging to Konda Reddi community and there has been a considerable anxiety and apprehension expressed by representations of individuals and body of individuals in this regard."

The issuance of the impugned Government Order was found by the learned Judge as being in the nature of a preventive measure. According to the learned Judge, the wisdom of entrusting the power to issue community certificates with Revenue Divisional Officers need not be belittled, and when it was urged before the learned Judge that it is quite possible that even Revenue Divisional Officers would be misguided, the learned Judge took the view that, "The higher in the listed hierarchy is definitely better than the lowest therein. When it was argued before the learned Judge that it was possible that Revenue Divisional Officers may be unapproachable, causing undue hardship to those

who seek those certificates, the learned Judge observed:

"If instances of Revenue Divisional Officers unwarrantedly making themselves scarce and unapproachable or refusing and declining to issue the community certificates on untenable or inadequate basis are to be found and if such instances are justifiable, definitely the persons concerned will not be denied the right to set in motion the due process of law to vindicate their rights."

On a review of the circumstances of the case the learned Judge found that the assigning of the duty of issuing community certificates in respect of the Konda Reddi community to Revenue Divisional Officers could not, on the facts placed before him, be characterized as unreasonable and lacking in intelligible differentia and the nexus between the classification and the object to be achieved.

21.The Scheduled Tribes Order of 1950 contains the names of several tribes and Konda Reddis are one such tribe. For the purpose of employment in posts under the Central Government, a certificate from the Tahsildar in proof of the fact that the person concerned belonged to a particular scheduled tribe was sufficient, according to the letter of the Central Government dated 5-8-1975. The question, however, is whether it is not open to the State Government to take notice of the fact that a large number of persons, who did not belong to the scheduled tribe were making attempts to obtain such certificates from the Tahsildars, who had also granted such certificates, and this had ultimately resulted in the members of the Konda Reddi tribe being denied the benefits conferred on them and to which they alone were entitled as members of a scheduled tribe. The question is, the State Government to be blind to the fact that there is a class of people who claim to belong to the tribe of Konda Reddis, when they are not and those claims are made on the basis of certificates issued by the Tahsildar. The very fact that the State Government has thought it fit to issue the impugned Government Order taking away the power to issue such certificates from the Tahsildar clearly indicates that the State Government had clearly taken notice of the fact that persons who belonged to the Reddiar community had been claiming the same benefits as the Konda Reddi

community and they could easily obtain such certificates from the Tahsildars, when they are legally not entitled to those certificates. In other words, the State Government has taken notice of the fact that Tahsildars cannot be trusted with issuing such certificates, because it is possible that Reddiars found it easy to persuade the Tahsildars to give them certificates evidencing that they belonged to Konda Reddi community. It is not possible for us to accept the contention that merely because the State Government has not taken any action against the erring Tahsildars, the State Government could not take away the power of the Tahsildar and vest it with some superior officer. We are not entitled to go into the sufficiency of the materials on which the State Government took the decision to vest the power to issue the community certificate in a higher Revenue Officer. The learned Judge was right when he said that a scrutiny of the materials, in the form of complaints, could not be made by him. In any case, we have a very glaring example of the mischief which such a certificate is capable of, if it is issued to a wrong person, such as a person belonging to the Reddiar community, when the election of a candidate to the State Assembly had to be set aside by the Supreme Court. Apart from the report of the director of Harijan and Tribal Welfare, which the State Government had taken note of, and we have no reason to doubt the correctness of his conclusions, the -learned judge was right when he pointed out that, on the basis of such false certificate issued by after Tahsildar, a Hindu Reddiar has contested a seat to the State Assembly from a constituency which was reserved for the Scheduled Tribe. He has referred to the decision of the Supreme Court in R. Palanimuthu v. Returning Officer, in which the elected candidate did not in fact belong to Konda Reddi community, but, as the judgment points out belonged to the 'Hindu Reddiar community' but was enabled to contest the election only on the basis of the certificate of the Tahsildar issued to show that the said elected person was a Konda Reddi, when he was in fact not one. That election, though it was upheld by this Court, had to be set aside by the Supreme Court That decision has been relied upon by the learned Advocate-General before us also. The judgment in that case contains observations, which, in our view, are enough to justify the impugned Government Order, though, undoubtedly, the Government Order was issued long before the judgment. Those observations are of special

significance, because they are made by a learned Judge who has special knowledge of the problems of this particular part. Those observations are as Follows (P. 910):

"If attempts are made by persons not belonging to any of these communities at securing the special benefits to which these backward classes, scheduled castes and scheduled tribes students and candidates are entitled under the rules in force in that State, and there is no proper scrutiny of the claim of such persons that they belong to these classes, the benefits which are intended by the State to go to these classes will be taken away by those to whom they are not really intended.

Therefore, so long as these benefits are continued for the aforesaid classes, strict scrutiny has to be made by the State Government machinery and the fraud which may be committed on the State and those classes of people for whom these benefits are really intended by those for whom those benefits are not meant by producing false community certificates has to be stopped by the Government taking appropriate steps. At the same time, it must be ensured that it is not made difficult for persons really belonging to these classes obtaining the necessary community certificates from those authorized to issue the same. A copy of the judgment shall be forwarded to the Chief Secretary to the Government of Tamil Nadu."

Mr.Subramaniam has contended that the other two learned Judges have not concurred with those observations and have expressly refrained from expressing any opinion on those observations quoted above, by adding a separate paragraph in the Judgment. We are referring to those observations, not as laying down any law, but to show that the learned Judge has also suggested that steps need to be taken in order to prevent persons making false claims as members of a scheduled tribe community, when they do not really belong to that community or scheduled tribe.

22.The question which naturally must arise is, even after it was pointed out to the State Government

by the report of the Director of Harijan and Tribal Welfare and by the complaints which were received by the Government and which were produced before the learned Judge, who decided the writ petitions, that members of the Reddiar community were trying to infiltrate into the community of Konda Reddis via the certificates of the Tahsildar, only for availing of the benefits given to the scheduled tribe of Konda Reddis, would the State Government be justified in ignoring all those facts of life and perpetuating the fraud that was being perpetrated to the prejudice of those who genuinely belonged to the Konda Community? It does not require much to see that admission gained to a professional college or appointment to a service in the State obtained on the basis of such a certificate by a person who is not entitled to it, because he does not belong to the scheduled tribe, has the effect of some other person who was legitimately entitled to a seat in an educational institution on the basis of reservation or to a public employment on the basis of reservation being deprived of that opportunity. It was therefore clearly necessary to safeguard the interests of the Konda Reddy Community by providing for the issue of community certificates by an officer of higher rank. We are therefore unable to appreciate the arguments which have been vehemently pressed before us that what has been done by the State Government by issuing the impugned Government Order is to the detriment of the community of Konda Reddis. We do not think that there is any other way of looking at this Government Order than that it is intended to safeguard the interests of the genuine Konda Reddis and to protect them' from being deprived of their opportunities by virtue of reservation by imposters trying to snatch away those opportunities."

12. It has been brought to the notice of this Court that a sizable number the Kondareddis community certificates that are now pending for verification before the State Level Scrutiny Committee are those obtained prior to G.O.Ms.No.1139, dated 23.03.1982 issued by the Government of Tamil Nadu, and due to various reasons, such as non-compliance of the principles of natural justice, non-formation of the three member committee and vigilance cells, etc., in accordance with the directions issued by the Hon'ble Supreme Court of India in Kumari Madhuri Patil v. Additional Commissioner for Tribal Welfare reported in AIR 1995 SC 94 laying down the procedure for verification of caste certificates, earlier orders passed for cancellation of those community certificates have been set aside without adjudication on merits and remitted for fresh disposal causing long delay

spanning over four decades.

13. Similarly in respect of Kurumans community, the Government of Tamil Nadu vide G.O. Ms. No. 388, Social Welfare Department, dated 06.05.1977, on the recommendations of the then Collector of North Arcot District, had directed that Kurumans, Kurumban and Kurumba communities residing in North Arcot District, particularly in Tirupattur Taluk be treated as Scheduled Tribes belonging to "Kurumans" Community and that community certificates be issued to them as Kurumans. However, the said Government Order was subsequently cancelled by another proceeding in G.O. Ms. No. 748, Social Welfare Department, dated 27.10.1977 on the basis of the directions issued by Government of India, Ministry of Home Affairs, New Delhi pointing out that the lists of Scheduled Castes and Scheduled Tribes are issued by a Presidential Order and that only the Government of India is competent to issue any clarification in that regard. Further, the correspondence between the Government of Tamil Nadu and Government of India exchanged from the year 2009 onwards shows that the proposal for inclusion of Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar communities as synonyms of Kurumans Scheduled Tribe in the State of Tamil Nadu has not been accepted till date.

14. The aforesaid overwhelming information borne out from the record substantiates that the State Level Scrutiny committee is confronted with spurious claims from a relatively large number of persons as though belonging to Scheduled Tribe communities for which that Committee has to diligently adopt a more cautious approach in verifying their claims in order to ensure that ineligible persons do not snatch away the benefits in education and employment of the Scheduled Tribes, which cannot at all be found fault with. This is particularly necessary in view of the settled legal position that burden of proof of social status is always on the person who professes to seek constitutional socio economic advantages and it is no part of the duty of the State to disapprove or otherwise as pointed out in Director of Tribal Welfare, State of Andhra Pradesh v. Laveti Giri (AIR 1995 SC 1506). Resultantly, it would follow that merely because a person holds a Scheduled Tribe community certificate, he cannot expect the same to be automatically confirmed during verification by the State Level Scrutiny Committee without producing sufficient materials in support thereof. If relevant evidence produced in support of the claim for Scheduled Tribe status is discarded by the State Level Scrutiny Committee, certainly the aggrieved person is entitled to impeach the same in proceedings under Article 226 of the Constitution before this Court, which would suffice to examine the correctness of the claim and grant appropriate relief, where necessary. On the other hand, the circumstance that Associations

and persons belonging to the Scheduled Castes have been complaining about some persons having secured false certificates as Scheduled Tribes, cannot, by any stretch of imagination, be a ground to disqualify officials belonging to Scheduled Castes from being members of the State Level Scrutiny Committee which verifies the community certificates of the Scheduled Tribes. In fact, acceding to such a contention, by itself, would amount to blatant discrimination and violation of Articles 14 and 16 of the Constitution of India. Hence, it is not possible to countenance, much less give any credence to, the unfounded allegations of the petitioner that the officials belonging to the Scheduled Castes are inimically disposed towards the Scheduled Tribes so as to entertain any real apprehension of bias against them for verifying the Scheduled Tribe community certificates.

15. In the aforesaid circumstances, we do not find any merit for granting any of the reliefs sought for by the petitioner in this writ petition. The writ petition is accordingly dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

pgp

To

1. The Chief Secretary,
Fort St. George, Secretariat, Chennai.
2. Mr. P. Annamalai, I.A.S.,
Chairman,
State Level Scrutiny Committee,
And Secretary Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai.
3. The Commissioner of Tribal Welfare,
Government of Tamil Nadu, Chepauk,
Chennai - 5.

4.The National Commission for Scheduled Tribes,
Government of India, Rep by its Secretary,
6th Floor, B Wing, Lok Nayak Bhawan,
Khan Market, New Delhi - 110 003.

5.The Secretary to Government,
Government of India,
Ministry of Tribal Affairs,
Shastri Bhawan, New Delhi - 01.

6.The Registrar General and Census Commissioner,
Ministry of Home Affairs,
No.2/A, Mansingh Road,
New Delhi - 110 011.

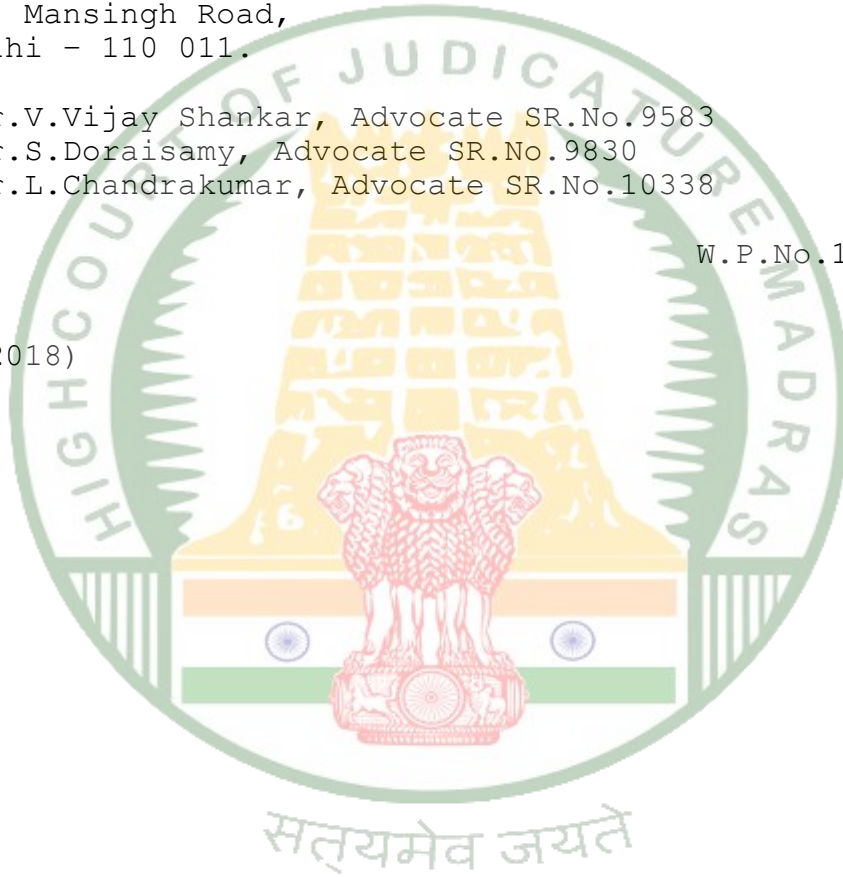
+1cc to Mr.V.Vijay Shankar, Advocate SR.No.9583

+1cc to Mr.S.Doraisamy, Advocate SR.No.9830

+1cc to Mr.L.Chandrakumar, Advocate SR.No.10338

W.P.No.1042 of 2017

MR(CO)
GN(28/02/2018)



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