

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|---------------|------------|
| Reserved on   | 02.08.2018 |
| Pronounced on | 20.08.2018 |

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.3650 of 2018  
and  
W.M.P.Nos.4478 & 4479 of 2018

S.Munikrishna Reddy .... Petitioner

-vs-

- 1.State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Adi Dravidar and Tribal  
Welfare (CV-4 (1) Department,  
Secretariat, Chennai - 600 009.
  - 2.The Tamil Nadu State Level Scrutiny Committee,  
Adi Dravidar and Tribal  
Welfare Department,  
Namakkal Kavingar Maligai,  
Secretariat,  
Chennai - 600 009,  
Rep. by its Chairman.
  - 3.The Director of Tribal Welfare Department,  
Chepauk,  
Chennai - 600 005.
  - 4.The Deputy Superintendent of Police,  
Deputy Superintendent of Police,  
Social Justice & Human Rights Division and  
District Vigilance Enquiry Division,  
Chennai Division,  
Kancheepuram District.
  - 5.Dr.S.Sumathi,  
Professor & Head,  
University of Madras,  
School of Social Sciences,  
Department of Anthropology,  
Chepauk,  
Chennai - 600 005.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the report in Proceeding Na.Ka.No.72/Sa.Nee (Ma) Ma.Vu.P/2017 dated 22.12.2017 on the file of the Fourth Respondent quash the same and direct the Respondents 1 to 3 to conduct a fresh enquiry by some other Vigilance officer.

For Petitioner :: Mr.S.Doraisamy  
For R1 to R4 :: Mr.S.N.Parthasarathy  
Government Advocate

For R5 :: Mr.C.A.Theagarajan

O R D E R

M.NIRMAL KUMAR, J.

The Petitioner has preferred the present writ petition seeking to call for the records of the proceedings dated 22.12.2017 of the Fourth Respondent and to quash the same and direct the Respondent Nos.1 to 3 to conduct a fresh enquiry by some other Vigilance Officer by issuing a Writ of Mandamus or any other appropriate orders or directions as the Court due fit.

2.Heard Mr.S.Doraisamy, Learned Counsel for the Petitioner, Mr.S.N.Parthasarathy, Learned Government Advocate appearing for the Respondent Nos.1 to 4 and Mr.C.A.Theagarajan, Learned Counsel appearing for the Fifth Respondent.

3.According to the Petitioner, the Petitioner belongs to Kondareddis (ST) Community, which is classified as a Scheduled Tribe Community and he was appointed as Kalasi on 13.12.1983 in Southern Railway Service and retired from service on 31.07.2015.

4.The Learned Counsel for the Petitioner submitted that the Petitioner had obtained Community Certificate from the Deputy Tahsildar, Pallipat on 01.11.1980 that he belonged to Kondareddis Community and again he obtained another Community Certificate from the Tahsildar, Tiruttani on 07.01.1983.

5.This being so, there was no necessity for his employer i.e. the Southern Railways in the year 2015, who have sent the Community Certificate of the Petitioner to the State Level Caste Scrutiny Committee for verification. The said State Level Committee in turn referred the matter to the Vigilance Cell Officer (DSP) to conduct an enquiry and submit a report. On his completion of enquiry, the Vigilance Cell Officer (DSP) had sent a report to the Third Respondent, Director of Tribal Welfare on 22.12.2017, stating that all the documents and the evidences collected by the Vigilance Officer supported to the claim of the

writ Petitioner, but the Fifth Respondent, Anthropologist had given a report that the Petitioner does not belong to Kondareddis Scheduled Tribe Community. Hence, the Fourth Respondent had given an adverse Vigilance cell report dated 22.12.2017 against the writ Petitioner.

6.The Petitioner places his reliance on paragraph 10(3) of the Government Order in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department dated 15.10.2012, which reads as follows:

"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 hail 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, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities etc."

7.Further, the Learned Counsel for the Petitioner contended that as per the above Government Order the only person to conduct the enquiry is the Vigilance Officer in respect of Anthropological aspect also and further, a professional Anthropologist have no role in conducting a preliminary enquiry, as it could be seen in the case of Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and Others reported in AIR 1995 Supreme Court 94 and the relevant paragraph is extracted here under:

"5.Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall 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 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 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 and dead bodies etc. by the concerned castes or tribes or tribal communities etc."

8. Thus, by applying the Government Order and the ratio laid down by the Hon'ble Supreme Court of India, the Fourth Respondent, Vigilance Officer alone has to proceed with the enquiry and send a report. The role of the Anthropologist comes in only when the report of the Vigilance Officer is against the Petitioner. Thus, the report of the Fifth Respondent, Anthropologist, Dr. S. Sumathi is contra to the above Government Order in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department dated 15.10.2012.

9. The Learned Counsel for the Petitioner emphatically contended that with regard to the Anthropologist report is concerned the report stands in the name of Dr.S.Sumathi, Professor and Head of the Department, Department of Anthropology, University of Madras. She is not the person who conducted any personal enquiry. As it could be seen from the report it is one Muniraj, who had conducted an enquiry on 12.12.2017 at the office of the Deputy Superintendent of Police, Tiruvallur District and who had made an enquiry in respect of the family members of the Petitioner and closed the enquiry. The Anthropologist, Dr.S.Sumathi, had not conducted any enquiry, she never meet the Petitioner and hence, the report submitted by her is a falsely created report, which has to be rejected and challenging the finding of the Fourth Respondent is based on the report of the Fifth Respondent and given a finding that the Petitioner does not belong to Kondareddis Scheduled Tribe Community, the Petitioner had filed the above writ Petition.



10. Per contra, it is the submission of the Learned Government Advocate, who had filed a counter affidavit of the Third Respondent for himself and on behalf of the Respondent Nos.1, 2 and 4. Before retirement of the Petitioner, his employer viz. Southern Railways had sent the Community Certificate of the Petitioner for verification to the First Respondent vide their letter dated 21.05.2015. At the request of the Petitioner's employer viz. Southern Railway, the First Respondent directed the Fourth Respondent to conduct the enquiry about the Community Status of the Petitioner. The Fourth Respondent on the direction of the First Respondent had conducted the enquiry and submitted the report with a finding that the Petitioner does not belong to Kondareddis Scheduled Tribe Community to the Third Respondent. Since the Community Certificate is not genuine and the Constitutional reservation benefits to the genuine Scheduled Tribe person has been denied.

11. The Third Respondent issued a show cause notice dated 10.01.2018, calling for an explanation to be submitted within two weeks as per the guidelines of G.O.2(D) No.108, Adi Dravidar and Tribal Welfare (CV-1) Department, dated 12.09.2007, which has been followed in G.O.Ms.No.106, dated 15.10.2012 and G.O.(Ms).No.50, Adi Dravidar and Tribal Welfare (C.V.1) Department, dated 28.07.2017. All these Government Orders have been issued for implementation of the guidelines by the Hon'ble Apex Court of India in Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and Others reported in AIR 1995 Supreme Court 94.

12. It is further submitted that followed by the show cause notice dated 10.01.2018, reminders dated 03.03.2018 and 09.04.2018 were issued. The Petitioner had not responded to the show cause notice and offered any explanation, instead he filed the above writ petition with a vague allegation.

13. The Learned Government Advocate appearing for the Respondents further contended that the contention of the Petitioner is that "the Vigilance Officer can alone proceed with the enquiry and send a report. The role of the Anthropologist comes only when the report of the Vigilance Officer is against the claimant". This contention is not proved and base less. As per the direction of Hon'ble Apex Court of India in the case of Kumari Madhuri Patil, the Government Order of Tamil Nadu in G.O.Ms.No.106, dated 15.10.2012 and G.O.Ms.No.50 dated 28.07.2017 had categorically stated the role of the Anthropologist.

14. Further, the Learned Government Advocate appearing for the Respondents stated that the Fourth Respondent calling for the explanation from the Petitioner, on coming to know that the Petitioner's Community Status is not genuine and it is in contemplation to the Government Order and in consonance to the Kumari Madhuri Patil's case of the Hon'ble Apex Court. The

Petitioner ought to have submitted his grievances to the Third Respondent in response to the show cause notice dated 10.01.2018. On the other hand, the Petitioner on receipt of the show cause notice dated 10.01.2018 without giving any explanation had filed the above writ petition for evading the proceedings of the First Respondent and hence, prayed the writ petition to be disposed of in limine.

15.The vehement contention of the Petitioner is that the Fifth Respondent, Dr.S.Sumathi, Anthropologist had not made any personal visit had submitted her report dated 18.12.2017, based on which the Fourth Respondent had submitted the report dated 22.12.2017 to the Third Respondent which caused the Third Respondent to issue the show cause notice dated 10.01.2018 to the Petitioner, which is under challenge.

16.The Learned Counsel for the Fifth Respondent had filed a counter and relied upon the Government Order in G.O.Ms.No.253 Adi Dravilar Tribal Welfare (CV-I) Department dated 26.10.2017. The Learned Counsel for the Fifth Respondent further submitted that the Fifth Respondent categorically asserts that she is working as a Professor and Head, University of Madras, School of Social Sciences, Department of Anthropology, Chepauk, Chennai - 600 005 denies that the allegation that the report of the Vigilance Cell Officer dated 22.12.2017 is against the Government Order in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department dated 15.10.2012.

17.The Learned Counsel appearing for the Fifth Respondent further submitted that she has been nominated by the State Government as an expert (Anthropologist) and holding positions as State Level Scrutiny Committee (SLSC) member, District Vigilance Committee and member in Vigilance Cell. Further, it is represented that the Fifth Respondent is the most Senior Anthropologist and carrying out Anthropologist study and submitting her report from the year 2005 onwards and she has so far submitted around 30,000 reports. As Head of the Department, Department of Anthropology, University of Madras and holding many administrative posts, due to the work pressure she could not visit and collect basic data in all cases. The Fifth Respondent had only enlisted the service of Government approved Anthropologist in compiling and preparation of the Anthropology report.

18.To counter the contention of the Petitioner that one Muniraj is not a competent person to conduct the enquiry and collect data and further, vehemently assailing the qualification, competence and authority of the said Muniraj, it is to be pointed out that the said Muniraj is a competent eligible person, who had completed his M.Phil. course in Anthropology and further, as per the Government Order in G.O.Ms.No.253, dated 26.10.2017. The said Muniraj was appointed as an Anthropologist. The Fifth Respondent being the Head of

Department, Department of Anthropology, University of Madras and holding many administrative post and due to work pressure had deputed Muniraj, who is in the empanelled list, duly authorised by the Government. The said Muniraj had generated primary data from the candidate following field work method and the Fifth Respondent had analyzed, drawn the interpretation and submitted report to the concerned.

19.Further, the Learned Counsel for the Fifth Respondent submitted that the Fifth Respondent is an experienced Researcher in the field of community studies for about 25 years, an expert in the field of Anthropology, who can do analysis and interpretation, keeping the data generated by the Anthropologist and this is the normal scientific procedure followed by the Senior Anthropologist and the Fifth Respondent is competent to submit the report. Further, the report is a complete and a comprehensive one.

20.Moreover, it could be seen from the G.O.Ms.No.253, dated 26.10.2017, the name of the Fifth Respondent is shown in serial No.1 and of Muniraj in serial No.10. Further, on a perusal of the Government Orders it is stated that the Anthropologists are authorised to assist 42 Vigilance Committees in verifying the genuineness of the Community Certificate of the Scheduled Tribes. Thus, the contention of the Petitioner cannot be countenanced.

21.The plea of the Petitioner is that at the time of his appointment his Community Certificate was verified and acted upon and subsequently, from the year 1983 to 2015 he had served in Southern Railways, during the verge of his retirement from the Department his Community Certificate has been sent for verification by his employer viz. Southern Railways is un-called for.

22.Further the Petitioner had already submitted the Community Certificate issued by the Deputy Tahsildar, Pallipat and Tahsildar, Tiruttani, while he joined service in the year 1983 and at the verge of his retirement, the verification of the Community Certificate is un-warranted.

23.Also, the issuance of the show cause notice by the Third Respondent was based on the report of the Fourth Respondent, who had given his report on the basis of the report of the Fifth Respondent that the Petitioner does not belong to Kondareddis Scheduled Tribe Community and hence, sought to quash the show cause notice dated 10.01.2018.

24.As per the G.O.Ms.No.2137 dated 11.11.1989, the issuance of Community Certificate of Scheduled Tribe communities in order to avoid misuse of concessions by obtaining false certificates. Hereafter, the Community Certificate is to be issued only by the Revenue Divisional Officers for various Scheduled Tribes



communities of which Kondareddis Scheduled Tribe is one such community and the Government had issued various Government Orders in streamlining issuance of Community Certificates.

25. Pursuant to the Kumari Madhuri Patil's case to suit the condition prevailing in the State of Tamil Nadu, Government Orders were issued to avoid the constitutional reservation benefits to the Scheduled Caste and Scheduled Tribe are not being denied to the genuine deserving candidates. Further, it is found that the Fifth Respondent, Anthropologist report does not suffer from any defect.

26. At this stage, this Court direct the Petitioner to take part in the enquiry before the Second Respondent and to produce all required documents to substantiate his case pertaining to his community namely Kondareddis Scheduled Tribe. The Third Respondent is directed to give a specific fresh date and time, on which date the Petitioner has to appear or submit his explanation to the Second Respondent, without further seeking time by giving any reasons.

27. It is also made clear that the Petitioner has to raise all factual legal pleas to the Third Respondent supported with documents, if any. The Third Respondent is directed to place the explanation and submission of documents, if any to the Second Respondent.

28. Moreover, the materials furnished by the Petitioner are required to be taken into consideration by the Third Respondent and if the Third Respondent/the Director of Tribal Welfare Department, Chepauk, Chennai comes to the conclusion that the Petitioner's claim in respect of the social status is a doubtful or not a genuine one, then, an explanation is required to be called for from the Petitioner within a period of 30 days from the date of receipt of communication by the Petitioner. After obtaining the reply of the Petitioner, then, he shall be directed to appear for an enquiry before the Second Respondent/Tamil Nadu State Level Scrutiny Committee, Chennai along with supporting reliable documents to establish his claim of community status. The Second Respondent/Tamil Nadu State Level Scrutiny Committee after providing necessary opportunity to the Petitioner by following 'Principles of Natural Justice' and by taking into consideration of the relevant documents and available records and also considering the opinion/view of Anthropologist is directed by this Court to pass final orders in the subject matter in issue in a free, just, fair, and in a dispassionate manner, in any event, within a period of six weeks from the date of receipt of copy of this order of course, bearing in mind the Principles laid down by the Hon'ble Supreme Court of India in Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and Others reported in AIR 1995 Supreme Court 94. The Petitioner is directed to afford assistance and unstinted co-operation in bringing to an



end the completion of enquiry in a comprehensive manner.

29. With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,  
Adi Dravidar and Tribal  
Welfare (CV-4 (1) Department,  
Secretariat, Chennai - 600 009.
2. The Tamil Nadu State Level Scrutiny Committee,  
Adi Dravidar and Tribal  
Welfare Department,  
Namakkal Kavingar Maligai,  
Secretariat,  
Chennai - 600 009,  
Rep. by its Chairman.
3. The Director of Tribal Welfare Department,  
Chepauk,  
Chennai - 600 005.
4. The Deputy Superintendent of Police,  
Deputy Superintendent of Police,  
Social Justice & Human Rights Division and  
District Vigilance Enquiry Division,  
Chennai Division,  
Kancheepuram District.

+1cc to Mr.S.Doraisamy, Advocate SR.NO.57018

+1cc to Mr.C.A.Theagarajan, Advocate SR.NO.56720

KGK(CO)

sm:31.8.2018

W.P.No.3650 of 2018