

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.30974 of 2017

N.Kanagaraj .. Petitioner

Vs

1.Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai - 9.
Rep. by its Chairman.

2.The Sub Collector,
Hosur, Krishnagiri District. ... 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 of the Tamil Nadu State Level Scrutiny Committee in Proceedings No.4609/CVIII/2013, dated 07.09.2016 on the file of the 1st respondent, to quash the same and to direct the 2nd respondent to issue community certificate to the petitioner and his son J.K.Suriya that they belong to Kurichchan (ST) Community.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

WEB COPY
ORDER

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

Assailing proceedings bearing No. 4609/CVIII/2013, dated 07.09.2016, of the first respondent/Tamil Nadu State Level Scrutiny Committee holding that the petitioner does not belong to Hindu 'Kurichchan', a Scheduled Tribe Community, the petitioner has filed this writ petition to quash the said proceedings and to direct the second respondent to issue community certificate to the petitioner and his son - J.K.Suriya to the effect that they belong to 'Kurichchan'

2. Succinctly put, the facts are as under: It is the case of the petitioner that he belongs to Kurichchan community, which is classified as a Scheduled Tribe community. He made an application to the Revenue Divisional Officer, Hosur, on 07.11.2008 and 16.07.2009 seeking issuance of community certificates to him and his son - J.K.Suriya, who is studying in 12th standard, to the effect that they belong to Kurichchan (ST) Community.

3. As the respondent authority did not pay heed to such applications, the petitioner filed W.P.No.15165 of 2009, wherein this Court, by order dated 03.08.2009, directed the second respondent to dispose of the application within a period of 2 months. Thereupon, the second respondent, by proceedings dated 25.9.2009, rejected the claim of the petitioner.

4. Assailing the above said proceedings dated 25.9.2009, the petitioner appealed to the first respondent/Committee, which, by proceedings dated 25.8.2011, rejected his appeal on the ground that no appeal will lie to the State Level Committee against the orders of the Revenue Divisional Officer.

5. Exasperated by the said order dated 25.8.2011, the petitioner filed another writ petition in W.P.No.660 of 2012 and this Court on 02.02.2012 directed the first respondent Committee to reconsider his appeal and conduct proper enquiry. Consequent to the said direction, the first respondent, by proceedings dated 30.1.2013, rejected the request of the petitioner.

6. The said order dated 30.1.2013 was challenged by filing W.P.No.18288 of 2013, wherein this Court, by order dated 22.10.2013, set aside the order of rejection passed by the first respondent and remitted the matter to the first respondent/Committee for fresh consideration.

7. As a sequitur to the said direction, the first respondent issued a notice for personal enquiry, in which the petitioner participated on 28.07.2016 and produced the following various records in support of his claim: (i) School Transfer certificate; (ii) community certificates of petitioner's own brothers - N.Muniraj and N.Nagaraj; (iii) District Vigilance Committee report of the petitioner's own brothers; (iv) community certificate of petitioner's own brothers' daughters; (v) community certificate and District

Vigilance Committee report of the petitioner's father's own brother - R.Lingan; and (vi) State Committee report of petitioner's close relatives E.Sankaranarayanan and V.Krishna.

8. It is alleged that, despite furnishing of records as aforesaid, the first respondent Committee by proceedings dated 07.09.2016, impugned in this writ petition, rejected the claim of the petitioner holding the petitioner does not belong to Kurichchan (ST) Community. Hence, the present writ petition for the relief stated supra.

9. Mr.S.Doraisamy, learned counsel appearing on behalf of the petitioner vehemently contends that when the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem, after due enquiry and perusal of records, has submitted a report to the first respondent/Committee to the effect that the petitioner belongs to Kurichchan Scheduled Tribe Community, the first respondent/Committee, without stating why and wherefores, chose to take a different view and rejected the claim of the petitioner, without even furnishing a copy of the Vigilance Report to the petitioner.

10. He further submitted that when the Vigilance Report is in favour of the petitioner, the first respondent/Committee is bound by the guidelines laid down in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012, and is not supposed to decide any further, unless it is found that the report or the particulars given are procured or are found to be false or fraudulent, and inasmuch as the petitioner's own brothers; their children; father's brother; and his close relatives had been issued community certificates to the effect that they belong to Kurichchan Community, nothing warranted the first respondent/ Committee to take a different view in respect of the claim of the petitioner.

11. He further submitted that the procedure followed by the first respondent is a far cry from the one stipulated in the following decisions: (i) Kumari Madhuri Patil v. Additional Commissioner, Tribal Development ((1994) 6 SCC 241); and (ii) G. Venkitasamy and another v. The Chairman, State Level Scrutiny Committee, 2016-1-LW 289.

12. On the contrary, the learned Additional Government Pleader appearing on behalf of the respondents submitted that the first respondent/Committee passed the impugned order after following the procedure contemplated in law and after conducting thorough enquiry and, therefore, the same does not warrant interference.

13. We have heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Ms.Thangavadhana Balakrishnanan, learned Additional Government Pleader appearing for the respondents and perused the documents available on record.

14. A perusal of the documents filed in support of the writ petition shows that the first respondent/Committee had referred the matter to SC/ST Vigilance Cell, Salem Region and Vigilance Cell Officer conducted an enquiry and forwarded the report to the Committee on 11.07.2016. For better appreciation of the said aspect, it is apposite to refer to para (4) of the impugned order, which reads as follows:

"4.In the meantime, the case was referred to SC/ST Vigilance Cell, Region as per the guidelines of Supreme Court of India Kumari Madhuri Patil's case. Accordingly, the Deputy Superintendent of Police, SC/ST Vigilance Cell Salem Region has forwarded the report on 11.07.2016, stating that the individual Thiru.N.Kanagaraj, S/o.Thiru.R.Nagappan belongs to Hindu "Kurichchan" Scheduled Tribes Community. But the Vigilance Cell has not thoroughly investigated before concluding the report."

However, no reason has been assigned by the first respondent/Committee to arrive at the finding that "the Vigilance Cell has not thoroughly investigated before concluding the report".

15. At this juncture, let us now refer to the law laid down in G.Venkitasamy case, supra. In the said decision, after referring to a catena of decisions, the procedure to investigate, identify and conduct the enquiry was postulated in the following manner:

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

i. The 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)]."

(emphasis supplied)

16. A perusal of the nature of work assigned to the Vigilance Cell as per the decision, supra, shows that the Vigilance Cell has to investigate into the social status of the claim of the applicant, after visiting the local place of residence and original place from which the candidate hails and usually resides. They have to 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 has to 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.

17. When the Vigilance Cell after following the aforesaid procedure submits a report to the first respondent Committee, that too which fortifies the claim of the petitioner, the first respondent Committee, as per guideline (vi) laid down in G.Venkitasamy case, supra, is supposed to not proceed further, but to pass order in favour of the petitioner. However, in the instant case, despite a positive report submitted by the Vigilance Cell in favour of the petitioner, the first respondent/Committee, without issuance of any show cause notice or furnishing a copy of such report to the petitioner, had rejected the claim of the petitioner. We are, therefore, of the firm view that the procedure adopted by the first respondent Committee is not in consonance with the procedure postulated supra.

18. Our abovesaid view is fortified by the decision of the Hon'ble Supreme Court in Gayatrilaxmi Bapurao Nagpure v. State of Maharashtra, (1996) 3 SCC 685, wherein it is held thus:

"The rejection of the appellant's claim especially when there is no other evidence placed contra to suspect the proof produced by the appellant and without appreciating the vital document placed before the Committee, was not correct. The High Court also erred in dismissing the writ petition filed by the appellant by simply accepting the conclusions reached by the Committee without appreciating the probative value of the documents placed before it. In this case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion. By a wrongful denial of the caste certificate to the genuine candidate, he/she will

be deprived of the privileges conferred upon him/her by the Constitution. Therefore greater care must be taken before granting or rejecting any claim for caste certificate. Though in cases of this type, the burden heavily lies on the applicant who seeks such a certificate, but that does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. The authorities concerned must also play a role in assisting the Committee to arrive at a correct decision."

In the case on hand, the first respondent, apart from differing from the view expressed by the Vigilance Cell, did not give due credence to the community certificates issued to the petitioners brothers, their children and his blood relatives and without assigning any reason rejected the plea of the petitioner.

19. That apart, admittedly, the certificates of petitioner's own brothers, to wit, N.Nagarajan and N.Muniraj, were found to be genuine and valid by Competent District Vigilance Committee and the certificate of petitioner's father's brother, R.Lingam, was also verified by the District Vigilance Committee and found to be genuine. Based on the District Vigilance Committee report of N.Nagarajan and N.Muniraj, their children also were issued with community certificates by the second respondent. Such community certificates issued by the competent authority were lightly discarded by the first respondent/Committee.

20. In State of Bihar v. Sumit Anand, (2005) 12 SCC 248, the Hon'ble Supreme Court held that once the family members, to wit, father, grandfather, mother, and maternal uncle had valid community certificates the applicant is entitled to obtain a similar certificate. The 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."

21. This Court has time and again held that a community comprises not only of the members of the family, but also the

members of the same group or tribe. In the case on hand, when the petitioner's brothers and blood relatives have been issued with community certificates and the same have also been verified by the competent committee to the effect that they belong to "Kurichchan" community and the said orders are still valid and subsisting, we find no justification in denying the same benefit to the petitioner and his children. The ratio laid down in the decisions, referred supra, squarely applies to the issue involved in this case.

22. For the foregoing reasons, we pass the following order:

(a) the writ petition is allowed and the impugned order passed in proceedings of the Tamil Nadu State Level Scrutiny Committee in Proceedings No.4609/CVIII/2013 dated 07.09.2016 by the first respondent is set aside;

(b) the second respondent is directed to issue community certificates to the petitioner and his son - J.K.Suriya to the effect that they belong to "Kurichchan", a Scheduled Tribe Community; and

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

vs

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman,
Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai, Secretariat, Chennai - 9.

2.The Sub Collector,
Hosur, Krishnagiri District.

+1cc to Government Pleader sR.No.7984

+1cc to Mr.S.Doraisamy, Advocate SR.No.6739 dt.14.3.2018

sm:7.3.2018

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