

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20.09.2018

Orders Pronounced on : 26.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.5673 of 2018
and
W.M.P.Nos.7023 and 7024 of 2018

K.Suganthi ... Petitioner

Vs.

1. State of Tamil Nadu, rep. by its
Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-9.
 2. State Level Caste Scrutiny Committee,
Rep. by its Chairman and
Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-9.
 3. The Deputy Director General,
All India Radio,
Kamarajar Salai,
Chennai-600 004.
 4. The Station Director,
All India Radio,
Tirunelveli-2.
- सत्यमेव जयते... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the Tamil Nadu State Level Scrutiny Committee in Proceedings No.2907/CVIII/2014-17, dated 12.02.2018 (received by the petitioner on 10.03.2018) on the file of the second respondent and quash the same.

For petitioner : Mr.S.Doraisamy
For respondents : Mr.K.Rajendra Prasad,
Addl.G.P. for RR-1 and 2
Mr.S.Rathanasabapathy for RR-3 and 4

ORDER

The present Writ Petition is filed for issuance of a Writ of Certiorari to call for the records relating to the Tamil Nadu State Level Scrutiny Committee in Proceedings No.2907/CVIII/2014-17, dated 12.02.2018 (received by the petitioner on 10.03.2018) on the file of the second respondent and quash the same.

2. The facts culled out from the affidavit and other materials placed before this Court, are:

(a) The petitioner belongs to Konda Reddis Community, which is a Scheduled Tribe Community. She obtained a Community Certificate from Tahsildar, Musiri on 23.05.1972. After completing her studies, she got appointed as Transmission Executive in the All India Radio (AIR) through Staff Selection Commission. Presently, she is working in the same post and place. But till date, her service was not regularised. While so, the Collector of Tiruchirappalli District, in his proceedings, dated 06.08.1990, passed an order cancelling the Community Certificate, dated 23.05.1972 issued by the Tahsildar, Musiri. Challenging the same, the petitioner herein filed W.P.No.4758 of 1991 before this Court and by order dated 05.10.1998, this Court dismissed the said Writ Petition holding that the District Collector, Tiruchirappalli has passed the order only after following the procedures.

(b) Aggrieved by the same, the petitioner has filed Writ Appeal in W.A.No.1412 of 1998. This Court, by order dated 26.10.1998, while admitting the above Writ Appeal, passed an order of status-quo. Subsequently, when the Writ Appeal came up for hearing on 18.04.2007, a Division Bench of this Court allowed the Writ Appeal holding that the issue involved is squarely covered by the dictum laid down by the Supreme Court in the case of Madhuri Patil Vs. Additional Commissioner, Tribal Development, reported in AIR 1995 SC 94 and also G.O.Ms.(2-D).No.18, Adi Dravidar and Tribal Welfare Department, dated 01.04.1997, and hence, it was observed by the Division Bench that cancellation of Community Certificate of the writ petitioner cannot be sustained. Thus, the Community Certificate issued by the Tahsildar, Musiri on 23.05.1972 became genuine and valid.

(c) However, the third respondent did not pass any order regularising the service of the petitioner on her appointment in the post of Transmission Executive. The employer of the petitioner was insisting upon production of the original Community Certificate issued by the Tahsildar, dated 23.05.1972. Hence, the petitioner has made representations to the Collector, Tiruchirappalli and the Revenue Divisional Officer (RDO), Musiri, to return her original Community Certificate, which she had produced during the course of enquiry before the RDO. Finally, the

employer of the petitioner, i.e. AIR, Government of India, on 18.02.2013, has directed the petitioner to produce the original Community Certificate, dated 23.05.1972 within 45 days to enable them to regularise her service with effect from 22.04.1992.

(d) It is stated by the petitioner that when once the Division Bench of this Court held that the cancellation of Community Certificate is wrong and set aside the cancellation, the petitioner is entitled for return of her Community Certificate. She made a request under the Right to Information Act on 04.02.2013 as to whether her Community Certificate is available or not in the Office of the RDO, Musiri. The RDO has sent his reply, dated 26.02.2013 stating that the files relating to 1989 and 1990 were destroyed and the Community Certificate of the petitioner is not available.

(e) Hence, the petitioner has filed a Writ Petition before the Madurai Bench of this Court in W.P.(MD).No.3543 of 2013 to direct the RDO Musiri, to return the petitioner's Community Certificate. After hearing the parties, the Madurai Bench of this Court has passed an order dated 06.06.2013 directing the RDO to return her Community Certificate, dated 23.05.1972 and in case the original records are not available, to issue a fresh Community Certificate to the petitioner, since her rights are already determined in the abovesaid Writ Appeal filed by the petitioner, and necessary orders be passed within six weeks from the date of receipt of a copy of the order. A copy of the said order was obtained by the petitioner on 19.06.2013. On 20.06.2013, the petitioner communicated a copy of the order to the RDO, Musiri, which was received by him on 24.06.2013.

(f) Though the RDO, Musiri has received the said order, no Community Certificate was issued till date. Hence, the petitioner has filed Contempt Petition in Cont.P.(MD). No.906 of 2013 before the Madurai Bench of this Court. When the Contempt Petition came up for hearing, the RDO produced only a xerox copy of the Community Certificate stating that the petitioner submitted only xerox copy and the same is being returned. On that basis, the Contempt Petition was closed on 02.01.2014. The RDO has given a false statement as if the petitioner has produced only xerox copy of the Community Certificate during the course of enquiry.

(g) Before handing over the xerox copy of the Community Certificate, the RDO, Musiri, had referred the xerox copy of the Community Certificate to the Tamil Nadu Forensic Science Laboratory, Madurai, to compare the signature of the Tahsildar. However, on the influence of the RDO concerned, the Forensic Science Laboratory gave a report that the signature found in the xerox copy is different from the admitted signature of the Tahsildar. On the basis

of the above report, the RDO, Musiri gave a complaint to the Inspector of Police, Musiri, which was registered in Crime No.486 of 2013 for the alleged offences under Sections 420, 468 and 471 IPC, as if the petitioner has produced a forged signature of the Tahsildar and the same is pending investigation.

(h) In the meanwhile, the RDO, Musiri wrote to the Station Director of the AIR, Tirunelveli, which was forwarded to the third respondent to take disciplinary proceedings against the petitioner. Hence, the petitioner filed W.P.No.4643 of 2014, in which, by order dated 17.03.2014, this Court directed the third respondent herein, i.e. Deputy Director General of AIR, Chennai, to refer the matter relating to the Community Certificate of the petitioner to the second respondent herein, namely State Level Scrutiny Committee, within a period of two weeks from the date of receipt of a copy of this order. Further, the second respondent-Committee was directed to consider the matter afresh and pass appropriate orders after making necessary enquiry and after giving an opportunity of hearing to the writ petitioner, within twelve weeks thereafter.

(i) Thereafter, the third respondent referred the matter to the second respondent-State Level Scrutiny Committee for verification. The second respondent, on 20.11.2017, called upon the petitioner to give an explanation to the report of the Vigilance Cell Officer, dated 10.11.2017. As per G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012 and also as per the judgment of the Supreme Court in Kumari Madhuri Patil's case (cited supra), the enquiry by the Deputy Superintendent of Police (DSP) should contain the Anthropologist report and unless the report of the Anthropologist is obtained, the enquiry report is incomplete. The Vigilance Cell Officer, in his report, dated 10.11.2017, has stated that he has not received the report of the Anthropologist and after receipt of the Anthropologist report, he will send his final report to the second respondent.

(j) Hence, the petitioner wrote to the second respondent on 04.12.2017 stating that she will send her explanation after receipt of the final report. The Vigilance Cell Officer has not given any opinion. But however, without considering her explanation, the second respondent issued notice to the petitioner to appear for the enquiry on 24.01.2018. Again, the petitioner represented to the second respondent on 19.01.2018 stating that the State Level Scrutiny Committee can proceed with the enquiry only on receipt of the final report of the Vigilance Officer and requested the second respondent-Committee to postpone the above enquiry till then. However,

the second respondent-Committee passed an order in complete non-application of mind, cancelling the Community Certificate of the petitioner, by order dated 12.02.2018. Challenging the same, the present Writ Petition has filed by the petitioner for the relief stated supra.

3. The respondents 1 and 2 have filed counter affidavit, inter-alia stating that the Deputy Superintendent of Police, Social Justice and Human Rights Commission, Trichy District, furnished enquiry report in respect of the petitioner, who is an employee of AIR, through the Director, Tribal Welfare, vide letter dated 20.11.2017, in which it is reported that the petitioner does not belong to Konda Reddis Scheduled Tribe Community. A show cause notice was issued to the petitioner by the Director, Tribal Welfare, vide letter dated 20.11.2017 so as to furnish a reply with a period of 15 days against the report of the Deputy Superintendent of Police (DSP). The reply had not been received from the petitioner. The State Level Scrutiny Committee had instructed the petitioner to attend the enquiry of the Committee to be held on 24.01.2018 to take a final decision regarding the genuineness of the Scheduled Tribe Community Certificate of the petitioner, but she did not attend the enquiry, instead, she submitted a letter stating that she could not attend the enquiry without the enquiry report of the DSP. It is further stated in the counter that the RDO, Musiri, has reported, vide proceedings, dated 08.01.1990 based on the enquiry conducted by him that the petitioner belongs to "Reddiar" Community and does not belong to "Konda Reddis" Community. He further stated that the photocopy of the Community Certificate which was produced by the petitioner, was sent for forensic examination and it was opined that the Tahsildar's signature found in the photocopy of the Community Certificate does not tally with that of the original and it was a forged one.

4. It is further stated in the counter affidavit filed by the respondents 1 and 2 that after verifying all the records/documents produced by the petitioner, and after affording reasonable opportunity to substantiate her claim, the State Level Scrutiny Committee has passed the impugned order and there is no violation of the principles of natural justice. The Vigilance Cell Officer has sent his report on 20.10.2017, in which he has stated that the Anthropologist report was not yet received, but subsequently, in his final report, dated 20.11.2017, the Anthropologist report had been incorporated. The petitioner failed to submit the basic documents like school records of herself and her parents to prove her claim. For these reasons, the respondents 1 and 2 prayed to dismiss the Writ Petition.

5. The respondents 3 and 4 have filed counter affidavit stating that the petitioner, from the day one of her joining, has been enjoying the Government job which is meant for Scheduled Tribe candidate, without producing the original Community Certificate from the competent authority. The enquiry already conducted by the RDO, Musiri as well as the District Collector, Tiruchirappalli, shows that she does not belong to Konda Reddis Community and she belonged to Forward Reddiyar Community. After the employer-AIR forwarded the proposal for verification of the Community status of the petitioner to the State Level Scrutiny Committee, she has not taken any steps to move the Committee to verify her status and she is not showing the same diligence to get her status verified by the said Committee than she is doing in filing various petitions. The RDO, Musiri held that the Community Certificate said to have been issued by the Tahsildar, Musiri is forged and a criminal case is pending against the petitioner. Further, the report submitted by the Deputy Superintendent of Police, Social Justice and Human Rights, Tiruchirapalli District, establishes that she does not belong to ST Community. As per the report of the DSP, the petitioner has conceded that either her parents or her siblings did not possess a Community Certificate. Further, her husband and her son also do not have the Community Certificate. Her Secondary School cumulative record book shows her Community as Hindu Reddiar. The State Level Scrutiny Committee's report states that the Anthropologist has reported that the petitioner does not know the cultural aspects of the Konda Reddis Community. The decision of the State Level Scrutiny Committee is on the strength of the report, dated 06.11.2017 of the Anthropologist. Hence, for the above reasons, the respondents 3 and 4 pray for dismissal of the Writ Petition.

6. The petitioner has filed reply affidavit reiterating the facts and inter-alia stating that the State Committee, in a prejudicial manner, instead of referring the matter to the Vigilance Cell for local enquiry, directed the petitioner to appear before the Committee and only after the petitioner's request to refer the matter to the Vigilance Cell, the second respondent referred the matter to the Vigilance Cell Officer, who conducted discreet enquiry without offering an opportunity of hearing and without following the procedures. The petitioner could not give any explanation, since the report of the Vigilance Officer does not say whether the petitioner's Community Certificate is genuine or not, however, the second respondent proceeded with the enquiry on the basis of the discreet enquiry report of the Vigilance Officer and cancelled the Community Certificate improperly. It is further stated by the petitioner that there is no Community

as Reddy or Reddiyar Community in the approved Community list by the Government. The petitioner further states that colloquially, Konda Reddis are called in short as Reddy or Reddiyar like the surname of Gounder is called by many Communities like Vellala Gounder, Kurmba Gounder, Vanniya Gounder, Ganiyala Gounder etc. As per G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012, the third respondent, before proceeding with the enquiry, ought to have undergone the training imparted by the Director of Tribal Research Centre so that he can gain knowledge about the Konda Reddis (ST) Community regarding the Anthropological and Ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Hence, the petitioner prays for quashing the impugned order dated 12.02.2018 of the second respondent.

7. Learned counsel for the petitioner submitted that earlier, the District Collector of Thiruchirapalli, by order dated 06.08.1990, cancelled the petitioner's Community Certificate, dated 23.05.1972 issued by the Tahsildar, Musiri. Challenging the same, she filed W.P.No.4758 of 1991, which was dismissed on 05.10.1998. However, the Writ Appeal in W.A.No.1412 of 1998 filed by the petitioner was allowed by a Division Bench on 18.04.2007 and the order of the learned Single Judge was quashed, thereby, the order of the District Collector, dated 06.08.1990 cancelling the Community Certificate of the petitioner, was not sustained. Therefore, the matter has reached finality. Even thereafter, the third respondent, without regularising the service of the petitioner, insisted for production of original Community Certificate, dated 23.05.1972. It is further stated by the learned counsel for the petitioner that the petitioner has produced the original Community Certificate during the enquiry before the RDO, who did not return the Community Certificate. Hence, the petitioner again filed W.P.(MD). No.3543 of 2013, to direct the RDO to return her Community Certificate, dated 23.05.1972. The Madurai Bench of this Court, by order dated 06.06.2013, directed the RDO either to return her Community Certificate or to issue fresh Community Certificate if the original is not available. Though this order was communicated to the RDO, the original Community Certificate was not yet returned. Hence, the petitioner filed Contempt Petition (MD).No.906 of 2013, which was closed by the Court on 02.01.2014, as the RDO produced a copy of the Community Certificate which was earlier produced by the petitioner. Learned counsel for the petitioner further submitted that the RDO has made false statement as if the petitioner has produced only xerox copy of her Community Certificate.

8. Learned counsel for the petitioner further contended that the RDO, Musiri has referred the xerox copy of the Community Certificate to the Forensic Science Laboratory to compare the signature of the Tahsildar, with his admitted signature, and the signature was alleged to be forged. In this regard, learned counsel for the petitioner submitted that since the xerox copy cannot be sent for Forensic Laboratory, the petitioner again filed W.P.No.4643 of 2014, in which, a Division Bench of this Court, by order dated 17.03.2014, has directed the employer-AIR to refer the matter relating to the Community Certificate of the petitioner, to the State Level Scrutiny Committee and to conduct fresh enquiry and to pass orders with regard to the genuineness of the Community Certificate of the petitioner. Accordingly, the third respondent has referred the matter to the second respondent-Committee. Pursuant to the same, as the Vigilance Cell Officer has issued notice for enquiry, the petitioner also participated in the enquiry and produced all the documents which are in her support and all the documents show that she belonged to Konda Reddis Community. The report of the Vigilance Cell Officer, dated 20.11.2017 is incomplete, as he has stated that he had not received the Anthropologist report and only after receipt of the Anthropologist report, he will send his final report to the second respondent. The petitioner wrote to the second respondent on 04.12.2017 stating that she will send her explanation after receipt of the final report. Without considering the request, the second respondent-Committee issued notice to the petitioner to appear for the enquiry and the petitioner again wrote to the second respondent-Committee on 19.01.2018 stating that the Committee could proceed with the enquiry only after receipt of the final report of the Vigilance Officer and prayed to postpone the enquiry until then. But her request was turned down and the impugned order has been passed by the second respondent-Committee. Hence, learned counsel for the petitioner submitted that there is no proper enquiry and the impugned order passed by the second respondent-Committee is in violation of the principles of natural justice, as no opportunity was given to her to support her case. The second respondent-Committee has passed the impugned order based on the incomplete report of the Vigilance Officer, and hence, learned counsel for the petitioner prayed for quashing the impugned order and allow the Writ Petition.

9. Countering the above submissions of the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 and 4 submitted that the petitioner has been appointed as Transmission Executive in the AIR through Staff Selection Commission, based on her Community Certificate. The employer (AIR) of

the petitioner requested the petitioner to produce a prescribed form of Caste Certificate issued by the concerned Revenue Divisional Officer. Hence, she applied for issuance of Konda Reddis Scheduled Tribe Community Certificate to the RDO, Musiri. The Revenue Divisional Officer rejected the claim of the petitioner after due verification. The petitioner preferred appeal before the District Collector, Tiruchirapalli, who also rejected the claim, by proceedings, dated 06.08.1990, against which W.P.No.4758 of 1991 was filed by the petitioner, which was dismissed by this Court on 05.10.1998. Subsequently, when the employer-AIR has asked the petitioner to produce the original Community Certificate, she has stated that she does not have the Community Certificate. She filed W.P. (MD).No.3543 of 2013 before this Court contending that she has produced the original Community Certificate, dated 23.05.1972 to the RDO during the enquiry and prayed for a direction to return the same or to issue fresh Community Certificate. This Court allowed the said Writ Petition on 06.06.2013, with a direction to the RDO to either issue the Community Certificate to the petitioner, and in case the original records are not available, to issue a fresh Community Certificate to the petitioner, within six weeks from the date of receipt of a copy of the order.

10. It is further contended by the learned counsel for the respondents that due to suspicion, the RDO found that what was actually produced, was only xerox copy of the Community Certificate and the same was sent for Forensic examination and it was opined that the Tahsildar's signature found in the xerox copy was a forged one. Hence, complaint was lodged with the Police and FIR was also registered in Crime No.486 of 2013 for the offences under Sections 420, 468 and 471 IPC. Hence, the petitioner filed W.P.No.4643 of 2014 before this Court and a Division Bench of this Court, by order dated 17.03.2014, directed the employer-AIR to refer the matter relating to the Community Certificate of the petitioner, to the State Level Scrutiny Committee. Accordingly, the Committee has taken up the matter and conducted enquiry.

11. It is further contended by the learned counsel for the respondents that the Vigilance Cell Officer has sent his report, in which he has stated that the Anthropologist report was not yet received and he would submit the report after obtaining Anthropologist report. Thereafter, the Vigilance Cell Officer submitted his final report, in which the Anthropologist report had been incorporated. Further, the DSP furnished the enquiry report pertaining to the petitioner, through the Director, Tribal Welfare, vide letter dated 20.11.2017, in which it is reported that the

petitioner does not belong to Konda Reddis Scheduled Tribe Community. It is further contended that a show cause notice was issued to the petitioner by the Director of Tribal Welfare, vide letter dated 20.11.2017, to furnish her reply within 15 days against the report of the DSP. But even after expiry of 40 days, the reply had not been received from the petitioner. Further, the State Level Scrutiny Committee had instructed the petitioner to attend the enquiry of the Committee on 24.01.2018 to take a final decision regarding the genuineness of the Scheduled Tribe Community Certificate of the petitioner, but the petitioner did not attend the enquiry and instead, she submitted a letter stating that she could not attend the enquiry without the enquiry report of the DSP, and the said letter was received only on 25.01.2018, even though the call letter had already been dispatched through Speed Post on 12.01.2018. The Committee decided to finalise the matter based on the available records, since the Committee had already given sufficient opportunity to the petitioner to substantiate her claim as "Konda Reddis". Thereafter, the impugned order had been passed by the second respondent-Committee, cancelling the Community Certificate issued to the petitioner. Hence, the learned counsel for the respondents prayed for dismissal of the Writ Petition.

12. Keeping in mind the above submissions of the learned counsel appearing for the parties, we have carefully perused the records.

13. The main contention of the learned counsel for the petitioner is that incomplete report was given by the Vigilance Cell Officer without the report of the Anthropologist and in fact, the petitioner sought for time before the Committee to submit her explanation after the final report of the Vigilance Cell Officer. However, as per the counter affidavit of the respondents, the Vigilance Cell Officer/DSP has submitted his final report, dated 20.11.2017 to the petitioner. The main grievance of the petitioner is that the Community Certificate, which was earlier furnished by her in the RDO enquiry, was not returned to her and without obtaining the final report of the Vigilance Cell Officer, the second respondent-Committee has come to the conclusion and taken a decision, and hence, learned counsel for the petitioner sought to quash the impugned order. The only grievance of the petitioner is that she was furnished only incomplete report with the show cause notice. Learned counsel for the petitioner submitted that the petitioner could not put-forth her case, as she is prejudiced for non-supply of the final report of the Vigilance Cell Officer. Though in the counter affidavit of the respondents 1 and 2, it is stated that the final report

was submitted by the Vigilance Cell Officer/DSP, dated 20.11.2017, the learned counsel for the petitioner submitted that the petitioner has not been furnished with a copy of the final report inspite of her request and hence, she was not in a position to give explanation and attend the enquiry before the second respondent-Committee.

14. In the above aspects, we have called for the files from the respondents 1 and 2 and on a perusal of the same, we find that the Vigilance Report, dated 20.11.2017 was in fact sent to the petitioner and explanation was also called for from her. Initially, the incomplete report was obtained by her under the Right to Information Act, but subsequently, the complete report, dated 20.11.2017 was sent to her, which is evident from the files. Therefore, we are not inclined to accept the submission of the learned counsel for the petitioner that since the petitioner has not received the full Vigilance Report, she was not able to give her explanation and attend the enquiry. Thus, it is clear that the petitioner has been prolonging the matter by filing various petitions before this Court for so many years. From the files, it could be seen that the Vigilance Report, dated 20.11.2017 was given to the petitioner and the same was received by the petitioner and the incomplete report was received by her pursuant to the information obtained through the Right to Information Act prior to one month from 20.11.2017. As the said Vigilance Report, dated 20.11.2017 was in fact furnished to the petitioner, which is evident from the files, we do not find any merit in the Writ Petition.

15. Hence, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

CS

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-9.

2.The Chairman and Secretary to Government,
State Level Caste Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-9.

3. The Deputy Director General,
All India Radio, Kamarajar Salai,
Chennai-600 004.

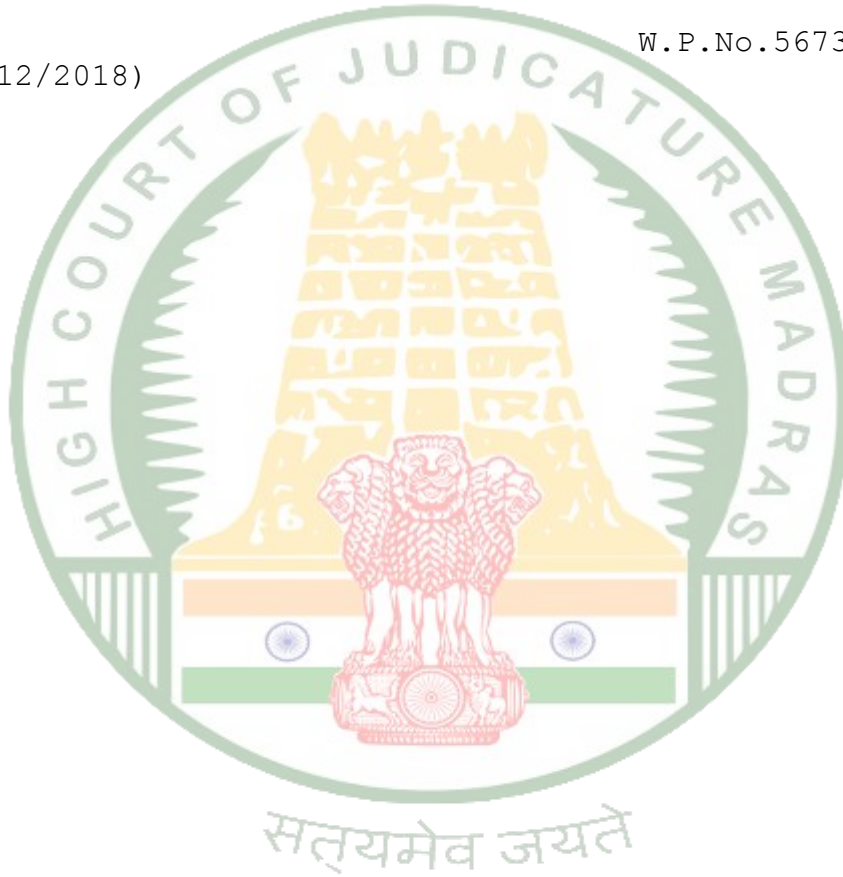
4. The Station Director,
All India Radio, Tirunelveli-2.

+1cc to Mr.S.Doraisamy, Advocate SR.No. 80978

+1cc to Mr.S.Rathnasabapathy, Advocate SR.No. 80600

ASK(11/12/2018)

W.P.No.5673 of 2018



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