

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.09.2018

Orders Pronounced on : 26.09.2018

CORAM:

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

W.P.No.3649 of 2018
and
W.M.P.No.4477 of 2018

N.Karthikeyan

Vs.

.. Petitioner

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, Social Justice and Human Rights Division and District Vigilance Enquiry Division, Chennai Division, Kancheepuram District.
5. Dr.S.Sumathi, Professor and Head, University of Madras, School of Social Sciences, Department of Anthropology, Chepauk, Chennai-600 005.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the report in Proceeding

No.C.No.138/DSP/SJ&HR/KPM/2017, dated 29.12.2017 on the file of the fourth respondent, quash the same insofar as the report of the fifth respondent and direct the respondents 1 to 3 to conduct a fresh enquiry in respect of Anthropological aspect by some other officer instead of the fifth respondent is concerned.

For petitioner : Mr.S.Doraisamy

For respondents : Mr.K.Rajendra Prasad,
Addl.G.P. for RR-1 to 4
Mr.C.A.Thiagarajan for R-5

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the report in Proceeding No.C.No.138/DSP/SJ&HR/KPM/2017, dated 29.12.2017 on the file of the fourth respondent, quash the same insofar as the report of the fifth respondent and direct the respondents 1 to 3 to conduct a fresh enquiry in respect of Anthropological aspect by some other officer instead of the fifth respondent.

2. Brief facts of the case are as follows:

(a) The petitioner belongs to Kurumans Community, which is classified as a Scheduled Tribe (ST) Community. He obtained Community Certificate from Headquarters Deputy Tahsildar in the year 1981, stating that he belongs to Kurumans Community and again in the year 1987, he obtained another Community Certificate from the Tahsildar, Kanchipuram. He entered into service in Postal Department on 14.07.1990 as Extra Department Delivery Agent (EDDA) under the ST category and at present, he is working as Postal Assistant at Sriperumbudur Post Office.

(b) The Superintendent of Post Offices, in the year 2016, sent the petitioner's Community Certificate to the State Level Caste Scrutiny Committee for verification of his Community Certificate and the said Committee in turn referred the matter to the Vigilance Cell Officer to conduct an enquiry and submit a report. The Vigilance Cell Officer (DSP), on completion of his enquiry, sent a report to the Director of Tribal Welfare on 29.12.2017, stating that though his enquiry reveals that the petitioner belongs to ST Community, i.e. Kurumans Community, since the Anthropologist opined that he does not belong to Kurumans (ST) Community, he referred the matter to the State Level Committee to take final decision in the matter. The said report of the Anthropologist, dated 04.12.2017 is adverse to the petitioner. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

3. The fifth respondent-Anthropologist has filed counter affidavit, inter-alia stating that it is incorrect to state that

the Vigilance Cell Officer (DSP), on completion of his enquiry, sent a report to the Director of Tribal Welfare on 29.12.2017, stating that though his enquiry reveals that the petitioner belongs to ST Kurumans Community, since the Anthropologist opined that the petitioner does not belong to Kurumans ST Community, he referred the matter to the State Level Committee to take a final decision in the matter. It is also incorrect to state that the report of the Vigilance Cell, dated 04.12.2017 is against the Government Order in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012. It is further stated that in respect of the Anthropologist report, though the report stands in her name, she did not conduct any personal enquiry as stated in her report and only one Muniraj had conducted the enquiry on 03.10.2017, who is the eligible person to conduct the enquiry and he has completed his M.A and M.Phil course in Anthropology. As per G.O.No.263, Adi Dravidar and Tribal Welfare Department, dated 26.10.2017, the said Muniraj had been appointed as Anthropologist to assist the District Level Vigilance Cells. Due to her work pressure on the particular day, she deputed the said Muniraj, who is a Researcher in the Department of Anthropology and also in the empanelled list, duly accepted by the Government. The said Muniraj had generated primary data from the candidate following field work method. The fifth respondent had analysed and drew the interpretation and submitted a report to the Government. The fifth respondent denies the allegation that the Government Order stipulates that an enquiry will be conducted by the Vigilance Officer only and a professional Anthropologist had no role in conducting the preliminary enquiry. It is false to state that professional anthropologists have no role to play in the matter. It is her further submission that the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get over them. The Tribal customs are unique to each Tribe and Tribal Communities, which are still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed, but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular Tribe, their traditional moorings and customary beliefs and practices. They are largely governed by their own customary code of conduct regulated from time to time with their own rich cultural heritage, mode of worship and cultural ethos. They have considered all the material facts and recorded the findings. Ultimately, she prayed to dismiss the Writ Petition.

4. It is the main contention of the learned counsel for the petitioner that though the Vigilance Cell Officer, on completion of enquiry, sent a report to the Director of Tribal Welfare on 29.12.2017 stating that his enquiry reveals that the petitioner belongs to ST Kurumans Community, and since the Anthropologist opined that the petitioner does not belong to Kurumans ST

Community, he referred the matter to the State Level Committee to take final decision in the matter. Hence, the petitioner prayed to quash the impugned order dated 29.12.2017 of the fourth respondent insofar as the report of the fifth respondent and to direct the respondents 1 to 3 to conduct a fresh enquiry in respect of the Anthropological aspect by some other officer instead of the fifth respondent.

5. Heard the learned counsel appearing for the respondents on the above aspects.

6. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have perused the materials available on record.

7. We are of the opinion that the legal position with regard to the procedures to be followed for verification of the Community Certificate, had been laid down by the Supreme Court in the decision reported in 2012 (1) SCC 113 (Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others), wherein the Apex Court observed as follows:

"17. We are of the view that for the purpose of examining the caste claim under the Rules, the following observations of this Court in Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Welfare Department and others [(1994) 6 SCC 241] still hold the field:

"The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste, etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. by the castes or tribes or tribal communities concerned, etc."

18. It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt

new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

19. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

8. A reading of the above judgment of the Supreme Court shows that the affinity test may be used to corroborate the documentary evidence and that should not be the sole criteria to reject a claim. Thus, it is clear that if the Anthropologist Report is not in favour of the petitioner, it is always open for the petitioner to stake/prove his claim by other independent documentary evidence. Therefore, absolutely there is no need to quash the impugned order dated 29.12.2017 passed by the fourth respondent, which resulted in passing the order by the District Vigilance Cell.

9. In fact, a Division Bench of this Court, in W.P.No.14915 of 2018, dated 07.08.2018, passed an elaborate order in identical issue and directed the petitioner therein to put-forth her grievance in the enquiry pending before the State Level Scrutiny Committee. The relevant portion of the said order

passed by the Division Bench is extracted below:

"23. In the present case, it is to be borne in mind that only based on the employers' request, the 1st Respondent/Tamilnadu State Level Scrutiny Committee, Secretariat, Chennai had directed the 3rd Respondent/the Deputy Superintendent of Police, Salem to conduct enquiry in regard to the Petitioner's Community status and to furnish a report to the 2nd Respondent, therefore, the 3rd Respondent had issued a notice to the Petitioner requiring him to appear for an enquiry. As a matter of fact, the Petitioner furnished documents nearly eight witnesses were examined. In reality, the 3rd Respondent / the Deputy Superintendent of Police, Salem collected necessary documents pertaining to Petitioner's Community status and after obtaining an opinion of the Anthropologist, submitted a report to the 2nd Respondent/the Director of Tribal Welfare Department, Chennai-600 005. The 3rd Respondent in his report dated 28.02.2018 submitted to the 2nd Respondent had stated that the Petitioner does not belong to 'Kondareddy'. Therefore, the 2nd Respondent/the Director of Tribal Welfare Department, Chepauk, Chennai issued a Show Cause Notice to the Petitioner on 26.04.2018 and further, reminded him on 14.05.2018, 12.06.2018 seeking explanation. Without tendering his explanation, the Petitioner has approached this Court and filed the present Writ Petition, which in the earnest opinion of this Court is a premature and futile one.

24. In the result, this Court to prevent an aberration of justice and in furtherance of substantial cause of justice, without expressing any opinion on the merits of the matter and also not delving deep into the subject matter in issue, at this juncture, directs the Petitioner to take part in the enquiry proceedings before the 2nd Respondent/the Director of Tribal Welfare Department, Chepauk, Chennai and to submit her explanation in writing in regard to the Vigilance Cell report. The 2nd Respondent is directed to specify a fresh date and time for enquiry by addressing a communication to the Petitioner within a period of two weeks

from the date of receipt of copy of this order. It is made clear that the Petitioner shall appear before the 2nd Respondent on the specified date and time without offering any excuses. Liberty is granted to the Petitioner to project all factual and legal pleas (including the aspect of seeking permission to cross examine the relevant witnesses) before the 2nd Respondent coupled with a production of documents at her command. Moreover, the materials furnished by the Petitioner are required to be taken into consideration by the 2nd Respondent and if the 2nd Respondent/the Director of Tribal Welfare Department, Chempauk, Chennai comes to the conclusion that the Petitioner's claim in respect of her 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 her. After obtaining the reply of the Petitioner, then, she shall be directed to appear for an enquiry before the 1st Respondent/Tamilnadu State Level Scrutiny Committee, Chennai along with supporting reliable documents to establish her claim of community status. The 1st Respondent/Tamilnadu 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 in Kumari Madhuri Patil and Another V. Addl. Commissioner, Tribal Development and Others reported in AIR 1995 Supreme Court 94. The Petitioner is directed to afford her assistance and unstinted co-operation in bringing an end to the completion of enquiry in a comprehensive manner.

With the aforesaid observations and

directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs."

10. Therefore, following the abovesaid order passed by the Division Bench, we are of the opinion that the petitioner has to address all his grievances only before the second respondent-State Level Scrutiny Committee. Hence, we are not inclined to grant the relief prayed for by the petitioner in this Writ Petition. The Writ Petition is dismissed. However, the petitioner is directed to appear before the second respondent-State Level Scrutiny Committee along with the supporting documents to establish his claim. The said Committee is directed to offer an opportunity of hearing to the petitioner to put-forth all his grievances and the second respondent-Committee shall complete the enquiry and pass appropriate orders, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order and before taking a final decision in the matter, the said Committee shall follow the judgment of the Supreme Court reported in 2012 (1) SCC 113 (Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others) and also the decision of the Supreme Court reported in AIR 1995 SC 94 = 1994 (6) SCC 241 (Kumari Madhuri Patil vs Addl. Commissioner).

11. No costs. Consequently, W.M.P. is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

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,
Social Justice and Human Rights Division and
District Vigilance Enquiry Division,
Chennai Division,
Kancheepuram District.

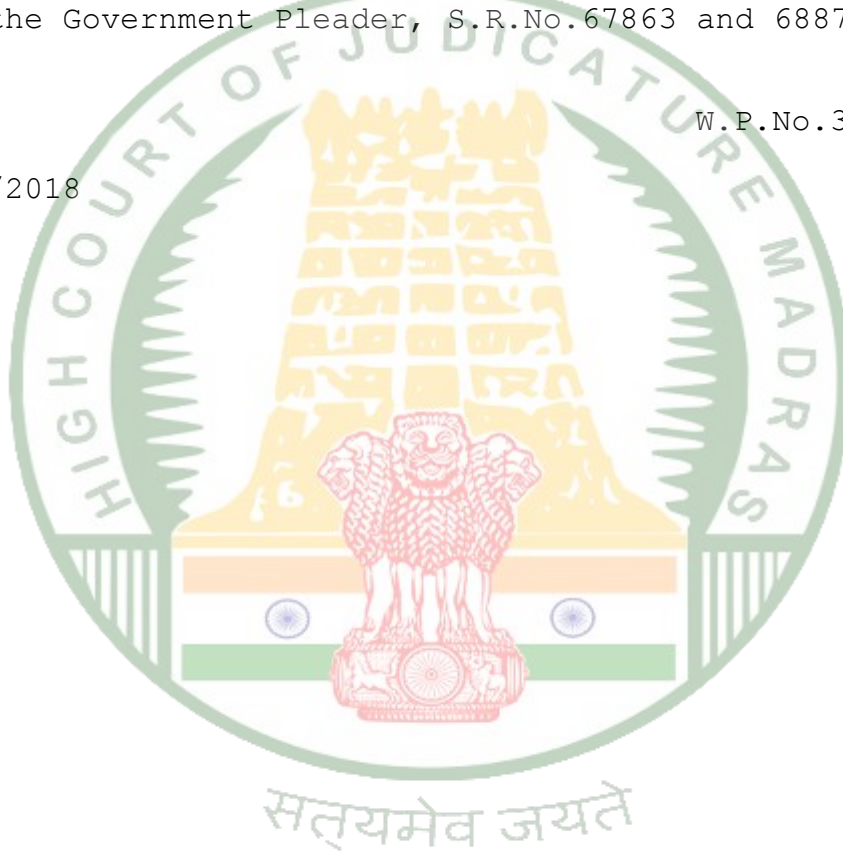
+1cc to Mr.S.Doraisamy, Advocate, S.R.No.66584

+1cc to Mr.C.A.Thiagarajan, Advocate, S.R.No.66839

+2ccs to the Government Pleader, S.R.No.67863 and 68870

W.P.No.3649 of 2018

rrs 23/10/2018



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