

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

DELIVERED ON : 27.08.2018

CORAM :

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

Writ Petition No.31835 of 2017

N.Vijayan

.. Petitioner

Vs.

- 1 The Chairman
State Level Scrutiny Committee and
Secretary to Government
Adi Dravidar and Tribal Welfare Department
Fort St. George, Secretariat, Chennai.
- 2 The Traffic Manager
VO Chidambaranar Port Trust
Traffic Department, Tuticorin. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus to direct the State Level Scrutiny Committee (1st Respondent) herein to verify the community status of the petitioner in terms of G.O.Ms.No.108 dated 12.9.2007 and G.O.Ms.No.106 dated 15.10. 2012.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.Thangavadhana Balakrishnan
Addl. Government Pleader
For 1st respondent

WEB COPY

ORDER

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

The petitioner has filed this writ petition seeking issuance of a writ of Mandamus to direct the State Level Scrutiny Committee, namely, the first respondent, herein to verify the community status of the petitioner in terms of G.O.2D.No.108,

Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007 and G.O.Ms.No.106, Adi Dravidar and Tribal Welfare (CVI) Department, dated 15.10. 2012.

2. Succintly put, the facts are as under: According to the petitioner, he belongs to "Konda Reddis" community, which is classified as a Scheduled Tribe community and a certificate to that effect was issued by the Tahsildar way back on 22.6.1977.

3. On the strength of the said community certificate as also his qualifications, the petitioner was appointed as Clerk in the Tuticorin Port Trust during 1980 and he was later promoted as Supervisor during 1986. It is averred that after putting in 35 years of service, he superannuated on 31.5.2015.

4. In the interregnum, it is stated that by dint of discreet enquiry conducted, the District Collector, Tuticorin, by order dated 5.12.1992, cancelled the community certificate issued to the petitioner. The said cancellation of community certificate was challenged by the petitioner by filing W.P.No.20695 of 1992 and it is stated that this Court granted an order of interim stay on 22.12.1992 and the same subsists even as on date.

5. It is further stated that despite such interim order passed, the second respondent was issuing a series of memorandums requiring the petitioner to explain as to why action should not be initiated against him, specifically stating that the earlier writ petition had been disposed of. However, the disposal of the earlier writ petition is seriously disputed by the petitioner.

6. It is averred that even though the petitioner was permitted to retire subject to outcome of the verification of the communal status, except provisional pension, no other admissible benefits had been sanctioned to him.

7. It is further stated that the second respondent issued a memorandum dated 3.10.2017 proposing to terminate the services of the petitioner. In reply to the said memorandum, the petitioner once again cited the pending writ petition and the interim order granted therein and also stated that the State Level Scrutiny Committee is the competent authority to verify the communal status of the petitioner in the light of G.O.2D.No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007 and G.O.Ms.No.106, Adi Dravidar and Tribal Welfare (CVI) Department, dated 15.10. 2012.

8. It is alleged that since the second respondent was threatening to take coercive action against the petitioner, the petitioner, in order to give a quietus to the issue, approached the State Level Scrutiny Committee by submitting an application

dated 9.11.2017 seeking to verify the communal status of the petitioner. However, apprehending that the second respondent might take penal action, the petitioner has filed this writ petition for the relief stated supra.

9. The learned counsel appearing on behalf of the petitioner submitted that by virtue of G.O.2D.No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007 and G.O.Ms.No.106, Adi Dravidar and Tribal Welfare (CVI) Department, dated 15.10. 2012, the State Level Scrutiny Committee is alone empowered to verify the communal status of persons belonging to Scheduled Tribes and such verification should be made by making reference to the Vigilance Cell and until the veracity of the community certificate of the petitioner is tested in the light of the procedure contemplated by the Hon'ble Supreme Court and the government orders, referred above, the second respondent should be inhibited from taking any penal action against the petitioner.

10. The learned Additional Government Pleader appearing on behalf of the first respondent highlighted the procedure to be followed by the State Level Scrutiny Committee while verifying the veracity of the community certificate of a person belonging to Scheduled Tribe and submitted that if sufficient time is given, the certificate of the petitioner would be verified.

11. At the outset, it is to be noted that even though the petitioner produced an order dated 22.12.1992 passed by this Court in W.M.P.No.29795 of 1992 in W.P.No.20695 of 1992, wherein a learned Single Judge of this Court had granted an order of interim stay of the proceedings dated 5.12.1992, the exact status of the said case is admittedly not known to both sides and the affidavit filed by the petitioner in W.M.P.No.2424 of 2018 in the present writ petition shows that the case bundle relating to W.P.No.20695 of 1992 is not traceable in the Registry and the counsel for the petitioner is also not in possession of the case records. So it is not worthwhile to deliberate of the said writ petition.

12. Coming to the case on hand, it is seen from the documents filed in support of the writ petition that the petitioner was issued a community certificate by the Tahsildar on 22.6.1977 to the effect that he belongs to "Hindu Konda Reddis" Community.

13. Qua the competency of the Tahsildar to issue the said community certificates, it is apposite to refer to the decision of the Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein it is emphatically held as under:

"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

14. In the light of the decision, referred supra, the respondents are bound to take into consideration the community certificate issued to the petitioner by the Tahsildar, who is a competent authority, at the relevant time. In any event, such community certificate was issued to the petitioner prior to 11.11.1989, and the cancellation of the same by the District Collector had also been stayed by a Single Bench of this Court.

15. It is beyond any cavil that under G.O.Ms. No. 106, Adi Dravidar and Tribal Welfare (CV 1) Department, dated 15.10.2012, the Government has constituted Vigilance Cell and modified the functions of the Committees ordered in G.O.(2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007, to verify the certificate issued to a person. In the context of the Government Order thus passed, before taking final decision, the State Level Committee shall have the benefit of report from the Vigilance Cell. Wherever any such report is given, the same shall be furnished to the individual concerned in compliance of principles of natural justice. In the said government order, it is emphatically specified that anthropological and ethnological traits should be thoroughly examined. When such is the procedure by the government orders, the cancelling of community certificate without even following the elementary principles of natural justice, purely based on discreet enquiry is uncalled for and the second respondent proposing to take penal action based on such cancellation of community certificate, which has been stayed, also deserves to be condemned.

16. The Hon'ble Supreme Court in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development, AIR 1995 SC 94, had streamlined the procedure for the issuance of a social status certificates, their scrutiny and their approval. The issue as to whether the 15 guidelines given in the case of Madhuri Patil (supra) were valid and whether it amounts to legislation was referred by the two Judges Bench of the Hon'ble Apex Court to a larger Bench. The reference was answered by the three Judges Bench of the Apex Court in the case of Dayaram v. Sudhir Batham, (2012) 1 SCC 333. In effect, the Hon'ble Supreme Court held that the directions issued in Madhuri Patil's case were intrinsic to the fulfilment of the fundamental rights of the

backward classes of citizens and were issued to preclude denial of such fundamental rights. It noted that the directions given in the case of Madhuri Patil were working satisfactorily for decades. Therefore, the guidelines laid down in Kumari Madhuri Patil case, supra, hold the field and the action of the authorities should hew to the same.

17. In the case on hand, admittedly, the petitioner himself submitted an application on 9.11.2017 to the first respondent and all that he seeks is verification of the communal status in the light of G.O.2D.No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007 and G.O.Ms.No.106, Adi Dravidar and Tribal Welfare (CVI) Department, dated 15.10. 2012, as his terminal benefits, except provisional pension, have not been released by the second respondent till date.

18. Having regard to the overall conspectus of the matter, the writ petition is allowed with the following directions:

- (i) The first respondent is directed to consider the application of the petitioner, dated 9.11.2017, as expeditiously as possible, and pass appropriate orders, in the light of the procedure stipulated in G.O.2D.No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.9.2007 and G.O.Ms.No.106, Adi Dravidar and Tribal Welfare (CVI) Department, dated 15.10. 2012, within three months from the date of receipt of a copy of this order.
- (ii) It is made clear that in case the State Level Scrutiny Committee seeks to rely on any statements, necessarily opportunity should be afforded to the petitioner to cross examine those witnesses. The cross examination should be conducted in the presence of the State Level Scrutiny Committee and such cross-examination should be an effective one. The State Level Scrutiny Committee must ensure the presence of the witnesses, so as to enable the petitioner to cross examine them on the very same day. In any case, the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.
- (iii) If the Committee is of the view that the issue can be decided even without reference to the deposition given by the witnesses, there is no need for summoning them. In such event, the Committee shall give an opportunity to the

petitioner to produce documents in support of his claim and thereafter, decide the matter on merits and as per law.

(iv) The petitioner is directed to co-operate with the State Level Scrutiny Committee for an early disposal of the matter. In case, the petitioner is prolonging the matter on one pretext or the other, it is open to the State Level Scrutiny Committee to decide the matter on the basis of available materials.

(v) It is made clear that till the pendency of the proceedings before the State Level Scrutiny Committee the second respondent shall not take any coercive action against the petitioner or threaten the petitioner with any dire consequences.

(vi) There will no order as to costs.

(vii) Consequently, W.M.P.Nos.34982 of 2017 and 2424 of 2018 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To:

1 The Chairman
State Level Scrutiny Committee and
Secretary to Government
Adi Dravidar and Tribal Welfare Department
Fort St. George, Secretariat, Chennai.

+1cc to Mr.V.Vijay Shankar, Advocate sr.no.58723
+1cc to Government Pleader sr.no.59286

Writ Petition No.31835 of 2017

mr(co)
nr 12/09/2018