

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	08/09/2017
PRONOUNCED ON	11 /01/2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.17854 of 2016 &
W.M.P.Nos.15541 & 15542 of 2016

R.Agilandamurthy ... 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 District Collector,
Salem District, Salem.
- 3.The Executive Engineer (O & M),
TANGEDCO, Mettur Dam-1.
- 4.The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
TANGEDCO, Dharmapuri. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the Tamil Nadu State Level Scrutiny Committee in Proceedings No.1553/CV4(2)/2013-8, dated 07.04.2016 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader [For R1 & R2]

Mr.Fakkir Mohideen [For R3 & R4]

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O R D E R

[Order of the Court was made by P.D.AUDIKESSAVALU, J.]

Heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.Jakkir Mohideen, learned counsel appearing for the respondents 3 and 4 and perused the materials placed on record.

2. The Petitioner was issued with a Community Certificate as belonging to Kondareddis Community by the Tahsildar, Mettur on 16.12.1978 which has been cancelled by the first respondent / State Level Scrutiny Committee by proceedings No.1553/CV4(2)/2013-8, dated 07.04.2016. Aggrieved thereby the Petitioner has preferred the instant Writ Petition impeaching the aforesaid order dated 07.04.2016 passed by the first respondent.

3. It is not in dispute that the Petitioner had secured employment in the services of Tamil Nadu Electricity Board, which is now known as TANGEDCO, in the year 1982 as assessor against a vacancy exclusively reserved for Scheduled Tribes on the strength of the aforesaid Community Certificate dated 16.12.1978. When that community certificate of the Petitioner was sent for verification, it had been held by the Revenue Authorities by earlier proceedings that the Petitioner does not belong to Kondareddis Community, but those orders had been set aside by this Court without going into merits and directed fresh determination as to whether the Petitioner belonged to Kondareddis Scheduled Tribe Community. Ultimately the verification of Scheduled Tribe Community status of the Petitioner reached the State Level Scrutiny Committee and on receipt of report dated 23.07.2015 of the Vigilance Cell, the Petitioner was issued a show cause notice dated 18.09.2015. The Petitioner had sent an explanation dated 03.10.2015 for the said show cause notice and when he was called to attend enquiry on 22.03.2016, the anthropologist in the State Level Scrutiny Committee verified his unique customs and cultural traits and concluded that he does not belong to Kondareddis Scheduled Tribe Community and his claim for the same was not genuine. Hence, on the basis of the report of the Vigilance Cell and the observation made by the anthropologist in the report, the Kondareddis Scheduled Tribe Community Certificate issued to the Petitioner was cancelled and it was recommended to the District Collector, Salem and the employer / third respondent to take stringent criminal action against him for obtaining bogus Community Certificate.

4. The legal position with regard to the procedure to be

followed for verification of community certificate has been laid down by the Hon'ble Supreme Court of India in paras 21 to 23 in the decision in Anand Vs. Committee for Scrutiny and verification of Tribe Claims and others [2012] 1 SCC 113, which are extracted below:-

"21. We are of the view that for the purpose of examining the caste claim under the Rules, the following observations of this Court in Madhuri Patil[(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259] still hold the field: (SCC p. 255, para 13)

"13 5. ... 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."

22. 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.

23. 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."

5. In this backdrop, the findings of the Vigilance Cell and the report of the anthropologist as mentioned in the impugned order require to be analysed and for that purpose, the relevant portions of the same are extracted below:-

"8. The Deputy Superintendent of Police, Vigilance Cell, Salem Region, in his Report C.No.10/DSP/SC/ST Vigilance Cell/Salem Region/2015, dated 23.07.2015 has stated as follows:-

- (i) The document / records produced by the individual do not prove that he belongs to "Kondareddis" Scheduled Tribes Community.
- (ii) In the Admission Register of Panchayat Union Primary School, Valasettiyur, Poolampatti, Salem District, the community of the individual's own brother Thiru.Sundaresan, is mentioned as "Hindu-Reddiar".
- (iii) In the Admission Register of Panchayat Union Primary School, Valayasettiyur, Poolampatti, Salem District, the community of the individual's uncle's son Thiru.Devarajan, S/o.Buddha Reddy, is mentioned as "Hindu-Reddiar".
- (iv) In the Revenue 'A' Register maintained by Village Administrative Officer, Chithur Bit-II Village, Edappadi Taluk, Salem District it has been mentioned as "Reddy" i.e., Thiru.Ramasamy Reddy, the father of the individual, Thiru.R.Agilandamoorthy.
- (v) The individual had not obtained Community Certificate from the native place (i.e.,) Chithur Bit-II Village, Edppadi Taluk, Salem District. Instead he had obtained certificate from the Tahsildar, Mettur, Salem District.
- (vi) No such "Kondareddis" Community people are living in the Chithur Bit-II Village, Edppadi Taluk, Salem District.
- (vii) During the enquiry made at Chithur Bit-II Village, Edappadi Taluk with the witnesses, statement of Village Administrative Officer and village people and on perusal of the document / records, it is concluded that the individual Thiru.R.Agilandamoorthy, S/o.Thiru.Ramasamy Reddy, does not belong to "Hindu-Kondareddis" Scheduled Tribe Community. Hence, his claim as "Hindu-Kondareddis" Scheduled Tribe

Community.

9. As per the Supreme Court order [JT 1994 [5] SC 488 dated 02.09.1994], if the Vigilance Cell report findings are found as not genuine, a show cause notice may be issued to the individual along with the copy of Vigilance Cell report. Hence, the show cause notice was issued to the individual vide Government letter No.1553/CV4[2]/2013-6 dated 18.09.2015. In his reply to the show cause notice dated 05.10.2015 the individual has stated as follows:-

"I appeal to the committee to conduct impartial, detailed and proper enquiry regarding my community status which will clearly demonstrate that our family belongs to the Kondareddis [ST] community. I request the committee to eschew the report of the Vigilance cell direct fresh enquiry by the Vigilance Cell and call me for personal enquiry during which I undertake to produce further evidence apart from what I have submitted earlier and also lead oral evidence to substantiate that our family belongs to the Kondareddis [ST] community. Kindly fix the date of enquiry well in advance so that, I can examine witness also".

10. As requested by the individual he was called for to appear before the State Level Scrutiny Committee enquiry held on 22.03.2016. The individual was present. The anthropologist in the State Level Scrutiny Committee verified the individual's unique customs and cultural traits and has given his report as follows:-

- (i) the individual's , mother tongue is "Telugu"
- (ii) the individual's Kulam is "Kondareddy"
- (iii) the individual's Chief Deity is "Ellammal"
- (iv) the individual's annual community festival is "Ugadhi"
- (v) the individual's traditional occupation is "Agriculture"
- (vi) the individual's village or community head man title is "Bethavaru"

and he also has concluded that, the individual does not belong to Kondareddis Scheduled Tribes community, and his claim is not genuine. The State Level Scrutiny Committee has observed as follows:-

"the State Level Scrutiny Committee has

inquired the individual in detail, obtained his deposition of statement. The anthropological evidence, the records and documents produced and obtained reveal that he does not belong to Schedule Tribes Kondareddis as claimed by him."

6. The main contention of the learned counsel for the Petitioner is that the documents attached to the report of the Vigilance Cell and the report of anthropologist had not been issued to the Petitioner before impugned order has been passed which vitiates the entire proceedings. Considering that submission made, this Court by an order dated 03.08.2017 following the principles laid down to be adopted when the enquiry in disciplinary proceedings are found to be faulty as enunciated in the authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court of India in Managing Director ECIL Vs. B.Karunakar [(1993) 4 SCC 727], directed the Special Government Pleader appearing of behalf of the State Level Scrutiny Committee to hand over the copy of the report of the Vigilance Cell along with all documents attached thereto as well as the report regarding anthropological and ethnological aspects to the learned counsel for the petitioner in order to enable the Petitioner to show how his case has been prejudiced because of non supply of those documents and the Petitioner was directed to submit his explanation in that regard through an affidavit. In pursuance thereof the Petitioner has filed an affidavit dated 26.08.2017.

7. This Court has carefully examined the contents of the affidavit dated 10.05.2016 filed in support of the writ petition as well as the affidavit dated 26.08.2016 filed pursuant to the order of this Court dated 03.08.2017 passed in the writ petition, along with the materials placed on record by the parties in the light of the submissions made by the respective counsel.

8. It requires to be noted at the outset that though the petitioner had submitted an explanation dated 03.10.2015 to the show cause notice dated 18.09.2015, the State Level Scrutiny Committee has not properly and fully adverted to the same in the impugned order. In this context, it has to be pointed out that the petitioner had contended that the entry as "Hindu-Reddiar" in the admission register of the school of his brother, viz., Sundaresan was on account of illiteracy and lack of awareness of his father and that his brother had subsequently obtained a Scheduled Tribe community certificate issued by the Tahsildar, but the first respondent has not dealt with this aspect. Further, it has been stated in that explanation of the petitioner that the "A" register in the village showing the father's name of the petitioner as Ramasamy Reddiar was the

revenue record maintained for the purpose of indicating the name of the registered owner of the land and in whose favour Patta had been issued and it was not maintained for determining the caste, but the first respondent has not made any discussion regarding the same. The petitioner had disputed the findings in the statement made in the vigilance report that there are no 'Konda Reddis' people living in Chittur Bit-II Village, Edappadi Taluk, Salem District and he had not obtained the community certificate from that village, by stating that he had obtained his community certificate from the Tahsildar, Mettur, Salem District, since his native Taluk is Mettur as his father and forefathers hail from Mettur Block and it was due to livelihood and other factors that his family had shifted from Mettur Taluk to Edapadi Taluk, which is hardly 20 kms away and there was nothing improper in obtaining community certificate from Mettur, which ought to have been examined by the first respondent. It had been further stated in that explanation of the petitioner that the following documentary evidence were submitted by him:-

- (i) His community Certificate dated 15.12.1978;
- (ii) Community Certificate dated 19.04.1974 issued by the Tahsildar in favour of his father;
- (iii) Community Certificate dated 19.04.1974 issued in favour of his father's own brother J.Puddareddy;
- (iv) Community Certificate issued in favour of his cousin brother Devaraj dated 12.05.1977;
- (v) Community Certificate issued in favour of his cousin brother Govindarajan who is the brother of Devarajan;
- (vi) His cousin brother's school certificate;
- (vii) Community Certificate of his brother Sundaresan;
- (viii) Community Certificate in favour of his grandmother Chinnammal dated 22.04.1969;
- (ix) Community Certificate of his cousin brother Ranjendran's son Niruban Chakravarthy;

The first respondent ought to have considered those submissions made as well as expressed its view on each of those documents and stated the reasons either for accepting or rejecting the same.

9.The petitioner has also stated that at the time of enquiry by the Vigilance Cell that he had brought certain persons to give evidence on his behalf, but he was not permitted to examine them on the ground that their evidence was not material. The said four persons were :-

- (i) Ramasamy [Petitioner's father]
- (ii) Devaraj [Petitioner's cousin brother]
- (iii) Ranganathan
- (iv) Devaraj [petitioner's maternal uncle]

One of the factors that had been taken into account by the State Level Scrutiny Committee was the entry in the school records of Devaraj, petitioner's uncle's son, who was found to be belonging to Hindu-Reddiar caste and as such, when the petitioner wanted to produce the community certificate of the said Devaraj and examine him as witness in support of his claim, it was incumbent upon the first respondent to have been granted such opportunity to him in consonance with the principles of natural justice.

10. In as much as the explanation dated 03.10.2015 submitted by the petitioner in response to the show cause notice dated 18.09.2015 has not been completely and effectually considered by the first respondent /State Level Scrutiny Committee, much less in a satisfactory manner, it has appallingly become inevitable for this Court to set aside the impugned order without expressing any view on the acceptability or otherwise of the aforesaid contentions made by the petitioner and remit the matter to the State Level Scrutiny Committee to proceed afresh from the stage after the submission of the explanation of the petitioner dated 03.11.2015. The first respondent shall accordingly issue notice to the petitioner fixing the date of enquiry and direct him to produce the originals of the documents submitted with the explanation as well as the witnesses mentioned by him to prove his claim on that hearing. It is also made clear that if the State Level Scrutiny Committee is convinced by the submission of the petitioner that he was a native of Mettur Taluk from where he had obtained the Scheduled Tribe community certificate dated 16.12.1978, it shall not be inhibited to obtain any further report of enquiry conducted in that regard in Mettur Block by the Vigilance Cell. Having due regard to the time constraints and earlier opportunities afforded to the petitioner, it is clarified that if the petitioner does not attend the hearing with documents and witnesses, he shall not be entitled to seek further extension of time under any circumstance. The State Level Scrutiny Committee shall examine each of the contentions of the petitioner given in the explanation dated 03.10.2015 to the show cause notice dated 18.09.2015 and after affording him full opportunity of hearing including production of documents and examination of witnesses as aforesaid, pass reasoned orders on the verification of the community certificate of the petitioner on merits and in accordance with law, taking note of the relevant Government orders and binding judicial decisions governing the subject. The State Level Scrutiny Committee shall expeditiously complete the aforesaid exercise and communicate the decision to the petitioner and file a report in compliance of the action taken before the Registrar (Judicial) of this Court on or before 30.04.2018. The disbursement of the terminal benefits of the petitioner who has attained the age of superannuation during the

pendency of this writ petition shall await the ultimate outcome of the verification of the Scheduled Tribe Community status of the petitioner by the State Level Scrutiny Committee.

11.The writ petition is allowed in part on the aforesaid terms. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

r n s/maya

To

- 1.The Chairman,
Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-9.
- 2.The District Collector,
Salem District, Salem.
- 3.The Executive Engineer (O & M),
TANGEDCO,
Mettur Dam-1.
- 4.The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
TANGEDCO, Dharmapuri.
- 5.The Registrar(Judicial), High court, Madras.

+1cc to Mr.S.DORAISAMY, Advocate, S.R.No.2777
+1cc to Mr.M.FAKKIR MOHIDEEN, Advocate, S.R.No.2902
+1cc to the Government Pleader, S.R.No. 3370,2990

Pre Delivery Order made in
W.P.No.17854 of 2016 &
W.M.P.Nos.15541 & 15542 of 2016

GMI (CO)
TR(30/01/2018)