

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	04/09/2017
PRONOUNCED ON	11/01/2018

Coram

THE HONOURABLE Mr.

JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE P.D.AUDIKESSAVALU

W.P.No.18112 of 2016

and

W.M.P.No. 15878 of 2016

T.Prabhu

..

Petitioner

Vs.

1.The Chairman

State Level Scrutiny Committee,
and Secretary, Adi Dravidar and
Tribal Welfare Department,
Fort St. George
Secretariat, Chennai-9.

2.The Regional Manager

Oriental Insurance Company
Cheran Towers 3rd Floor
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the proceedings of the 1st respondent in its No.20006/CV/4(2)/2007-20, dated 07.04.2016 [received on 12.05.2016] and quash the same.

For Petitioner : Mr.Vijay Shankar

For R1 : Mr.K.V.Dhanapalan
Special Government Pleader

For R2 : Mr.N.Vijayaraghavan

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O R D E R

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

Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner, Mr.K.V.Dhanapalan, learned Special Government Pleader appearing for the first respondent and Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent and perused the materials placed on record.

2.The petitioner was issued with a Scheduled Tribe Community Certificate as belonging to 'Kondareddis' by the Tahsildar, Perundurai on 24.04.1981 which has been cancelled by the first respondent /State Level Scrutiny Committee by proceedings No.20006/CV-4(2)/2007-20, 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 the second respondent, viz., Oriental Insurance Company in the year 1985 against a vacancy exclusively reserved for Scheduled Tribes on the strength of the aforesaid community certificate dated 24.04.1981. When the aforesaid Scheduled Tribes Community Certificate of the Petitioner was sent for verification, it was held by the revenue authorities in earlier proceedings that the petitioner belongs to Hindu Reddiar Community, but the same had been set aside by this Court without going into merits and directed fresh determination as to whether the petitioner belongs to 'Kondareddis' Scheduled Tribes Community. Ultimately, the verification of the Scheduled Tribes Community certificate of the petitioner had reached the State Level Scrutiny Committee and on receipt of report dated 27.03.2014 of the Vigilance Cell, the petitioner was issued a show cause notice dated 30.07.2014. The petitioner had sent a reply dated 20.08.2014 to the said show cause notice and when he was called to attend the enquiry on 16.12.2014 and 17.11.2015, he was absent on those days and sent a medical certificate stating that he was suffering from Viral Fever [URI] and took medical treatment and requested to postpone the enquiry to another date. When the enquiry was again fixed on 22.03.2016, the petitioner was absent on that day also and sent a medical certificate stating that he was suffering from Viral Fever and he was taking continuous medical treatment. Hence, on the basis of the report of the Vigilance Cell and the observations made by the Anthropologist in his report, the Kondareddis Scheduled Tribes Community Certificate issued to the petitioner was cancelled and it was recommended to the District Collector, Erode and the employer/second 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 the 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:-

"11. The individual was once again called for State Level Scrutiny Committee enquiry held on 16.07.2013. The individual was present on that day. The anthropologist of the State Level Scrutiny Committee verified the individual's unique customs and cultural traits and has given report as follows:

(i) the individual's mother tongue is "Telugu"

(ii) the individual's Kulam is "Kanaitha"

(iii) the individual's Gothiram is "Kondapala"

(iv) the individual's Chief Deity is "Ranga Nayaki"

(v) the individual's traditional occupation is

"Agriculture"

and has also concluded that, the individual does not belong to Kondareddis Scheduled Tribes Community, and the individual's claim is not genuine. The State Level Scrutiny Committee referred the case to the Deputy Superintendent of Police, Schedule Castes/Scheduled Tribes Vigilance Cell for sport enquiry and detained report vide Government letter No.20006/ADW5/2007-11, dated 29.07.2013.

12. The Deputy Superintendent of Police, Vigilance Cell, Salem region has stated as follows:

"(i) The documents/records produced by the individual has not proved that individual belong to "Kondareddis community.

(ii) The community of individual's sister Tmt.T.Shanthi and individual's father's elder brother's son Thiru.C.Sampath, Thiru.C.Kamalapathy and Thiru.C.Saravanan Community has been mentioned as "Reddy-Kanjam" in the primary Register of Panchayat Union Primary School, Samrajpalayam, Uthukuli Panchayat, Tiruppur District.

(iii) The act of securing Government jobs by

- furnishing fake Community Certificate or obtaining bogus Community Certificate from Government Officials by producing false evidence and documents, essentially has the effect of depriving the Government benefits.
- (iv) During the enquiry made with the witnesses, as per the documents /records perused and the enquiry made it is concluded that individual does not belong to "Hindu Kondareddis" ST Community."

6.The main contention of the learned counsel for the petitioner is that the documents attached to the Report of the Vigilance Cell had not been furnished to the petitioner before the impugned order had been passed, which vitiates the entire proceedings. Considering those submissions made, this Court by 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 Hon'ble Supreme Court of India in Managing Director ECIL Vs. B.Karunakar reported in [1993] 4 SCC 727, directed the learned Special Government Pleader appearing on behalf of the State Level Scrutiny Committee to hand over a copy of the report of the Vigilance Cell along with all documents attached thereto to the learned counsel for the petitioner in order to enable the petitioner to show how his case has been prejudiced because of the non-supply of those documents and the petitioner was directed to submit his reply in that regard through an affidavit. In pursuance thereof, the petitioner has filed an affidavit dated 14.08.2017.

7.This Court has carefully examined the contents of the affidavit dated 17.05.2017 filed in support of the writ petition as well as the additional affidavit of the petitioner dated 14.08.2017 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.The learned counsel for the petitioner submitted that the matter requires to be remitted back to the State Level Scrutiny Committee in order to consider the following documents in support of the claim of the petitioner for Scheduled Tribe status:-

- (i) By proceedings dated 29.01.1981, the Collector of Erode on the basis of the local spot enquiry through Tahsildar, Perundurai has given a finding that this cousin Dhanasekar and his wife Kalarani belongs to Kondareddis Scheduled Tribes Community.

- (ii) The petitioner's first cousin Moorthy issued with community certificate by R.D.O. on 08.09.1998, which is still valid and subsisting.
- (iii) Community certificate issued to the petitioner's sister S.Shanthi by the Deputy Tahsildar on 04.09.1978.
- (iv) The petitioner's brother Vijayaragavan issued with community certificate in the year 1978.
- (v) Other Registered Sale Deeds submitted at the time of enquiry.

9. Since the petitioner had not produced the aforesaid documents before the State Level Scrutiny Committee to prove his claim and had remained absent during the enquiry despite the opportunity provided to him, he cannot be heard to complain that there has been violation of principles of natural justice as pointed out by the Division Bench of this Court in S.Chandra Mohan V. State reported in [2011] 7 MLJ 497, in which one of us [M.VENUGOPAL, J.] is a party. That apart, in as much as it is not the case of the petitioner that those community certificates of his relatives have been confirmed by the State Level Scrutiny Committee, the same cannot, in any event, be taken as conclusive evidence to prove his claim for scheduled tribe status. It requires to be pointed out that the petitioner conspicuously has not disputed the entries of community of his sister viz., T.Shanthi and his father's elder brother's sons, viz., C.Sampath, C.Kamalapathy and C.Saravanan mentioned as 'Reddy-Kanjam' in the Primary Register of Panchayat Union Primary School, Samrajpalayam, Uthukuli Panchayat, Thiruppur District, in his explanation dated 20.08.2014 to the show cause notice dated 30.07.2014 as well as in his affidavits filed in this Writ Petition. When the said materials relied by the first respondent/State Level Scrutiny Committee would suffice to arrive at the conclusion that the petitioner actually belongs to the 'Reddy-Kanjam' community, it would be futile to remit the matter back for fresh /further enquiry at this stage.

10. Having regard to the aforesaid factual findings arrived by the first respondent /State Level Scrutiny Committee on the basis of entries of community status of his sister and father's brother's sons in their school records, which unimpeachably show that they belong to the "Reddy-Kanjam" caste, the claim of the petitioner as belonging to Kondareddis Scheduled Tribe, cannot be countenanced. Hence, this Court does not find any infirmity in impugned order and there are no merits in any of the contentions made in this regard. Accordingly, the writ petition

is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sj/maya

To

1.The Chairman
State Level Scrutiny Committee,
and Secretary, Adi Dravidar and
Tribal Welfare Department,
Fort St. George
Secretariat, Chennai-9.

2.The Regional Manager
Oriental Insurance Company
Cheran Towers 3rd Floor
Coimbatore.

+1 cc to Govt Pleader sr 2991
+1 cc to M/s.V.Vijay shankar sr 2325
+1 cc to Mr.N.Vijay raghavan Advocate sr 2544

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