

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2018

CORAM :

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

Writ Petition No.27341 of 2017
and
WMP.No.29234 of 2017

A.S.Gajendran

.. Petitioner

Vs.

1.The Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai,
Chennai - 1.

2.The Tamil Nadu State Level Scrutiny Committee,
Rep. by its Chairman and Secretary,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Fort St. George,
Chennai - 9.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a Writ of Mandamus, refraining the respondents 1 and 2 from carrying out re-verification of the petitioner's community status which was done and found to be true.

For Petitioner : Mr.V.Vijay Shankar

***Mr.R.Karthikeyan (for R1)**

For Respondents: Mr.Thangavadhana Balakrishnan
Additional Government Pleader
(For 2nd respondent)

ORDER

(Order of the Court was made by M.V.MURALIDARAN,J.)

This writ petition has been filed seeking issuance of a writ of mandamus to inhibit the respondents from carrying out re-

verification of the petitioner's communal status, which was already done and found to be true.

2. The facts in a nutshell are as under: According to the petitioner, he belongs to Hindu "Kattunaicken" Community, which is classified as a Scheduled Tribe community, and it is claimed that his school records also reveal the said fact.

3. It is stated that the Tahsildar, who was the competent authority at the relevant time, issued a community certificate to the petitioner during August, 1981 and thereafter, he was issued another certificate by the P.A. to the Collector, Chennai on 08.07.1988 to the effect that he belongs to Hindu "Kattunaicken Community". He also claims that several of his relatives also hold certificates to the effect that they belong to the said community.

4. The petitioner, based on his communal status, was appointed as Assistant Technician in the Chennai Port Trust in the year 1983 and was subsequently promoted as Fitter Grade-III, Special Mechanic and as Junior Engineer Grade-II. At present, the petitioner claims to be working as Assistant Engineer in the Chennai Port Trust and had rendered 34 years of service.

5. When the employer of the petitioner, referred his community certificate for verification by the District Level Committee, the Committee, vide report No.P4/44242/98, dated 03.04.2000, confirmed that the petitioner belongs to Hindu Kattunaicken (ST) Community. The said report was issued after thorough enquiry conducted by the Tahsildar. Thus, according to the petitioner, process of verification attained finality.

6. It is further stated that the verification of the communal status of the petitioner's son (G.Satheesh Babu) was done by the State Level Scrutiny Committee and vide report dated 19.07.2013, it was confirmed that the petitioner's son belongs to Kattunaicken Community (ST).

7. It is averred that, when things stood thus and the petitioner rendered almost 34 years of service, the first respondent vide letter dated 04.08.2017 directed the petitioner to report for enquiry regarding his communal status before the State Level Scrutiny Committee. It is stated that the second respondent had directed the Deputy Superintendent of Police SC/ST, Vigilance Cell to conduct enquiry regarding the communal status of the petitioner.

8. The petitioner sent a representation to the first respondent on 28.08.2017 to the effect that the validity of his community certificate has already been upheld by the District Level Committee and had been issued by a competent authority

and, therefore, once again subjecting him to such enquiry tantamounts to harassment. It is alleged that the said representation did not evoke any response. Hence, the present writ petition for the relief stated supra.

9. The learned counsel for the petitioner submits that inasmuch as the validity of the community certificate of the petitioner has already been upheld by the District Level Scrutiny Committee vide report dated 03.04.2000 and since it is not in dispute that the said Committee is a competent authority, subjecting the petitioner to fresh enquiry is nothing short of harassment and the same needs to be condemned.

10. It is further contended that when the State Level Scrutiny Committee vide proceedings dated 19.07.2013 had upheld the community certificate issued to the petitioner's son (G.Satheesh Babu), it is not known, as to why a fresh enquiry is being contemplated qua the communal status of the petitioner.

11. On the other hand, the learned Additional Government Pleader appearing on behalf of the second respondent reiterated the reasons that weighed with the said authority in initiating the said proceedings and prayed for dismissal of the writ petition.

12. We heard Mr.V.Vijay Shankar, learned counsel for the petitioner, ***Mr.R.Karthikeyan Learned Counsel for the first respondent,** and Mr.Thangavadhana Balakrishnan, learned Additional Government Pleader for the second respondent and perused the documents on record.

13. A perusal of the typed set of papers shows that the Secondary School Leaving Certificate dated 19.04.1976 shows that the petitioner belongs to Hindu "Kattunaicken" (ST) community. The Community Certificate issued by the Additional District Magistrate and Personal Assistant to the Collector, Madras, dated 08.07.1988 also affirms that the petitioner belongs to Hindu Kattunaicken (ST) community.

14. The proceedings of the District Vigilance Committee dated 03.04.2000 states that on verification and based on enquiry, it is concluded that the petitioner belongs to Hindu Kattunayakan (ST) Community.

15. Another factor which needs mention is that the community certificate of the petitioner's son (G.Satheesh Babu) had been duly verified by the State Level Scrutiny Committee and vide proceedings dated 19.07.2013, it had been held that the "Kattunayakan" Scheduled Tribe Community Certificate issued to the petitioner's son (G.Satheesh Babu) is genuine.

16. 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."

17. In the light of the decision, referred supra, the authorities concerned 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, to wit, prior to 11.11.1989. That apart, as stated supra, the District Vigilance Committee, after thorough enquiry, arrived at the conclusion that the petitioner belongs to Hindu Kattunaicken (ST) community.

18. In State of Bihar v. Sumit Anand, (2005) 12 SCC 248, the Hon'ble Supreme Court upheld the order High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Hon'ble Supreme Court observed as under:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

19. The case on hand is a counter case. The father's community certificate is being put to test by the very same authority, which had held that the community certificate issued to the son is genuine. It is a classic case which shows non application of mind by the respondent authorities.

20. The above said act of the respondent authorities in conducting repeated enquiry into the community certificate of the petitioner, only shows that the powers to be are acting on

autopilot, without application of mind, more so when the very same authority held that the community certificate of the petitioner's son (G.Satheesh Babu) is genuine. In our firm view, the further verification of the petitioner's communal status is nothing but a clear case of harassment and abuse of power by the respondent authorities and amounts to violation of Article 21 of the Constitution of India.

21. For the foregoing reasons, we allow the writ petition as prayed for and the respondents are inhibited from carrying out re-verification of the communal status of the petitioner. No costs. Consequently, W.M.P.No.29234 of 2017 is closed.

Sd/-
Assistant Registrar
10/01/2018

**Corrected as per order
dated 21/08/2018 in
WP.No.27341/2017
Sd/-
Assistant Registrar(CO)**

//True Copy//

Sub Assistant Registrar

To

The Chairman and Secretary,
Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Fort St. George,
Chennai - 9.

To be Substituted
to the order already
despatched on
10/08/2018

+1cc to Mr.V.Vijay Shankar, Advocate sr.no.2326
+1cc to Special Government Pleader sr.no.2410
+1cc to Mr.R.Karthikeyan, Advocate sr.no.2179

Writ Petition No.27341 of 2017
and
WMP.No.29234 of 2017

svn(co)
nr 09/08/2018
nr 30/08/2018