

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.13881 of 2018
and
W.M.P.No.16400 of 2018

L.Nagarajan ... Petitioner
vs.

1. The Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai-600 009.
2. The Deputy Superintendent of Police,
Social Justice and Human Rights
Division, Office of the Vigilance Cell,
Erode. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus, to call for the records of the Proceedings dated 30.04.2018 of the Second Respondent and quash the order passed therein and consequently forbear the respondents from conducting or re-opening the enquiry on the basis of third party complaints.

For Petitioner : Mr.B.Suresh
For Respondents : Mr.K.Rajendraprasad,A.G.P.

सत्यमेव जयते
ORDER

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

The Petitioner has preferred the present Writ Petition, seeking to call for the Records of the Proceedings, dated 30.04.2018, of the Second Respondent and to quash the Order passed therein. Further he has sought for passing of an Order by this Court in consequentially restraining the Respondents from conducting or re-opening the enquiry on the basis of Third Party complaints, by issuing Writ of Mandamus or any other appropriate Writ, Order or Direction, as this Court deems fit and proper.

2.Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader for the Respondents.

3.According to the Petitioner, he belongs to 'Konda Reddis' Community. Further he was appointed as a Casual Labourer in the year 1984 in the Indian Oil Corporation under the quota reserved for 'Scheduled Tribes'. In fact, the said appointment was made after his name was sponsored by the Employment Exchange under the category 'Scheduled Tribes'. Subsequently, he produced a 'Community Certificate' dated 28.4.1986 issued by the Tahsildar, Bhavani Taluk, as required by his employer. The said Certificate was issued to him after necessary verification and perusal of records.

4.The Petitioner was appointed as Sweeper on regular basis by the Indian Oil Corporation, during the year 1989, and later his services were confirmed and he was promoted and presently he is working as 'Charge Man' (Technical).

5.The plea of the Petitioner is that at the time of his appointment, his Community Certificate was verified and acted upon and subsequently, his services were confirmed. After completion of nearly two decades of entering into service, certain persons, who are inimically disposed of towards him, appears to have given a false complaint, making allegations against his Community status, resulting in the commencement of an enquiry by the then District Level Vigilance Committee, Erode District. The then District Level Vigilance Committee had conducted an enquiry without jurisdiction and passed an adverse order. The then District Vigilance Committee, which was not constituted as per the findings of the Hon'ble Supreme Court in Madhuri Patil's case [(1994) 6 SCC 241], had passed an adverse order, which was assailed by him in W.P.No.34637 of 2003 and this Court, had quashed the said order on the ground that the said Committee does not possess jurisdiction. Against his Employer, he filed a separate Writ Petition, which was later on withdrawn in view of the Order passed in W.P.No.34637 of 2003.

6.The First Respondent, in his Communication, dated 13.02.2017 had required the Second Respondent office to verify the genuineness of the Community Certificate produced by the Petitioner. Subsequently, the Second Respondent sent a communication to the Petitioner, directing him to appear for an enquiry in his office. After several Communications, the Second Respondent had finally issued a communication dated 30.04.2018, directing the Petitioner to appear for an enquiry on 07.05.2018. When the Petitioner appeared in the Office of the Second Respondent, he was not furnished with the details as to why the above enquiry had begun and the copy of the Communication received from the Office of the First Respondent was also not furnished to him. Indeed, the Second Respondent, in a casual

manner collected few documents and obtained the signature of the Petitioner. Moreover, the Second Respondent had obtained the signature of the Petitioner's elder brother, who had studied up to 4th Standard only and further his brother has not obtained any 'Community Certificate' nor is in employment. In short, the Second Respondent totally misled his brother and directed him to affix his signature without disclosing the contents of the statement. After the said enquiry, the Petitioner took further time in order to ascertain the reasons as to why the aforesaid enquiry is initiated at the instance of the First Respondent, who cannot take any decision on his own.

7. At this stage, the Learned Counsel for the Petitioner submits that in the decision of the Hon'ble Supreme Court in *Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and Others* [reported in (2013) 4 SCC 465], the guidelines of *Kumari Madhuri Patil's* case was further clarified, which proceeds to the effect that the caste Certificate issued by holding proper enquiry, in accordance with duly prescribed procedure, would not require any further verification by the Scrutiny Committee.

8. The Learned Counsel for the Petitioner points out that it is not open to the Constituted Authorities to enquire into the genuineness or the status of 'Community Certificates' issued already, merely on the basis of complaints from the Third Parties and in this regard, refers to the decision of this Court between *Gurusamy, R. vs. The District Collector, Coimbatore and Others* (reported in 1999(3) MLJ at Page 88). Also, the Learned Counsel for the Petitioner relies on the Order of the Division Bench of this Court between *R. Nirmala vs. Reserve Bank of India*, in W.P.No.10292 of 1989, wherein at paragraph No.3, it is observed as under:-

"3. There is also an application in W.M.P.No.18028 of 1989 by the Association of Scheduled Caste Uplift for being impleaded in the writ Petition on the ground that it is entitled to protect the interests of scheduled castes. It is a matter between the writ petitioner and the Reserve Bank of India and there is no link between the writ petitioner and the Scheduled caste uplift union. Hence, we see no reason to allow W.M.P.No.18028 of 1989 and is accordingly dismissed."

9. The learned Counsel for the Petitioner refers to the Letter dated 11.12.2012 of the State Government (which was issued relating to G.O.Ms.No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012) and comes out with a stand that the action of the Second Respondent in commencing an enquiry on his own accord, without placing before the Committee

and that too, in the capacity of Principal Secretary, is arbitrary and void in Law.

10.Per contra, it is the submission of the Learned Additional Government Pleader for the Respondents that the employer, viz., the Manager of Indian Oil Corporation Limited, Chennai, made a request to the District Collector, Erode, to cause the verification of genuineness of Hindu 'Konda Reddis' Scheduled Tribe Community Certificate issued to the Petitioner. Further, as per the Orders in force, the District Level Vigilance Committee, Erode, verified the case and concluded that the Scheduled Tribe 'Hindu Konda Reddy' Community Certificate issued to the Petitioner on 28.04.1986 is not genuine and later, the District Level Vigilance Committee cancelled the Community Certificate as per Proceedings dated 01.11.2003.

11.Being dissatisfied with the cancellation of Community Certificate, dated 01.11.2003, the Petitioner, on earlier occasion, filed W.P.No.34637 of 2003 and this Court, on 01.08.2005, had ordered that the District Level Vigilance Committee consisting of two Members did not have the authority to pass the impugned order and allowed the Writ Petition as prayed for. Further, it was observed in the said order that the said order was passed without prejudice to any action in future to be taken by the 'Concerned Authority', based on the Community Certificate.

12.The Learned Additional Government Pleader for the Respondents points out that the District Collector, Erode District, had sent the Original District Level Committee records for verification by the State Level Scrutiny Committee, as instructed by the Government in its Letter No.5103/CV-1/13-1, dated 05.04.2013. The Petitioner was directed to appear before the State Level Scrutiny Committee in connection with the enquiry, on 05.12.2003. However, he remained absent on that day. As per the guidelines issued by the Hon'ble Supreme Court in Kumari Madhuri Patil's case, (reported in Judgment Today 1994 (5) SC 488), the State Level Scrutiny Committee then referred the case to the Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Region, to cause verification of the genuineness of 'Hindu Kondareddis' Scheduled Tribe Community Certificate issued by the Tahsildar, Bhavani Taluk, Erode District, on 28.04.1986, in respect of the Petitioner, as per Government Letter No.14122/CV-4(2)/2013-2, dated 13.2.2017.

13.The Second Respondent/Deputy Superintendent of Police, Social Justice and Human Rights Wing, Erode District, based on the aforesaid Government Letter, dated 13.2.2017, had issued a Proceedings dated 30.04.2018, requiring the Petitioner to appear for an enquiry. Aggrieved over the same, the Petitioner had filed the present Writ Petition.

14.The Learned Additional Government Pleader appearing for the Respondents submits that the verification of genuineness of the Community Certificate of the Petitioner will be finalised by the State Level Scrutiny Committee only after receipt of Report by the Concerned Deputy Superintendent of Police, SC/ST Vigilance Cell, in terms of the guidelines issued by the Hon'ble Supreme Court in Kumari Madhuri Patil's case. In reality, the Director of Tribal Welfare, Chennai-5, will issue a show cause notice along with the copy of Vigilance Cell Report and documents to the Petitioner, if his claim for Social Status is found to be 'not genuine', or 'doubtful' or 'furious' or 'falsely or wrongly claimed' and obtain an explanation from him, within a period of 30 days. Soon after receipt of the explanation, the Petitioner will be called for an enquiry to appear before the State Level Scrutiny Committee for furnishing the reliable documents in support of his claim so as to establish his Community status and thereafter, the State Level Scrutiny Committee will pass necessary orders based on the available documents/materials, of course, after taking into account the views of Anthropologist and issue relevant Proceedings.

15.As far as the present case is concerned, the Petitioner, by means of the Communication dated 30.04.2018 of the Second Respondent, was required to appear in the Office of the Village Administrative Officer, Andhiyur Circle, Elipili (Gurugareddiyur) at 12.00 Noon on 07.05.2018. In the said Communication, the Second Respondent had clearly mentioned that a Report was to be sent, after completion of enquiry as regards the genuineness of the 'Hindu Kondareddy' Community Certificate of the Petitioner. Also the Petitioner was required to appear for an enquiry on 07.05.2018 at 12.00 Noon, along with the connected documents to confirm his Community Certificate and he was also required to produce the Certificates of his blood relatives. Conspicuously, the Petitioner, for the reasons best known to him, had not appeared before the Second Respondent on 07.05.2018. Without making an appearance before the Second Respondent, as required in the Communication dated 30.04.2018 of the Second Respondent, the Petitioner has approached this Court and filed the instant Writ Petition, which, in the considered opinion of this Court, is a pre-mature and otiose one. Viewed in that perspective, the Writ Petition sans merits.

16.In fine, this Court, based on Equity, fair play, good conscience and even as a matter of prudence, at this stage, simpliciter directs the Petitioner to take part in the enquiry before the Second Respondent and to produce all the required documents sought for by the Second Respondent, as per Letter dated 30.04.2018 with a view to substantiate/to prove his case, pertaining to his Community Certificate, viz., 'Hindu

Kondareddy'. The second Respondent is directed to specify a fresh date and time of enquiry, by addressing a Communication to the Petitioner, within 10 days from the date of receipt of copy of this Order, on which date, the Petitioner shall appear before the Second Respondent, without offering 'Lame Duck' excuses whatsoever. It is open to the Petitioner to raise all factual and legal pleas before the Second Respondent, coupled with the production of documents at his command. Further, the materials so produced by the Petitioner shall be taken into account and after completion of enquiry, the Second Respondent shall submit a report to his higher Authority/Director of Tribal Welfare, Chennai-5, so as to enable the said Authority to proceed further in accordance with law. In the event of the Director of Tribal Welfare, Chennai-5 coming to the conclusion that the claim of the Petitioner in respect of his social status is a 'doubtful' or 'not a genuine' one, then, an explanation may be obtained from the Petitioner within a period of 30 days from the date of receipt of Communication by the Petitioner. After getting reply from the Petitioner, the Petitioner may be directed to be called for an enquiry to appear before the Chairman of the State Level Scrutiny Committee along with supporting/reliable documents to prove his claim of his Community status. In fact, the Chairman of the State Level Scrutiny Committee, after providing necessary opportunity to the Petitioner, by adhering to the Principles of Natural Justice, by taking into consideration of the relevant documents and available materials on record and also considering the opinion/view of the Anthropologist, can pass final Orders in the subject matter in issue in a fair, just, unbiased and in a dispassionate manner, preferably, within a period of seven weeks from the date of receipt of copy of this Order, to prevent an aberration of justice and to promote substantial cause of Justice, ofcourse, keeping in mind the ingredients of the Hon'ble Supreme Court decision in Madhuri Patil's case (vide (1994) 6 SCC 241). Before parting with the case, this Court directs the Petitioner to afford his unstinted cooperation and assistance to the Second Respondent in completing the enquiry in a comprehensive fashion.

With the above observations/Directions, the Writ Petition stands disposed of. No costs. Connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

msk

To

1.The Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai-600 009.

2.The Deputy Superintendent of Police,
Social Justice and Human Rights
Division, Office of the Vigilance Cell,
Erode.

3. The Chairman State Level
Scrutiny committee
Chennai.

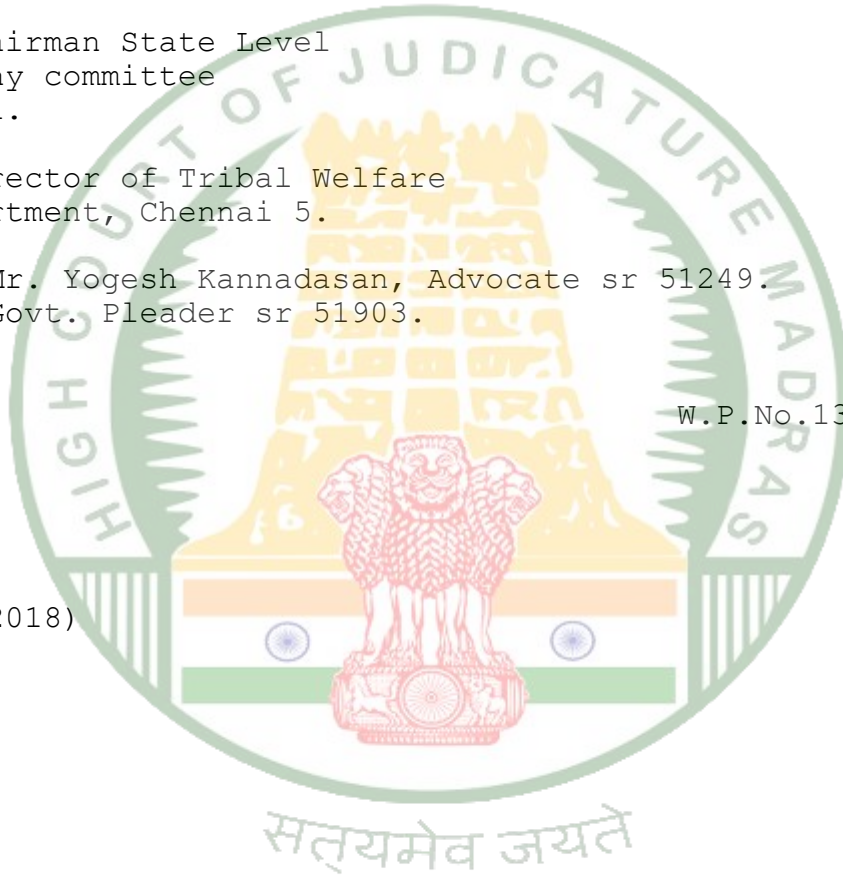
4. The Director of Tribal Welfare
Department, Chennai 5.

+1 CC to Mr. Yogesh Kannadasan, Advocate sr 51249.

+1 CC to Govt. Pleader sr 51903.

W.P.No.13881 of 2018

SP(09/08/2018)



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