

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2018

CORAM:

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

W.P.No.17256 of 2018
and
W.M.P.No.20535 of 2018

Mrs.R.Kowsalya ... Petitioner

vs.

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

2.The Director of Tribal Welfare Department,
Chepauk, Chennai-600 005

3.The Deputy Superintendent of Police,
SC/ST Vigilance Cell,
Salem Zone,
Room No.109, District Collector's
Office Compound,
Salem-1.

... 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 third respondent bearing C.No.240/DSP/SC/ST Vigilance Cell/Salem Region/2018, dated 28.6.2018, on the file of the 3rd Respondent and quash the same and to consequently, forbear the respondents from conducting the enquiry based on the anonymous/pseudonymous complaints of the third party.

For Petitioner : Mr.N.Naganathan

For Respondents : Mr.K.Rajendraprasad,A.G.P.

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 Third Respondent in Reference No.C.No.240/DSP/SC/ST, Vigilance Cell/Salem Region/2018, dated 28.06.2018 and to quash the same. Further she has prayed for issuance of a consequential direction in restraining the Respondents from conducting the enquiry based on the anonymous/pseudonymous complaints of the Third party.

2.Heard both sides.

3.According to the Petitioner, she is a native of Kolathur Village, Mettur Taluk, Salem District and she belongs to 'Konda Reddi' (Scheduled Tribe), Community. She had completed her School Education in her native place. Her parents are illiterate and as such, there is no necessity for them to obtain a 'Community Certificate'.

4.The stand of the Petitioner is that, after conducting thorough verification and enquiry by the Revenue Department, the Deputy Tahsildar, Mettur Dam, Salem District, had issued a 'Community Certificate', on 12.09.1978, stating that she belongs to 'Konda Reddis' Community. The Tahsildar was then competent to issue Community Certificate earlier to 11.11.1989. As such, the Tahsildar had issued the Community Certificate to her. Her close relatives were also issued with 'Konda Reddis' Community Certificates.

5.It comes to be known that the Petitioner was appointed as Lower Division Clerk in B.S.N.L. at Chennai, on 01.10.1985 under the 'Scheduled Tribes quota' and later, the said post was re-designated as Junior Office Associate, Office of Executive Engineer, Civil, BSNL, Coimbatore. The Petitioner was not given any promotion for all these periods and in the year 1985, one of the Employees gave a complaint to the Petitioner's Employer and the Revenue Divisional Officer, Mettur, Salem, on account of personal vendetta. Based on that the Petitioner's Employer had directed her to produce the original 'Community Certificate' for verification. Accordingly, she had submitted the original Community Certificate to her Employer.

6.It is to be noted that the Petitioner's Employer had forwarded the complaint of the Third party to the Revenue Divisional Officer, for verification. The grievance of the Petitioner is that the Revenue Divisional Officer, Salem, had

conducted an enquiry behind her back and forwarded his findings to the District Collector, who in turn, had cancelled her 'Community Certificate', by means of Proceedings in Roc.No.164550/85/D-10, dated 16.08.1989, without conducting an enquiry, in the manner known to Law. Therefore, the Petitioner was perforced to assail the said Proceedings of Revenue Divisional Officer, dated 16.8.1989, by filing W.P.No.13019 of 1989, before this Court and obtained an interim Order. Subsequently, the said Writ Petition was disposed of, against which, the Petitioner preferred Writ Appeal No.749 of 1998, on the file of this Court. The said Writ Appeal was disposed of by this Court with a direction being issued to the District Level Committee, to conduct the enquiry afresh.

7.The Learned Counsel for the Petitioner proceeds to take a plea that inspite of numerous guidelines issued by the Government as well as this Court, the First Respondent/Principal Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St.George, Chennai-09, without following the said Guidelines, had issued a Communication, dated 03.08.2017, to the Third Respondent/The Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Zone, Salem-1, to verify the genuineness of the Community Certificate produced by the Petitioner. A copy of the said Communication was not communicated to the Petitioner till date. As a matter of fact, the Third Respondent/The Deputy Superintendent of Police, SC/ST Vigilance Cell, Salem Zone, had issued a Communication dated 28.06.2018, to the Petitioner, directing her to appear for an enquiry in his Office, for which, the Petitioner had prayed for an extension of time.

8.The Learned Counsel for the Petitioner, emphatically contends that when a 'Community Certificate' is issued by the Competent Authority to an individual, then the onus does not lie on the said person to prove the same. Furthermore, it is represented on behalf of the Petitioner that the Petitioner joined the service during the year 1985 and that the Third Respondent, at this distant point of time, cannot compel the Petitioner to furnish Certificates of her Parents and property documents before the year 1950. Yet another plea taken on behalf of the Petitioner is that the First Respondent/Principal Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St.George, Chennai-09, had failed to appreciate that the State Level Scrutiny Committee alone is competent authority to verify the Petitioner's Community Certificate and in the present case, the First Respondent had issued a Letter which is without jurisdiction.

9.Lastly, it is projected on the side of the Petitioner that the Respondents had failed to consider that the Central

Vigilance Committee Guidelines, issued by the Central Government from time to time in respect of Caste Certificates relating to Scheduled Castes and Scheduled Tribes, are binding upon them.

10.It is to be pointed out that this Court, on 11.07.2018, had directed the Petitioner to Co-operate for the enquiry, pursuant to the notice issued on 28.06.2018, by appearing and producing the relevant documents. Further, this Court had directed that the Third Respondent shall not pass any final orders.

11.In this connection this Court significantly points out that the Petitioner has filed the present Writ Petition on 09.07.2018. At this juncture, this Court, on perusal of the Impugned Order of the Third Respondent, is of the considered view that the Petitioner was directed to appear for an enquiry on 05.07.2018, at 10.00 a.m. along with necessary documents mentioned therein. She was further informed that if she fails to appear, then, based on the documents available on record, further action would be taken. The said Proceedings of the Third Respondent dated 28.06.2018, was issued to the Employer of the Petitioner and added further, the Employer was directed to communicate the appearance of the Petitioner to attend for an enquiry on 05.07.2018 at 10.00 hours at Kollathur Village, VAO Office. However, the Petitioner had not turned up for enquiry on 05.07.2018, at 10.00 hours, as directed in the Proceedings of the Third Respondent dated 28.06.2018.

12.The Learned Additional Government Pleader for the Respondents brings it to the notice of this Court that the next date of enquiry is fixed on 02.08.2018 at 10.00 a.m. and if the Petitioner appears on that date, with necessary documents, then the Third Respondent will submit his Report within a period of four weeks, after conclusion of the enquiry.

13.In view of the fact that the Petitioner's next date of appearance is fixed on 02.08.2018, at 10.00 a.m., by the Third Respondent, this Court is of the considered view that the Petitioner is duty bound to appear before the Third Respondent on 02.08.2018 at 10.00 a.m. in connection with the enquiry, without fail. Accordingly, this Court directs the Petitioner to appear before the Third Respondent on 02.08.2018, at about 10.00 a.m, without fail. It is open to the Petitioner to produce all the relevant records, which she rely upon, to support her version, before the Third Respondent, who shall take into account of the same and to proceed further in the manner known to Law and in accordance with Law. It cannot be gainsaid that the Third Respondent shall submit his Report to the First Respondent/The Principal Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St.George, Chennai-09,

within a period of four weeks, after completion of enquiry. The First Respondent, after obtaining the 'Report' of the Third Respondent, in the subject matter in issue, shall pass necessary reasoned Speaking Order, in a fair, just, unbiased and in a dispassionate manner, ofcourse, after providing adequate opportunity to the Petitioner to put forward her version, within a period of two weeks thereafter.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msh
To

- 1.The Principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George,
Chennai-600 009.
- 2.The Director of Tribal Welfare Department,
Chepauk, Chennai-600 005
- 3.The Deputy Superintendent of Police,
SC/ST Vigilance Cell,
Salem Zone,
Room No.109, District Collector's
Office Compound,
Salem-1.

+1cc to the Government Pleader Sr.50368
+1cc to Mr.N.Naganathan, Advocate Sr.49925

W.P.No.17256 of 2018

srg 27/07/2018