

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 27.08.2018

Orders Pronounced on : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.18914 of 2018
and
W.M.P.Nos.22303 of 2018

Tmt.S.Rajeswari .. Petitioner
Vs.

1. The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat,
Chennai-600 009, rep. by its Chairman
2. The Director of Tribal Welfare Department,
Chepauk,
Chennai-600 005.
3. The Deputy Superintendent of Police,
Social Justice and Human Rights Division,
Thiruvallur District.
4. The Anthropologist,
Professor & Head,
University of Madras,
School of Social Sciences,
Department of Anthropology,
Chepauk, Chennai-600 005.

(The fourth respondent is given up,
as per order dated 25.07.2018) .. Respondents

Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of
Certiorarified Mandamus to call for the records relating to
the report of the third respondent in Proceedings in
Na.Ka.No.72/Sa.Ni (Ma).Ma.Vu.P/2017, dated 11.05.2018 as
well as the report of the fourth respondent, dated
19.04.2018 and quash the same.

For petitioner : Mr.S.Doraisamy
For respondents:Mr.K.Rajendra Prasad,Addl.G.P.
for RR-1 to 3
R-4 given up

ORDER

R.SUBBIAH, J

The present Writ Petition is filed to call for the records relating to the report of the third respondent in Proceedings in Na.Ka.No.72/Sa.Ni (Ma).Ma.Vu.P/2017, dated 11.05.2018 as well as the report of the fourth respondent, dated 19.04.2018 and quash the same.

2. The petitioner herein belongs to Konda Reddy Community, which is classified as Schedule Tribe Community. Her origin is Pandaravedu Village, Pallipattu, Thiruvallur District. Presently, she settled at Melapudur, Trichy. The petitioner's father was working as Cooly Porter in the Trichirappalli Railway Station. The entire Melapudur residents belong to Mudaliar Community. When the petitioner was admitted in the School at Melapudur, without verifying the original community, the School authorities entered her community as Mudaliar, as she resides in Melapudur. Hence, she preferred an application to the Tahsildar at Trichirappalli for issuance of Community Certificate stating that she belongs to Konda Reddy Community and she was directed to go to her original place, namely Pandaravedu Village, the then Tiruttani Taluk. Thereafter, she preferred an application to the Tahsildar, Tiruttani. The Tahsildar, after conducting an enquiry with the petitioner's relatives residing in and around Pandaravedu Village, issued Community Certificate to the petitioner on 15.06.1979 stating that she belonged to Konda Reddy (ST) Community. Based on the same, she was appointed as Clerk in Southern Railway and posted at Diesel Loco Shed, Ponmalai, Trichy, under ST category. Presently, she is working as Senior Clerk. Her husband belongs to Mudaliar Community and it was inter-caste marriage. Her son obtained Community Certificate stating that he belongs to Agamudayar Community (Mudaliar), as her husband belongs to the said Community.

3. While so, the third respondent issued a notice for an enquiry in respect of verification of the petitioner's Community Certificate and directed the petitioner to produce the following documents:

(i) Copy of the Elementary/Primary School Admission Register/Record Sheet of the individual and individual's father and mother (if studied in School);

- (ii) Secondary School Leaving Certificate of the individual's and his/her parents (if studied in School);
- (iii) School Transfer Certificate of the individual's and his/her parents (if studied in School);
- (iv) Community Certificate issued to the individual by the Revenue authority;
- (v) First page of Service Register of the individual's father/mother if employed/retired;
- (vi) Community Certificate issued to the individual's father/mother;
- (vii) Sale deed if any executed prior to the year 1950 wherein Community is expressly mentioned;
- (viii) Any Record/evidence to defend the individual's claim of the Community status;
- (ix) Family tree for proof of blood relationship duly authorized by Revenue authorities, and
- (x) Along with the report regarding the cultural aspects and customs of the individual, particularly, anthropological traits, deity, rituals, mode of marriage, death ceremonies, method of burial of dead bodies with the help of an anthropologist.

During enquiry, the petitioner produced the following documents:

- (i) Community Certificate issued by the Tahsildar, Tiruttani, dated 15.06.1979;
- (ii) Nativity Certificate;
- (iii) Community Certificate of the petitioner's cousin brother V.N.Arumugam;
- (iv) Service Register of the petitioner's cousin brother V.N.Arumugam;
- (v) Community Certificate and School T.C. of the petitioner's cousin brother Ravi;
- (vi) Sale Deed and
- (vii) Family Tree.

4. It is further stated by the petitioner that all the documents and statements of the witnesses recorded by the third respondent shows that the petitioner belongs to Konda Reddy Community. Instead of sending a report that the petitioner's Community Certificate is genuine, the third respondent obtained report from the fourth respondent-Anthropologist, stating that the petitioner does not belong to Konda Reddy Community. According to the petitioner, the fourth respondent has no role in giving a report at that stage as per G.O.(Ms).No.106, Adi Dravidar and Tribal Welfare Department, dated 15.10.2012. The third respondent alone is bound to obtain the data in the prescribed proforma about: (i) peculiar anthropological, (ii) ethnological traits, (iii) deity, (vi) rituals, (v) customs, (vi) mode of marriage, (vii) death ceremonies,

(viii) method of burial of dead bodies, etc. A negative report was sent to the second respondent, who, on 07.07.2018, called upon the petitioner to give an explanation to the report of the third respondent.

5. It is the further case of the petitioner that the Vigilance Cell Officer has not given any opportunity to the petitioner to examine the witnesses. Had the Vigilance Cell Officer given an opportunity to her, she would have proved her claim that she belongs to Konda Reddy Community. Pursuant to the report of the third respondent as well as the fourth respondent, the second respondent has called upon the petitioner to give her explanation. Hence, the present Writ Petition is filed by the petitioner for the relief stated supra.

6. The main ground taken by the learned counsel for the petitioner is that the fourth respondent had not conducted any enquiry as per the guidelines issued by the Supreme Court in the case of Kumari Madhuri Patil Vs. Additional Commissioner, reported in AIR 1995 SC 94 = 1994 (6) SCC 241. The report of the fourth respondent should contain peculiar anthropological and ethnological traits, deity, ritual, customs, mode of marriage, death ceremony, mode of burial of dead bodies, etc. by the concerned Tribal Community. Thus, without conducting any enquiry, the report was sent by the fourth respondent and the third respondent-Vigilance Officer ought to have given an opportunity of hearing to the petitioner. Hence, the petitioner seeks to quash the impugned order of the third respondent.

7. Heard the learned Additional Government Pleader appearing for the respondents 1 to 3 on the above aspects. The fourth respondent is given up, vide endorsement, dated 25.07.2018 made by the learned counsel for the petitioner in the Writ Petition.

8. Heard both sides and perused the materials available on record.

9. Learned counsel for the petitioner relied upon an order passed by a Division Bench of this Court in W.P.No.14915 of 2018, dated 07.08.2018, wherein, the Division Bench passed an elaborate order in identical issue and directed the petitioner therein to put-forth her grievance in the enquiry pending before the State Level Scrutiny Committee. The relevant portion of the said order passed by the Division Bench is extracted below:

"23. In the present case, it is to be borne in mind that only based on the employers' request, the 1st Respondent/Tamilnadu State Level Scrutiny Committee, Secretariat, Chennai had

directed the 3rd Respondent/the Deputy Superintendent of Police, Salem to conduct enquiry in regard to the Petitioner's Community status and to furnish a report to the 2nd Respondent, therefore, the 3rd Respondent had issued a notice to the Petitioner requiring him to appear for an enquiry. As a matter of fact, the Petitioner furnished documents nearly eight witnesses were examined. In reality, the 3rd Respondent / the Deputy Superintendent of Police, Salem collected necessary documents pertaining to Petitioner's Community status and after obtaining an opinion of the Anthropologist, submitted a report to the 2nd Respondent/the Director of Tribal Welfare Department, Chennai-600 005. The 3rd Respondent in his report dated 28.02.2018 submitted to the 2nd Respondent had stated that the Petitioner does not belong to 'Kondareddy'. Therefore, the 2nd Respondent/the Director of Tribal Welfare Department, Chepauk, Chennai issued a Show Cause Notice to the Petitioner on 26.04.2018 and further, reminded him on 14.05.2018, 12.06.2018 seeking explanation. Without tendering his explanation, the Petitioner has approached this Court and filed the present Writ Petition, which in the earnest opinion of this Court is a premature and futile one.

24. In the result, this Court to prevent an aberration of justice and in furtherance of substantial cause of justice, without expressing any opinion on the merits of the matter and also not delving deep into the subject matter in issue, at this juncture, directs the Petitioner to take part in the enquiry proceedings before the 2nd Respondent/the Director of Tribal Welfare Department, Chepauk, Chennai and to submit her explanation in writing in regard to the Vigilance Cell report. The 2nd Respondent is directed to specify a fresh date and time for enquiry by addressing a communication

to the Petitioner within a period of two weeks from the date of receipt of copy of this order. It is made clear that the Petitioner shall appear before the 2nd Respondent on the specified date and time without offering any excuses. Liberty is granted to the Petitioner to project all factual and legal pleas (including the aspect of seeking permission to cross examine the relevant witnesses) before the 2nd Respondent coupled with a production of documents at her command. Moreover, the materials furnished by the Petitioner are required to be taken into consideration by the 2nd Respondent and if the 2nd Respondent/the Director of Tribal Welfare Department, Chepauk, Chennai comes to the conclusion that the Petitioner's claim in respect of her Social status is a doubtful or not a genuine one, then, an explanation is required to be called for from the Petitioner within a period of 30 days from the date of receipt of communication by her. After obtaining the reply of the Petitioner, then, she shall be directed to appear for an enquiry before the 1st Respondent/Tamilnadu State Level Scrutiny Committee, Chennai along with supporting reliable documents to establish her claim of community status. The 1st Respondent/Tamilnadu State Level Scrutiny Committee after providing necessary opportunity to the Petitioner by following 'Principles of Natural Justice' and by taking into consideration of the relevant documents and available records and also considering the opinion/view of Anthropologist is directed by this Court to pass final orders in the subject matter in issue in a free, just, fair, and in a dispassionate manner, in any event, within a period of six weeks from the date of receipt of copy of this order, of course, bearing in mind the principles laid down by the Hon'ble Supreme Court in Kumari Madhuri Patil and Another V.

Addl. Commissioner, Tribal Development and Others reported in AIR 1995 Supreme Court 94. The Petitioner is directed to afford her assistance and unstinted co-operation in bringing an end to the completion of enquiry in a comprehensive manner.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs."

10. Therefore, following the abovesaid order passed by the Division Bench, we are of the opinion that the petitioner has to address all her grievances only before the first respondent-State Level Scrutiny Committee. Hence, we are not inclined to grant the relief prayed for by the petitioner in this Writ Petition. The Writ Petition is dismissed. However, the petitioner is directed to appear before the first respondent-State Level Scrutiny Committee along with the supporting documents to establish her claim. The said Committee is directed to offer an opportunity of hearing to the petitioner to put-forth all her grievances and the first respondent-Committee shall complete the enquiry and pass appropriate orders within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS iv)
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Sub Assistant Registrar

cs
To

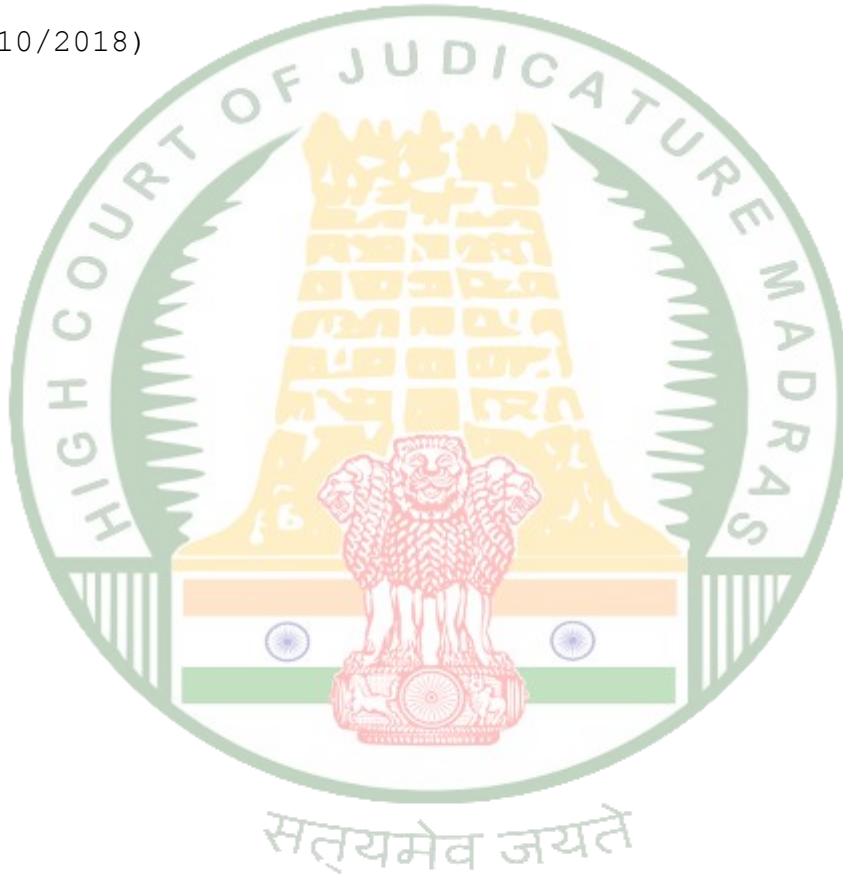
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Chepauk, Chennai-600 005.

+2ccs to Mr.S.DORAISAMY , Advocate SR.No.58441,61011
+1 CC TO GOVERNMENT PLEADER SR.NO. 61273

Order in
W.P.No.18914 of 2018

ASK(10/10/2018)



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