



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.06.2018
DELIVERED ON : 27.06.2018

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CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
and
THE HON'BLE MRS. JUSTICE T.KRISHNAVALLI

W.P.(MD).No.11555 of 2018
and
WMP (MD) Nos.10524 and 10525 of 2018

V.Raju

.. Petitioner

Vs.

1.The Tamilnadu State Level Scrutiny Committee,
rep. by its Chairman and Secretary to Government,
Adi Dravdar 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,
Social Justice and Human Rights Unit
and SC/ST Vigilance Cell,
Coimbatore District,
Salem District (in charge)

4.The Revenue Divisional Officer,
Attur, Salem District.

.. Respondents

Prayer : 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 first respondent in Letter No.5074/CV-4(2)/2012-3, dated 05.4.2017 and the Vigilance Cell Report in Na.Ka.No.150/SJHR/SLM/2017, dated 26.04.2018 of the third respondent and the consequential show cause notice Na.Ka.No.PaMe/Aa1/1998/2017, dated 27.04.2018 of the second respondent and Letter Na.Ka.2989/2017/A3, dated 20.04.2018 of the 4th respondent to quash the same and to consequently declare the communal status of the petitioner as Uraly Scheduled Tribe Community based on the community certificate of the petitioner dated 12.04.1985 in the light of the letter No.35404/ADW II/9-1, dated 16.09.1991 issued by ADTW Department and judgment of the Hon'ble Apex Court reported in 1997 (7) SCC 305, W.P.No.4070 of 1986 dated 8.8.1996 and W.P.No.86 of 1998, dated 25.3.2011.



For Petitioner : Mr.N.Naganathan
For Respondents : Mr.V.R.Shanmuganathan
Spl. Government Pleader

ORDER

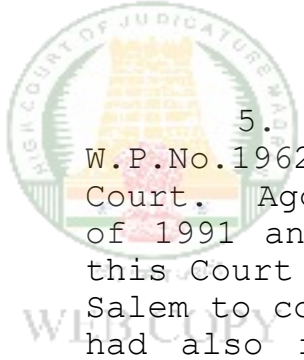
[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

This writ petition has been filed by the petitioner seeking issuance of a writ of certiorarified mandamus to call for the records of the first respondent in Letter No.5074/CV-4(2)/2012-3, dated 05.4.2017 and the Vigilance Cell Report in Na.Ka.No.150/SJHR/SLM/2017, dated 26.04.2018 of the third respondent and the consequential show cause notice Na.Ka.No.PaMe/Aa1/1998/2017, dated 27.04.2018 of the second respondent and Letter Na.Ka.2989/2017/A3, dated 20.04.2018 of the 4th respondent and to quash the same and to consequently declare the communal status of the petitioner as "Uraly" Scheduled Tribe Community based on the community certificate of the petitioner dated 12.04.1985 in the light of the letter No.35404/ADW II/9-1, dated 16.09.1991 issued by ADTW Department and judgment of the Hon'ble Apex Court in Kandasamy v. Chief Engineer, Madras Port Trust, reported in (1997) 7 SCC 505, W.P.No.4070 of 1986, dated 8.8.1996 and W.P.No.86 of 1998, dated 25.3.2011.

2. In the affidavit filed in support of the writ petition, it is averred that the petitioner belongs to "Uraly" community, which is classified as Scheduled Tribe community and to that effect, he obtained a community certificate from the Tahsildar, Attur on 12.4.1985. According to the petitioner, his relatives were issued with "Uraly" community certificate. The said community certificate remains unchallenged till date and is in vogue.

3. It is stated that the petitioner was appointed as Supervisor Grade-II at Chennai Port Trust on 30.8.1986 under the Scheduled Tribe quota and subsequently, he was promoted as Supervisor Grade-I and at the time of filing the writ petition, he was working as Executive Engineer. It is stated that the petitioner was going to retire from service on 31.5.2018.

4. By a letter dated 9.7.1987, the Port Trust requested the District Collector, Salem to enquire into the correctness of petitioner's community certificate and upon enquiry, the Sub-Collector, submitted a report to the District Collector stating that the petitioner belong to Uraly Gounder community. Thereafter, on 23.9.1989, the District Collector issued a show cause notice, for which the petitioner submitted his explanation on 19.10.1989. Without looking into the explanation, on 9.10.1990, the District Collector cancelled the community certificate issued to the petitioner.



5. Challenging the cancellation order, the petitioner filed W.P.No.19627 of 1990 and the said petition was dismissed by this Court. Aggrieved by the same, the petitioner preferred W.A.No.1172 of 1991 and by the judgment dated 28.10.1991, a Division Bench of this Court allowed the appeal with a direction to the Sub Collector, Salem to conduct a fresh enquiry. In the mean time, the petitioner had also filed W.P.No.17573 of 1990 forbearing the Chennai Port Trust from terminating him from service.

6. Despite appearance and production of documents before the District Collector, the District Collector, by order dated 24.5.1999 cancelled the permanent community certificate issued to the petitioner dated 12.4.1985 on the ground that the petitioner had not produced original documents. Challenging the order of the District Collector, the petitioner filed W.P.No.9825 of 1999. By an order dated 31.7.2008, a Division Bench of this Court, while setting aside the order of the District Collector, remitted the matter to the first respondent to test the veracity of the community certificate with a direction to complete the exercise within three months. Since petitioner succeeded in the writ petition, again his communal status was treated as Scheduled Tribe and till date his communal status remains as Scheduled Tribe.

7. On 29.3.2012, the Chennai Port Trust requested the first respondent to verify the community certificate. On 5.4.2017, the first respondent requested the respondents 2 and 3 to conduct enquiry and submit a report in respect of the community certificate of the petitioner. The third respondent also sent summons to the petitioner to appear before him and accordingly, the petitioner appeared and produced all documents even before Anthropology department. However, the third respondent without getting the report from the Anthropology Department, issued the impugned report dated 26.4.2018 to the second respondent, who in turn, issued the impugned show cause notice dated 27.4.2018 calling upon the petitioner to appear before him within a period of two weeks.

8. According to the petitioner, without having jurisdiction over the issue, the fourth respondent issued a notice dated 20.04.1998 calling upon the petitioner to appear for enquiry on 4.5.2018 and the said notice was received by the petitioner on 11.5.2018. Once the State Level Scrutiny Committee has been constituted, the fourth respondent had no role to verify the social status of the petitioner.

9. By relying upon the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and another v. Additional Commissioner of Tribal Development and others, reported in (1994) 6 SCC 241, the respondents are testing the veracity of the certificate obtained prior to 11.11.1989. Hence, the petitioner has filed the writ petition seeking the relief aforesaid.



10. I heard Mr.N.Naganathan, learned counsel appearing for the petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents and also perused the materials available on record.

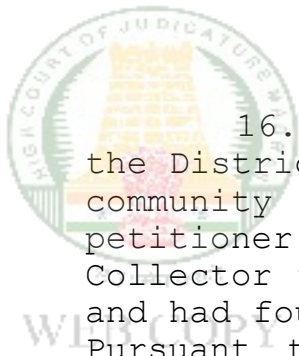
11. The learned counsel for the petitioner submitted that the proceedings in re-opening the enquiry pertaining to the community certificate is erroneous, illegal and contrary to law and probabilities of the case and the same are liable to be quashed. He submitted that the proceedings of the respondent authorities does not disclose any valid reason for the verification of the community status of the petitioner. He submitted that the respondent authorities failed to consider the fact that the community certificate issued by the then Tahsildar is only after thorough scrutiny and spot enquiry made by the revenue officials, which is valid and having legal force.

12. The learned counsel for the petitioner submitted that the respondent authorities failed to consider the fact that Uraly community certificates were issued not only to the petitioner, but also to his entire family as well as his close relatives. Once community certificates were issued to close relatives of a person that they belonged to a particular community, then it has to be presumed that the particular person also belongs to that community.

13. He argued that the proceedings of the respondent authorities are in flagrant violation of the decision in *Kandasamy v. Chief Engineer, Madras Port Trust*, reported in (1997) 7 SCC 505. Further, the respondent authorities have failed to adhere the letter dated 16.9.1991 issued by ADTW Department and as per the said letter, the petitioner's communal status had reached finality.

14. The learned Special Government Pleader appearing for the respondents submitted that the impugned proceedings were issued as per the decision in *Kumari Madhuri Patil and another v. Additional Commissioner of Tribal Development and others*, reported in 1994 (6) SCC 241, wherein the Hon'ble Supreme Court issued directions to streamline the procedure for issuance of social status certificate. He argued that the State Level Scrutiny Committee is empowered to verify the genuineness of the community certificate issued to the petitioner and when the respondent authorities issued notices to the petitioner for enquiry, he was evading to appear before them and was in the habit of dragging the matter. The learned Special Government Pleader submitted that the proceedings impugned are issued only as per law and the same need not be interfered with.

15. It appears that the petitioner was appointed as Supervisor Grade-II at Chennai Port Trust on 30.8.1986 under Scheduled Tribes Quota and had retired from service on 31.5.2018 after filing of the writ petition.



16. It appears that the employer of the petitioner requested the District Collector, Salem to inquire into the correctness of the community certificate dated 12.4.1985 issued in favour of the petitioner by the Tahsildar, Attur, who in turn, directed the Sub-Collector to conduct enquiry. The Sub-Collector, conducted enquiry and had found that the petitioner belong to Uraly Gounder community. Pursuant to the report of the Sub-Collector, the Collector had issued a show cause notice dated 23.9.1989 to the petitioner and the petitioner has submitted his explanation. However, the District Collector, cancelled the community certificate vide order dated 09.10.1990.

17. Challenging the order of the District Collector, dated 9.10.1990, the petitioner filed W.P.No.19627 of 1990 and the same was dismissed. Aggrieved by the dismissal of the writ petition, the petitioner filed writ appeal being W.A.No.1172 of 1991. By the judgment dated 28.10.1991, a Division Bench of this Court allowed the appeal, thereby giving direction to the Sub-Collector, Salem to conduct fresh enquiry.

18. It appears that in the mean while, the petitioner had filed W.P.No.17573 of 1990 forbearing the employer of the petitioner from terminating him from service. While things stood thus, the fourth respondent, without notice to the petitioner, visited Thammampatti village and submitted a report to the District Collector recommending cancellation of the community certificate issued in favour of the petitioner. On 24.5.1999, the District Collector once again cancelled the community certificate issued to the petitioner on the ground that he had not produced original documents.

19. Challenging the order of the District Collector, the petitioner filed W.P.No.9825 of 1999. By an order dated 31.7.2008, a Division Bench of this Court, while allowing the writ petition, remitted the matter to the first respondent to test the community certificate and conclude the proceedings within a period of three months from the date of receipt of a copy of this order. Thus, when the moment the writ petition was allowed, the community status of the petitioner was to be treated as Scheduled Tribe and till date the community certificate issued to the petitioner remains as Scheduled Tribe.

20. On 29.3.2012, the employer of the petitioner requested the first respondent to verify the community status of the petitioner and after a lapse of 5 years, the first respondent had issued the impugned letter dated 5.4.2017 requesting the respondents 2 and 3 to conduct enquiry and submit a report qua community status of the petitioner.

21. On a verification of the typed set of papers, I find that the petitioner was issued with community certificate dated 12.4.1985 by the Tahsildar, Attur stating that he belongs to "Uraly" community, which has been recognised as a Scheduled Tribe.



22. It is to be pointed out that the respondent authorities have failed to show that Uraly Gounder community and Uraly community are two different communities and they are not coming under the Scheduled Tribe.

23. It is also to be noted that in the Letter No.35404/ADW II/91-1, dated 16.9.1991 of the Secretary to Government, Adi Dravidar and Tribal Welfare (AD II) Department addressed to all Collectors, it has been stated as under:

"I am directed to state that the Tamil Nadu Kattunayakkan (Scheduled Tribe) Samooga Seerthirutha Sangam Nagapattinam has requested the Government among other things to validate the permanent community certificate issued to Scheduled Tribes prior to the issue of G.O.(Ms) 2137/AC & TW dated 11.11.89 by Tahsildar.

2. The Government have examined the request in detail in consultation with Special Commissioner and Commissioner of Revenue Administration and confirmed that the community certificates issued to the Scheduled Tribe Communities by Tahsildar prior to 11.11.89 will be valid. I am to enclose a copy of G.O. (Ms) No.2137 Adi Dravidar and Tribal Welfare dated 11.11.89 for guidance.

3. I am to request you to validate the community certificates issued to Scheduled Tribe Communities by Tahsildar prior to 11.11.89. In doubtful cases, I am to request that they may be verified as per Government orders in force."

(emphasis supplied)

24. Thus, as per the letter of the Secretary to Government, Adi Dravidar and Tribal Welfare (AD II) Department, community certificates issued to the Scheduled Tribe Communities by the Tahsildar prior to 11.11.1989 are valid.

25. It is beyond any cavil that community certificate was issued to the petitioner by the Tahsildar, Attur on 12.4.1985 to the effect that he belongs to Uraly Gounder community and Uraly as the case may be and the same has not been cancelled by any authority till date.

26. 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."



27. In the light of the decision in R.Kandasamy, supra, the authorities have to take into consideration the community certificate issued prior to 11.11.1989 as a good and valid community certificate for all purposes, so long such certificate was not cancelled.

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28. By the order dated 31.7.2008 in W.P.No.9825 of 1999, the Division Bench of this Court directed the Committee to conclude the proceedings within three months. But, the Committee had not taken steps immediately to verify the community status and after lapse of five years, they issued the impugned letter requesting the respondents 2 and 3 to conduct enquiry, which clearly shows that the Committee had failed to obey the order of the Court within the time frame. It is a sorry state of affairs. The first respondent, despite direction of this Court, had not chosen to expedite the process and because of the delay in compliance with the said order, the petitioner, who had since retired from service, is deprived of his statutory right of getting pension and other terminal benefits for the service rendered by him for years. The whys and wherefores for such delay are not explained by the respondent authorities.

29. Since the Chennai Port Trust has not been made as respondent and no relief regarding disbursement of retiral benefits was sought in this writ petition, there is no necessity to deal with the said aspect. However, be it noted that a Co-ordinate Bench of this Court in W.P.No.5918 of 2016, dated 18.2.2016 (Union of India and another v. The Registrar, CAT, Madras Bench, Chennai-104), held as under:

" mere reference to the pendency of the verification of the community certificate of the second respondent before the State Level Scrutiny Committee is not a ground for the petitioners to deny the terminal benefits to the second respondent. As observed by the Division bench of this Court in the above referred to decision, in the event of the Scrutiny Committee cancelling the Community Certificate, the Railways can pass orders forfeiting the pension. Hence, the mere pendency of the proceedings before the Scrutiny Committee cannot impede the settlement of terminal benefits to the second respondent."

30. By virtue of the law enunciated in the decision, referred supra, it is clear that pendency of verification of the community status is no ground for denial of terminal benefits to the employee.

31. For the foregoing reasons, the following order is passed:

(a) the writ petition is allowed and the proceedings impugned in this writ petition are set aside;

(b) on production of a copy of this order, the employer of the petitioner shall forthwith release all his pensionary and terminal benefits within a



period of one month thereafter, without insisting on any proceedings from the first respondent;
(c) No costs. Consequently, WMP(MD) Nos.10524 and 10525 of 2018 are closed.

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Sd/-
Assistant Registrar (Crl. side)

/True Copy/

Sub Assistant Registrar

To

- 1.The Tamilnadu State Level Scrutiny Committee,
rep. by its Chairman and Secretary to Government,
Adi Dravdar 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,
Social Justice and Human Rights Unit
and SC/ST Vigilance Cell,
Coimbatore District,
Salem District (in charge)
- 4.The Revenue Divisional Officer,
Attur, Salem District.

+1cc to M/S.N.Naganathan, Advocate SR.No. 70101

order made in
W.P.(MD) No.11555 of 2018
and
WMP (MD) Nos.10524 and 10525 of 2018
27.06.2018

vsv
JM/SV/SAR 1/10.07.2018/8P/6C