

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 25.04.2019

Order pronounced on : 18.06.2019

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Krishnan Ramasamy

Writ Petition No. 5775 of 2019
and
W.M.P. No. 6599 of 2019

S. Dinakaran ... Petitioner

Versus

1. The State Level Scrutiny Committee
represented by its Chairman
Fort St. George
Chennai - 600 009
 2. The Director
Tribal Welfare Department
Chepauk, Chennai - 600 005
 3. Life Insurance Corporation of India
represented by the Senior Divisional Manager
Divisional Office
Vellore District, Vellore
 4. The National Commission for Schedule Tribes (HQ)
6th Floor, "B" Wing
Lokayak Bhavan, Khan Market
New Delhi - 110 003
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the third respondent's impugned notice dated 15.02.2019 and quash the same and directing the first and second respondents to consider the petitioner's representation dated 21.02.2019 and re-verify the community certificate of the petitioner in the light of the guidelines issued in the case of Kumari Madhuri Patel and G.O. Ms. No.106, Adi Dravidar and Tribal Welfare (CV-I) Department dated 15.10.2012.

For Petitioner : Mr. R. Neelakandan
for Mr. N. Naganathan

For Respondents : Mr. J. Pothiraj
Special Government Pleader for RR1 and 2
Mr. R.S. Anandan for R3

ORDER

R. SUBBIAH, J

The petitioner has come forward with this writ petition challenging the notice dated 15.02.2019 issued by the third respondent and for a consequential relief of directing the first and second respondents to consider his representation dated 21.02.2019 to re-verify the community certificate issued to him in the light of the guidelines issued by the Honourable Supreme Court in the case of Kumari Madhuri Patel and G.O. Ms. No.106, Adi Dravidar and Tribal Welfare (CV-I) Department dated 15.10.2012.

2. According to the petitioner, he belongs to Kondareddy community, which is classified as a Schedule Tribe community and he is a native of Thondanthulasi Village, Vellore District. It is his contention that after causing due enquiry and verification of his communal status, the Head Quarters Deputy Tahsildar, Gudiyatham has issued a community certificate to him on 02.07.1981 certifying that the petitioner belong to Konda Reddy community. Based on such community certificate, the petitioner joined as Development Officer in Life Insurance Corporation in a vacancy earmarked for Schedule Tribe candidate. During the year 1988, the community certificate furnished by the petitioner was forwarded by the petitioner's employer to the District Collector, Vellore to conduct an enquiry and to confirm the genuineness of the certificate produced by the petitioner with regard to his communal status. The District Collector, Vellore, in turn forwarded the community certificate of the petitioner to the Revenue Divisional Officer to conduct an enquiry and to submit a report. Accordingly an enquiry was conducted by the Revenue Divisional Officer, Vellore based on the same, the District Collector passed an order dated 14.09.1999 cancelling the community certificate issued to the petitioner. Aggrieved by the same, the petitioner filed WP No. 16828 of 1999 before this Court and it was allowed on 26.07.2005. Thereafter, a notice dated 26.07.2005 was issued by the District Collector, Vellore which was challenged by the petitioner in WP No. 17004 of 2007 and the same was disposed of by this Court on 19.11.2008 with a direction to the first

respondent herein to conduct an enquiry and to pass orders thereof within a time frame. Accordingly, an order dated 08.09.2009 was passed by the first respondent herein cancelling the community certificate issued to the petitioner. Assailing the order dated 08.09.2009 of the first respondent, the petitioner has filed WP No. 19669 of 2009 before this Court and it was dismissed on 14.11.2008. As against the order dated 14.11.2008, the petitioner has also filed a Special Leave to Appeal (C) No. 32298 of 2018 before the Honourable Supreme Court and it was also dismissed on 14.12.2018. Pursuant to the order dated 14.12.2018 dismissing the Special Leave to Appeal filed by the petitioner, the third respondent has issued a show cause notice dated 15.02.2019 calling upon the petitioner to show cause as to why his appointment should not be held void ab initio and why the proposed penalty of dismissal from service in terms of Regulation 39 (1) (g) of the Corporation be not imposed on him. As against the show cause notice dated 15.02.2019 issued by the third respondent, the petitioner has come up with this writ petition with the prayer as stated hereinabove.

3. The learned counsel appearing for the petitioner would contend that the Government of Tamil Nadu has initially constituted a District Level Vigilance Committee during the year 1997 and later the Government modified the constitution of the committee by issuing G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department dated 12.09.2017 re-constituting the State Level Caste Scrutiny Committee and District Level Vigilance Committee. Once again, the Government issued G.O. Ms. No.106, Adi Dravidar and Tribal Welfare Department dated 15.10.2012 ordering that on receipt of a report from the Vigilance Officer, if it is found that the claim with regard to social status of a person is not genuine, or doubtful or spurious or falsely or wrongly claimed, the State Level Scrutiny Committee has to issue a show cause notice enclosing the report of the Vigilance Officer against the candidate. According to the learned counsel for the petitioner, such a procedure has not been adopted by the first respondent at all before passing the order dated 08.09.2009 of the first respondent. It is further submitted by the learned counsel for the petitioner that the first respondent has also failed to follow established procedures contemplated under law before cancelling the community certificate issued to the petitioner besides the order of cancellation passed by the first respondent is contrary to the decision rendered by the Honourable Supreme Court in Kumari Madhuri Patil's case as also the decision of the Division Bench of this Court in the case of G. Venkatasamy and another vs. SLSC reported in 2016 (1) Law Weekly 289. Therefore, the petitioner had sent a representation dated 21.02.2019 to the respondents 1 and 2 to conduct re-enquiry, to furnish the report of revenue officials and to appoint an Anthropologist and District Vigilance Officer.

However, the representation dated 21.02.2019 has not been considered by the respondents 1 and 2. In the meantime, the third respondent has issued the impugned show cause notice in which the third respondent has come to a definite conclusion to dismiss the petitioner from service. Therefore, the learned counsel for the petitioner prayed for allowing the writ petition as prayed for by directing the respondents 1 and 2 to conduct a re-enquiry and to pass appropriate orders on merits.

4. On the above contention, we have heard the learned Special Government Pleader appearing for the respondents 1 and 2 as also the counsel for the third respondent and perused the materials placed on record. Admittedly, the community certificate issued to the petitioner was referred to the first respondent for causing an enquiry. The Committee conducted an enquiry and passed an order dated 08.09.2009 cancelling the community certificate issued to the petitioner. On perusal of the order dated 08.09.2009 it is seen that the petitioner was granted several opportunities to put forth his submissions. The petitioner also produced certain documentary evidence in support of his case. After considering the documentary evidence submitted by the petitioner, the first respondent in the order dated 08.09.2009 concluded as follows:-

"1. The appellant Thiru. S. Dinakaran has shown his Secondary School Leaving Certificate Book before the committee. As per the first page of the Secondary School Leaving Certificate, his community has been mentioned as "Reddy" on 28.05.1979.

2. The community certificate under reference and the bonafideness of the same itself under dispute. Therefore, this cannot stand as evidence in favour of the claimant. The records of Collectorate reveals the fact that the community certificate issued by the Head Quarters Deputy Tahsildar, Gudiyatham dated 02.07.1981, it is clearly confirmed the fact that the appellant obtained the above community certificate on misrepresentation to avail the concession meant for schedule tribe.

3. The sale deed document in the year 1934 not exempted one. The document not having the Registration Seal and proof of Registration. The appellant relatives names were found with the word "Reddy" which has been classified as Forward Community and not as Konda Reddis. Moreover, the Tribes won't use their caste title as suffix after their name only the Forward community people have suffix of their own community name after their names. Hence, the abovenamed document can not be taken as a proof.

The Transfer Certificate was issued on

05.04.1984. The community of the certificate holder has been mentioned as "Konda Reddy" the community was mentioned in the Transfer Certificate only with reference to the community certificate dated 02.07.1981, which itself is under dispute and needs verification of bonafideness. Therefore, the college transfer certificate cannot be taken as an evidence.

The State Level Scrutiny Committee has given fair and reasonable opportunity to Thiru. S. Dinakaran to substantiate his claim as "Konda Reddis". However, he has not produced any other document to help to come to the conclusion that he belonged to "Konda Reddis". Hence, it is proved that the appellant obtained the 'Konda Reddis' community certificate on misrepresentation to avail the concession meant for Schedule Tribe. In view of the above, the State Level Scrutiny Committee obtained as follows:-

As per the 1st page of the Secondary School Certificate his community is mentioned as "Reddy" on 28.05.1979. The Revenue Divisional Officer, and the District Level Vigilance Committee also rejected his claim as "Konda Reddy". Petitioner has not produced any other document to help the committee to come to the conclusion that he belonged to "Konda Reddy". Therefore, committee decided to reject his claim and considered that the Certificate issued by the Head Quarters Deputy Tahsildar is not genuine and also Thiru. S. Dinakaran, Son of Sreeramulu Reddy does not belong to 'Kondareedi' ST community. He belongs to 'Reddiar' Forward community. He got the ST certificate on misrepresentation and without producing any originals and valid documentary evidence. The appointment wrongly obtained on the basis of false social status certificate or cheating the revenue officials and enjoying the Constitutional benefits conferred upon them by the Constitution. This is nothing but cheating the constitution and it defeats the very aim of the constitution. Hence, State Level Committee hereby cancels the community certificates issued in favour of Thiru. S. Dinakaran, Son of Sreeramulu Reddy, who played fraud should be terminated forthwith without further notice.

The State Level Scrutiny Committee direct the Collector of Vellore District to process and initiate criminal action against the individuals concerned and send a report to the Government in due course."

5. It is evident that the first respondent/State Level Scrutiny Committee has evaluated the community certificate issued to the petitioner and passed a speaking order cancelling

the community certificate issued to the petitioner. The petitioner also, assailing the order passed by the first respondent on 08.09.2009, filed WP No. 19669 of 2009 before this Court. In the said Writ Petition No. 19669 of 2009 the petitioner has raised several grounds with respect to the alleged failure on the part of the first respondent in following the established procedures contemplated under law. By order dated 14.11.2018, the Division Bench of this Court dismissed the writ petition by holding that the petitioner was given sufficient opportunities and after evaluation of the material documents placed, the first respondent has independently come to a correct conclusion and it does not call for any interference. Challenging the order dated 14.11.2018 passed in WP No. 19669 of 2009, the petitioner has preferred an appeal to the Honourable Supreme Court in Special Leave to Appeal (C) No. 32208 of 2018 and it was also dismissed by the Honourable Supreme Court on 14.12.2018. Thus, the order passed by the first respondent dated 08.09.2009, rejecting the community certificate issued to the petitioner, has reached a finality by virtue of the order dated 14.12.2018 passed by the Honourable Supreme Court.

6. Pursuant to the order dated 14.12.2018 passed by the Honourable Supreme Court, the third respondent has issued a show cause notice dated 15.02.2019, which is questioned in this writ petition. It is needless to mention that the third respondent has not passed any final order, but only issued a show cause notice, calling upon the petitioner to submit his explanation. It is well settled proposition of law that a writ petition under Article 226 of The Constitution of India is not maintainable as against a show cause notice inasmuch as by virtue of such notice the rights or liability of a person is not determined. In this case also, what is challenged by the petitioner is a show cause notice issued by the third respondent calling upon him to submit his explanation. The petitioner, without submitting an explanation, has come forward with this writ petition.

7. Admittedly, the genuineness of the community certificate produced by the petitioner has been evaluated by the first respondent and the community certificate issued to him was rejected. Challenging the same, the petitioner filed writ petition before this Court in WP No. 19669 of 2009 and it was dismissed on 14.11.2018. As against the same, the petitioner has also filed Special Leave Appeal (C) No. 32208 of 2018 before the Honourable Supreme Court and it was also dismissed on 14.12.2018. Therefore, the petitioner cannot be permitted to agitate the very same grounds which he had raised in the earlier writ petition. Further, the prayer of the petitioner to consider his representation and direct the respondents 1 and 2 to cause a re-enquiry with regard to the genuineness of his community certificate, in our opinion, is only an attempt to

revive a stale or dead claim as has been held by the Honourable Supreme Court in the case of (C. Jacob v. Director of Geology and Mining and another) 2008 AIR SCW 7233. Therefore, we are of the view that the prayer sought for by the petitioner in this writ petition cannot be countenanced.

In the result, the writ petition fails and it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman
The State Level Scrutiny Committee
Fort St. George
Chennai - 600 009
2. The Director
Tribal Welfare Department
Chepauk, Chennai - 600 005
3. The Senior Divisional Manager
Life Insurance Corporation of India
Divisional Office
Vellore District, Vellore
4. The National Commission for Schedule Tribes (HQ)
6th Floor, "B" Wing
Lokayyak Bhavan, Khan Market
New Delhi - 110 003

+1cc to Mr.N.Naganathan, Advocate, S.R.No.49835
+1cc to Mr.R.S.Anandan, Advocate, S.R.No. 49508

WP No. 5775 of 2019

RSI (CO)
GN(24/07/2019)