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IN HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15553 of 2019
and
W.M.P.No.15455 of 2019

M.Divya

... Petitioner

vs

1.State Level Scrutiny Committee,
rep by its Chairman & Secretary to the Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai - 600 009.

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

3.The Principal,
Tamil Nadu Government Dental
College & Hospital,
Chennai 600 003.

... Respondents

Prayer: Writ Petition is filed under article 226 of Constitution of India, to issue a Writ of Mandamus, order or Direction to direct the respondents 1 & 2 to declare the petitioner as belonging to the scheduled tribe community in the light of the favourable findings already arrived at in respect of her family and direct the third respondent to furnish her the provisional / decree certificate and all other certificates of BDS course.

For Petitioner : Mr.Yogesh Kannadasan

For Respondents : Mr.V.Shanmuga Sundar
Special Government Pleader

O R D E R

[Order of the Court was delivered by C.SARAVANAN.J]

The present Writ Petition has been filed for a Writ of Mandamus to direct the 1st and 2nd respondents to declare the



petitioner as a person belonging to the Scheduled Tribe community in the light of the favourable findings already arrived in respect of petitioner's family members and to direct the 3rd respondent to furnish provisional/decreed certificate and all other certificates of BDS course.

2.The petitioner was admitted to BDS course with the 3rd respondent under the quota meant for persons belonging to Schedule Tribe. The petitioner had submitted her community certificate at the time of admission in the year of 2008. The petitioner has thereafter successfully completed the course including Compulsory Rotatory Residential Internship (CRRI) during the year of 2014-15 and obtained a course completion certificate on 27.05.2015.

3.However, after the petitioner obtained her completion certificate, the 3rd respondent has not furnished the provisional / decreed certificate. Later the petitioner came to know that her Community Certificate was referred to the 1st respondent for verification.

4. An enquiry was initiated through the Vigilance Officer, Salem Division to verify the genuineness of the claim of the petitioner that she belongs to Schedule Tribe (Kattunaicken) Community.

5.By a letter dated 08.04.2019, the 2nd respondent has sent notice to the petitioner to give her written explanation in response to report dated 27.03.2019 of the Vigilance Cell, Salem Division in terms of the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241.

6.The petitioner replied to the above notice sent by the 2nd respondent and sought six weeks time to give her written explanation. However, after seeking time, the petitioner filed the present Writ Petition for the above relief.

7.Heard the learned counsel for the petitioner and the Special Government Pleader for the respondents.

8.The case of the petitioner is that her father was certified as a person belonging to the Kattunaicken community by the District Collector, Tiruchirappalli as early on 23.03.1981. Further, a favourable report was issued to the petitioner's sister Karunya by the District Vigilance Committee on 11.01.2008 and that the Revenue Divisional Officer, Karur had also



confirmed that the petitioner belonged to the Kattunaicken community by a report dated 21.08.2013.

9. Therefore, the learned counsel for the petitioner submits that the proposed enquiry before the 2nd respondent was unwarranted particularly in the light of the fact that the petitioner's father and sister have been confirmed that they are belong to the aforesaid community. It was therefore submitted that a fresh enquiry regarding the community of the petitioner was contrary to the guidelines of the Hon'ble Supreme Court in Kumari Madhuri Patil and another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241.

10. The Special Government Pleader has filed typeset of papers consisting of correspondence exchanged between the 1st respondent and 2nd respondent and order dated 30.08.2017 passed by this court on an earlier occasion in W.P.No.23355 of 2017.

11. The petitioner had filed the aforesaid Writ Petition to direct the 2nd respondent to forward CRRi particulars of the petitioner in BDS decree course during the academic year 2014-2015 to the 1st respondent by considering the petitioner's representation dated 28.07.2017.

12. By the aforesaid order dated 30.08.2017, this court had directed to the 2nd respondent to complete the such exercise within a period of four weeks from the date of receipt of a copy of this order.

13. It was informed that the 3rd respondent was unable to issue the provisional / decree certificate to the petitioner as Schedule Tribe community certificate's verification of the petitioner has not been received.

14. By an letter dated 04.06.2019 the 2nd respondent has informed the 1st respondent that though the petitioner sought six weeks time to give her written explanation by her letter dated 11.05.2019, there was no response from the petitioner till 04.06.2019.

15. The 2nd and 3rd respondents have also filed their counter. Wherein the 2nd respondent has reiterated the above position that the petitioner had not responded to letter dated 08.04.2019.



16.The 2nd further submitted that though the petitioner's father and sister have obtained report/certificate that they are belong to the Kattunaicken Community (ST), the petitioner's father certificate report was not based on verification and appears to have been issued across the table.

17.As far as the petitioner's sister Karunya's verification was concerned, it was submitted that the certificate was verified by the District Level Vigilance Committee on 11.01.2008 and therefore the verification of District Level Vigilance committee was no significance.

18.It is further submitted that the 2nd respondent received their report and therefore called the petitioner to give explanation on the report before the DSP, Vigilance Cell to forward the explanation to the 1st respondent to verify the genuineness of the community certificate issued to the petitioner.

19.However, after seeking time to respond to the above notice of the 2nd respondent, the petitioner has rushed to the court for relief, which cannot be granted.

20.It is further submitted that the respondents were only carrying on their functions as per the decisions of Hon'ble Supreme Court in Kumari Madhuri Patil and another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241 and are following the procedure prescribed in G.O.(Ms).No.106, Adi Dravidar and Tribal Welfare (CV I) Department dated 15.10.2012 and therefore submitted that the petitioner should be directed to approach the 2nd respondent so that bring a closure.

21.We have considered the arguments advanced by the learned counsel for the petitioner and the Special Government Pleader for the respondents and the documents filed by the petitioner and the respondents.

22.The petitioner's father was working in the Telecommunications, TamilNadu Circle. He had obtained favourable report from the Distirct Collector, Trichirapalli on 23.03.1981. There is no discussion in the said report. It merely refers to the letter dated 14.03.1981 issued by Musiri Revenue Divisional officer vide letter reference No. L.Dis.1120/81.



23. Therefore, said letter declaring the petitioner's father belonging to the said community cannot be the basis for confirming the status of the petitioner in the community certificate issued to her.

24. As far as the petitioner's sister verification is concerned, the verification report was given by the District Level Committee, even though by that time already G.O.(2D) No.108 dated 12.09.2007 had been issued empowering the 1st respondent to verify the genuineness of the Schedule Tribe Community Certificate.

25. By G.O. (GD).No.3 dated 31.01.2008, paragraph No.3 of the G.O. (GD).No.108 dated 12.09.2007 was amended as follows:-

"Wherein it has been stated that the cases for verification of the genuineness of the Schedule Tribe Community Certificates referred to by the Head of Departments, District Collectors, Universities, Educational Institutions, Central / State Public Sector Undertakings and other recruiting agencies received by District Level Vigilance Committees up to the date of issue of this Government Order i.e 12.09.2007 have to be dealt with by the respective District Level Vigilance Committee. Similarly, the State Level Scrutiny committee shall pass order on the appeal cases of both Scheduled Castes and Scheduled Tribe on which personal hearing have already been given before the date of issue of this Government order i.e 12.09.2007, but no order were passed for want of certain particulars on the date of personal hearing."

26. In Kumari Madhuri Patil and another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241, it was held as follows:-

13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the



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Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.
2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.
3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.
4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.
5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate



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hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.



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7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for



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elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

27. In this case, the admission to the 3rd respondent institution was contrary to the decision of the Hon'ble Supreme Court in the above mentioned case. In the paragraph No.13 (3) it has mentioned that an application for verification of the community certificate has to be completed at least six months in advance before seeking admission into educational institution or an appointment to a post. It was bounden duty of the petitioner to submit the certificate for verification to the 1st respondent before applying. However, neither the petitioner obtained a verification report nor the 3rd respondent insisted for verification of the certificate before admitting the petitioner.

28. Thus, this exercise can be done now provided the petitioner co-operates with the 2nd respondent by answering to the report of the Deputy Superintendent of Police, Vigilance Cell, Salem dated 27.03.2019, which was forwarded to the petitioner by a letter dated 08.03.2019 of the 2nd respondent.

29. In any event, the respondents are merely carrying out their obligation cast on them though under the Constitution of India to verify the genuineness of the petitioner's claim in terms of the decision of the Hon'ble Supreme Court in Kumari Madhuri Patil and another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241 and the petitioner has been merely called upon to give her written representation to the letter of the 2nd respondent.

30. Therefore, we are of the view that the relief claimed by the petitioner based on the report of the District Collector of Tiruchirapalli in the year 1981 issued in favour of the petitioner's father and in the year of 2008 issued in favour of the petitioner's sister cannot be granted.



31.We therefore are of the view, the Writ Petition filed by the petitioner is liable to be dismissed. The petitioner is therefore directed to co-operate to the 2nd respondent, so that the genuineness and bonafide communicate certificate produced by the petitioner can be decided by the 1st respondent.

32.In view of the above, we therefore direct the petitioner to give a representation to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order.

33.The 2nd respondent shall be complete the proceedings and forward the report to the 1st respondent within a period of four weeks thereafter. The first respondent is directed to pass appropriate orders within a period of three months from the date of the report of the 2nd respondent.

34.The present Writ Petition stands dismissed with the above observations. No cost. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

1.State Level Scrutiny Committee,
rep by its Chairman & Secretary to the Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai - 600 009.

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

3.The Principal,
Tamil Nadu Government Dental
College & Hospital,
Chennai 600 003.



+1cc to Mr.Yogesh Kannadasan, Advocate SR.No.62002

+1cc to Government Pleader SR.No.61972

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W.P.No.15553 of 2019
and
W.M.P.No.15455 of 2019

PA (CO)

GMV (26/08/2019)