

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.08.2019
Pronounced On	05.09.2019

CORAM

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

W.P.No.18946 of 2019
and
W.M.P.No.18299 of 2019

M.Sreepathy

...Petitioner

vs

- 1.The State Level Scrutiny Committee,
rep. by its Chairman,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George, Secretariat,
Chennai - 600 009.
- 2.The Deputy Superintendent of Police,
Social Justice (&) Human Rights Wing,
Tiruvallur District.
- 3.Union of India,
rep. by its General Manager,
Southern Railways,
Park Town, Chennai - 600 003.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue of a Writ of Certiorarified Mandamus or any other other appropriate Writ to call for the records of the proceedings of the proceedings No.13812/CV-4(1)/2014-11 dated 12.06.2019 of the first respondent and quash the order passed therein and consequently direct the third respondent to disburse the terminal benefits such as provident fund, gratuity, leave encashment and other benefits.

For Petitioner : Mr.Yogesh Kannadasan
For R1 & R2 : Mr.V.Shanmuga Sundar
Special Government Pleader
For R3 : Mr.P.T. Ramkumar

O R D E R

C.SARAVANAN, J.

The petitioner has challenged the impugned order passed by the 1st respondent cancelling the petitioner's 'Konda Kappu' Scheduled Tribe Community Certificate dated 31.07.1976 issued by the Tahsildar, Tiruttani.

2.The petitioner was appointed by the 3rd respondent as a fireman against the vacancy reserved for Scheduled Tribe by producing the aforesaid community certificate. After serving with the 3rd respondent, the petitioner has retired on 31.10.2014.

3.The petitioner had earlier filed O.A.No.74 of 2015 before the Central Administrative Tribunal for an order to release of terminal benefits which was allowed by the said Tribunal vide its order dated 14.03.2016.

4.The said order was challenged by the 3rd respondent before this court in W.P.No.34907 of 2016. Interim order was passed to ensure that the 1st respondent eventually passes an order regarding the claim of the petitioner in the said Community Certificate. Pursuant to the interim orders passed in the said writ petition, the 1st respondent has passed the impugned order and has cancelled the petitioner's 'Konda Kappu' Scheduled Tribe Community Certificate.

5.It is this order which is challenged in the present writ petition. In the present writ petition the petitioner has questioned the manner in which the 1st respondent has cancelled the petitioner's aforesaid Community certificate. According to the petitioner the Anthropologist's report was not furnished and therefore the impugned order passed without furnishing the Anthropologist's report was liable to be set aside.

6.A common counter has been filed on behalf of the 1st and 2nd respondent. The 3rd respondent/the former employer of the petitioner has also filed a separate counter.

7.The learned counsel for the petitioner relied upon the followings decisions of this Court:-

- i. In A.N.Narasimhan vs The Chairman and District Collector, District Level Vigilance Committee & Ors in W.P.No.254 of 2011 dated 29.08.2011.
- ii. In G.Appusamy vs The Tamil Nadu State Level Scrutiny Committee in W.P.No.9262 of 2011 dated 30.10.2012.

8. In A.N.Narasimhan vs The Chairman and District Collector, District Level Vigilance Committee & Ors in W.P.No.254 of 2011 dated 29.08.2011, this court held that the principles of natural justice were violated for the reason that the report of the Sub Collector as well as the view of report of the Anthropologist were furnished to the writ petitioner and that apart there was no discussion with regard to the documents produced by the writ petitioner to show that he belongs to Hindu Konda reddy Community.

9. Per contra, the learned counsel for the 1st and 2nd respondents submitted that the petitioner was given an opportunity vide show-cause notice Govt.Letter.No.13812/CV-4(1)/2014-10 dated 24.05.2019 to give an explanation on the queries raised by them. However, the petitioner failed to give any reply to that. Therefore, proceedings were held without any reply from the petitioner to the Show-Cause Notice and during the examination the petitioner had admitted that he belongs to 'Kappu Reddy' but not 'Hindu Konda Kapus'.

10. The 3rd respondent/former employer of the petitioner vehemently argued that the petitioner himself gave a written statement in an enquiry conducted by the Vigilance department on 25.02.2000 wherein confirmed that his cousin brother Thiru.M.V.Rajamanikam was also working as a clerk in Railway department at GSD, Perambur.

11. In the enquiry, it has been established that the petitioner's cousin brother M.V.Rajamanikam belonged to 'Kapu Reddy' a Forward Community and not 'Konda Kapu' Scheduled Tribe Community.

12. The 3rd respondent further stated that the school records and the proceedings of the Revenue Divisional Officer, Thirutani issued to the petitioner's cousin brother vide letter dated 25.05.2000 were referred to the District Collector, Tiruvallur to verify the genuineness of the 'Konda Kapus' Scheduled Tribe Community Certificate dated 31.07.1976 of the petitioner. Since no action was taken by the District Collector to verify the

genuineness of the Community Certificate of the petitioner. Several reminders were sent to expedite the verification. Further no verification has carried out by the authorities concerned.

13. Therefore, the 3rd respondent thereafter sent a letter to the Chariman, Adi Dravidar and Tribal Welfare Department requested to expedite the case which was pending for 13 years as the petitioner was due to retire on 31.01.2014. Meanwhile, the 3rd respondent filed W.P.No.34907 of 2016 against the order of the Central Administrative Tribunal and during the pendency of said proceedings, vide an interim order dated 01.03.2019, the 1st respondent was impleaded as one of the respondent.

14. The 1st respondent took up the case and issued a show cause notice dated 24.05.2019 to the petitioner to give reply as to why the petitioner's 'Konda Kapus' Community Certificate should not be cancelled. However, instead of giving reply, the petitioner has participated in the proceedings before the 1st respondent. The 1st respondent has confirmed that the petitioner does not belong to 'Konda Kappu' Scheduled Tribe Community but to 'Kappu Reddy' which is Forward Community.

15. The learned counsel for 3rd respondent filed a detailed set of documents for dismissal of the present Writ Petition.

16. In support of the above contentions, the learned counsel for the 3rd respondent relied on the following decisions of the Hon'ble Supreme Court:-

- i. R.Vishwanatha Pillai vs State of Kerala and Ors, (2004) 2 SCC 105.
- ii. Bank of India and Another vs Avinash D. Mandivikar and Ors, (2005) 7 SCC 690.

17. Heard Mr.Yogesh Kannadasan learned counsel for the petitioner, Mr.V.Shanmuga Sundar, Special Government Pleader for 1st and 2nd respondents and Mr.P.T.Ramkumar, learned counsel for 3rd respondent.

18. The impugned order has referred the report obtained from the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Tiruvallur District vide letter

Na.Ka.No.TD/B2/3284/2017 dated 09.07.2018. In the impugned order, it has mentioned that the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Tiruvallur District in its report dated 08.05.2018 has stated that based on the depositions of the individuals and his relatives, statement of the Government officials, report of the Tahsildar, Tiruttani and on perusal of the documents/records, it has concluded that the petitioner belongs to 'Hindu Konda Kapus' Scheduled Tribe Community.

19.A copy of the said report dated 08.05.2018 is not available for perusal. Paragraph No.6 of the impugned order dated 12.06.2016 of the 1st respondent reads as under:-

6.The Director, Tribal Welfare, Chennai has forwarded the Vigilance cell enquiry report obtained from the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Tiruvallur District Vide Letter Na.Ka.No.TD/B2/3284/2017, dated 09.07.2018. The Deputy Superintendent of Police, Social Justice and Human Rights Wing, Tiruvallur District in its report dated: 08.05.2018 has stated that based on the deposition of the individual and his relatives, statement of the Government officials, report of the Tahsildar, Tiruttani and on perusal of the documents/records, it is concluded that the individual Thiru.M.Sreepathy, S/o.Thiru.M.Krishna Reddy belongs to 'Hindu Konda Kapus' Scheduled Tribe Community.

20.The impugned order also refers to a spot enquiry report of the Anthropologist which was enclosed along with the Vigilance Cell Report which according to the petitioner was not furnished and therefore there has been manifest the violation of Principles of natural justice. As per the said report the claim of the petitioner that he belongs to 'Konda Kapus' Scheduled Tribe Community was not genuine.

21.The 1st respondent has also found the contradiction answers elicited from the petitioner while recording the deposition on 11.04.2019. The 1st respondent has confirmed that the petitioner belongs to 'Kappu Reddy' Community which is Forward Community in the State of Tamil Nadu and that he had obtained 'Reddy' Community Certificate for his daughter and that in the Elementary and Higher Secondary School's records of the petitioner, it is seen that the petitioner's community has been declared as 'Kappu'.

22. Though it appears there are records to indicate that the petitioner may not belong to 'Konda Kapus' Schedule Tribe Community as the petitioner's cousin brother M.V. Rajamanikam's 'Konda Kapus' Scheduled Tribe Community Certificate was cancelled and that the petitioner himself obtained 'Reddy' community Certificate for his daughter and in view of the Elementary and Higher Secondary School's records indicating that the petitioner belongs to 'Kappu' Community which is Forward Community, we are unable to uphold the impugned order.

23. The order passed by the 1st respondent has relied on the spot enquiry of the Anthropologist enclosed with the Vigilance Cell Report to come to a conclusion that the petitioner's claim 'Konda Kapus' Scheduled Tribe Community was not genuine. This has not been furnished to the petitioner. Further, there is finding in favour of the petitioner in paragraph No.6 of the impugned order.

24. The exercise of verification of Community Certificate ought to have been completed at the time of employment, if not soon after by the State Level Scrutiny Committee was constituted as per the order of the Hon'ble Supreme Court in Kumari Madhuri Patil and Another vs Additional Commissioner, Tribal Development and Others 1994 SCC (6) 241. 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 elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

25. The Hon'ble Supreme Court in Chairman and Managing Director, Food Corporation of India and Others vs Jagdish Balaram Bahira and Others, 2017 (8) SCC 670 held that finality does not attach to a community certificate (or to claim the benefits) where the claim of the individual is yet to be verified by the scrutiny committee.

26. The court further observed that when a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud.

It is a fraud on the statutes which implement the provisions of the Constitution. It is a fraud on State policy. The Court further held that usurpation of constitutional benefits by persons who are not entitled to them must be answered by the court in the only way permissible for an institution which has to uphold the rule of law. Unless the courts were to do so, it would leave open a path of incentives for claims based on fraud to survive legal gambits and the creativity of the disingenuous.

27. Finally court also held as follows:-

69.1. The directions which were issued by the Constitution Bench of this Court in para 38 of the decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] were in pursuance of the powers vested in this Court under Article 142 of the Constitution;

69.2. Since the decision of this Court in Madhuri Patil [Madhuri Patil v. Commr., Tribal Development, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349] which was rendered on 2-9-1994, the regime which held the field in pursuance of those directions envisaged a detailed procedure for:

- (a) the issuance of caste certificates;
- (b) scrutiny and verification of caste and tribe claims by Scrutiny Committees to be constituted by the State Government;
- (c) the procedure for the conduct of investigation into the authenticity of the claim;
- (d) Cancellation and confiscation of the caste certificate where the claim is found to be false or not genuine;
- (e) Withdrawal of benefits in terms of the termination of an appointment, cancellation of an admission to an educational institution or disqualification from an electoral office obtained on the basis that the candidate belongs to a reserved category; and
- (f) Prosecution for a criminal offence.

69.3. The decisions of this Court in R. Vishwanatha Pillai [R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105 : 2004 SCC (L&S) 350] and in Dattatray [Union of India v. Dattatray, (2008) 4 SCC 612 : (2008) 2 SCC (L&S) 6] which

were rendered by Benches of three Judges laid down the principle of law that where a benefit is secured by an individual-such as an appointment to a post or admission to an educational institution-on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.

69.4. The exception to the above doctrine was in those cases where this Court exercised its power under Article 142 of the Constitution to render complete justice;

69.5. By Maharashtra Act 23 of 2001 there is a legislative codification of the broad principles enunciated in *Madhuri Patil* [*Madhuri Patil v. Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349]. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates [Sections 6(2) and 6(3)]; cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things;

69.6. The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18-10-2001. Finality does not attach to a caste certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee;

69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise;

69.8. The decisions in *Kavita Solunke* [*Kavita Solunke v. State of Maharashtra*, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] and *Shalini* [*Shalini v. New English High School*

Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] of two learned Judges are overruled. Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] insofar as it stipulates a requirement of a dishonest intent for the application of the provision of Section 10 is, with respect, erroneous and does not reflect the correct position in law;

69.9. Mens rea is an ingredient of the penal provisions contained in Section 11. Section 11 is prospective and would apply in those situations where the act constituting the offence has taken place after the date of its enforcement;

69.10. The judgment of the Full Bench of the Bombay High Court in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] is manifestly erroneous and is overruled; and

69.11. Though the power of the Supreme Court under Article 142 of the Constitution is a constitutional power vested in the court for rendering complete justice and is a power which is couched in wide terms, the exercise of the jurisdiction must have due regard to legislative mandate, where a law such as Maharashtra Act 23 of 2001 holds the field."

28.Be that as it may, we are of the view since the petitioner was allowed to continue in service without timely verification of the genuineness of the Community Certificate and has now retired, no prejudice will be caused if the case is remitted back to the 1st respondent. The proceedings conducted by the 1st respondent was in violation of principles of natural justice for non-furnishing the copy of the Spot enquiry report of the Anthropologist and for not discussing the report of the Deputy Superintendent of Police's report dated 08.05.2018 referred in paragraph No.6 of the impugned order which seems to indicate that the petitioner indeed belongs to 'Hindu Konda Kapus' Community.

29.We are therefore of the view that the impugned order passed by the 1st respondent has to be set aside and fresh order has to be passed after furnishing a copy of the related documents and after considering other evidences on record.

30.The 1st respondent is also directed to furnish a copy of the spot report of the Anthropologist to the petitioner immediately to enable the petitioner to prepare his reply to the Show Cause Notice dated 24.05.2019. The petitioner is therefore given a last chance to file a reply to the show-cause notice.

31.Consequently, 1st respondent shall pass a speaking order within a period of three months from the date of receipt of a copy of this order.

32.In case the petitioner fails to co-operate with the 1st and 2nd respondents, the petitioner's aforesaid community certificate may be cancelled. Respondents shall thereafter take further steps to cancel payment of all terminal benefits and pensionary benefits including provisional pension which is being paid to the petitioner. The observations in this paragraph will apply only the petitioner fails to co-operate in the proceedings before the 1st & 2nd respondents.

33.The Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chairman,
The State Level Scrutiny Committee,
Adi Dravidar & Tribal Welfare Dept.,
Fort St. George, Secretariat,
Chennai - 600 009.
- 2.The Deputy Superintendent of Police,
Social Justice (&) Human Rights Wing,
Tiruvallur District.

3.The General Manager,
Union of India,
Southern Railways,
Park Town, Chennai - 600 003.

+1cc to Mr.Yogesh Kannadasan, Advocate SR.76808
+1cc to the Government Pleader SR.77732

Order
in
W.P.No.18946 of 2019
and
W.M.P.No.18299 of 2019

Rgn(CO)
CB(04/11/2019)