

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20.08.2019

Orders Pronounced on :05.09.2019

CORAM:

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

W.P.No.19323 of 2019
and
W.M.P.No.18788 of 2019

T.Senthil Kumar Petitioner

Vs.

The Tamil Nadu State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-600 009,
Rep. by it Chairman. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the enquiry notice in Letter No.18031/CV-5/2017-5, dated 20.06.2019 on the file of the respondent and quash the same.

For petitioner : Mr.S.Doraisamy

For respondents : Mr.V.Shanmuga Sundar, Spl.G.P.

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records relating to the enquiry notice in Letter No.18031/CV-5/2017-5, dated 20.06.2019 on the file of the respondent and quash the same.

2. It is the averment of the petitioner in the affidavit filed in support of the Writ Petition that he belongs to Konda Reddis Community, which is a Scheduled Tribe Community. He obtained Community Certificate from the Revenue Divisional

Officer, Salem on 19.12.1995 stating that he belongs to Konda Redis Community. In all his School Certificates, his community is entered as Konda Reddis. It is stated that one Appusamy filed a Writ Petition in W.P.No.11410 of 2015 for a direction to the State Level Scrutiny Committee to take a decision regarding the genuineness of the petitioner's Community Certificate and send a report to the District Collector to enable him to remove the petitioner herein from the post of Panchayat President. A Division Bench of this Court disposed of the above Writ Petition on 17.06.2015 holding that an enquiry into the verification of the petitioner's Community Certificate is pending with the State Level Scrutiny Committee.

3. While so, the respondent-Committee issued a notice to the petitioner to appear for the enquiry to be held on 08.06.2015 and 08.07.2015 about the genuineness of his Community Certificate. Accordingly, the petitioner appeared before the Committee. Pending enquiry, the Committee referred the matter to the Vigilance Cell, Salem Region. The Vigilance Cell Officer, without taking into consideration the evidence of the public and without conducting enquiry as per the guidelines of the Supreme Court issued in Kumari Madhuri Patil case (Kumari Madhuri Patil Vs. Addl. Commissioner), reported in AIR 1995 SC 94 = 1994 (6) SCC 241, sent a report that the petitioner does not belong to Konda Reddis Community. After receiving the report from the Vigilance Cell Enquiry Officer, instead of the State Level Scrutiny Committee, the Secretary to Government, in his individual capacity, issued a show cause notice and called upon the petitioner to submit explanation within 15 days. Hence, the petitioner filed a Writ Petition in W.P.No.33217 of 2015 challenging the show cause notice dated 28.09.2015 and also the report of the Vigilance Cell Officer-DSP, dated 14.09.2015. In the said Writ Petition, this Court has ordered notice. In the meantime, the Committee proceeded with the enquiry and passed final order on 06.11.2015 cancelling the petitioner's Community Certificate. Hence, the petitioner filed W.P.No.37233 of 2015 challenging the order of cancellation of his Community Certificate. After issuing notice, this Court took up both the above said Writ Petitions, viz., W.P.No.37233 of 2015 and W.P.No.33217 of 2015, and dismissed both the Writ Petitions on 09.12.2015 as having become infructuous, since the order of cancellation dated 06.11.2015 of the petitioner's Community Certificate was withdrawn on 07.12.2015. The relevant portion of the order passed by this Court is as follows:

"4. It is submitted by the learned Government Advocate appearing for the respondents that the proceedings of the State Level Scrutiny Committee dated 06 November 2015 impugned in W.P.No.37233 of 2015, has been withdrawn by the Chairman, State Level

Scrutiny Committee and Secretary to Government, by proceedings in Letter No.6101/CV-4(2)/2015-11 dated 07.12.2015 on the ground of affording further opportunity to the petitioner.

5. The show cause notice dated 28 September 2015 issued prior to the proceedings dated 06 November 2015, is under assail in W.P.No.33217 of 2015. In view of the fact that the State Level Scrutiny Committee has decided to afford fresh opportunity of hearing after withdrawing the consequential order dated 06 November 2015, it is not proper to proceed further.

6. In view of the subsequent development as aforesaid, both the writ petitions have become infructuous and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

4. It is the grievance of the petitioner that the Committee proceeded with the enquiry and passed final orders on 06.11.2015 cancelling the petitioner's Community Certificate holding that it is not genuine, against which, the petitioner filed a Writ Petition in W.P.No.37233 of 2015 as noted above, which was dismissed as having become infructuous as indicated above. Thereafter, the respondent-Committee, by letter in No.6101/CV-4(2)/2015-11, dated 07.12.2015 had withdrawn the cancellation proceedings dated 06.11.2015. On the basis of the above proceedings of the withdrawal, this Court closed the above Writ Petitions on 09.12.2015 as having become infructuous.

5. It is further stated by the petitioner that the Director of Tribal Welfare issued a notice on 08.03.2016 in Na.Ka.No.PaMe/Aa2/22/2015, calling for an explanation for the report of the Vigilance Cell Officer within a period of 30 days. The above notice was received by the petitioner on 19.03.2016, against which, the petitioner filed W.P.No.14532 of 2016 seeking to set aside the said notice issued by the Director of Tribal Welfare Department. This Court, by order dated 09.03.2017, directed the petitioner to appear before the respondent-Committee for the next hearing and the respondent-Committee was directed to consider the matter in the light of the law laid down by the Supreme Court in the said Madhuri Patil case (cited supra) and to pass appropriate orders on merits.

6. Subsequently, the respondent-Committee, on 10.07.2017, issued a notice calling upon the petitioner to appear before the Committee on 25.07.2017 with necessary documents as mentioned

therein. Though the petitioner could not gather all the above documents within the time prescribed, however, appeared for enquiry on 25.07.2017 and requested one month's time for giving reply to the show cause notice. But the respondent closed the enquiry and passed final order on 31.08.2017, which was received by the petitioner on 20.09.2017, holding that the petitioner's Community Certificate, dated 19.12.1995 is not genuine and directed the District Collector, Salem to cancel the above Community Certificate and also directed the State Election Commission to take stringent criminal action against the petitioner, against which, the petitioner filed W.P.No.26083 of 2017. This Court, after hearing the parties, passed order dated 17.11.2017 in the above W.P., setting aside the order of cancellation dated 31.08.2017 with a direction to conduct a fresh enquiry after following proper procedures as stated in the said order dated 17.11.2017.

7. It is further stated by the petitioner that on 06.05.2019, the respondent-Committee sent a copy of the report submitted by the Deputy Superintendent of Police (DSP) (Vigilance Cell), containing 120 pages, which was received by the petitioner only on 11.05.2019. Thereafter, on 16.05.2019, the respondent-Committee issued a notice for enquiry to be held on 27.05.2019. Since the report of the Vigilance Cell Officer containing 120 pages, was received by the petitioner only on 11.05.2019, the petitioner required some time to study in detail the report of the DSP (Vigilance Cell) and hence, the petitioner requested one month's time for the enquiry. Thereafter, on 27.05.2019, the respondent wrote to the petitioner that the enquiry is postponed by a month and the next date of enquiry will be intimated to the petitioner later. Subsequent thereto, on 20.06.2019, the respondent issued the impugned notice for enquiry to be held on 10.07.2019, as against which, the present Writ Petition is filed for the relief stated supra.

8. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner made detailed submissions advertng to the averments made in the affidavit filed in support of the Writ Petition.

9. The learned Special Government Pleader appearing for the respondent, by filing counter affidavit, submitted that by proceedings in No.6101/CV-4(2)/2015-21, Adi Dravidar and Tribal Welfare Department, dated 31.08.2017, the State Level Scrutiny Committee cancelled the Hindu Konda Reddis Scheduled Tribe Community Certificate No.3682212 issued by the Revenue Divisional Officer (RDO), Salem to the petitioner, vide C.No.1216/95, dated 19.12.1995. Aggrieved by the same, the petitioner filed W.P.No.26083 of 2017 before this Court and this Court, by order dated 17.11.2017, directed as follows:

"22. Accordingly, we allow the writ petition and set aside the impugned order in proceedings No.6101/CV-4(2)/2015-21, dated 31.08.2017 passed by the 1st respondent with the following directions:

(i) The State Level Scrutiny Committee is directed to furnish the statements recorded by the vigilance cell or by the committee to the petitioner.

(ii) In case, the State Level Scrutiny Committee seeks to rely on such statements, necessarily opportunity should be afforded to the petitioner to cross examine those witnesses. The cross examination should be conducted in the presence of the State Level Scrutiny Committee and such cross-examination should be an effective one. The State Level Scrutiny Committee must ensure the presence of the witnesses, so as to enable the petitioner to cross examine them on the very same day. It is made clear that the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.

(iii) In case, the Committee is of the view that the issue can be decided even without reference to the deposition given by the witnesses, there is no need for summoning them. In such event, the committee shall give an opportunity to the petitioner to produce documents in support of his claim and thereafter, decide the matter on merits and as per law.

(iv) The petitioner is directed to co-operate with the State Level Scrutiny Committee for an early disposal of the matter. In case, the petitioner is prolonging the matter on one pretext or the other, it is open to the State Level Scrutiny Committee to decide the matter on the basis of available materials.

(v) The above said exercise shall be completed within a period of three months from the date of receipt or production of a copy of this order.

(vi) There will be no order as to costs. Consequently, W.M.P.No.27703 of 2017 is closed."

10. The learned Special Government Pleader further submitted that based on the above order of this Court, a copy of the report of the DSP, SC/Scheduled Tribe Vigilance Cell, Salem Region, containing 120 pages, was served on the petitioner, vide Government letter No.18031/CV5/2017-2, Adi Dravidar and Tribal Welfare Department, dated 06.05.2019. Further, in Government Letter No.18031/CV-5/2017-3, Adi Dravidar and Tribal Welfare Department, dated 16.05.2019, the petitioner was called to appear before the State Level Scrutiny Committee-III for inquiry

which was to be held on 27.05.2019, but the petitioner was absent on that day and he requested one month's time, which was granted by the Committee through communication in Government Letter, dated 27.05.2019. Once again, the petitioner was called for to appear before the State Level Scrutiny Committee-III for enquiry which was to be held on 10.07.2019 and he appeared and requested to grant 45 days' time for submitting documents in support of his claim of Konda Reddis Community, which was granted and he was also informed that if the supported documents for his claim are not submitted within the stipulated time, the Committee will decide with available records/documentary evidence in the file, vide Letter dated 18.07.2019.

11. It is further stated in the counter that the petitioner, in his petition, dated 10.07.2019, had requested the Chairman, State Level Scrutiny Committee-III to furnish the report of the Anthropologist, which was communicated in Government Letter, dated 18.07.2019. In the meanwhile, the present Writ Petition is filed. The petitioner is again called for to appear before the State Level Scrutiny Committee-III for enquiry to be held on 26.08.2019 in Government Letter No.18031/CV-5/2017-7, Adi Dravidar and Tribal Welfare Department, dated 06.08.2019, for verification of genuineness of the Hind Konda Reddis Scheduled Tribe Community Certificate No.3682212 issued by the RDO, Salem, vide No.1216/95, dated 19.12.1995, along with the original documents referred to therein. Thus, the respondent prayed for dismissal of the present Writ Petition.

12. The petitioner has filed reply affidavit reiterating the facts and inter-alia stating that he filed W.P.No.26083 of 2017 as against the order of the respondent-Committee, dated 31.08.2017 on the ground that neither the Vigilance Cell Officer, nor the Committee conducted any enquiry in respect of the anthropological and ethnological aspects and no report was furnished to him and he was not permitted to cross-examine the witnesses. This Court disposed of the said W.P.No.26083 of 2017 with directions extracted earlier in this order. Since the petitioner had not gone through 120-page report of the Vigilance Cell Officer, though he requested two months' time, however, only one month time was granted. After going through the said report, the petitioner has preferred the present Writ Petition. The Vigilance Cell Officer had not followed the guidelines issued by the Supreme Court in the said Kumari Madhuri Patil's case (cited supra) and also not followed the procedures laid down in the Government Order in G.O.(Ms).No.106, Adi Dravidar and Tribal Welfare (CV.I) Department, dated 15.10.2012. Since the report is incomplete, the petitioner could not submit his explanation. It is the duty of the Vigilance Cell Officer to gather the particulars as envisaged in the Proforma, 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 and dead bodies. The said report should be in accordance with law. These are all the essential materials to find out the social status of a person. The respondent had not given any report on the above guidelines.

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

14. Earlier, one month's time sought for by the petitioner, was duly granted by the respondent to go through the 120-page report of the Vigilance Cell Officer and make his submissions. The allegation of the petitioner that the said report is incomplete report, is not acceptable for this Court for the reason that the Vigilance Cell Officer had gone into the details of the matter and submitted the report. It could be manifestly implied that the intention of the petitioner is only to avoid enquiry proceedings for one reason or the other. In fact, the Anthropologist report was also communicated to the petitioner by the respondent-Committee on 06.05.2019 in Letter No.18031/CV.5/2017-2. In such circumstances, absolutely, we do not find any justification on the part of the Writ Petitioner in seeking to quash the impugned enquiry notice. There is no merit in this Writ Petition and the same is liable to be dismissed.

15. Accordingly, the Writ Petition is dismissed. The respondent-Committee is directed to proceed with the enquiry and complete the same at the earliest. The petitioner is directed to co-operate for the enquiry to be held by the respondent-Committee. If the petitioner fails to co-operate for the enquiry, the respondent-Committee shall proceed with the enquiry based on the available documents. No costs. Consequently, W.M.P. is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

CS

To

The Tamil Nadu State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-600 009,
Rep. by it Chairman.

+lcc to Mr.S.Doraisamy, Advocate Sr.77598
+lcc to the Government Pleader Sr.77733

W.P.No.19323 of 2019

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srg 18/10/2019



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