IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Review Application (Writ)No.175 of 2018
and
WMP.Nos.17471 and 17472 of 2017

R.Usha Rani .. Review Petitioner/Review Petitioner

vs.

1.The Tamilnadu State Level Scrutiny Committee,
Represented by its Chairman,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai,
3rd floor, Secretariat, Chennai-600 009.

2.The Bank of Baroda
Represented by its
Deputy General Manager,
Chennai Metro Region (CMR),
No.10, C.P.Ramasamy Road,
Alwarpet, Chennai-600 018. .. Respondents/Respondents

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PRAYER: Review Application filed under Order 47 Rule 1 of CPC, to review the final order passed in W.P.No.16173 of 2017 dated 17.11.2017 passed by this Court.

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For Petitioner : Mr.L.Mohan
for M/s.V.Vijay Shankar

For Respondents : Mrs.Narmada Sampath,
Additional Advocate General
assisted by Mr.M.Elumalai,
Government Advocate
for 1st respondent

ORDER

(Order of this Court was made by *M.V.MURALIDARAN,J.*)

This review application has been filed by the writ petitioner seeking to review the order dated 17.11.2017 passed in W.P.No.16173 of 2017.

2. Before adverting to the merits of the review application, it behooves us to reproduce the relevant portion of the order dated 17.11.2017 passed in W.P.No.16173 of 2017, which reads thus:

> *"3. Learned counsel for the petitioner submitted that the claim of the petitioner belonging to Kattunayakan community is supported by certificates issued to as many as six other family members. Despite the same, the impugned order cancelling the Scheduled Tribes Hindu 'Kattunayakan' form of caste certificate issued to the petitioner has been passed.*
>
> *4. Learned Government Advocate refers to the counter of first respondent and brings to notice that petitioner*

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was called to appear before the State Level Scrutiny Committee on 28.07.2016 and offer her remarks in support of the claim through Government Letter No.20802/CV III/2015, dated 15.07.2016. However, she has not done so. Thus, it is seen that the impugned order has been passed without hearing the petitioner.

In the circumstances, this Court allows this Writ Petition. The proceedings of first respondent in Na.Ka.No.20802/CVIII/2015 dated 22.05.2017 is quashed and the matter is remitted back to first respondent for fresh consideration. First respondent is directed to provide all relevant documents to petitioner, afford a fresh opportunity to petitioner to appear before it and offer her explanation in support of her claim..."

3. The learned counsel appearing on behalf of the review applicant/writ petitioner submits that the applicant belongs to Kattunayakan community and a certificate to the said effect was issued to her way back on 7.8.1977 by the competent authority and the said certificate was also verified and found to be true by the Revenue Divisional Officer on a reference made by the second respondent bank and when the validity of the community certificate of the applicant has been verified and found to be true, no further verification is warranted. To buttress the said argument, he submitted

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that community certificates issued by Tahsildar prior to 11.11.1989 are valid for all purposes in the light of the decisions of the Hon'ble Supreme Court and the said factor was not considered by the first respondent/ Committee before cancelling her community certificate.

4. The next limb of argument advanced by the learned counsel appearing for the petitioner is that in respect of the sister of the review applicant (Sujatha), the State Level Scrutiny Committee had confirmed that she belongs to Hindu Kattunayakan Community and proceedings to that effect have also been passed on 24.3.2015 by the said Committee and, therefore, there is no justification in directing the review applicant to appear for enquiry before the first respondent Committee, more particularly when the Hon'ble Supreme Court had time and again held that community certificates issued in favour of close relatives and blood relations by a competent authority should be considered, unless they are set aside by an higher authority.

5. Lastly, he submitted that when the communal status of the review applicant is declared and confirmed to be of Hindu Kattunayakan, the second respondent bank is bound to release pension, gratuity and all other admissible terminable benefits to her and withholding the same is causing irreparable hardship to the review applicant.

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6. Contrarily, Smt.Narmadha Sampath, learned Additional Advocate General appearing on behalf of the first respondent submitted that there is no error apparent on the face of the record and no prejudice will be caused to the review applicant if she appears for an enquiry before the first respondent/Committee. She also represented before this Court, pursuant to the order in the writ petition on several occasion, the respondent sent notice to the petitioner, but she was response to it and not appear in the enquiry.

7. Heard the learned counsel on either side and perused the documents available on record.

8. In the case on hand, it is beyond any cavil that even at the time of filing the writ petition, the petitioner had annexed to the typed set of papers the proceedings, being Proceedings No.1551/CVIII/2012, dated 24.3.2015, passed by the Tamil Nadu State Level Scrutiny Committee in respect of one R.Sujatha, D/o.V.G.Rajaswamy. In the said proceedings, the first respondent/Committee had held as under:

> *"7. The State Level Scrutiny Committee have carefully examined the original records, oral statement of the individual, the views of the Anthropologist and the sport enquiry report of the Tahsildar, Village Administrative Office, Revenue Inspector, Kodavasal,*

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Thiruvarur. ***After careful examination, the Committee have decided that Tmt.R.Sujatha, D/o. Thiru V.G.Rajaswamy belongs to Hindu 'Kattunayakan' Scheduled Tribe Community. Accordingly, the State Level Scrutiny Committee hereby confirms that the Hindu 'Kattunayakan' Scheduled Tribe Community Certificate bearing Certificate No.2686276 (RC No.5587/2001/A1), dated 19.2.2002 issued to Tmt.R.Sujatha, D/o.THiru V.G.Rajaswamy by the Revenue Divisional Officer, Thiruvarur is genuine.***"

(emphasis supplied)

9. It is not in dispute that the petitioner herein and the said R.Sujatha are daughters of V.G.Rajasamy and both are sisters. This Court while passing the order in the writ petition had by oversight not taken into consideration the proceedings of the first respondent/Committee, being Proceedings No.1551/CVIII/2012, dated 24.3.2015, in respect of the petitioner's sister Smt.Sujatha.

10. In *State of Bihar v. Sumit Anand, (2005) 12 SCC 248*, the Hon'ble Supreme Court upheld the order of the High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Hon'ble Supreme Court observed as under:

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"*6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."*

11. The Hon'ble Supreme Court as well as this Court, time and again, held that when community certificates issued in favour of close relatives and blood relations by a competent authority subsist, the authorities are bound to consider the same, unless the same are set aside by a higher authority. In the case on hand, the first respondent/Committee itself upheld the communal status of the petitioner's own sister. Therefore, the cancellation of the community certificate of the petitioner by the very said Committee is unjustified.

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12. 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*

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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."

13. In the light of the decision, referred supra, the first respondent is bound to take into consideration the community certificate issued to the petitioner by the Tahsildar, who is a competent authority, at the relevant time, to wit, prior to 11.11.1989. This vital fact was not considered by the first respondent Committee before cancelling the community certificate of the review applicant.

14. The act of the first respondent in cancelling the community certificate of the petitioner vide proceedings dated 22.05.2017, while the very same authority had upheld the communal status of her sister vide proceedings dated 24.3.2015, only goes to show that the first respondent is acting on autopilot, without application of mind.

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15. For the foregoing reasons, the direction passed by this Court in the writ petition remitting the matter to the first respondent/ Committee is recalled and instead the proceedings of first respondent in Na.Ka.No.20802/CVIII/2015 dated 22.05.2017 stand quashed and the communal status of the petitioner to the effect that she belongs to

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Hindu Kattunayakan community is upheld, more so, in view of the proceedings of the first respondent/Committee in respect of the sister of the petitioner, and the second respondent is directed to disburse the pension, gratuity, provident fund contribution, earned leave encashment and all other admissible benefits to the review applicant within eight weeks from the date of receipt of a copy of this order.

In the result, the review application is allowed with the above directions. No costs.

(C.T.S., J.) (M.V.M.,J.)

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