

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2019

Pronounced on : 16-04-2019

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Writ Petition No. 28295 of 2018
and
Contempt Petition No. 2243 of 2018

Writ Petition No. 28295 of 2018

R. Sundaram ... Petitioner

Versus

1. The Tamil Nadu State Level Scrutiny Committee
represented by its Chairperson
Adi Dravidar and Tribal Welfare Department
Namakkal Kavingar Maligai
Secretariat, Chennai - 600 009
2. The Principal Secretary to Government

Adi Dravidar and Tribal Welfare Department
Fort St. George
Secretariat, Chennai - 600 009
3. The Director of Tribal Welfare Department
Chepauk, Chennai - 600 005
4. The Director of Tribal Research Centre
M. Palada, Udhamandalam - 4
5. The Deputy Superintendent of Police
SC/ST Vigilance Cell
Madurai Division
(In-charge) Salem Division
Salem - 1
6. The District Collector
Salem
7. The Sub-Collector
Mettur
Salem District

8. The Tahsildar
Mettur Taluk, Mettur
Salem District

9. Indian Bank
represented by its General Manager
Corporate Office
No.254-360, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014

.. Respondents

Contempt Petition No. 2243 of 2018

R. Sundaram

.. Petitioner

Versus

1. Mr. Otem Dai, I.A.S.,
Chairman
State Level Scrutiny Committee and
Principal Secretary to Government
Adi Dravidar and Tribal Welfare Department
Secretariat, Chennai - 600 009

2. Mr. T. Ritto Cyriac, I.F.S.,
Director cum Member Secretary
State Level Scrutiny Committee
Tribal Welfare Department
Chepauk, Chennai - 600 005

3. Dr. P. Subramaniam, M.D.,
Member/Anthropologist
State Level Scrutiny Committee and
The Director of Tribal Research Centre
M. Palada, Udhaigai-4

.. Respondents

Prayer in WP No.28295 of 2018:

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari and Mandamus calling for the records pertaining to impugned proceedings in No.4009/CV-4(2)/2013-21 dated 27.03.2018 on the file of the first respondent and quash the same and consequently directing the first respondent to restore the petitioner's community certificate dated 15.11.1975 issued by Tahsildar, Mettur, as valid and genuine by declaring the petitioner's communal status as "Kondareddy (Schedule Tribe Community)" in the light of the letter No.35404/ADW-II/91-1 dated 16.09.1991 issued by the second respondent and the judgment of the Honourable Supreme Court reported in 1997 (7) SCC 505 with a further direction to the ninth respondent to disburse and settle the petitioner's retirement benefits and pensioner benefits etc., within a reasonable period to be fixed by this Court.

Contempt Petition No. 2243 of 2018:

Petition filed under Section 11 of The Contempt of Courts Act praying to punish the respondents for Contempt of Court for wilful disobedience of the Order dated 19.12.2017 in WP No. 33207 of 2017.

Prayer in WP No. 33207 of 2017:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order passed by the first respondent Na.Ka. No.Pa.Me/ Aa2/ 1760/ 2017 dated 07.12.2017 and the Report of the 2nd Respondent in Na.Ka. No.136/ D.S.P/ SC/ST Vigilance Cell/ Salem Division/ 2017 dated 29.11.2017 and quash the same and direct the Respondents to conduct a fresh enquiry in accordance with law.

For Petitioner : Mr. P. Wilson, Senior Advocate
for Mr. R. Neelakandan
in WP No. 28295 of 2018

For Petitioner : Mr. P. Wilson, Senior Advocate
for Mr. N. Naganathan
in Contempt Petition No. 2243 of 2018

For Respondent : Mrs. Narmadha Sampath
Additional Advocate General
assisted by Mr. M. Elumalai
Government Advocate for RR1 to 8 in Writ Petition
and for respondents in Contempt Petition
Mrs. Rita Chandrasekar
for M/s. Aiyar & Dolia for R9 in Writ Petition

COMMON ORDER

R. Subbiah, J

The writ petition as well as the contempt petition have been filed by the petitioner by name Sundaram. He filed the writ petition challenging the order dated 27.03.2018 of the first respondent and after quashing the same, seeks for a consequential direction directing the first respondent to restore his community certificate dated 15.11.1975 issued by Tahsildar, Mettur, as valid and genuine by declaring the petitioner's communal status as "Kondareddy (Schedule Tribe Community)" in the light of the letter No.35404/ADW-II/91-1 dated 16.09.1991 issued by the second respondent and the judgment of the Honourable Supreme Court reported in 1997 (7) SCC 505 with a further direction to the ninth respondent to disburse and settle his retirement benefits and pensioner benefits etc., within a reasonable period to be fixed by this Court.

2. The petitioner also filed Contempt Petition No. 2243 of 2018, complaining non-compliance of the order dated 19.12.2017 passed in an earlier writ petition filed by him in WP No. 33207 of 2017 and to initiate contempt proceedings against the respondents.

3. According to the petitioner, he belongs to "Konda Reddy" community, which is classified as a Scheduled Tribe community and notified in Serial No.12, Part XIV of Constitution of Schedule Tribes Order, 1950. It is the contention of the petitioner that his forefathers hailed from Godawari District, Andhra Pradesh and later they migrated to Tamil Nadu and Karnataka State. As far as Kolathur Village, Mysore State is concerned, where the petitioner's forefather lived, it was part of Kollegal Taluk, Karnataka and after bifurcation of Mysore State, Kolathur Village became part of Bhavani Taluk and was subsequently brought under Mettur Taluk of Salem District. It is the further case of the petitioner that when he applied for issuing community certificate in his favour before the Tahsildar, Mettur, a thorough enquiry was conducted as regards the communal status of the petitioner and after such enquiry, a community certificate dated 16.06.1974 was issued stating that the petitioner belonged to "Konda Reddy" community. The petitioner was thereafter appointed as Clerk Sherof in Indian Bank during November 1975 under the quota meant for Schedule Caste and his services were also confirmed. The petitioner retired from his service on 31.05.2013 as a Scale-3 Officer in the Bank. According to the petitioner, even at the time of his appointment and before confirmation of his service, the community certificate produced by him was subjected to verification by the ninth respondent. While so, the sixth respondent, without conducting any enquiry, cancelled the community certificate issued to the petitioner. Therefore, the petitioner filed WP No. 12546 of 1998 and this Court, by order dated 09.06.2009 remanded the matter back to the first respondent for conducting an enquiry afresh. However, till the retirement of the petitioner on 31.05.2013, the verification with respect to the communal status of the petitioner was not completed. As the petitioner was not paid the terminal benefits after his retirement, he filed WP No. 19006 of 2013 seeking to issue appropriate direction to the respondents therein to pay his pensionary benefits. By order dated 04.07.2014, this Court disposed of the said writ petition by directing the first respondent to complete the enquiry within a period of eight weeks. As against the order dated 04.07.2014, the petitioner filed SLP (C) No. 33267 of 2014 before the Honourable Apex Court. Pending the Special Leave Petition an interim order was passed directing the petitioner to appear before the first respondent/State Level Committee for enquiry. In the meantime, as directed by the first respondent, the fifth respondent appears to have conducted an enquiry and submitted his report on 29.11.2017. According to the petitioner, such a report was filed by the fifth respondent without examining any witness or conducting any enquiry and arrived at a conclusion as if the petitioner did

not belong to Konda Reddy community. Based on the report dated 29.11.2017 of the fifth respondent, the third respondent issued a show cause notice dated 07.12.2017 to the petitioner enclosing a copy of the report dated 29.11.2017. Aggrieved by the show cause notice dated 07.12.2017, the petitioner filed WP No. 33207 of 2017 before this Court. By order dated 19.12.2017, this Court set aside the show cause notice dated 07.12.2017 issued by the third respondent and the enquiry report dated 29.11.2017 submitted by the fifth respondent with certain directions. After receipt of the order dated 19.12.2017, the petitioner submitted representations to the first respondent seeking to comply with the directions issued by this Court in the order dated 19.12.2017 in WP No. 33207 of 2017. However, the petitioner has not received any communication from the first respondent. While so, the impugned order dated 27.03.2018 was issued by the first respondent and it was served on the petitioner on 06.04.2018. Thus, according to the petitioner, the impugned order dated 27.03.2018 was passed by the first respondent without complying with the directions issued by this Court in the order dated 19.12.2017 in WP No. 33207 of 2017. Notwithstanding the filing of the present writ petition challenging the order dated 19.12.2017 of the first respondent, the petitioner has also filed the above contempt petition complaining that the first respondent had breached the directions issued by this Court on 19.12.2017 in WP No. 33207 of 2017 and therefore the respondents are liable to be prosecuted.

4. Mr. Wilson, learned Senior counsel for the petitioner would vehemently contend that the impugned order dated 27.03.2018 was passed by the first respondent without complying with the directions issued by this Court in the order dated 19.12.2017 in WP No. 33207 of 2017. By the said order dated 27.03.2018, this Court had set aside the show cause notice dated 07.12.2017 issued by the first respondent inter alia directed that in case the first respondent committee seeks to rely upon the statements recorded by the fifth respondent against the petitioner, due opportunity should be afforded to the petitioner to cross-examine those witnesses and copies of all the documents relied on should be furnished to the petitioner. However, inspite of such specific direction issued by this Court, the first respondent, without issuing any notice regarding the enquiry or affording an opportunity of hearing, has passed the impugned order concluding that the community certificate has been obtained by the petitioner by resorting to fraud and that the certificate issued to the petitioner is bogus. In any event, the first respondent failed to adhere to the directions issued by this Court in the order dated 19.12.2017 in WP No. 33207 of 2017 and therefore, the impugned order is legally not sustainable. Thus, the sum and substance of the submissions of the learned Senior counsel for the petitioner is that by the earlier order dated 19.12.2017 in WP No. 33207 of 2017, this Court set aside the show cause notice dated 07.12.2017 issued by the first

respondent as well as the vigilance report submitted by the Deputy Superintendent of Police, SC/ ST Vigilance Cell, Madurai Division, Salem dated 29.11.2017, however, by placing reliance on the very same Vigilance report dated 29.11.2017, the impugned order dated 27.03.2018 has been passed by the first respondent and therefore, the learned Senior counsel for the petitioner prayed for allowing the writ petition.

5. Per contra, Mrs. Narmadha Sampath, learned Additional Advocate General appearing for the respondents 1 to 8 in the writ petition would contend that the order dated 27.03.2018, which is impugned in this writ petition, has been passed strictly in compliance with the directions issued by this Court in the earlier order dated 19.12.2017 passed in WP No. 33207 of 2017. According to the learned Additional Advocate General, a notice dated 12.03.2018 was sent to the petitioner for his appearance on 23.03.2018 at 10.30 am for an enquiry so as to take a decision with reference to the genuineness of the community certificate issued to him by the Tahsildar, Mettur Dam. The letter dated 12.03.2018 was sent to the petitioner to the two addresses furnished by the employer of the petitioner namely the ninth respondent. The letter dated 12.03.2018 was sent by speed post on the same day on 12.03.2018 to his address at No/F-3, Lilly Block, Salim's Justice Square, Judges Colony, Noombal, Thiruverkadu, Chennai - 600 077 and the same was delivered on 13.03.2018. The very same notice dated 12.03.2018 was also sent to the petitioner's address at No.4/11, Pannavadi Village, Mettur Taluk, Salem District and it was returned un-served with an endorsement "out of station". Therefore, it is incorrect on the part of the petitioner to contend that notice was not served on him before passing the order, which is impugned in this writ petition. Further, inspite of receipt of the notice, the petitioner did not attend the enquiry. Therefore, based on the available records, the first respondent has passed the order dated 27.03.2018, which is impugned in this writ petition, holding that the community certificate obtained by the petitioner is bogus and ingenuine. In any event, it cannot be said that the order dated 27.03.2018 has been passed by the first respondent without complying with the directions issued by this Court in the earlier order dated 19.12.2017 in WP No. 33207 of 2017. Therefore, the learned Additional Advocate General prayed for dismissal of the writ petition.

6. Keeping the submissions made on behalf of both sides, we have carefully gone through the materials placed. Though very many contentions have been raised on behalf of both sides, the important point that has been brought for our consideration in this writ petition is whether the first respondent has adhered to the directions issued by this Court in the order dated 19.12.2017 in WP No. 33207 of 2017. The said WP No. 33207 of 2017 was filed by the petitioner herein challenging the show cause notice dated 07.12.2017 issued by the first respondent. It is relevant to look into the directions issued by the Division Bench of this Court in the

order dated 19.12.2017 in WP No. 33207 of 2017, which reads as follows:-

"24. Accordingly, we allow the writ petition and set aside the impugned orders in Na.Ka.No.P.Me.Aa2/1760/2017 dated 07.12.2017 passed by the first respondent and the report of the second respondent in Na.Ka.No.136/D.S.P./SC/ ST Vigilance Cell/Salem Division/2017 dated 29.11.2017 with the following directions:-

"i. The matter is remanded to the State Level Scrutiny Committee for fresh consideration

ii. It is made clear that 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 and copies on all documents relied on should be furnished to the petitioner. 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. In any case, the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.

iii. If 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 as per law.

iv. The petitioner is directed to cooperate with the State Level 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 two months from the date of receipt or production of a copy of this order.

7. Thus it is evident that the Division Bench of this Court, in the order dated 19.12.2017 in WP No. 33207 of 2017 has directed the first respondent to afford opportunity to the petitioner in compliance with principles of natural justice and to complete the enquiry within a period of two months. The Division Bench also, in clause (iv) of para No. 24 mentioned above, directed the petitioner to extend his cooperation for completion of the enquiry and on his failure liberty was given to the State Level Scrutiny Committee to decide the matter on the basis of available materials. In fact, the petitioner filed Special Leave to Appeal (C) No. 33627 of 2014 before the Honourable Supreme Court challenging the order dated 04.07.2014 passed in WP No. 19006 of 2013. By order dated 23.01.2018, the Honourable Supreme Court passed the following order:-

"Let the matter be adjourned for six weeks.

In the meantime, the State Level Scrutiny Committee shall decide the matter as per order dated 19.12.2017 passed by the High Court of Madras in Writ Petition No. 33207 of 2017.

List after six weeks.

8. It is pursuant to the aforesaid order passed by the Honourable Supreme Court on 23.01.2018, the first respondent has passed the order dated 27.03.2018, which is assailed in this writ petition, purportedly on the ground that before passing the order dated 27.03.2018, the directions given by the Division Bench of this Court in the order dated 19.12.2017 in WP No. 33207 of 2017 has not been adhered to.

9. As regards the service of notice on the petitioner, we have directed the learned Additional Advocate General to produce the original file pertaining to this case. Accordingly, the original file has been produced before this Court. On perusal of the file, we have noticed that the communication dated 12.03.2018 was sent to the addresses furnished by the petitioner's employer, one at Salem District and the other at Thiruverkadu, Chennai. The communication dated 12.03.2018 was sent to both the addresses by which the petitioner was called upon to attend the enquiry on 13.03.2018. We have also noticed that the communication dated 12.03.2018 sent to the petitioner at his Thiruverkadu address has been duly delivered on 13.03.2018 by speed post service. On the other hand, the communication dated 12.03.2018 sent to the petitioner to his Salem address was returned with an endorsement "out of station". Therefore, it is evident that the communication dated 12.03.2018 has been duly served on the petitioner, but the petitioner, on receipt of the communication dated 12.03.2018, did not participate in the enquiry conducted by the first respondent on 23.03.2018. Even on 23.03.2018, the first respondent adjourned the enquiry proceedings to 27.03.2018 to enable the petitioner to participate in the enquiry. However, the petitioner did not attend the enquiry. On the other hand, curiously, in the representation dated 27.03.2018 sent by the petitioner, he has stated that he has not received any notice for the enquiry proposed to be conducted on 23.03.2018. According to the petitioner, he came to know about the enquiry to be conducted on 23.03.2018 through one Ranganathan against whom also an enquiry was proposed to be conducted by the first respondent on that day. In any event, we are of the view that the first respondent has duly served notice on the petitioner for the enquiry proposed to be conducted on 23.03.2018 and it was also received by the petitioner as could be evident from the original records. However, for the reasons best known, the petitioner did not participate in the enquiry. It is needless to mention that this Court has granted two months time for completing the enquiry in the order dated 19.12.2017 in WP No. 33207 of 2017, however, the enquiry could not be completed within the time indicated by this Court. Thus, inspite of service of notice, the petitioner did not turn up for enquiry and that is the reason

why the first respondent, on the strength of the directions issued by this Court in para No.24 (iv) of the order dated 19.12.2017 in WP No. 33207 of 2017, passed the order dated 27.03.2018 on the basis of the materials made available and we do not find any reason to interfere with the same.

10. We have also noticed from the records that the petitioner earlier filed WP No. 19006 of 2013 seeking to issue appropriate direction to the respondents therein to pay his pensionary benefits. The said writ petition was disposed of by this Court on 04.07.2014 directing the first respondent to complete the enquiry within a period of eight weeks. As against the order dated 04.07.2014, the petitioner filed SLP (C) No. 33267 of 2014 before the Honourable Apex Court. Ultimately, the petitioner himself had withdrawn the Special Leave Petition on 24.04.2018 as could be seen from page No.118 of the typed set of papers filed by the petitioner.

11. As regards the contempt petition, as mentioned above, the first respondent, in adherence to the directions issued by this Court on 19.12.2017 in WP No. 33207 of 2017 has passed the final order dated 27.03.2018, which is challenged by the petitioner in the writ petition. In such view of the matter, we do not find any disobedience, much less wilful disobedience on the part of the respondents in complying with the earlier order dated 19.12.2017 passed in WP No. 33207 of 2017 warranting initiation of contempt proceedings against them.

12. In the result, the writ petition as well as the contempt petition are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Chairperson,
Tamil Nadu State Level Scrutiny Committee
Adi Dravidar and Tribal Welfare Department
Namakkal Kavingar Maligai
Secretariat, Chennai - 600 009

2. The Principal Secretary to Government
Adi Dravidar and Tribal Welfare Department
Fort St. George
Secretariat, Chennai - 600 009

3. The Director of Tribal Welfare Department
Chepauk, Chennai - 600 005
4. The Director of Tribal Research Centre
M. Palada, Udthagamandalam - 4
5. The Deputy Superintendent of Police
SC/ST Vigilance Cell
Madurai Division
(In-charge) Salem Division
Salem - 1
6. The District Collector
Salem
7. The Sub-Collector
Mettur
Salem District
8. The Tahsildar
Mettur Taluk, Mettur
Salem District
9. The Director cum Member Secretary
State Level Scrutiny Committee
Tribal Welfare Department
Chepauk, Chennai - 600 005

+1cc to M/s. Aiyar & Dolia , Advocate SR.No. 37580

+1cc to Mr.N. Naganathan , Advocate SR.No. 37821 (24/06/2019)
WP No. 28295 of 2018
and
Cont.P No. 2243 of 2018

A.SK(03/06/2019)

सत्यमेव जयते

WEB COPY