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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.7787 of 2021

and

W.M.P.[MD]Nos.5929 & 6505 of 2021

Kanthimathi

... Petitioner

Vs.

1.The Chairman,
State Level Scrutiny Committee,
Additional Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

2.The Director,
Tribal Welfare Department,
Chepauk,
Chennai - 600 005.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

4.The Revenue Divisional Officer,
Tirunelveli,
Tirunelveli District.

5.The Divisional Manager,
Southern Railway,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order passed by the first respondent his dated 08.02.2021 vide proceedings No.14489/CV-2 (2)/2013-11 and quash the same and consequently direct the first respondent to issue a valid Kattunayakan Community Certificate to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.Niranjana S.Kumar

For Respondents 1 to 4 : Mr.A.K.Manikkam
Standing Counsel for Government

For Respondent No.5 : Mr.S.Manohar
Standing Counsel



O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

With the consent on either side, the Writ Petition is taken up for final disposal.

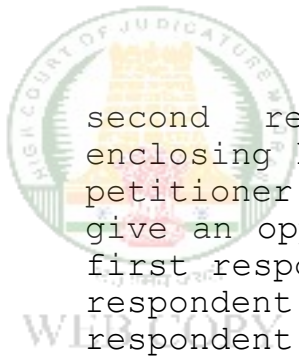
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2.Heard Mr.Niranjan S.Kumar, learned Counsel appearing for the petitioner, Mr.A.K.Manikkam, learned Standing Counsel for Government appearing for the respondents 1 to 4 and Mr.S.Manohar, learned Standing Counsel appearing for the fifth respondent/Southern Railway.

3.The petitioner claims himself to belong to Kattunayakan community and his father was issued a community certificate on 22.05.1981. During 1991, the petitioner applied for a community certificate and the same was issued on 31.12.1991, certifying that the petitioner belongs to Kattunayakan community. The petitioner applied for employment in the Railways and initially appointed as Gangman on temporary basis. Thereafter, after undergoing the process of interview, he was appointed as a permanent staff. The petitioner is stated to have submitted all certificates at the time when he was made as a permanent staff and thereafter, appointed as a Commercial Clerk. During 2009, the petitioner fell sick and as his kidneys had failed, the doctors had advised him to undergo transplantation. Since, the donors were not available, the petitioner could not get the kidneys transplanted, but would state that he is managing with the help of medical assistance and undergoing dialysis twice in a week.

4.While so, the fifth respondent sent a notice dated 26.08.2013, directing that the genuineness of the community certificate of the petitioner has to be verified and advised the same to be forwarded to the first respondent. Subsequently, the Secretary, Adi Dravidar and Tribal Welfare Department by letter dated 03.08.2016 sought for a vigilance report about the genuineness of the community certificate issued to the petitioner by the fourth respondent. The petitioner appeared for an enquiry on 25.11.2017 and produced all the documents in his possession. The enquiry did not conclude and was prolonged for nearly five [5] years. On 22.01.2018, the Deputy Superintendent of Police, SC/ST Vigilance Cell submitted a report stating that the community certificate issued to the petitioner dated 31.12.1991, was not genuine.

5.The petitioner would state that the enquiry was not properly conducted, the documents were not perused and without proper application of mind, a report came to be submitted. Thereafter, the petitioner received a communication from the second respondent to appear before him on 07.12.2020 for an enquiry. Since the petitioner was undergoing dialysis and due to the Covid-19 pandemic, the petitioner was unable to travel to Chennai to appear before the



second respondent and therefore, submitted a representation enclosing his medical reports to justify his health conditions. The petitioner specifically sought for postponing of the enquiry and to give an opportunity to him to submit his explanations. However, the first respondent by proceedings dated 08.02.2021, directed the third respondent to cancel the community certificate issued by the fourth respondent dated 31.12.1991 and also directed the petitioner's employer namely, Southern Railway to take action against the petitioner. This order is impugned in this writ petition.

6.The primary ground on which the impugned order is challenged is on the ground of violation of principles of natural justice that the petitioner was not given an opportunity of hearing even though he had made a specific request to adjourn the enquiry, citing health reasons duly supported by medical records. Further, it is contended that the community certificate issued to the petitioner's father continue to remain valid and in such circumstances, the certificate issued to the petitioner cannot be held to be not genuine. In this regard, learned Counsel for the petitioner relied upon a decision of this Court in **C.V.Kalaivanan Vs. The Sub-Collector, Mettur Dam, Salem District** reported in **2010 (3) CTC 673**. To the same effect, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of **R.Kandhasamy Vs. Chief Engineer, Madras Port Trust** reported in **(1997) WLR 806**. Further, in support of the contention that if principles of natural justice has been violated, the order impugned has to be set aside, the learned Counsel referred to the decision of the Hon'ble Supreme Court in the case of **Ravi S.Naik and Sanjay Bandekar Vs. Union of India and others** dated **09.02.1994**.

7.We have perused the order impugned and in paragraph No.6 of the order, the first respondent has stated that the petitioner was called to appear before the State Level Scrutiny Committee for an enquiry of 07.12.2020, but he was absent. There is no reference to the request made by the petitioner to grant an opportunity of personal hearing and a specific request for adjournment on account of his precarious health condition. Therefore, we are satisfied that there has been gross violation of principles of natural justice, while passing the impugned order. Admittedly, the petitioner had been issued a certificate in the year 1991 and based on which he had also secured employment and he is presently working with the Southern Railway. In such circumstances, adequate opportunity should have been granted to the petitioner to put forth his submissions, especially, when the petitioner claims that his father has been issued with the community certificate as early as on 22.05.1981 and the certificate continues to remain valid. Furthermore, the petitioner's brother M.Bahavathi Rajulu, has also been issued a community certificate dated 17.07.2009.



8.In such circumstances, we are of the view that adequate opportunity should be granted to the petitioner to appear for a full-fledged enquiry, wherein he can place all the documents for the consideration of the first respondent and also make oral submissions. Therefore, only for such reason, we are inclined to interfere with the order impugned.

9.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration. The first respondent shall fix a date for enquiry and permit the petitioner to appear for a personal hearing during which he will be entitled to place all documents in support of his claim and after hearing his oral submission, the first respondent shall take a fresh decision in the matter, uninfluenced by any of the observations contained in the impugned order dated 08.02.2021, which has been set aside by us. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)

MR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chairman,
State Level Scrutiny Committee,
Additional Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

2.The Director,
Tribal Welfare Department,
Chepauk,
Chennai - 600 005.

3.The District Collector,
Tirunelveli District,
Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Revenue Divisional Officer,
Tirunelveli,
Tirunelveli District.

5.The Divisional Manager,
Southern Railway,
Madurai.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate(SR-24079[F]dated 27/07/2021)

+1 CC to M/s.S.MANO HAR, Advocate (SR-24241[F] dated 28/07/2021)

+1 CC to M/s.SPL GP (SR-24418[F] dated 29/07/2021)

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RK (24.08.2021) 5P 9C