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W.P.(MD)No.8424 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2022

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P(MD)No.8424 of 2021

and

W.M.P(MD)Nos.6360, 6361 and 17786 of 2021

P.Maheswari

... Petitioner

Vs.

- 1.The Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner/Director of
Adi Dravidar & Tribal Welfare
Chepauk, Chennai - 600 005.
- 3.The Vigilance Committee on
Genuineness of Community Certificate,
Headed by the District Collector,
Theni District.
- 4.The District Adi Dravidar & Tribal Welfare Officer,
Office of the District Adi Dravidar & Tribal Welfare Officer,
Tribal Welfare Officer,
Theni District.
- 5.The District Collector,
Collectorate, Theni District.
- 6.Tmt.Chinnathai

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the fifth respondent herein in Na.Ka.No.1233/2021/Adi5 dated 09.04.2021 and quash the same and consequently, forbear the respondents herein and their men, officials, subordinates from in any manner interfering with the petitioner's right to function as Village Panchayat President of G.Kallupatti Village Panchayat under the fifth respondent herein.

For Petitioner

:Mr.R.Gandhi

For R-1 to R-5

:Mr.J.Ashok,

Additional Government Pleader

For R-6

:Mr.R.Karunanidhi



ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Heard Mr.R.Gandhi, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader for respondents 1 to 5 and Mr.R.Karunanidhi, learned counsel for the sixth respondent.

2. The writ petition has been filed to quash the impugned order passed by the fifth respondent in Na.Ka.No.1233/2021/Adi5, dated 09.04.2021 to forbear the respondents from in any manner interfering with the petitioner's right to function as Village Panchayat President of G.Kallupatti Village Panchayat under the fifth respondent herein.

3. Brief facts which are necessary for the disposal of the writ petition are as follows:

The petitioner states that she belongs to Hindu Kuravan Community which comes under Schedule Caste community. Though it is admitted that the petitioner's application to get her community status as she belongs to Hindu Kuravan Community was earlier dismissed, it is stated that the petitioner's father, husband and her son, were given community certificate as they belong to Hindu Kuravan Community. It was thereafter, the petitioner submitted an application before the Tahsildar and she was given community certificate. Later, on the basis of a representation submitted by a person, who has contested the election as a rival candidate, who is the sixth respondent herein, the fourth respondent issued a show-cause notice, dated 08.02.2021, stating that an enquiry is contemplated regarding the community status of the petitioner. The respondents 4 and 5, appeared to have formed an opinion that the petitioner belongs to Hindu Uppiliyar community, which comes under the Backward Class and does not belong to Hindu Kuravan Community. It was thereafter, the impugned order came to be passed by the District Collector. From the impugned order passed by the fifth respondent, it is seen that a decision was taken by the District Collector based on the report of the Anthropologist, dated 10.03.2021 and the enquiry report of the Sub-Collector.

4. The learned counsel appearing for the petitioner relied upon G.O.(2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 and the subsequent Government Order in G.O(Ms).No.106 Adi Dravidar and Tribal Welfare (CV-I) Department, dated 15.10.2012. Vide G.O(2D)No.108, dated 12.09.2007, issued by the Adi Dravidar and Tribal Welfare Department, the Government based on the judgment of the Honourable Supreme Court in **Kumari Madhiri Patil and another vs. Additional Commissioner, Tribal Development and others**, issued certain directions after constitution of District



Level Vigilance Committee at District level and State Level Scrutiny Committee at State level, to verify the genuineness of the community certificate issued to the Scheduled Castes and Scheduled Tribes.

5. As per the said G.O., the District Level Vigilance Committee, should consist of District Collector as a Chairman and District Adi Dravidar and Tribal Welfare Officer as a Member Secretary and an Anthropologist as a Member, to scrutinize the genuineness of the community certificates issued as Scheduled Caste. As against the order of District Level Vigilance Committee, the remedy available to the aggrieved person is to approach this Court under Article 226 of the Constitution of India.

6. As regards the function of District Level Vigilance Committee and State Level Scrutiny Committee, the annexure to G.O.(2D) No.108, dated 12.09.2007, indicates the following procedure:

"2. The District Level Vigilance Committee / State Level Scrutiny Committee concerned, on receipt of Petition / Application shall call for a report from the concerned local revenue authority by whom such Scheduled Caste/Scheduled Tribe certificate was issued. On receipt of the report the District Level Vigilance Committee / State Level Scrutiny Committee, if found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed / issued, the committee concerned should issue a show cause notice supplying a copy of the report of the verification authority to the candidate by a registered post with acknowledgement due or through the head of the concerned educational institution in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the committee on receipt of such representation reply shall convene the committee and the committee shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. If any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof."



3. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 2 be followed.

4. Notice contemplated in para 2 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

5. The enquiry should be completed as expeditiously as possible preferably by day to day proceedings within such period not exceeding two months. If after inquiry, the caste scrutiny committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent / guardian and the applicant.

6. The committee should ensure that in case, the certificate obtained or social status claimed 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 the Parliament.

7. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.."



7. The Government thereafter issued G.O.(Ms)No.106 dated 15.10.2012, giving further directions which warranted pursuant to the clarifications issued by this Court in a batch of writ petitions. As per G.O(Ms)No.106, dated 15.10.2012, the Regional Vigilance Cells, to verify the community status of the persons belonging to Scheduled Castes and Scheduled Tribes. The Vigilance Cells are constituted for four regions to cover all the Districts in the State. The Vigilance Cell of each region was expected to function with three staffs namely the Senior Deputy Superintendent of Police, jurisdictional Inspector of Police and Police Constable.

8. On the application in relation to scrutinisation or verification of the community certificate, the District Level Vigilance Committee or the State Level Scrutiny Committee, is required to refer the case of the individual to the respective Vigilance Cell where the community certificate was issued to the individual for verification of the community status of the individual. On receipt of reference from the District Level Vigilance Committee or State Level Scrutiny Committee, the Inspector of the Vigilance Cell should go to the local place of the residence and the original place from which the candidates hails in case of migration and should personally verify and collect all the facts regarding social status claimed by the candidate or by the parent or guardian as the case may be. After the enquiry as contemplated under the second G.O., a report should be submitted by the Vigilance Cell to the District Level Vigilance Committee or the State Level Scrutiny Committee together with all particulars as envisaged in the said G.O. It was thereafter, on receipt of the report from the Vigilance Officer, further enquiry should be conducted and completed by the District Level Vigilance Committee, as expeditiously as possible not exceeding two months and pass an order and communicate the same to the individual, within a period of one month from the date of conclusion of the proceedings.

9. The learned counsel appearing for the petitioner submitted that the procedures as contemplated under G.O.2(D)No.108, dated 12.09.2007 read with G.O.(Ms).No.106, dated 15.10.2012, have not been followed and the District Collector has decided the community status of the petitioner on the basis of the report of the Anthropologist.

10. The learned counsel appearing for the petitioner then submitted that the petitioner has submitted her explanation in response notice of enquiry and the District Collector has not even looked into the specific contentions and the documents relied upon by the petitioner to prove her community status.

11. The learned counsel appearing for the petitioner also pointed out that the conclusion of the District Collector is that no-one belongs to Hindu Kuravan Community was residing in the



village G.Kallupatti in the census that was taken in the year 2011. However, the information furnished to the petitioner pursuant to the application filed by her under the RTI Act, reveals that several persons were given the community certificate as they belong to Hindu Kuravan Community in the area where the petitioner resides.

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12. Leave alone the specific contentions raised by the learned counsel appearing for the petitioner with regard to the community status, the fact that the District Collector has passed the impugned order without following the procedure as contemplated under the two Government Orders referred to above, is not in dispute.

13. However, the learned Additional Government Pleader referred to the enquiry report of the Anthropologist and the findings of the Sub-Collector in relation to the community status of the petitioner.

14. This Court is of the view that the impugned order passed by the fifth respondent is not sustainable. Hence, the matter has to be remitted to the District Level Vigilance Committee, to consider the issue afresh in relation to the community status of the petitioner and pass appropriate orders following the procedure contemplated as per G.O.Ms.(2D) 108, dated 12.09.2007 and G.O(Ms). No.106 dated 15.10.2012 both issued by the Adi Dravidar and Tribal Welfare Department, in accordance with law.

15. Accordingly, the writ petition is allowed and the impugned order passed by the fifth respondent, dated 09.04.2021, is set aside. The District Level Vigilance Committee, Theni District, shall obtain a report from the Vigilance Cell and on the basis of the report and following the procedure prescribed in G.O.(2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 and the subsequent Government Order in G.O(Ms).No.106 Adi Dravidar and Tribal Welfare (CV-I) Department, dated 15.10.2012, fresh final order shall be passed, within a period of twelve weeks from the date of receipt of a report from the Vigilance Cell concerned. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner/Director of Adi Dravidar & Tribal Welfare
Chepauk, Chennai - 600 005.
- 3.The Vigilance Committee on Genuineness of Community Certificate,
Headed by the District Collector,
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- 4.The District Adi Dravidar & Tribal Welfare Officer,
Office of the District Adi Dravidar & Tribal Welfare Officer,
Tribal Welfare Officer,
Theni District.
- 5.The District Collector,
Collectorate, Theni District.
- 6.The District Legal Committee,
Theni District.

+2 CC to M/s.R. KARUNANIDHI, Advocate (SR-26828[F] & dated
20/06/2022 & SR-27011[F] dated 21/06/2022)

+1 CC to M/s.SPL.GP (SR-27406[F] dated 22/06/2022)

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20.06.2022

MGJ(2.06.2022) 7P 10C