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W.P.No.392

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.11.2023

ORDERS DELIVERED ON: 24.11.2023

CORAM

**THE HON'BLE MRS.JUSTICE J.NISHA BANU
AND
THE HON'BLE MRS.JUSTICE N.MALA**

**W.P.No.3923 of 2023
and
W.M.P.No.3986 of 2023**

M.R.Anand

... Petitioner

vs.

- 1.The Chairperson,
Tamil Nadu State Level Scrutiny Committee – III/
Additional Secretary to Government,
Adi-Dravidar and Tribal Welfare Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector,
Chennai District, Chennai.
- 3.The Senior Divisional Manager,
Life Insurance Corporation of India,
Vellore.
- 4.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, For St.George,
Chennai – 600 009.



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(R4 – Suo moto impleaded as per order
dated 02.11.2023 in W.P.No.3923 of 2023
by JNBJ & NMJ)

... Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in respect of Proceedings No.5459/CV-6/2011 dated 01.09.2022 passed by 1st respondent and quash the same, consequently declare the community certificate as genuine one and direct the 3rd respondent to reinstate the petitioner with all attendant benefits and back wages.

For Petitioner : Mr.P.R.Dinesh Kumar

For R1 & R2 : Mr.Stalin Abhimanyu
Additional Government Pleader

For R3 : Mr.C.K.Chandrasekhar

* * * * *

ORDER

(Order of the Court was made by N.MALA,J.)

This Writ Petition is filed to call for the records in respect of Proceedings No.5459/CV-6/2011 dated 01.09.2022 passed by 1st respondent and quash the same, consequently declare the community certificate as genuine one and direct the 3rd respondent to reinstate the petitioner with all attendant benefits and back wages.



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2.The petitioner joined the Life Insurance Corporation of India, Vellore Division in Arakonam Branch Office as an Assistant on 29.03.1990 under the quota reserved for Scheduled Tribes. The petitioner at the time of appointment produced the community certificate dated 21.06.1989 issued by Tahsildar, Purasaiwalkam, Perambur Taluk. Life Insurance Corporation of India, vide letter dated 12.06.2002 requested the District Level Vigilance Committee to verify the genuineness of the Scheduled Tribe Community Certificate produced by the petitioner, as the certificate produced by the petitioner was issued by the Tahsildar, whereas the competent authority to issue the community certificate for Scheduled Tribe was the Revenue Divisional Officer. The petitioner filed a Writ Petition in W.P.No.52875 of 2002 challenging the request of the Life Insurance Corporation of India. On 13.11.2002, this Court in the said writ petition directed the District Level Vigilance Committee to conduct the enquiry and to pass appropriate orders after giving fair and reasonable opportunity to the petitioner. The District Level Scrutiny Committee on enquiry concluded that the petitioner did not belong to the Konda Reddy Community and therefore cancelled the Community Certificate of the petitioner vide order dated 24.02.2007. Aggrieved by the order of the District Level Vigilance Committee, the petitioner filed the writ petition in W.P.No.11070 of 2007 and this Court vide order dated 18.03.2009 set aside the order of



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the District Level Scrutiny Committee dated 24.02.2007 and further directed the State Level Scrutiny Committee to consider the claim of the petitioner after giving reasonable opportunity to the petitioner. The State Level Scrutiny Committee on enquiry vide order dated 10.05.2010 concluded that the petitioner did not belong to Konda Reddy Scheduled Tribe Community and that the certificate issued to the petitioner was not genuine. Aggrieved by the order of the State Level Scrutiny Committee dated 10.05.2010, the petitioner preferred the writ petition in W.P.No.10839 of 2010 and this Court vide order dated 03.08.2010 remitted the matter back to the State level Scrutiny Committee for fresh consideration. On remand the State Level Scrutiny Committee passed the impugned order dated 01.09.2022 cancelling the Scheduled Tribe Community Certificate of the petitioner. Aggrieved by the order of the State Level Scrutiny Committee, the petitioner has filed the above writ petition.

3.The first respondent filed the counter justifying the cancellation of the community certificate of the petitioner. According to the first respondent, the petitioner was called to appear for enquiry on 25.02.2022 but he did not attend the same. The petitioner though appeared for enquiry on 20.04.2022, 15.06.2022 and 11.08.2022 gave oral testimony but did not produce valid supporting documents to substantiate his claim. Even the Anthropologist report was against the petitioner. The first respondent relied



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on the Judgments in the case of N.Karthikeyan Vs. The State of Tamil Nadu and Madhuri Patil's case in support of the plea that the burden to prove the communal status was on the petitioner and that it was mandatory to verify the community certificate of a person claiming benefit of reservation.

4.The learned counsel appearing for the petitioner submitted that the State Level Scrutiny Committee eventhough had full knowledge about all the documents filed by the petitioner, particularly, the community certificate of the petitioner's father and sister did not refer to the same, by simply stating that the petitioner had not produced valid document to substantiate his claim that he belonged to Konda Reddy Scheduled Tribe Community. The learned counsel submitted that the petitioner had produced the community certificates of his father dated 20.09.1965 and the community certificate of his sister dated 18.06.1982, which were issued after due enquiry but the first respondent totally ignored the documents and rejected the petitioner's claim. The learned counsel further submitted that when the community certificate of the petitioner's father and sister remained unchallenged till date, the first respondent was bound to issue the community certificate to the petitioner on the basis of their community certificates. The learned counsel therefore prayed that the writ petition be allowed with a positive direction to the first respondent to issue community certificate to the petitioner.



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5.The learned Additional Government Pleader stated that in the absence of valid documents, the committee was justified in concluding that the community certificate of the petitioner was not genuine and in cancelling the same. The learned Additional Government Pleader relying on the Judgment dated 26.09.2018 of this Court in the case of N.Karthikeyan Vs. The State of Tamil Nadu in W.P.No.3649 of 2018, stated that the burden of proving the caste claim rests upon the petitioner and it was for the petitioner to produce valid documents in support of his claim.

6.The learned Additional Government Pleader relying on the Judgment dated 05.09.2019 in the case of A.Sukumar Vs. State of Tamil Nadu, represented by the Director, Tribal Welfare and Member Secretary, State Level Scrutiny Committee in W.P.No.22446 of 2018, stated that it was mandatory to verify the community certificate of the person claiming benefit of reservation based on the community status whether as an employee or as a student. The learned counsel finally submitted that as there was no prior verification of the community certificate of the petitioner it was verified and found to be false and so the State Level Scrutiny Committee was justified in cancelling the same.



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7. We have heard both the learned counsels and we have perused the entire materials placed on record.

8. The string of previous litigations referred to above would show how much the petitioner has been harassed for getting the community certificate. It is seen from the materials on record that when the order of the State Level Scrutiny Committee dated 10.05.2010 declaring the petitioner's community certificate as not genuine was challenged in this Court in W.P.No.10839 of 2010, this Court on 03.08.2010 passed the following order:

“12. In view of our order remitting the matter back to the State Level Scrutiny Committee, we are inclined to set aside the impugned proceedings without expressing any opinion on merits. Accordingly, the impugned order is set aside and the matter is remitted back to the State Level Scrutiny Committee. The petitioner is directed to file whatever the documents available in support of his claim within a period of 15 days from the date of receipt of a copy of this order and if such claim is made, the same shall be



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considered by the State Level Scrutiny Committee in the light of the observations made in this order. We also make it clear that if no representation is made by the petitioner on the basis of this order within the stipulated period, the order of the State Level Scrutiny Committee can be enforced.

13.The writ petition is disposed of with the above observation. No costs. Consequently, connected M.P.Nos.1 and 2 of 2010 are closed.”

9.In pursuance of the above order the petitioner sent a representation to the first respondent vide letter dated 19.08.2010 annexing the following documents:

- (1) Front page of S.S.L.C. Book of my father No.26617F
- (2) Community Certificate of his father issued by Headquarters Deputy Tahsildar, Bhavani on 20.09.1965.
- (3) Community Certificate of M.R.Anand dated 21.06.1989
- (4) Copy of Transfer Certificate No.78 (8.7.1983) and Migration Certificate No.10466 (16.5.1986) issued by CBSE.
- (5) Attested copy of 1st page of Service Book of my father.



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10. Thereafter, the State Level Scrutiny Committee passed an order on 20.11.2010 rejecting the petitioner's claim on the ground that the petitioner did not produce sufficient evidence before the Committee to substantiate his claim that he belonged to Konda Reddy Community. The above order was challenged before this Court in W.P.No.27605 of 2010 and this Court vide order dated 07.02.2011 observed that the approach of the State Level Scrutiny Committee was not in consonance with the Apex Court Judgment in the case of ***State of Bihar Vs. Sumit Anand*** reported in **2005 (12) SCC 248** and the Division Bench Judgments of this Court in the case of ***C.K.Kalaivannan Vs. The Sub Collector, Mettur Dam, Salem District*** reported in **2010 3 CTC 673**. This Court in the said order in paragraphs No.8 and 9 held as follows:

“8. The judgment of the Apex Court must be read to mean that when the father was issued with a Community Certificate, the children should also have the same status and thereby, they are entitled to similar certificate of their father. Merely because the grand father has intimated the school authorities a different community, that will not invalidate the certificate issued by the competent authority subsequently, so long as that certificate is not cancelled. The fact remains, in this case, is both the certificates issued in favour of the petitioner's father and his sister, have not



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been cancelled so far. In that sense, when the genuineness of the certificates produced by the petitioner is sought to be verified, the Committee cannot ignore the certificates issued in favour of the father and sister of the petitioner. We have to add that it does not mean that the authorities are not empowered to verify the genuineness of these certificates as well. Hence, before rejecting to place reliance on the certificates of the petitioner's father and sister, the authorities should have taken steps to verify those certificates at first by giving due opportunities to them. In the event, the Committee comes to the conclusion that those certificates are not genuine, they need not place reliance on those certificates in the first place of verification of the Community Certificate of the petitioner herein. When that procedure being adopted, the Committee cannot ignore the certificates already issued to the father and sister of the petitioner by the authorities who are competent to issue such certificates. In that view of the matter, the petitioner's grievance must be considered and the writ petition must be allowed.

9. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remitted to the State level Scrutiny Committee for fresh consideration. In the event, the Certificate issued in favour of the petitioner's father and sister is not cancelled, the petitioner would be entitled to similar certificate. That does not mean that the Committee is not empowered to go into the genuineness of the certificates issued in favour of the father and



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sister of the petitioner. But in the event, the Committee is of the opinion that those Certificates must be verified, it must be done after due notice to them as well.”

11. Thus it is seen that this Court made it abundantly clear that the petitioner was entitled to community certificate as Konda Reddy, if the petitioner's father and sister's Community Certificates were not cancelled. The Court further stated that the committee was empowered to verify the certificate issued in favour of the petitioner's father and sister, but in such event, the committee was bound to give notice to them. Contrary to the aforesaid order of this Court, it is seen from the impugned order as well as the counter filed by the first respondent that there is no whisper about the community certificate of the petitioner's father and sister. It is appalling to note that in paragraph No.13 of the impugned order, the first respondent states that the petitioner did not produce valid documents to substantiate his Konda Reddy Caste claim, when the very same respondent in the earlier order dated 20.11.2010, in the list of references referred to the representation dated 19.08.2010 of the petitioner wherein the said documents were annexed. Further in the earlier order, the first respondent while rejecting the petitioner's claim adverted to the petitioner's father's certificate by stating that it was not beyond doubt. When the petitioner challenged the order dated 20.11.2010 in



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W.P.No.27605 of 2010, this Court while remanding the matter, categorically observed that in the event the community certificates of the petitioner's father and sister were not cancelled, the petitioner would be entitled to the same. In the light of the above facts, we are of the view that the first respondent's observation that no valid documents were filed by the petitioner is capricious. The first respondent, in our view, has wantonly not alluded to the community certificate of the petitioner's father and sister and illegally concluded that the certificate issued to the petitioner on 21.06.1989 was a bogus one and cancelled the same.

12. When the Hon'ble Division Bench in its order dated 20.11.2010 specifically directed the first respondent to issue the community certificate to the petitioner on the basis of the community certificate of his father and sister, if it was not cancelled, then the first respondent had no option but to comply with the said direction. Liberty was given to the first respondent to verify the genuineness of the certificates issued to the petitioner's father and sister after due notice and as the said liberty was not exercised by the first respondent, the first respondent was obliged to issue the certificate to the petitioner. The first respondent having chosen not to verify the community certificate of the petitioner's father and sister could not refuse the certificate to the petitioner. It is trite in law that once the community certificate is issued to the father and or other close



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relatives and such certificate has attained finality, then persons claiming through them are also entitled to community certificate. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***State of Bihar Vs. Sumit Anand*** reported in **2005 (12) SCC 248**, we therefore, hold that the impugned order is unsustainable and the same is quashed.

13.We are perturbed to note that the petitioner was made to run from pillar to post and was forced to file a series of litigations to agitate his genuine claim for community certificate. Fraudulent claims have to be dealt with stringently but, at the same time genuine claims cannot be rejected on flimsy and untenable grounds. Constitutional fraud is committed not only when spurious persons usurp the benefits of reservation extended to persons belonging to Scheduled Caste and Scheduled Tribe communities, but also when genuine persons of the said community are deprived of their right to the said benefits by illegal and whimsical orders as the present one.

14.In the light of the above discussions, we are of the view that this is a fit case to issue positive direction to the first respondent. We therefore allow the writ petition directing the first respondent to issue the community certificate to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. We make it clear



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that a very serious view will be taken, if the direction is not complied with, as we are of the view that the impugned order is contumacious of the order dated 07.02.2011 passed by this Hon'ble Court in W.P.No.27605 of 2010.

15.Before parting with this case, we deem it fit to remind the Government of the directions issued by the Hon'ble Division Bench of this Court in ***W.P.No.13851 of 2022 dated 16.12.2022***. The relevant paragraphs are as follows:

“7.In the light of the aforesaid findings, We direct the Government to issue a manual in conformity with

(a)the guidelines issued in Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Welfare reported in 1994 (6) SCC 241;

(b)the supplemental guidelines issued in G.Venkitasamy Vs. The Chairman, State Level Scrutiny Committee reported in 2016 (1) CTC 647;

(c)the additional guidelines issued in W.P.Nos.17231, 17232, 17495 and 17496 of 2015 (P.Govindarasu and G.Ramasamy Vs. The Revenue Divisional Officer, Harur, Dharmapuri District) dated 22.04.2016;



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*(d)the directions issued in W.P.Nos.2828 and 5237 of 2022
(E.Karthikeyan and L.Elumalai Vs. The Chairman, Tamil Nadu
State Level Scrutiny Committee-III, Chennai) dated 25.11.2022;*

*(e)the various Government Orders, circulars, letters and
clarifications issued by the Government from time to time;*

*Such exercise shall be completed by the first respondent
within a period of eight weeks from the date of receipt of a copy of
this order.*

*8.We also are of the view that the Government should
conduct sensitization courses to the Authorities in-charge of grant
of community certificate and the verification as to the guidelines
issued by the Government and the various judgments of the Hon'ble
Apex Court as well as this Court in issuing the community
certificate and verification of the same. We are hopeful that the
Government will implement the directions issued above to ensure
the elimination of grant of community certificates to ineligible
persons and grant the community certificates to the persons
belonging to the communities notified in the Presidential Order.”*



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16.The Hon'ble Supreme Court in the case of *Maharashtra Adiwasli Thakur Jamat Swarakshan Samiti Vs. State of Maharashtra and others* reported in 2023 SCC

Online SC 326 held as follows:

“CONCLUSIONS

38.Thus, to conclude, we hold that:

(a)Only when the Scrutiny Committee after holding an enquiry is not satisfied with the material produced by the applicant, the case can be referred to Vigilance Cell. While referring the case to Vigilance Cell, the Scrutiny Committee must record brief reasons for coming to the conclusion that it is not satisfied with the material produced by the applicant. Only after a case is referred to the Vigilance Cell for making enquiry, an occasion for the conduct of affinity test will arise.

(b)For the reasons which we have recorded, affinity test cannot be conclusive either way. When an affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim; and

(c)In short, affinity test is not a litmus test to decide a caste claim and is not an essential part in the process of the determination of correctness of a caste or tribe claim in every case.”



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17.We, therefore, direct the Government to incorporate the above conclusions of the Hon'ble Supreme Court in the comprehensive manual to be issued by it in terms of the directions issued by the Hon'ble Division bench in ***W.P.No.13851 of 2022*** vide ***order dated 16.12.2022***.

18.As we have directed the Government to implement the terms of the Hon'ble Division Bench as also the directions of the Hon'ble Supreme Court, we deem it fit to suo moto implead the Chief Secretary, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai – 600 009 as a party respondent. We direct the Chief Secretary, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai – 600 009 to take immediate steps to comply with the aforesaid directions forthwith and in any event within a period of three months from the date of receipt of a copy of this order.

19.Accordingly, the writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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20.Registry is directed to post the matter for compliance on 26.02.2024.

J.N.B., J. N.M., J.

24.11.2023

Index : yes/no
Internet : yes/no
Speaking order : Non-speaking order
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To

- 1.The Chairperson,
Tamil Nadu State Level Scrutiny Committee – III/
Additional Secretary to Government,
Adi-Dravidar and Tribal Welfare Department,
Secretariat, Chennai – 600 009.
- 2.The District Collector,
Chennai District, Chennai.
- 3.The Senior Divisional Manager,
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J.NISHA BANU, J.
and

N.MALA, J.

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PRE-DELIVERY ORDER IN
W.P.No.3923 of 2023

24.11.2023