



W.A.(MD)No.1529 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.1529 of 2022 & W.P.(MD)No.17827 of 2022

and

C.M.P.(MD)No.12860 of 2022

and

W.M.P.(MD)Nos.13014, 13016 & 21551 of 2022

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1.The Director of Medical Education,
Directorate of Medical Education,
156, Poonamallee High Road,
New Bupathy Nagar, Chetpet, Chennai.

2.The Dean,
Kanyakumari Medical College,
Asaripallam, Kanyakumari District.

... Appellants

Vs.

R.Anchana

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.(MD)No.19475 of 2022, dated 01.09.2022 on the file of this Court.



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For Appellant : Mr.R.Baskaran,
Additional Advocate General,
assisted by Mr.T.Amjadkhan,
Government Advocate
For Respondent : Mr.T.Lajapathi Roy, Senior Counsel

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R.Anchana

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Principal Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.

2.The State Level Scrutiny Committee II,
Rep. by its Member Secretary,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

3.The Dean,
Kanyakumari Medical College,
Asaripallam, Kanyakumari District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in proceedings No.14611/CV-2/2020-9, dated 04.07.2022 on the file of the 2nd respondent and quash the same as illegal and consequently, for a direction directing the 2nd respondent to grant genuineness certificate to the



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petitioner in the light of the judgment of this Court in Prabhavathi.S. Vs. The Revenue Divisional Officer, Thiruppathur reported in 1993 2 LW 143 and W.P. (MD)Nos.11763 and 11918 of 2010, dated 30.01.2013.

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel

For Respondents : Mr.R.Baskaran,
Additional Advocate General,
assisted by Mr.T.Amjadkhan,
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by ***V.LAKSHMINARAYANAN, J.***)

This Writ Petition challenges the order dated 04.07.2022 of the State Level Scrutiny Committee, rejecting the request of the petitioner to grant Scheduled Tribe Community Certificate.

2.The petitioner claims that she belongs to “Hindu Kaniyan” Community. It is her case that her mother was the employee of BSNL, which is Central Public Sector Undertaking, as Deputy General Manager and had been benefitted with certificate that she belongs to Scheduled Tribe (Hindu Kaniyan) Community. The petitioner states that her certificates were sent for verification



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and on the basis of the certificate, which was under verification, she joined MBBS course. She had been successful in clearing the course for the academic year 2020-2021. In and about October, 2020, she was informed that her certificate is the subject matter of scrutiny before State Level Scrutiny Committee and in pursuance thereof, in November, 2020, she sent a representation to the State Level Scrutiny Committee, requesting her verification be done at the earliest, so as to enable her to pursue further studies. By the impugned order dated 04.07.2022, the State Level Scrutiny Committee rejected her claim and stated that she does not belong to Hindu Kaniyan Community. Aggrieved by the said order, the present Writ Petition is filed.

3.Heard Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the petitioner and Mr.R.Baskaran, learned Additional Advocate General-6 appearing for the respondents.

4.Mr.T.Lajapathi Roy would submit that the State Level Scrutiny Committee ought not to have relied upon “affinity test” for the purpose of coming to the conclusion that the petitioner does not belong to Hindu Kaniyan Community. More importantly, he would submit that as the maternal and paternal



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side of the petitioner are the members belonging to Hindu Kaniyan Community and they have been benefitted with Hindu Kaniyan Community Certificate, the petitioner's claim ought not to have been rejected.

5.The learned Additional Advocate General appearing for the respondents brought to our notice that the statements of as many as 16 persons were examined by Verification Cell of the State Level Scrutiny Committee and they had deposed that the writ petitioner did not belong to Hindu Kaniyan Community, but belongs to a higher caste. He would also state that the State Level Scrutiny Committee has applied its minds to the facts of the case and come to the categorical conclusion that the petitioner is not a Scheduled Tribe.

6.Having heard both sides and considered the papers before us.

7.At the outset, we have to refer to the very recent judgment of the Supreme Court in *Mah.Adiwasi Thakur Jamet Swarakshan Samiti Vs. State of Maharashtra and others* reported in **2023 SCC Online 326**. The verdict arose out of a reference that had been made to three Judges of the Supreme Court.



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8.Speaking for the Bench, Mr.Justice.SANJAY KISHAN KAUL and Mr.Justice.ABHAY S.OKA take a view in paragraph No.38, which reads as follows:-

“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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9.From this it is very clear that when the State Level Scrutiny Committee, after holding enquiry, is not satisfied with the claim of the applicant, only thereafter, it should refer the matter to the Vigilance Cell. The law having been declared by the Supreme Court, the State Level Scrutiny Committee is bound to follow this judgment.

10.Apart from that the learned Senior Counsel made a submission that the certificates that had been issued to the cousins of the writ petitioner, namely, Ms.Athirasai and Mr.Anup Chandran though were referred to by the petitioner in her explanation before the State Level Scrutiny Committee, there is no discussion on the same. When a close relative has been given a certificate (though by a non-speaking order), it is the duty of the State Level Scrutiny Committee to have taken that for consideration and passed an order. It ought to have been given a finding why it is either agreeing or disagreeing by the previous order by the State Level Scrutiny Committee, if so, furnish the reasons for the same. That being absent, we are constrained to interfere with the order passed by the State Level Scrutiny Committee.



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11.In the light of the view taken by us, we set aside the impugned order dated 04.07.2022 on the ground of non-application of mind with respect to the certificates produced by the writ petitioner and remit the matter to the 2nd respondent for the purpose of reconsideration. It is open to the petitioner to produce such certificates that are in her possession to substantiate her claim. The State Level Scrutiny Committee shall refer to the orders previously passed by it with respect to close relatives of the petitioner and its genuinity thereof.

12.One further aspect remains to be discussed is the direction given by the learned Single Judge, which is the subject matter of the Writ Appeal. By the time, the State Level Scrutiny Committee had passed an order, the petitioner had completed her MBBS course. The learned Single Judge had directed return of the certificates. The petitioner, having completed her course, she will be entitled to get her educational certificates. However, we make it clear that in case the State Level Scrutiny Committee holds against her, she will not be entitled to the benefits under Scheduled Tribe Community and she can only be treated as non-Scheduled Tribe Community person.



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13. With the above directions, W.P.(MD)No.17827 of 2022 stands allowed and W.A.(MD)No.1529 of 2022 stands disposed of. The State Level Scrutiny Committee shall complete the said exercise within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)

27.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

1. The Principal Secretary,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai-600 009.

2. The Member Secretary,
State Level Scrutiny Committee II,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

3. The Dean,
Kanyakumari Medical College,
Asaripallam, Kanyakumari District.

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S.M.SUBRAMANIAM, J.
AND
V.LAKSHMINARAYANAN, J.
Yuva

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& W.P.(MD)No.17827 of 2022

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