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W.P.No.6710 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.04.2024
(Reserved on 22.12.2023)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.6710 of 2021
and
WMP.No.7267 of 2021

S.Thiruranga Ruban

... Petitioner

vs.

The Chairman,
The Tamil Nadu State Level Scrutiny Committee-II
and Additional Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai, Secretariat,
Fort St.George, Chennai-600 009.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent vide order in proceedings No.4340/CV-2(2)/2014-5 dated 15.02.2021, impugned herein and quash the same.

For Petitioner : Mr.G.B.Sabari Das
For Respondent : Mrs.R.L.Karthika, Government Advocate



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ORDER

(Order of the Court was made by **J.NISHA BANU, J.**)

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Challenging the order dated 15.02.2021 passed by the respondent cancelling the community certificate of the petitioner certifying that the petitioner belongs to Sholaga community, this writ petition is filed.

2. The case of the petitioner is that his parents belonged to Sholaga community which is listed as item No.34 of Scheduled Tribes in the list of communities and even his father's name is Subbiah Sholagar. According to the petitioner, Sholaga community is also called as Sholagar or Cholar or Cholagar or Cholaga and all are one and the same community and it is also not the case of the respondent that all the above community names are different communities. Even the petitioner's school leaving certificate dated 03.01.1969 and transfer certificate dated 30.07.1971 reflect the petitioner's community as 'Cholar'. The petitioner further states that he applied for community certificate and the Deputy Tahsildar, Radhapuram, after due verification and enquiry issued a community certificate dated 15.03.1976 certifying that the petitioner belongs to Sholaga community. The petitioner joined the Indian Overseas Bank as Shroff Godown Keeper in 1977 and later he was



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promoted as Branch Manager and finally he retired on 30.04.2012 after his 35 years of unblemished service. Even during his employment, the petitioner was called for enquiry on his caste/community verification thrice by the District Collector and the Member Secretary of Adi Dravidar and Tribal Welfare Office, Tirunelveli District. After retirement also, the petitioner was called for enquiry on his caste/community verification by the Deputy Superintendent of Police, SJ & HR, SC/ST Vigilance Cell, Tirunelveli District. According to the petitioner, though he and his relatives made depositions and submitted the documents in support of his community claim, the Deputy Superintendent of Police submitted his report dated 02.08.2018 to the Principal Secretary, Adi Dravidar and Tribal Welfare Department, Chennai, stating the petitioner does not belong to Sholaga community. Pursuant thereto, a show cause notice dated 16.08.2018 was issued by the respondent, for which, the petitioner submitted his explanation dated 12.09.2018 denying and distinguishing the findings of the Deputy Superintendent of Police. However, without considering the petitioner's explanation and without giving him opportunity of hearing, the respondent passed the impugned order cancelling the community certificate of the petitioner. Hence, this writ petition.



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3. Learned counsel appearing for the petitioner submits that since the impugned order has been passed without issuing notice and without affording any opportunity of hearing to the petitioner, it is liable to be set aside on the ground of violation of principles of natural justice. He would further contend that the respondent and its agencies namely, Vigilance Cell and Anthropologist have only conducted discreet enquiries and no opportunity for cross examination of witnesses examined by those authorities was made available to the petitioner to disprove the version of the witnesses, as such, the said reports of the authorities are biased and have no evidentiary value. Further, the respondent did not advert to the explanation and documents submitted by the petitioner and merely reproduced the contents of the Vigilance report and the Anthropologist's report. Learned counsel also contended that the finding of the Anthropologist proceeds as if the petitioner had not revealed the traits, customs and origin of Sholaga community which is unknown to law and it cannot be basis for invalidating the community certificate issued to the petitioner 45 years ago. It is also submitted that the above authorities brushed aside the statements of the petitioner's relatives mainly relying upon the statements obtained from the neighbouring persons who belong to different communities and unaware



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of the petitioner's community and therefore, the impugned order cancelling the community certificate of the petitioner, is liable to be set aside.

4. Learned Government Advocate appearing for the respondent would submit that in the Government of India, Ministry of Home Affairs/ GrihMantralaya, New Delhi, Circular No.35/1/72-R.U. (SCT.V), dated 02.05.1975, it has been stated that where a person claims to belong to Scheduled Caste or Scheduled Tribe by birth, the following should be verified:

"I. That the person and his parents belongs to the community claimed.

II. That this community is included in the presidential orders specifying the scheduled caste and scheduled tribes in relation to the concerned State that the person belong to that state and to the area within that state in respect of which the community has been scheduled.

III. If the person claims to be a scheduled tribe he may profess any religion.

IV. Where a person migrates from one state to another he can claim to belong to Scheduled Caste or Scheduled Tribe only in relation to the State to which he originally belonged and not to the migrated state.

V. In order that the certificates are issued to the



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deserving persons it is necessary that proper verification based primarily on revenue records and if need be, through reliable enquiries, is made before such certificates are issued. As it is only the Revenue Authorities who, besides having access to relevant revenue records are in a position to make reliable enquiries, Government of India insists upon the production of certificates from such authorities only.

VI. Government of India insists upon the production of certificates from such authorities only. In order to be competent to issue such certificates, therefore the authority mentioned in the GOI (Department of Personnel and Administrative Reforms) letter No.13/2/74-Est(SCT) dated 5th August 1975, locality in which the person applying for the certificates and his place of permanent abode at the time of the notification of the relevant Presidential order. Thus, the Revenue Authority of one district would not be competent to issue such a certificate in respect of persons belonging to another district. Nor can such an authority of one State / UT issue such certificates in respect of persons belonging to another district. Nor can such an authority of one State / UT issue such certificate in respect of persons whose place of permanent residence at the time of the notification of a particular Presidential order, has been in a different State / Union Territory. The Revenue authority shall be the one concerned with the locality in which the person applying for the community certificate in his place of permanent abode at



the time of the notification of the presidential order (i.e. September 1950).

VII. In the case of persons born after the date of notification of presidential order, the place of residence for the purpose of acquiring ST certificate is the place of permanent abode of their parents at the time of the notification of the presidential orders."

5. Learned Government Advocate would further submit that the Government have issued orders in G.O(Ms)No.61, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 04.04.2005 clarifying certain terms with regard to community certificate and the relevant portion of the said G.O is as follows:

"The term 'their parents' used in the said phrase, will include not only the parents, but also the grandparents, subsequent generation also. Therefore, only a Scheduled Tribe certificate is issued to a person, born after the date of notification of a particular Presidential Order, based on the permanent abode of his parents, then his children, grand children, i.e. successive generation, will also continue to be entitled to claim the status of Scheduled Tribes in the state of their ancestors, who were residing on the date of notification of the particular Presidential Order."

6. Learned Government Advocate further submitted that the



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Director, Tribal Welfare, Chennai, has forwarded the Vigilance Cell enquiry report obtained from the Deputy Superintendent of Police, Social Justice and Human Rights Wing, Tirunelveli District, vide letter dated 25.09.2018. The Deputy Superintendent of Police, Social Justice and Human Rights Wing, Tirunelveli District, conducted enquiry with the petitioner, witnesses in the petitioner's residential area and after perusing the depositions of the witnesses, documents produced by the petitioner, RDO spot enquiry report and the report of the Anthropologist, concluded that the petitioner does not belong to Hindu Sholaga Scheduled Tribe community. Learned Government Advocate further submitted that in the secondary school leaving certificate of the petitioner, the petitioner's community is mentioned as Hindu-Cholar but the said Cholar community is not a Scheduled Tribe community. It is further submitted though pre independence records have great probative value, the school and college certificates of the petitioner which were obtained after independence do not bear any value and no pre-independence records of the petitioner have been produced to prove the petitioner's community claim.

7. Learned Government Advocate further submitted that in

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Tribal Development and others reported in (1994) 6 SCC 241, the

Hon'ble Supreme Court has observed that in case, the certificate obtained or social status claimed is 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. 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 acknowledgment due with a request to cancel the admission or the appointment. The Principal of the educational institution responsible for making admission or the appointing authority should cancel the admission/appointment without any further notice to the candidate or to continue in office in a post.

8. Learned Government Advocate further submitted that Hindu Sholaga community people are native tribal of western ghats. The petitioner did not produce any evidence to prove that his forefathers have



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their origin in western ghats and later on migrated to the present area.

When the petitioner was requested to appear before the State Level Scrutiny Committee-II for enquiry on 14.12.2020, he remained absent. The State Level Scrutiny Committee examined the documents of the petitioner, reports of the Deputy Superintendent of Police, Social Justice and Human Rights Wing, SC/ST Vigilance Cell, Tirunelveli and the Anthropologist associated with District Vigilance and concluded that Hindu-Sholaga ST community certificate held by the petitioner is not correct and cancelled the same by impugned order and also recommended to the employer i.e., Indian Overseas Bank to take stringent action against the petitioner as per the guidelines for having obtained a bogus community certificate. Thus, the learned Government Advocate submitted that the impugned order passed by following the procedure, does not suffer from violation of principles of natural justice or illegality as such it does not require interference by this Court.

9. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent.

10. The petitioner has supplied the following documents:-



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- (i) SSLC Book of the petitioner;
- (ii) Transfer Certificate of the petitioner;
- (iii) Two property documents in the name of the petitioner's grandfather of the years 1922 and 1932 respectively ;
- (iv) Genealogy certificate issued by the Village Administrative Officer, Vadakku Vallioor Part II; and
- (v) Voters card for the petitioner's father's family.

11. Before deciding the issue involved in this writ petition, it is relevant to consider the observation of this Court regarding the social status certificate in **G.Venkitasamy and another vs. The Chairman, State Level Scrutiny Committee [W.P.Nos.30368 and 31973 of 2015, decided on 21.12.2015]** and the procedure laid down by the Apex Court in **Kumari Madhuri Patil's case (supra)**, for identifying proper community of a person. The relevant paragraphs of the said judgment worth reproduction:-

17. The grant of social status certificate to a person is not a mere formality. It is to be borne in mind that both denial of social status certificate to a genuine person and grant of such certificate to a fake person, are unconstitutional.

18. The makers of the Indian Constitution,



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recognising the social and economic status of a particular community in India, had made provisions for grant of certain preferential treatment under Articles 15(4), 16(4), 341 and 342 of the Constitution of India. If a request for community certificate is rejected in a casual and mechanical manner without proper investigation, the very purpose of Constitutional objective would become otiose. Thus, it is expected that all the authorities involved in the process of identification, investigation and grant of social status certificate (in common parlance, called as "community certificate") need to be sensitised the importance of such certificate. Thus, a detailed enquiry, as considered and laid down by the Supreme Court, is required to be adhered to. Even if a single link is missed, it may lead to unexpected result, which may amount to violation of Constitutional objective and goal.

19 The objective of the Constitution is enshrined in the Preamble. The underlying principle is to secure (i) justice – social, economic and political, (ii) liberty of thought, expression, belief, faith and worship, (iii) equality of status and of opportunity and (iv) to promote among them all, fraternity. Thus, even a simple miss in the process of proper identification may defeat the basic object of the Constitution in its fullness.

20 The Supreme Court, noticing the defect in the mechanism to identify proper community, considered the issue at length in Kumari Madhuri Patil (supra) and laid down the procedure as under:

"13. x x x x x x x x x x x For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy



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Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status



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claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned 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 Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce



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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.

7. 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 6 be followed.

8. Notice contemplated in para 6 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.

9. The inquiry 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.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be



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only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is 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 Parliament.

15. 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 educational institution concerned 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 from further study or continue in office in a post.



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22 A proper, systematic and effective enquiry to ascertain the social status of an applicant is of paramount importance for more than one reason. It has clearly been held by a Constitution Bench of the Supreme Court in State of Maharashtra vs. Milind and Others reported in (2001) 1 SCC 4, that it is not open to the State Government or Courts or Tribunals or any other authority to make, amend or alter the list of Scheduled Tribes or Scheduled Castes specified in the notification issued under the provisions of the Constitution of India. The Court cannot take up a roving enquiry and as such, it is for the competent authority to investigate and identify a community, adhering to all the fundamentals of enquiry."

12. In the case on hand, on the request of the vigilance cell regarding the genuineness of the petitioner's community certificate, the Anthropologist submitted his report dated 19.07.2018. In the said report, though the Anthropologist stated that he used Ethnographic approach, conducted focus group interview with the community people and using the scientific research tools, the data was collected and systematic analysis were drawn, the Anthropologist observing that during enquiry, the petitioner could not reveal the cultural aspects of sholaga community and further examination of neighbouring other community person revealed that the petitioner belongs to Thondaman community, came to the conclusion that the petitioner's way of life along with his family



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members shows that he could not substantiate his claim that he belongs to sholaga community. The said report of the Anthropologist does not reveal any discussion as to the outcome of the abovesaid methods used by him to find out the genuineness of the petitioner's community certificate and also does not contain the names of the persons whom he had enquired. He had just relied on the petitioner's deposition and the depositions of neighbouring community persons to come to the said conclusion.

13. Perusal of the vigilance report dated 02.08.2018 submitted by the Deputy Superintendent of Police, SJ & HR, SC/ST Vigilance Cell, Tirunelveli District, also shows that he has only reproduced the ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc., of the sholaga community people. Though the said vigilance report refers to four annexures namely, (i) Genealogy certificate, (ii) Anthropologist's report (iii) depositions of other community people and (iv) depositions of petitioner's relatives, absolutely there is no discussion about the same in the said report. Perusal of the report of the Vigilance Cell also shows that the Deputy Superintendent of Police, SJ & HR, SC/ST Vigilance



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Cell, Tirunelveli District, on the one hand stated at paragraph 8 of the report that the writ petitioner did not furnish any documents sought for by the Government during his enquiry and therefore, he could not conduct a detailed enquiry and submit a report, whereas, on the other hand, at paragraph 9, the said authority held that his personal visit to the native place of the petitioner on 10.07.2018 and examination of the documentary evidence, did not reveal that the petitioner belongs to sholaga community. On receipt of the said vigilance report, the respondent issued a show cause notice, for which, the petitioner submitted his explanation on 12.09.2018 denying the findings of the vigilance cell report, stating that though he submitted all the documents sought for by the enquiry officer/vigilance cell, the said authority has erroneously stated that no document was furnished by the petitioner and therefore, enquiry could not be proceeded properly.

14. The afore-stated documents submitted by the petitioner are old documents and in fact, some of those documents namely, two property documents in the name of the petitioner's grandfather of the years 1922 and 1932 respectively, which date back to pre-independence era, have a high probative value. None of these documents were



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adverted to either by the Vigilance Cell or the respondent Committee.

The same need to be examined and adverted to properly in the Vigilance Cell report as well as in the final orders passed by the State Level Scrutiny Committee.

15. As regards the contention of the petitioner that pre-independence documents were not considered by the respondent and that his present way of living will not take away his community status, it is relevant to consider the following observation of the Hon'ble Supreme Court in **Anand vs. Committee for Scrutiny and Verification of Tribe Claims and Others** reported in (2012) 1 SCC 113, wherein, broad parameters have been laid down for the purpose of verification and examination of documents in support of the claim of applicants, which reads as follows:

"22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

*(i) While dealing with documentary evidence, **greater reliance***



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may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. **Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies, etc.** Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

16. Coming to the next contention of the petitioner that the respondent and its agencies namely, Vigilance Cell and Anthropologist have only conducted discreet enquiries and no opportunity for cross



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examination of witnesses examined by those authorities was made available to the petitioner to disprove the version of the witnesses, it is relevant to consider the decision of this Court in **V. Jaganathan vs. The District Collector, Collectorate, Trichy and Others** reported in (2004) **3 MLJ 272**, wherein, it has been held as under:

*"6 There is no dispute that this Court has held in more than one occasion that **the authorities are not permitted to conduct discreet enquiry, without affording opportunity to the petitioner.** Even otherwise, if any enquiry is conducted, copy of those proceedings/materials are to be supplied to the person concerned in order to make further representation or meet the said conclusion arrived in the said enquiry."*

17. As rightly contended by the counsel for petitioner, the petitioner was not given opportunity of cross examination of witnesses enquired by the Anthropologist, Vigilance Cell authority and the respondent and therefore, it cannot be said that the impugned order has been passed adhering to the principles of natural justice. In this regard, the Apex Court in **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and Others** reported in (2013) **4 SCC 465**, has held as follows:-

*"30. The aforesaid discussion makes it evident that, **not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to***



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meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.

46. In view of the above discussion and considering the seriousness of the allegations, as the Scrutiny Committee has already conducted an inquiry in relation to this matter, and the only grievance of the appellant is that there has been non-compliance with the principles of natural justice, and the fact that the applications filed by him were not decided upon, we direct that before the submission of any report by the Scrutiny Committee, his application for calling the witnesses for cross examination must be disposed of, and the appellant must be given a fair opportunity to cross-examine the witnesses, who have been examined before the Committee. We further direct the Scrutiny Committee to pass appropriate orders in accordance with the law thereafter. In case the Scrutiny Committee has already taken a decision, the same being violative of the principles of natural justice, would stand vitiated."

18. In view of the above, we are of the view that the impugned order cancelling the community certificate of the petitioner, suffers from infirmities of holding discreet enquiries by the authorities and also not conducting the enquiry strictly as per the required parameters laid down in the above cited Apex Court judgments, as such, the impugned order is in violation of principles of natural justice.

19. In an employment related case where the appellant was not



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heard before his community certificate was declared to be fake and that too belatedly, the Bench of the Hon'ble Supreme Court of India comprising of **Hon'ble Mr. Justice Aniruddha Bose and Hon'ble Mr. Justice Krishna Murari**, in the recent judgment in **R. Sundaram vs. Tamil Nadu State Scrutiny Committee** reported in **2023 SCC Online SC 287**, has held that where the validity of a community certificate is put to question, keeping in mind the importance of the document and the effect it has on peoples' rights, the proceedings questioning the document cannot, except in the most exceptional circumstances, be done ex-parte.

19.1. Explaining the importance of a community certificate, the Court observed that in cases of scheduled tribe communities, such certificate, unlike any other piece of paper, is an acknowledgment of a person belonging to a community which has faced years of oppression. The Constitution of India guarantees certain rights to people from Scheduled Tribe communities on grounds of historical injustice, and for the translation of such rights from paper to real life, the community certificate in most cases becomes an essential document. This certificate, whilst being an acknowledgment of history, is also a document that tries to rectify such historical injustice by becoming a tool that fabricates



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constitutional rights into reality. Hence, any person, whose entire identity, and their past, present and future rights are challenged, must at the least be given an opportunity to be fairly heard.

19.2. The Apex Court in the said judgment has further held that it is a settled law that in cases where employment is based on a fake community certificate, post-retirement benefits cannot be granted. However, in the case at hand, the respondents failed to prove their claim that the appellant's community certificate is fake. Even though two reports declaring the community certificate of the Appellant as fake were submitted after inordinate and unexplained delay, however, both the reports have not allowed the participation of the Appellant. Hence, the Apex Court observed that the Appellant, in proceedings where the genuineness of his belonging to a community is under question, must have a right to be heard, and must be given the right to cross-examine the witnesses, for the nature of the proceedings which are not just a question pertaining his employment, but also something that strikes at the core of his being, i.e., his identity." Therefore, as the right to be heard was denied to the Appellant, the burden of proof on the respondents to disprove the nature of the certificate, had not been discharged. Hence, it was held that the Court must presume the community certificate of the Appellant to be



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genuine.

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20. In our view, the aforesaid judgment of the Apex Court squarely applicable to the facts of the present case. Thus, in view of our discussion in the preceding paragraphs and in the light of the recent judgment of the Apex Court in **R.Sundaram's case** (supra), we hold that the respondent and its agencies have failed to prove their claim that the petitioner's community certificate is fake and though the Apex Court time and again directed the authorities concerned to ensure speedy disposal of fake caste certificates, in this case, the respondent has passed the impugned order belatedly after a lapse of more than 8½ years from the date of retirement of the petitioner. Hence, we hold that, there has been an inordinate and unexplained delay in passing the impugned order by the 1st respondent and as held by the Hon'ble Supreme Court, the amount of time taken to verify the genuineness of community certificate, cannot be fathomed within the ambit of “reasonable time”. Therefore, the impugned order passed by the 1st respondent dated 09.05.2022, is not sustainable.

21. Accordingly, the impugned order passed by the respondent



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in proceedings No.4340/CV-2(2)/2014-5 dated 15.02.2021, is set aside and the Writ Petition is allowed. All the terminal benefits of the petitioner withheld due to pendency of verification of his community certificate, shall be released and disbursed to the petitioner forthwith without any further delay. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Neutral Citation : Yes / No
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(J.N.B., J.) (N.M., J.)
18.04.2024

To

The Chairman,
The Tamil Nadu State Level Scrutiny Committee-II
and Additional Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai, Secretariat,
Fort St.George,
Chennai-600 009.



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J.NISHA BANU, J
AND
N.MALA, J.

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ORDER MADE IN
W.P.No.6710 of 2021

DATED 18.04.2024