



W.P.No.6993 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

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S.Thangapandi .. Petitioner

v.

1. The State Level Scrutiny Committee II
Adi Dravidar and Tribal Welfare Department
Namakkal Kavignar Maligai
Secretariat, Chennai 600 009

2. The Director of Tribal Welfare
Chepauk, Chennai 600 005

3. A.S.Mohan Ram

4. The Superintendent of Post Offices
Tirunelveli Division
Palayamkottai ..

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent's impugned proceedings No.12557/CV-2(2)/2015-12 dated 12.02.2021 and quash the same.



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For Petitioner :: Mr.L.Chandrakumar
for Mr.N.Naganathan

For Respondents :: Mrs.V.Yamuna Devi
Special Government Pleader
for R1 & R2
R3-No appearance
Mr.C.Samivel for R4

ORDER

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

This writ petition is filed seeking to quash the impugned proceedings of the first respondent dated 12.02.2021.

2. The facts leading to the filing of the writ petition are as follows:-

(a) The petitioner is a resident of Tirunelveli Town, however, claims that he is a native of Ilathur Village, Jeevanallur in Shenkottai Taluk and belongs to “Hindu-Malaikuravan” community, which is recognised as a Scheduled Tribe community as per the Amendment Act, 1976.

(b) The case of the petitioner is that the petitioner was issued with a community certificate on 04.11.1988 indicating that he belongs to “Hindu-Malaikuravan” community, which is a Scheduled Tribe. On the basis of the



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community certificate, he was originally appointed in the Postal Department on daily wage basis in the year 1979. The petitioner was thereafter appointed in the Group 'D' post in the vacancies earmarked for Scheduled Tribes on 03.08.1989 after clearing the special examination. Later he was posted at Tirunelveli Town in the year 1993 pending verification of his community certificate. It is admitted that the petitioner retired from service on attaining the age of superannuation on 05.11.2014.

(c) The community certificate issued to the petitioner was cancelled by the District Collector, Tirunelveli vide proceedings dated 07.07.1994 based on the enquiry report submitted by the Revenue Divisional Officer, Tirunelveli. However, the order of the District Collector was quashed by this Court in a writ petition filed by the petitioner in W.P.No.16407 of 1994 with a direction to the District Collector, Tirunelveli to examine afresh on the basis of the reports of the Revenue Divisional Officer and to pass appropriate orders, by order dated 10.07.2001.

(d) Again the community certificate was cancelled by the District Collector as the Chairman of the District Level Vigilance Committee. Even the subsequent order was challenged by the petitioner in W.P.No.229 of



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2005 and this Court, by order dated 25.03.2009, directed the petitioner to approach the State Level Scrutiny Committee. Again the State Level Scrutiny Committee confirmed the order passed by the District Level Vigilance Committee dated 01.05.2003, by proceedings dated 05.04.2010.

(e) Based on the decision of the State Level Scrutiny Committee, the fourth respondent, employer of the petitioner, removed the petitioner from service by an order dated 05.11.2014.

(f) Meanwhile, the order passed by the State Level Scrutiny Committee dated 05.04.2010 was challenged before this Court by the petitioner in W.P.No.21804 of 2015 and this Court, by an elaborate order dated 01.09.2015, set aside the order impugned therein, citing the following reasons:-

“7. On perusal of the impugned proceedings as well as counter affidavit, it is not clear as to whether the matter was referred to the vigilance committee, as contemplated by the Supreme Court in Kumari Madhuri Patil (supra). The Supreme Court has clearly laid down that each directorate, i.e., State Level Scrutiny committee, 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. It is also required that 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



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the 5 town or city, the place from which he originally hailed from. The vigilance officer is required to personally verify and collect all the facts of the social status claimed by the candidate. If the claim of the applicant is found not genuine or doubtful by the vigilance officer, the Director concerned should issue a 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 studied, calling upon the candidate to file a reply or representation and conduct enquiry thereafter and a decision can be taken only thereon.

8. The said guidelines was referred to with approval in Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and Anr.² ,, Baswant Vs. State of Maharashtra & Ors.³ , Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Ors.⁴ , and G.M., Indian Bank Vs. R.Rani⁵.

9. In the case on hand, it is noticed that the Committee has examined the report without affording an opportunity to the petitioner concerned for filing reply or representation to the report submitted by the District Level Vigilance committee. It is not clear as to whether the vigilance committee has been constituted as per the guidelines of the Supreme Court (supra).

10. For the reasons mentioned herein-above, the impugned proceedings dated 5th April, 2010 is unsustainable in the eye of law. We, accordingly, set aside the same and remit back the matter to the State Level Vigilance Committee / second respondent herein to consider afresh in accordance with the guidelines and take proper decision on its own merit, as early as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

2 (1995) 4 SCC 32

3 JT 2000 (10) SC 280

4 (2004) 9 SCC 481

5 (2007) 12 SCC 796"



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(g) Pursuant to the direction of this Court, it appears that the petitioner submitted a detailed representation dated 05.08.2016 to the first respondent through the Deputy Superintendent of Police, Vigilance Cell, Madurai Region. Along with the representation, the petitioner has submitted several documents.

(h) One Mr.G.Pandiaraj (Anthropologist), a Member of the District Level Vigilance Committee, submitted a report to the SC/ST Vigilance Unit on 12.09.2018 with a recommendation that the petitioner was unable to substantiate his claim that he belongs to “Malakkuravan”, a Scheduled Tribe in Tamil Nadu. His report is based on some ethnographic study by eliciting answers concerning the ways of life of the people belonging to the community. During the enquiry, the Anthropologist found that the petitioner had not revealed his cultural aspects of the community “Malaikkuravan” and recorded that there is no historical evidence to prove the migration of the community “Malaikkuravan” to the southern district of Tamil Nadu. Thereafter, a report was also submitted by the Vigilance Cell to the State Level Scrutiny Committee. From the report dated 15.02.2019 received from the Vigilance Cell, the documents relied upon by the petitioner to support



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his community claim were considered and ultimately, based on the documents, the Vigilance Cell pointed out several discrepancies in the claim and held that the Vigilance Cell was unable to find out on what basis the certificate was issued to the petitioner that he belongs to “Hindu-Malaikkuravan”, a Scheduled Tribe community.

(i) Based on the reports of the Anthropologist and the Vigilance Cell, the State Level Scrutiny Committee passed the impugned order holding that the “Malaikkuruvan” community certificate held by the petitioner showing him as belonging to Scheduled Tribe, is not correct and the State Level Scrutiny Committee recommended for taking action against the petitioner for confiscation of the certificate given to the petitioner and requested the employer to take stringent action against the petitioner for getting employment based on the bogus community certificate. Hence the present writ petition.

3. The learned counsel appearing for the petitioner, assailing the impugned order, made the following submissions. The petitioner was not given sufficient opportunity to participate in the proceedings. Referring to



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the notice for enquiry, wherein the petitioner was called upon to appear for the enquiry on 14.12.2020 and the representation of the petitioner dated 11.12.2020, the learned counsel pointed out that the first respondent, who passed the order only on 12.02.2021 nearly two months after the representation of the petitioner, ought to have considered the representation and given one more opportunity to the petitioner to appear before the Committee. The learned counsel relied upon the Census of India, 1901 released by the Travancore administration. Similarly, the learned counsel also relied upon a report given by a Visiting Professor in the Department of Tribal Studies, Kannada University, State of Karnataka. The learned counsel then submitted that the genuineness of a caste claim has to be considered not only on a thorough examination of documents submitted in support of the claim, but also on the affinity test, which would include the anthropological and ethnological traits of the community. The learned counsel submitted that the Hon'ble Supreme Court in a few judgments has held that the peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage etc., can be used only to corroborate the documentary evidence and it cannot be the sole criteria for deciding the



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community status of an individual. He also submitted that the State Level Scrutiny Committee, though found some discrepancies in the documents relating to “Malaikkuravan” and “Kuravan”, has failed to appreciate the consistent stand taken by the petitioner that he belongs to “Malaikkuravan” community and the reference to “Kuravan” in some of the certificates, is only a mistake or improper entry by the educational authorities based on their understanding of the community. Stating that no evidence or report is available with the Scrutiny Committee to discredit any of the documents, counsel further contended that the impugned order passed by the authority based on conjectures without assigning any valid reason for discrediting the documentary evidence, is unsustainable.

4. On the question of violation of the principles of natural justice, this Court finds that the petitioner ought to have been more careful and vigilant when notice is received from the State Level Scrutiny Committee for enquiry. From the communication, it is revealed that the petitioner was asked to appear for the enquiry on 14.12.2020. The petitioner has submitted an elaborate reply along with the documents pursuant to the final order



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passed in Writ Petition No.21804 of 2015 and subsequently on 11.12.2020.

Even though it is not specifically raised as a ground, this Court takes judicial notice of the fact that in December 2020, Covid-19 pandemic was prevalent and therefore a fair opportunity ought to have been given to the petitioner. When the representation of the petitioner, in response to the notice dated 19.11.2020, was received on 11.12.2020, we are unable to find any valid reason as to why the petitioner was not given an opportunity to appear and produce the other documents before concluding the proceedings. Though this Court has also reasons to believe that the petitioner too had failed to cooperate in response to the notice for enquiry, this Court is of the view that the petitioner could have been given a further opportunity to explain the discrepancies in some of the documents. The petitioner would have apprised the Committee giving more information to support his case that “Malaikkuravan” and “Kuravan” are synonymous names of same community.

5. The learned Special Government Pleader appearing for the respondents 1 & 2 relied upon the booklet released by the Adi Dravida and



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Tribal Welfare Department, Government of Tamil Nadu containing the list of Scheduled Castes and Scheduled Tribes in the State. In the list of Scheduled Castes, “Kuravan” comes in Serial No.36. It is pointed out by the learned Special Government Pleader that “Malaikkuravan” is again listed in Serial No.23 as Scheduled Tribe community. The learned Special Government Pleader therefore would submit that the community “Kuravan” and “Malaikkuravan” are different and hence the petitioner's claim that he belongs to “Malaikkuravan” community cannot be conceded, when several certificates produced by the petitioner themselves would show that he belongs to “Kuravan”, which is shown in the list of Scheduled Castes. The learned Special Government Pleader also would advance an argument that the petitioner was given sufficient opportunity by the State Level Scrutiny Committee and the matter is dragged for a long time only by the petitioner by showing a recalcitrant attitude at every stage of the proceedings.

6. The learned counsel appearing for the fourth respondent-employer would submit that the petitioner has produced a certificate showing that he belongs to “Malaikkuravan”, but unable to produce documents or evidence



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to prove his community as Scheduled Tribe. When many of the documents relied upon by the petitioner themselves would show that the petitioner has obtained the certificate mentioning his community as “Hindu-Kuravan”, it is contended that the petitioner cannot claim that he belongs to “Hindu-Malaikkuravan”.

7. This Court carefully went through the detailed order passed by the State Level Scrutiny Committee. The State Level Scrutiny Committee considered the Vigilance Cell report and the report submitted by the Anthropologist, which was also considered by the Vigilance Cell. The Vigilance Cell considered the service register in respect of the petitioner's father by name Mr.T.Sankaran, where his community was mentioned as “Hindu-Veder”. Similarly, the State Level Scrutiny Committee considered the several community certificates issued in favour of the petitioner's sister or some of the relatives of the petitioner or school records showing the community of the petitioner as “Hindu-Kuravan” and not as “Hindu-Malaikkuravan”.



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8. The question is about the genuineness of the petitioner's claim, as the respondents have admitted the issuance of certificate to the petitioner showing the petitioner's community as “Malaikkuravan”.

9. Even though the Anthropologist submitted a report to the Vigilance Cell and the report was also available with the State Level Scrutiny Committee, this Court finds that the enquiry of the Anthropologist is not a full-fledged enquiry. The Anthropologist has enquired about the petitioner's way of life along with his family members. It is stated in the report that the individual has not revealed the cultural aspects of the community “Malaikkuravan” and that there is no historical evidence to prove the migration of the community “Malaikkuravan” to the southern district of Tamil Nadu.

10. The report of the Anthropologist is without considering the material facts and the position. The Census of India, 1901 published by Travancore is produced by the petitioner. While dealing with the community “Malakkuravan”, also known as “Malaikkuravan”, “Kuravan”



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is recognised as a community under the Scheduled Caste. It is to be noted that “Kuravans” speaking Tamil are recognised as one of the early tribes of southern India, who have spread to the southern part of the State. It is also seen from the census that the community is known as “Malaikkuravan” as well as “Kuravan” and the sizeable population of “Malaikkuravan” community have migrated to the plains and started living in different parts of the State.

11. The report of the former Director, Tribal Research Centre, Ooty, who is also a visiting professor in Kannada University produced by the petitioner also supports his case. It is stated that in the State of Tamil Nadu, persons belonging to “Malaikkuravan” community, though speak Tamil and other languages, they are following their distinctive cultures, living in isolation and their shyness to strangers. The recommendation was that the Government should accept all the tribal certificates issued by the Tahsildars and Revenue Divisional Officers in the name of “Malaikkuravan”. This Court, though finds that several research material and research papers will certainly help the Government to take a policy decision or to frame



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guidelines for considering the individuals' claim, is of the view that the order passed by the State Level Scrutiny Committee without reference to the principles reiterated by the Hon'ble Supreme Court and/or the research articles published in relation to the petitioner's community "Malaikkuravan", cannot be sustained.

12. Since we have found enough reasons to remit the matter to the State Level Scrutiny Committee to again consider the genuineness of the community certificate issued to the petitioner in 1988, this Court is not inclined to delve further, which may prejudice the Committee. Considering the fact that the petitioner could have been given one more opportunity for his appearance to substantiate his case on the basis of material documents produced by him, this Court finds that the impugned order suffers on account of violation of the principles of natural justice. As a result, this writ petition stands allowed and the impugned order passed by the first respondent is set aside. The first respondent shall commence the process of verification of the community status of the petitioner and give adequate opportunity to the petitioner to put forth his case on the basis of the



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documents which are already filed or that may be produced along with any verifiable material to substantiate his claim. The first respondent is directed to hold enquiry and pass final orders afresh within a period of twelve weeks from the date of receipt of a copy of this order. We find it important to direct the petitioner to co-operate with the State Level Scrutiny Committee for early disposal by making his presence whenever it is required, keeping in mind that it is the petitioner who is responsible for this third round of litigation. Consequently, W.M.P.No.7543 of 2021 is closed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
22.02.2024

ss

To

1. The State Level Scrutiny Committee II
Adi Dravidar and Tribal Welfare Department
Namakkal Kavignar Maligai
Secretariat
Chennai 600 009



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2. The Director of Tribal Welfare
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S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

SS

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