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WA.No.1319 of 2019 and WP.No.4335 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WA.No.1319 of 2019 and WP.No.4335 of 2021  
WMP.Nos.4924 and 4925 of 2021 and CMP.No.8970 of 2019

WA.No.1319 of 2019:-

1. The Chairman, Chennai Port Trust  
Chennai-1
2. The Chief Mechanical Engineer, Chennai Port Trust  
Chennai-1

Appellants

Vs

1. M.Nagaraj
2. The State Level Scrutiny Committee, represented by Secretary  
Adi Dravidar and Tribal Welfare Department,  
Chennai-9

Respondents

WP.No.4335 of 2021:-

1. M.Nagaraj

Petitioner

Vs



WA.No.1319 of 2019 and WP.No.4335 of 2021

1. The State Level Scrutiny Committee II

Adi Dravidar and Tribal Welfare Department, Chennai-9

2. The Deputy Superintendent of Police, Social Justice and Human Rights  
Scs/STs Vigilance Cell, Chennai Region, Kancheepuram

3. The Chairman, Chennai Port Trust  
Chennai-1

Respondents

Prayer:- This Writ Appeal is filed to set aside the order dated 09.01.2019 made in WP.No.33756 of 2018. This Writ Petition has been filed, under Article 222 of the Constitution of India, for issuance of Writ of Certiorari to call for the records of the 1st Respondent's proceedings in No.20449/CV-4(1)/2017-11 dated 10.12.2020 and to quash the same.

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

For Appellant : Mr.S.Haja Mohideen Gisthi-WA For

Respondents : Mr.R.Karthikeyan-R3-WP  
Mr.M.R.Gokulkrishnan-AGP-RR1 and 2-WP

Mr.L.Chandrakumar-R1-WA for Mr.N.Naganathan  
Mr.M.R.Gokulkrishnan-AGP-R2-WA

## ORDER

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

1. This Writ Appeal is filed to set aside the order of the learned Single Judge of this Court, dated 09.01.2019 made in WP.No.33756 of 2018.

2. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records of the 1st Respondent's proceedings in No.20449/CV-



4(1)/2017-11 dated 10.12.2020 and to quash the same.

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3. The Petitioner is a permanent residence of Vandalur Village, Chengalput. The Petitioner states that he belongs to “Hindu Kurumans” Community, which is a ST Community, notified under the Constitution of Schedule Tribes Order, 1950. It is the case of the Petitioner that his forefathers and ancestors lived in and around the locality for the past several decades. It is stated by the Petitioner that the Petitioner's family moved from their native to Thiruvallur District several decades ago and that his father was a coolie. The Petitioner, however, was issued with a Community Certificate on 18.10.1977 by the Tahsildar, Thiruvallur Taluk. It is stated by him that the said Certificate was issued to the Petitioner after due enquiry.
4. It is the further case of the Petitioner that the Petitioner's Employer, the 3rd Respondent directed the Petitioner to produce a fresh Community Certificate and this was also done by the Petitioner, by getting a fresh Certificate dated 02.11.1988. Thereafter, the District Collector conducted a discrete enquiry and passed an order on 12.12.1991, holding that the Petitioner does not belong to “Hindu Kurumans” Community. The District Collector, therefore cancelled the Community



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Certificate of the Petitioner. The Petitioner was also terminated from service by the 3rd Respondent in 1992. The Petitioner challenged the termination order and the proceedings of the District Collector in WP.Nos.2478 and 2479 of 1992. This Court disposed of the said Writ Petitions by an order dated 27.06.2000, with a direction to maintain Status quo till the disposal of the objections.

5. The Petitioner also obtained a fresh Community Certificate, showing his Community Status as “Hindu Kurumans” Community. However, the said Certificate obtained by the Petitioner was referred to the 2nd Respondent for verification and its genuineness. After enquiry, it is stated that the Sub Collector, by proceedings dated 28.06.2019 affirmed the Community Status of the Petitioner. Later, the matter was referred to the 1st Respondent for verification of the Community Status of the Petitioner. Accordingly, the 1st Respondent, after following the procedure prescribed under law, passed the impugned order, on the basis of the reports of Anthropologist and Vigilance Cell, holding that the Petitioner does not belong to “Hindu Kurumans” Community and that the Certificate issued to the Petitioner is liable to be confiscated. The 1st Respondent also recommended to take stringent action against the



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Petitioner by the Employer. Hence, this Writ Petition is filed seeking the relief as stated above.

6. In the Writ Appeal, the challenge is to the order of the learned Single Judge of this Court dated 09.01.2019 made in WP.No.33756 of 2018, which was filed by the Petitioner, seeking to quash the proceedings of the Employer, permitting the Petitioner to retire on 31.03.2017, but withholding the terminal benefits, except the provisional pension. The said Writ Petition was disposed of, quashing the proceedings of the Employer and directing the Employer to disburse the pensionary and terminal benefits to the Petitioner with interest at 18% p.a.
7. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
8. The learned counsel for the Petitioner in the Writ Petition submits that the impugned order is arbitrary inasmuch as the Petitioner's claim based on substantial documents was not considered and that there is total non application of mind. Referring to the reports of the Anthropologist and the Vigilance Cell, the learned counsel pointed out that no material was relied upon by the Anthropologist to confirm the Community Status of the Petitioner.



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9. From the reading of the reports of the Anthropologist and the Vigilance Cell, it is seen that no spot enquiry was conducted and the whole proceedings were only on the basis of the materials supplied by the Petitioner. It is seen that the Vigilance Cell has collected no adverse material to disbelieve the statement of the Petitioner. Therefore, the Vigilance Cell has consciously recorded a finding that the 'Petitioner has not proved his Community Status'.

10. The Petitioner has obtained the Community Certificate earlier at the request of the Employer. The Community Certificate was issued by the Competent Authority and hence, it is not in dispute. The Community Status of the Petitioner during the enquiry was found to be genuine. However, the question considered was whether the Petitioner has proved beyond doubt by materials as to his Community Status. This Court in the present context, examined the reports of the Anthropologist. The relevant portion of the said report reads as follows:-

**“Methodology:-**

The basic methodology followed was field visit in Otteri Village, Vandalur, Kancheepuram District and conducted Focus group interview with the family and Community Members. Besides that the observation technique has been used to assess the material culture. Using these scientific research tools the



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data were gathered systematically and analysis were drawn. The data were more of qualitative in nature and ethnographic approach was used.

Over the past three decades, ethnography has moved from marginal position to central place of social science discipline. Of course, in the case of social and cultural anthropology ethnography has always been the predominant method; but now extended to all the other social science discipline more related to applied research. Ethnography as method seeks to answer central anthropological questions concerning the ways of life of living human beings. Ethnographic questions generally concern with the link between culture and behaviour and/or how cultural processes develop over time. The database for ethnographies is usually extensive description of the details of social life or cultural phenomena of small communities. The team felt it as an appropriate approach to accomplish the objective of the present field visit.

The following characteristic plays a vital role in India to identify the tribal communities and also it was applied for the individual in the field

- Nomadic/Semi-nomadic people
- Close contact with forest
- Kinship-Clan organization
- Own dialect
- Simple belief system
- Indigenous Knowledge system
- Traditional political system
- Rigidity towards change
- Folk songs
- Lifecycle ceremonies of their own
- Community endogamous and clan exogamy
- Relative Isolation

Based on the above characteristics the respondent has not



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expressed his culture in a patterned form. There was no congruence in his narratives with the culture of claimed community which is listed out in Scheduled Tribe list of Tamil Nadu. Due to the incongruent data and the analysis process has its restraint and finally the interpretation cannot be substantiated.

Taking the above research factors into consideration and to conclude that Thiru. M.Nagaraj S/o. Thiru. Munusamy and his claim as that Hindu Kurumans' - Schedule Tribe Tamil Nadu is Not Genuine.”

11.From the report of the Anthropologist, this Court finds some technical reasons about the method adopted by the Anthropologist in assessment of the Petitioner's Community Status. We have no quarrel over the characteristics of Schedule Tribe, which places a vital role to identify any Tribal Community. However, after referring to general factors, which will be required to be considered by the Anthropologist, the Anthropologist has not given a single reason as to why or how the characteristics identified in the Petitioner's case do not match the Anthropological characteristics of the Community Kurumans. The assessment of Anthropologist is subjective and not based on objective consideration. The report fits any other case. Such a report should be avoided.

12.Even though it is relevant to point out that the Vigilance Cell



considered several documents relating to his Community Status, the verification of the Community Status was done almost by the Revenue Officials. The Community Certificate issued to the Petitioner and the Certificates issued to the Petitioner's relatives were considered by the Vigilance Cell. No other material is referred to in the report to discredit the statement of the Petitioner as to his Community Status. The Vigilance Cell referred to the statement of some individuals as well as the Petitioner. As against the specific case of the Petitioner about his Community Status, the Respondents have not collected a single document which would disprove the contention of the Petitioner's case. Ultimately, this Court from the materials can only deduce that the Petitioner's claim was not favourably considered only because the Petitioner has failed to prove his Community Status beyond reasonable doubt. In short, the findings of the Vigilance Cell reads as follows:-

“சமர்ப்பிக்கப்பட்ட ஆவணங்கள் அடிப்படையில் பெறப்பட்ட மெய்த்தன்மை அறிக்கைகள் வாயிலாக மட்டும் தனியரின் இந்து-குருமன்ஸ் சாதிப்பிரிவினை உறுதிப்படுத்த இயலவில்லை.”

13. In modern days, people from Tribal areas are migrating to neighbouring Towns and Cities seeking job opportunities and other prospects. The object of verification of the Community Status is to ensure that genuine



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people get fair opportunity in employment as well as in getting admission in Educational Institutions. It is only to ensure equal opportunity to the tribal people. People belonging to SC and ST Community enjoy certain privileges in view of the social inequalities. The Petitioner, who has obtained certificate from the Competent Authority is entitled to rely upon them and they may be sufficient to justify his claim as to his Community Status in the absence of any material to reject the claim. Such a certificate cannot be rendered invalid merely on the basis that during verification after 20 or 30 years, the Petitioner is unable to prove his Community Status beyond doubt. In the absence of any material adverse to the Petitioner's claim, this Court is of the view that for want of proof at the time of scrutiny after four decades, the Certificate issued to the Petitioner earlier by the Competent Authority cannot be confiscated.

14.Regarding the report of the Anthropologist, this Court finds that the report is not useful. There is no objective consideration of the Petitioner's claim. Therefore, the impugned order in this Writ Petition based on the report of the Anthropologist and the Vigilance Cell is unsustainable, in view of the inherent defects and lack of clarity in the



reports of the Anthropologist and the Vigilance Cell.

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15. Though this Court would normally remit the matter to the 1st Respondent for fresh decision, in view of the fact that the Petitioner has now retired and crossed the age of 70 years, this Court is not inclined to remit the matter. Hence, the impugned order in this Writ Petition is set aside. Accordingly, the consequential direction to the Respondents is that the Petitioner shall be treated as Hindu Kurumans for the purpose of employment and he is also entitled to terminal benefits on the basis of the Community Certificate already issued to the Petitioner.

16. The Writ Appeal is directed against the order of the learned Single Judge of this Court dated 12.03.2017. It is admitted that the Petitioner was due to retire on superannuation with effect from 31.03.2017. Since the proceedings regarding verification as to the genuineness of the Community Certificate issued to the Petitioner was pending, the Employer permitted the Petitioner to retire on 31.03.2017, but withhold terminal benefits. This is challenged in the Writ Petition. Allowing the Writ Petition filed by the Employee, the learned Single Judge directed the Employer to disburse terminal benefits. Challenging the same, the Writ Appeal is filed by the Port Trust.



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17. Since this Court has decided the issue only on the available materials due to want of proof and taking into account a few circumstances, this order cannot be taken advantage of by the relatives of the Petitioner or any one who claims under the Petitioner. This order cannot be treated as an order finally declaring the Community Status of the Petitioner in this Writ Petition. This order is passed considering the inherent defects in the order relying upon the reports of the Anthropologist and Vigilance Cell, this order cannot be a precedent and cannot be interpreted to be an order acknowledging the Petitioner's Community Status.

18. However, the direction of the learned Single Judge of this Court was to pay terminal benefits with interest at 18%. In view of the fact that the delay in disbursement is due to the pendency of the proceedings, the Petitioner is not entitled to any interest. To that extent, the order of the learned Single Judge of this Court is modified and the Writ Appeal is partly allowed and the disbursement of the pension and terminal benefits shall be with no interest. Since we have said that the terminal benefits shall be disbursed without any interest, the Employer is directed to disburse the monetary benefits within a period of eight weeks from the date of receipt of a copy of this order.



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19. With the above directions, the Writ Petition is allowed. The Writ Appeal is partly allowed, as indicated above. No costs. Consequently, the connected MPs are closed.

(S.S.S.R.J.) & (N.S.J.)  
25.07.2024

Index: Yes/No  
Web: Yes/No  
Speaking/Non Speaking  
Neutral Citation  
Srcm

To

1. The State Level Scrutiny Committee II, Adi Dravidar and Tribal Welfare Department, Chennai-9
2. The Deputy Superintendent of Police, Social Justice and Human Rights Scs/STs Vigilance Cell, Chennai Region, Kancheepuram
3. The Chairman, Chennai Port Trust, Chennai-1
4. The Chief Mechanical Engineer, Chennai Port Trust, Chennai-1



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S.S.SUNDAR, J.  
and  
N.SENTHILKUMAR, J.

Srsm

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