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W.P.No.16687 of 2022

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.16687 of 2022
and
WMP.Nos.15982 and 15988 of 2022

M.Kulanthaivelu

... Petitioner

VS.

1. The Chairman,
The Tamil Nadu State Level Scrutiny Committee-II,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-600 009.

2. The District Collector,
Tirunelveli District,
Collectorate,
Tirunelveli-627 002.

3. The District Revenue Officer,
Collectorate,
Tirunelveli-627 002.

4. The Tahsildar,
Tirunelveli Taluk,
Collectorate,
Tirunelveli-627 002.



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5. The Head Quarters Deputy Tahsildar,
Collectorate,
Tirunelveli-627 002.

6. The Manager,
The UCO Bank,
Pungammal Complex, Main Road,
Gopalasamuthiram,
Tirunelveli-627 451.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the proceedings No.99/CV-2/2017-16 dated 09.05.2022, on the file of the 1st respondent herein and quash the same.

For Petitioner	: Mr.S.Subbiah, Senior Counsel for Mrs.Elizabeth Ravi
For R1 to R5	: Mrs.R.L.Karthika, Government Advocate
For R6	: Ms.Aishwarya S Nathan

ORDER

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

Challenging the order dated 09.05.2022 passed by the 1st respondent cancelling the community certificates of the petitioner certifying that the petitioner belongs to Hindu Sholaga community, this writ petition is filed.



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The case of the petitioner is that he was issued with a community certificate by the 5th respondent by proceedings dated 23.12.1983 certifying that he belongs to Sholagar community which is listed as Serial No.366 in the list of BO/SC/ST under the Scheduled Caste and Scheduled Tribe Order. The petitioner's school certificates also reflect the said community. The petitioner was appointed as Office Assistant in the 6th respondent Bank and though he was eligible for further promotion, it was kept pending on account of verification of his communal status. The petitioner further states that at the instance of the 6th respondent, he approached the Tahsildar, Tirunelveli Taluk, who also issued the certificate dated 23.02.1989 certifying that the petitioner belongs to Hindu Sholagar community. Despite the same, the 6th respondent referred the matter to the 2nd respondent for the purpose of finding out the genuineness of the community certificate issued to the petitioner. The District Vigilance Committee, Tirunelveli, by proceedings dated 16.11.2001 cancelled the community certificate of the petitioner, against which, the petitioner filed W.P.No.1255 of 2001 and this Court by order dated 27.07.2001 permitted the petitioner to file appeal before the 1st respondent. The petitioner also filed appeal dated



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06.08.2001 but the same was transferred again to the District Vigilance Committee, Tirunelveli, in view of G.O.Ms.No.11. The District Vigilance Committee, Tirunelveli, by order dated 11.03.2011 affirmed the cancellation of the petitioner's community certificate, against which, the petitioner filed W.P(MD)No.4376 of 2011, in which, stay was granted and later on, the said writ petition was partly allowed by a Division Bench by order dated 21.11.2016, setting aside the order impugned therein dated 11.03.2011 and by granting liberty to the petitioner to challenge the legality of the order dated 11.03.2011 in the form of appeal to the 1st respondent and directed the 1st respondent to dispose of the appeal within 10 weeks with a further direction that till such time, the employment status of the petitioner should not be disturbed by the respondents therein.

3. The petitioner further states that pursuant to the said order, the petitioner filed appeal to the 1st respondent on 22.02.2017. In terms of G.O(Ms)No.106, dated 12.09.2007, the 1st respondent by letter dated 13.03.2017, directed the Assistant Commissioner of Police, Social Justice and Human Rights Wing, Tirunelveli District, to conduct an enquiry and by letter dated 02.10.2017, the petitioner was also called for an enquiry.



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In the enquiry, the petitioner, his family members and his neighbours participated. However, after the delay of five years, the Assistant Commissioner of Police, Social Justice and Human Rights Wing, Tirunelveli District, sent his report dated 09.03.2022 based on the negative report of one Mr.G.Pandiaraj, Anthropologist. Thereafter, the 6th respondent by letter dated 16.05.2018 requested the 1st respondent to verify the genuineness of the petitioner's community status and the 6th respondent Bank also filed W.P.No.3094 of 2015 for a Mandamus directing the 1st respondent/sole respondent therein to expeditiously commence and conclude verification of the community certificate for the employees mentioned in its letters dated 07.03.2014 and 01.12.2014 and submit a report within a month. The Division Bench by order dated 07.11.2016 directed the 1st respondent to expedite the verification of the community certificates of those employees within a period of three months. Subsequently, alleging non compliance of the said direction, the 6th respondent filed Contempt Petition No.1215 of 2020. Thereafter, the 1st respondent by proceedings dated 15.03.2022 enclosing a copy of the report dated 09.03.2022 of the Assistant Commissioner of Police, Social Justice and Human Rights Wing, Tirunelveli District, called for an explanation from the petitioner. The petitioner requested the 1st



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respondent to furnish copy of the report of the Anthropologist and thereafter gave his explanation on 02.04.2022 with documents.

However, the 1st respondent has passed the impugned order cancelling the community certificate of the petitioner. Hence, this writ petition.

4. Learned Senior 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 1st 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 1st respondent did not advert to the explanation and documents submitted by the petitioner and passed the impugned order merely relying upon the Vigilance report and the Anthropologist's statement. Learned Senior Counsel also contended that the finding of the Anthropologist proceeds as if the petitioner was not aware of the traits, customs and origin of



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Sholaga community which is unknown to law and it cannot be basis for invalidating the community certificate issued to the petitioner long back.

5. Learned Senior Counsel further submitted that the reference made by the 6th respondent/employer was only in relation to genuineness of the certificates but not for examining the correctness of the certificates issued to the petitioner. Learned Senior Counsel further contended that the 1st respondent has not even established that the community certificates came to be issued to the petitioner on wrong or fraudulent informations furnished by the petitioner and therefore, the 1st respondent has no power to proceed with enquiry and to cancel all the certificates. According to the learned Senior Counsel, the reference of the State Level Scrutiny Committee that Sholagar community has been included only as OBC on the basis of the letter dated 19.10.1994 is untenable since it was not issued by the Government of Tamil Nadu, whereas it was issued by the Government of Orissa as such it cannot be made applicable to Tamil Nadu. It is further contended that the report of the Anthropologist having not been furnished to the petitioner, it cannot be relied upon as such the impugned order basing such unserved report is hit by violation of principles of natural justice. Further the report of the Assistant



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Commissioner of Police also cannot be relied upon by the 1st respondent since he had not followed the mandatory directions issued in G.O.Ms.No.106, dated 15.10.2012. It is also stated that the Government of Tamil Nadu itself acquired lands in Survey No.252/1 in Krishnapuram Village, Tenkasi Taluk for the benefit of Sholagar community people and therefore, the 1st respondent cannot overcome the book issued by the Government of Tamil Nadu whereby it is held that sholaga and sholagar in the then Nellai Kattabomman District may be grouped as homogeneous community. Therefore, the learned Senior Counsel submitted that the impugned order cancelling the community certificate of the petitioner, is liable to be set aside.

6. The petitioner has also filed additional affidavit stating that his cousin Tmt.K.Jeyanthi has obtained Sholaga community certificate dated 03.05.1991 from the Revenue Divisional Officer, Thoothukudi and she has been employed as Assistant Grade-III (Technical) in the Food Corporation of India under Scheduled Tribe quota. The paternal grandmother of Tmt.K.Jeyanthi and the petitioner's paternal grandmother were sisters and hence both Tmt.K.Jeyanthi and the petitioner belong to sholaga community. When the Food Corporation of India requested the



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State Level Scrutiny Committee to verify the genuineness of the community certificate of Tmt.K.Jeyanthi, the State Level Scrutiny Committee examining all the records, statements, other documentary evidences, report of the Revenue Divisional Officer, Thoothukudi and the views of the Anthropologist, came to the conclusion that the said Tmt.K.Jeyanthi belongs to Sholaga ST community, but in the case of the petitioner, without considering the same, the impugned order has been passed and hence, the same is liable to be set aside.

7. Learned Government Advocate appearing for the respondents 1 to 5 submitted that the Director, Tribal Welfare, Chennai, has forwarded the Vigilance Cell enquiry report obtained from the Assistant Commissioner of Police, Social Justice and Human Rights Wing, Tirunelveli City, who conducted an enquiry with the petitioner, witnesses in the petitioner's residential area and after perusing the depositions of the witnesses, documents produced by the petitioner 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 while the petitioner's school admission and withdrawal register reported by the Headmistress, STC



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Branch, Puttagarati Primary School, Tirunelveli, mentions the petitioner's community as Hindu Sholagar, the petitioner's transfer certificate attested by the Headmaster, Javagar Government High School, Tirunelveli, mentions the petitioner's community as Hindu-Sholaga. 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.

8. Learned Government Advocate further submitted that in Kumari Madhuri Patil's case reported in JT 1994 (5) SC 488, 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



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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.

9. 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 their origin in western ghats and later on migrated to the present area. The State Level Scrutiny Committee examined the documents of the petitioner, reports of the Assistant Commissioner 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 6th respondent to take stringent action against the petitioner as per the guidelines for having obtained a bogus



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community certificate. As regards the non furnishal of Anthropologist's report, the State Level Scrutiny Committee observed that the said report was sent along with the proceedings of the Assistant Commissioner of Police, Social Justice and Human Rights Wing, SC/ST Vigilance Cell, Tirunelveli. As regards the contention that Sholagar community is mentioned as ST community in the Hand Book issued by the Government of Tamil Nadu, learned Government Advocate submitted that as per the letter dated 19.10.1994 of the Ministry of Social Justice and Empowerment Department, Sholagar community is included in OBC list and not under ST community list. It is further submitted that though the petitioner contended that his forefathers even before independence migrated to Tirunelveli District from the Nilgiri Hills and a book namely, West Mountaineer written by Thiru.Pilo Irudhayanath is evidencing migration of such people, no evidence such as, voter identity card, house tax receipts etc., have been produced. As regards the contention that Government of Tamil Nadu itself acquired the lands in Survey No.252/1 in Krishnapuram Village, Tenkasi Taluk for the benefit of Sholagar community people, learned Government Advocate submitted that Sholaga community alone is an ST community and the petitioner has misunderstood that sholagar and sholaga are one and the same



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community. Though the petitioner states that a committee of Anthropologists appointed by the Tamil Nadu Adi Dravidar and Tribal Welfare Department conducted an enquiry and submitted a report to the effect that Sholaga and Sholagar are one and the same community, the petitioner has not produced copy of such report. 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.

10. The 6th respondent has filed a counter affidavit. Learned counsel appearing for the 6th respondent would submit that the 6th respondent is a leading Nationalised Bank and Government of India undertaking which provides premium banking services through its various branches across the country. At the time of application, the petitioner represented to be a Scheduled Tribe Community by claiming that he belonged to Sholaga community. Therefore, he was appointed as peon on 23.08.1988 in the 6th respondent Bank on the assumption that he was an ST candidate. He was admitted into a vacancy reserved for ST candidates and continued to serve in the Bank as peon until his date of



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retirement. Since there was two community certificates issued in favour of the petitioner certifying that he belongs to Sholaga and Sholagar community, the 6th respondent referred the matter to the District Level Vigilance Committee which by proceedings dated 16.11.2000 cancelled the community certificate issued to the petitioner. The petitioner filed appeal against such cancellation which ended in dismissal. Again the petitioner challenged the same before this Court and this Court remanded the matter to the State Level Scrutiny Committee which after providing opportunity to the petitioner, considering his explanation and documents, held by impugned order that the petitioner does not belong to Sholaga community and also directed the 6th respondent to take stringent action against the petitioner for having obtained bogus certificates. In the light of the finding by the State Level Scrutiny Committee, the Bank is of the view that he had obtained public employment by fraud, and that he is not entitled to any benefits under the quota reserved for Scheduled Tribe. In view of the findings recorded by the Scrutiny Committee, there cannot be any question of payment of pension or terminal benefits to the petitioner as the petitioner has obtained appointment by playing fraud. Prima facie, his appointment was void from its inception. The petitioner retired from service on 31.07.2022 and his terminal benefits have been withheld by



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the Bank in view of the impugned cancellation of community certificate of the petitioner. Thus, the learned counsel submits that the writ petition is liable to be dismissed.

11. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

12. The petitioner has supplied the following documents along with his explanation:-

(i) community certificates of the petitioner dated 23.12.1983, 23.02.1989 and 19.07.1989.

(ii) Transfer certificates of the petitioner's son and daughter.

(iii) Certificate dated 28.04.1986 issued by the District Revenue Officer.

(iv) School certificate.

(v) Handbook copy dated 31.12.1986

(vi) Proceedings dated 27.09.1983 of the Adi-draavidar and Tribal Welfare Department.

(vii) Tamil Nadu Government Gazette dated 19.01.1982.

(viii) Order dated 24.09.1999 passed in the writ petition filed by



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WEB COPY (ix) order dated 21.01.2016 passed by the Madurai Bench.

13. 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, 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



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



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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



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he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status 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



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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 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



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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 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



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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."



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14. 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 05.06.2018. 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, came to the conclusion that the petitioner's way of life along with his family 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 his way of life along with his family members to come to the said conclusion.

15. Perusal of the vigilance report dated 09.03.2022 submitted by the Deputy Superintendent of Police, SJ & HR, SC/ST Vigilance Cell,



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Tirunelveli District, also shows that it is based on the report of the Anthropologist and on the basis that except the petitioner, his relatives obtained community certificate as Hindu Thondaiman community and also based on the statement of the petitioner before the Tahsildar, Tirunelveli, that he did not know the traits and customs of sholaga community. On receipt of the said vigilance report, the 1st respondent issued a show cause notice dated 15.03.2022, for which, the petitioner submitted his explanation on 02.04.2022 denying the findings of the vigilance cell report, stating that mere mismatching of the petitioner's present way of living with the olden traits and customs of sholaga community people cannot be put against his claim and even the Director of Adi Dravidar and Tribal Welfare Department, Chennai, in his proceedings dated 09.11.1984 has stated that sholaga ST community people are living within the entire district of Tirunelveli. The petitioner further stated that G.O.No.126, dated 19.01.1983 issued by the Government for free house-site patta to the petitioner's villagers at Krishnapuram Village, Tenkasi Taluk, specifically mentions the sholagar (scheduled Tribe) community name and that the petitioner's relative one Rajarajeswari obtained sholaga community certificate pursuant to the order of this Court. The petitioner has also enclosed all the relevant



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documents in support of his explanation. However, perusal of the impugned order passed by the 1st respondent does not show any discussion about the petitioner's explanation and consideration of the documents submitted by him.

16. As regards the contention of the petitioner that the 1st 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, 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



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enquired by the Anthropologist, Vigilance Cell authority and the 1st 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 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 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



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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 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



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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 genuine.

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



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impugned order belatedly after a lapse of more than 5 years from the date of the petitioner's appeal which was filed on 22.02.2017 before the 1st respondent. 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 Honourable 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 1st respondent in proceedings No.99/CV-2/2017-16 dated 09.05.2022, is set aside and the Writ Petition is allowed. We make it clear that the promotion of the petitioner stated to be withheld because of the verification of his community certificate, shall be given to the petitioner as per his seniority, if he is otherwise eligible and that monetary and service benefits shall be calculated accordingly and disbursed to the petitioner forthwith any further delay. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) (N.M., J.)



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18.04.2024

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Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Chairman,
The Tamil Nadu State Level Scrutiny Committee-II,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-600 009

2. The District Collector,
Tirunelveli District,
Collectorate,
Tirunelveli-627 002

3. The District Revenue Officer,
Collectorate,
Tirunelveli-627 002.

4. The Tahsildar,
Tirunelveli Taluk,
Collectorate,
Tirunelveli-627 002.

5. The Head Quarters Deputy Tahsildar,
Collectorate,
Tirunelveli-627 002.

6. The Manager,
The UCO Bank,
Pungammal Complex, Main Road,
Gopalamuthiram,
Tirunelveli-627 451.



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W.P.No.16687 of 2022

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

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ORDER MADE IN
W.P.No.16687 of 2022

DATED 18.04.2024