



W.P.No.31436 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 22.12.2023
ORDER PRONOUNCED ON : 08.03.2024
CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BA NU
AND
THE HON'BLE MRS. JUSTICE N.MALA**

W.P.No. 31436 of 2022

and

WMP.No. 30890 of 2022

S.Subramanian

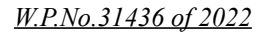
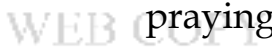
...Petitioner

Vs.

1.The Tamilnadu State Level Scrutiny Committee-III
Represented by its Chairman and Secretary,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai,
Secretariat, Chennai-9.

2.The Chief Regional Manager,
National Insurance Company Limited,
Coimbatore Regional Office,
684, Trichy Road, Stock Exchange Building,
Coimbatore-5.

...Respondents





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2. The petitioner belongs to Malayali community which is Scheduled Tribe in terms of the Constitution Scheduled Tribes Order 1950. The petitioner was issued with the community certificate by the Tahsildar, Attur on 17.06.1977. The petitioner joined as Assistant in United India Insurance Company and the company was later transferred and taken over by the National Insurance Company Limited, the 2nd respondent herein with effect from 01.09.1994. The petitioner after 36 years of service retired as a Senior Assistant with effect from 31.12.2014. The Collector, Salem District cancelled the community certificate of the petitioner vide order dated 16.06.1992. The petitioner challenged the said order in W.P.No. 10550 of 1992 and the same was allowed by this Court on 14.06.2001. According to the petitioner thereafter no steps were taken for nearly 25 years by the competent authority for verifying the petitioners communal status. Even though the petitioner retired on 31.12.2014, his terminal benefits were not settled and therefore the petitioner filed writ petition in W.P.No. 5957 of 2016. While so in 2017, the petitioner was issued with the show cause notice dated 21.06.2017 along with the Vigilance Cell report and the petitioner submitted his



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objections vide his representation dated 10.07.2017. In the said representation the petitioner sought for an opportunity to cross-examine the witnesses from whom the statements were taken by the Vigilance Cell. The 1st respondent for a long time did not take follow up action. In December 2020, the petitioner was directed to appear for enquiry on 11.12.2020. The said letter was received by the petitioner on 14.12.2020 and the petitioner immediately replied on 15.12.2020 seeking postponement of enquiry on the ground of illhealth. Thereafter the 1st respondent passed the impugned order on 15.06.2022 cancelling the petitioner's caste certificate. In the meantime the writ petition filed by the petitioner in W.P.No. 5957 of 2006 for release of pension and other terminal benefits was allowed on 17.03.2022 but, because of the cancellation of the caste certificate the 2nd respondent refused to disburse the terminal benefits. The petitioner therefore filed the above writ petition for the aforesaid relief.



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3. The 1st respondent filed detailed counter denying all the averments and contentions raised in the writ petition. The 1st respondent further denied that there was violation of the procedure outlined in G.O (Ms). No.108 dated 12.09.2007 and G.O.(Ms).No.106 dated 15.10.2012. It was further stated that the petitioner was given reasonable opportunity to substantiate his community claim. The 1st respondent further stated that the petitioner was absent for enquiry conducted on 11.12.2020 and 31.05.2022 and further failed to prove his community claim by producing valid documents. The 1st respondent further stated that the 2nd respondent referred the petitioners community certificate only on 2014 and because of the procedures involved in the verification process, there was delay. The 1st respondent therefore prayed that there were no merits in the writ petition and the same deserved to be dismissed.

4. The learned counsel for the petitioner submitted that the receipt of the petitioners objection dated 10.07.2017 is not denied by the



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respondent and therefore the respondent ought to have given the petitioner an opportunity to cross-examine the witnesses. The learned counsel further submitted that petitioner retired in 2014 and admittedly the 2nd respondent referred the petitioners community certificate for verification only in 2014. The respondent thereafter took almost 9 years to complete the proceedings. As a result the petitioner was put to great hardship and harassment. The learned counsel submitted that as per G.O(Ms). No.106 dated 15.10.2012, the respondent was bound to consider the objections of the petitioner to the Vigilance Cell report and failure to do so shows the biased and one sided approach of the respondent. The learned counsel therefore submitted that the impugned order deserved to be set aside and the writ petition allowed.

5. The learned Additional Government Pleader appearing for the 1st respondent submitted that the procedure contemplated in G.O(Ms). No.106 dated 15.10.2012 was followed scrupulously and the petitioner had also submitted his reply to the show cause notice and therefore there was no violation of principles of natural justice or provisions of the



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G.O. The learned counsel submitted that in the absence of any material documents placed by the petitioner, the Committee was constrained to pass orders on the basis of the materials available before it and hence the same could not be faulted. The counsel submitted that there were no merits in the writ petition and the same deserved to be dismissed.

6. We have heard both the learned counsels and we have perused entire materials placed on record.

7. The challenge to the impugned order is basically two fold, one that there has been a denial of principles of natural justice in as much as no opportunity to cross-examine the witnesses from whom the statements were obtained by the Vigilance Cell was given to the petitioner and that the provisions of G.O (Ms). No. 106 dated 15.10.2012 were violated. The 1st respondent did not deny the receipt of the reply of the petitioner to the show cause notice dated 21.06.2017. When the reply of the petitioner to the show cause notice is admitted, then it was



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incumbent on the respondent to give the petitioner an opportunity to cross-examine the witness from whom the statements were obtained by the Vigilance Cell. The denial of the opportunity to cross-examine witnesses amounts to violation of principles of natural justice. It is trite in law that the right to cross-examine the witnesses is a facet of 'Audi Alteram Partem' Rule. In this regard, it would be pertinent to refer to the Judgment of the Hon'ble Supreme Court in the case of *R. Sundaram vs. The Tamil Nadu State Level Scrutiny Committee* reported in 2023 SCC OnLine SC 287, which is as follows:

"20. By not allowing the Appellant an opportunity to be heard, the principle of "Audi Alteram Partem", a principle of natural justice has also been violated. 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 are not just a question pertaining his employment, but also something that strikes at the core of his being, i.e., his identity."

8. We are also inclined to accept the contention of the learned



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counsel for the petitioner that there is violation of G.O (Ms). 106 dated 15.10.2012, in as much as the 1st respondent has not considered the objections of the petitioner in his reply to the show cause notice. The impugned order in para '11' specifically refers to the receipt of the reply of the petitioner, whileso the 1st respondent ought to have considered the objections raised therein while passing the impugned order. The failure to consider the petitioners objections in our view violates the provisions of G.O (Ms). No.106 and therefore on this ground also the impugned order cannot be sustained.

9. In the light of the above facts and the law laidown by the Hon'ble Supreme Court, we are of the view that the impugned order cannot be sustained and hence the same is set aside.

10. The next question would be whether the matter has to be remanded to the 1st respondent for fresh enquiry. We find that the petitioner is 69 years of age and he superannuated from service as early



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as in December 2014. As held by the Hon'ble Supreme Court in the aforesaid Judgment, remanding the matter to the 1st respondent would result in further harassment of the petitioner, who is now 69 years old. We are of the view that the Damocles sword of verification of the certificate should not be kept hanging over the petitioner's head at this stage of his life. We therefore abstain from remanding the matter to the 1st respondent for fresh consideration.

11. The petitioner has filed an affidavit on 16.12.2023 wherein in paragraph '4' the petitioner has stated as follows:

"4. I submit that based on my caste certificate, neither my daughter nor my son have obtained caste certificates in their favour to the effect that they belong to the ST community. I further submit that neither myself nor my childrens/family members will, in future, make any claim or derive any concession or benefits on the basis of my caste certificate."

We record the statement made in the sworn affidavit filed by the petitioner .



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In view of the above discussions, the writ petition is allowed.

Consequently connected Miscellaneous Petition is closed. There shall be no order as to costs.

(J.N.B,J.)

(N.M,J.)

08.03.2024

(4/4)

Index: Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

1.The Chairman and Secretary,
The Tamilnadu State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maligai,
Secretariat, Chennai-9.

2.The Chief Regional Manager,
National Insurance Company Limited,
Coimbatore Regional Office,
684, Trichy Road, Stock Exchange Building,
Coimbatore-5.



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J. NISHA BANU, J.

and

N.MALA, J.

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PREDELIVERY ORDER IN
W.P.No. 31436 of 2022

ORDER DELIVERED ON



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