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W.P(MD)No.15687 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2024
(Reserved on 20.08.2024)

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.15687 of 2021
and
W.M.P(MD)Nos.12638 & 12639 of 2021 and 12874 of 2022

L.Gunasekaran

... Petitioner

vs.

1. The State Level Scrutiny Committee III,
Adi Dravidar and Tribal Welfare,
Namakkal Kavingnar Maligai,
Secretariat, Chennai – 600009.

2. Tmt.V.Priyadharshini, SFS,
Deputy Conservator of Forests/Member Secretary,
State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai – 600009.

3. The Zonal Manager,
UCO Bank,
Zonal Office, Vijay Towers,
1st Floor, No.22, Father Randy Street,
R.S.Puram, Coimbatore – 641002.

4. The Branch Manager,
UCO Bank,
Rajappa Nagar,
Thanjavur – 613004.

... Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings bearing No.41108/CV-5/2008 dated 05.08.2021 passed by the 1st respondent and quash the same.

For Petitioner : Mr.T.Lajapathi Roy, Senior Counsel for
Mr.G.R.Satish
For R1 & R2 : Mr.SRA.Ramachandran
Additional Government Pleader
For R3 & R4 : Mr.T.Govindasamy

ORDER

(Order of the Court was made by **R.SUBRAMANIAN, J.**)

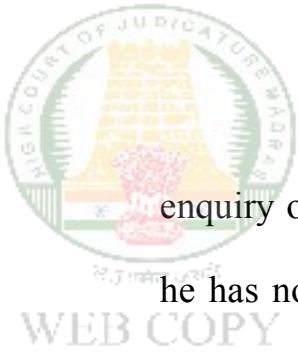
Challenge in this writ petition is to the order of the State Level Scrutiny Committee dated 05.08.2021, in and by which, the State Level Scrutiny Committee had reached a conclusion that the petitioner does not belong to Konda Reddis, a Scheduled Tribe community, and the certificate issued by the Tahsildar to the effect that the petitioner belongs to the said Scheduled Tribe community is not genuine.

2. The petitioner was favoured with a community certificate to the effect that he belongs to Konda Reddis, a Scheduled Tribe community, by the jurisdictional Tahsildar on 10.02.1980. He had participated in the selection process conducted by the Banking Services Recruitment Board and upon being selected, he was appointed as Clerk cum Assistant Cashier in UCO Bank on



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25.06.1982. His services were confirmed with effect from 25.12.1982. The petitioner is also a physically disabled person and such disability was evidenced by certificate issued by the Head of the Department of Orthopedics Surgery, Government General Hospital, Chennai, certifying that the petitioner suffers 50% disability. The petitioner served the Bank for almost 31 years till his retirement on 31.10.2013. Provisional pension was also sanctioned to the petitioner in January 2014. While things stood thus, in the year 2007, an attempt was made to verify the community certificate of the petitioner by the District Collector, Salem. The petitioner challenged the said attempt in W.P.No. 16242 of 2007 and this Court granted stay of further proceedings by the Collector. Upon constitution of the State Level Scrutiny Committee, the case of the petitioner was referred to the State Level Scrutiny Committee. The Deputy Superintendent of Police, Vigilance Cell, Salem, issued a notice to the petitioner requiring him to appear for an enquiry on 03.06.2019. The petitioner sent a reply seeking certain documents which were referred to in the notice issued by the Deputy Superintendent of Police. While so, the Chairman of the State Level Scrutiny Committee issued another enquiry notice dated 14.12.2020 to the petitioner requiring him to appear for the enquiry on 29.12.2020. The petitioner sent a reply on 26.12.2020. After a brief lull, the petitioner was visited with another notice, this time by the Chairman of the State Level Scrutiny Committee-III dated 18.06.2021, requiring him to appear for an



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enquiry on 19.07.2021. The petitioner sent a reply on 15.07.2021, stating that he has not received any report from the Vigilance Cell and required the State Level Scrutiny Committee to furnish a copy of the report. On 12.07.2021, the Director of Tribal Welfare Department forwarded the enquiry report of the Deputy Superintendent of Police, Vigilance Cell, dated 31.05.2021 to the petitioner and required him to show cause as to why his community certificate should not be cancelled. The said letter dated 12.07.2021 granted two weeks time to the petitioner to send a reply. The said notice was received by the petitioner only on 04.08.2021. Even before the said period could expire, the State Level Scrutiny Committee, the 1st respondent herein, passed the order impugned in the writ petition on 05.08.2021.

3. The petitioner challenges the order passed by the State Level Scrutiny Committee mainly on the ground that the order impugned is in violation of settled principles of law regarding enquiry relating to validity of community certificate. The petitioner would also rely upon the Circular issued by the Ministry of Personnel, Public Grievances and Pension, Government of India, dated 25.05.2005, wherein, the Government of India had decided that verification of community certificates of those persons who had obtained employment under Scheduled Tribe category, would be carried out only in respect of employment obtained from 1995 and afterwards only. He would also



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attack the report of the Vigilance Cell on the ground that it is not a reasoned one and enquiry was conducted without giving proper opportunity to the petitioner. It is also contended by the petitioner that due to passage of time, many of his relatives had either passed off or had migrated to other places and therefore, the enquiry itself is vitiated. The delay in launching the enquiry itself is made a ground to attack the findings of the State Level Scrutiny Committee.

4. The claim of the petitioner is opposed by the State and the employer contending that the petitioner was allowed to retire only subject to the outcome of the proceedings of the enquiry relating to his communal status. The petitioner adopted dilatory tactics and did not co-operate with the State Level Scrutiny Committee during the enquiry. The Bank would also rely upon a letter by the Revenue Divisional Officer dated 21.05.1993 which was admittedly obtained without giving an opportunity to the petitioner, to claim that even in 1993, the Revenue Divisional Officer had pointed out that the petitioner does not belong to Konda Reddis community. The fact that the petitioner did not appear for enquiry before the District Collector was also made a ground to claim that the delay was only due to the attitude of the petitioner.

5. We have heard Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the petitioner and Mr.S.R.A.Ramachandran, learned Additional



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Government Pleader appearing for the respondents 1 and 2 and Mr.T.Govindasamy, learned counsel appearing for the respondents 3 and 4.

6. Mr.Lajapathi Roy, learned Senior Counsel appearing for the petitioner would vehemently contend that after having allowed the petitioner to join service in the year 1982, an attempt was made to verify his community only in the year 1993. At that point of time, the Revenue Divisional Officer who issued a communication on 21.05.1993, had not heard the petitioner and no enquiry was conducted by him. Though the District Collector issued a notice in 2007, the proceedings before the District Collector was stayed by this Court on the ground that enquiry, if any, could be made only by the State Level Scrutiny Committee as per the decision of the Hon'ble Supreme Court in **Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and others** reported in (1994) 6 SCC 241. Thereafter, the petitioner was called upon to appear for an enquiry only in the year 2019 despite the fact that this Court had directed the State Level Scrutiny Committee to conclude the enquiry at the earliest in W.P.No.3094 of 2015.

7. The learned Senior Counsel would also rely upon a judgment of the Hon'ble Supreme Court in **R.Kandasamy vs. The Chief Engineer, Madras Port Trust** reported in (1997) 7 SCC 505, wherein, it was held that a



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community certificate certifying that a person belongs to Scheduled Tribe issued prior to 11.11.1989 is good and valid unless it is cancelled. Reliance is also placed on **Anand vs. Committee for Scrutiny & Verification of Tribe Claims and others** reported in (2012) 1 SCC 113, wherein, the Hon'ble Supreme Court had laid down the procedure that is to be followed in enquiry relating to verification of communal status. Reliance is also placed on the judgment of the Hon'ble Supreme Court in **Mah. Adiwasi Thakur Jamat Swarakshan Samiti vs. State of Maharashtra and others** reported in 2023 SCC OnLine SC 326, wherein, the Hon'ble Supreme Court concluded that the affinity test cannot be regarded as a litmus test for establishing the link of the applicant with the Scheduled Tribe. Reliance is also made to the judgment of a Division Bench of this Court in **V.Sathyamurthi vs. Union of India and two others** [W.P.No.5737 of 2022, dated 28.10.2022], to which, one of us (**R.SUBRAMANIAN, J.**) was a party, in support of the contention that inordinate delay in conducting the verification or repeated enquiries on the communal status of a person claiming benefit either as a Scheduled Caste or as a Scheduled Tribe is not conducive. Reliance is also placed on a common judgment of a Division Bench of this Court in **W.A.No.1319 of 2019, dated 25.07.2024** [The Chairman, Chennai Port Trust and another vs. M.Nagaraj and another] and **W.P.No.4335 of 2021, dated 25.07.2024** [M.Nagaraj vs. The State Level Scrutiny Committee-III, Chennai-9 and two others],



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wherein, the Bench has taken note of the fact that tribal community people have migrated to neighbouring towns and cities seeking job opportunities and other prospects. The object of the verification was also considered by the Court and the Court finally concluded that a remittal for a fresh enquiry is unnecessary in view of the fact that the employee in the case before the Division bench, had retired from service and he was aged about 70 years when the appeal was disposed of by the Court. Reliance is also placed on a judgment of a Division Bench of this Court in **R.Shanthi vs. The State Level Scrutiny Committee, Chennai, and two others [W.P.No.29351 of 2023, dated 18.04.2024]** wherein, the Division Bench has underscored the need for early verification of the community certificates to avoid instances where the verification has done after superannuation of the employee.

8. Contending contra, Mr.SRA.Ramachandran, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.T.Govindasamy, learned counsel appearing for the Bank would vehemently contend that there was no delay on the part of the Bank or the State Level Scrutiny Committee. The delay if at all occurred was only due to the dilatory tactics adopted by the petitioner. It was also contended that the petitioner cannot be allowed to go scot-free having enjoyed the benefits that are allowable to a genuine person hailing from depressed community. The learned counsel



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for the respondents would take us through the order impugned in the writ petition to point out that enough and more material has been relied upon by the State Level Scrutiny Committee to reach its conclusion and the petitioner has not demonstrated that such material is unworthy of consideration.

9. We have considered the rival submissions.

10. As already pointed out, the petitioner was favoured with a community certificate by the competent authority on 10.02.1980. He secured an appointment in the 3rd respondent Bank as early as on 18.06.1982. No attempt was made by the Bank to verify his community certificate till 1993. Though an attempt was made in 1993 and the Revenue Divisional Officer, Salem, had sent a report dated 21.05.1993, to the Bank, stating that the petitioner does not belong to the Scheduled Tribe community namely, Konda Reddis, the Bank had not chosen to take any action pursuant to the said proceedings of the Revenue Divisional officer. The said proceedings of the Revenue Divisional officer dated 21.05.1993 has also been placed before us. It does not disclose the basis on which the Revenue Divisional officer had reached his conclusion except stating that it is found from enquiry that the petitioner does not belong to Konda Reddis community. Thereafter, an attempt was made by the District Collector to launch an enquiry in the year 2007. Even



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that attempt did not fructify, as this Court had granted stay of the proceedings before the District Collector in W.P.No.16242 of 2007. There was a time gap of almost 14 years between the proceedings of the Revenue Divisional Officer and the show cause notice issued by the Collector.

11. We find from the records that the first notice was sent by the Deputy Superintendent of Police, Vigilance Cell, Salem, on 22.05.2019 again after a gap of 12 years. In the interregnum, the petitioner had attained the age of superannuation and also retired from service. The Deputy Superintendent of Police, Vigilance Cell, is stated to have submitted his report to the Director of Tribal Welfare, Chennai, on 31.05.2021. The Director of Tribal Welfare, Chennai, as per the procedure established by law, should have furnished the copy of the report of the Deputy Superintendent of Police, Vigilance Cell, to the petitioner and thereafter conducted an enquiry. The records reveal that the copy of the enquiry report of the Deputy Superintendent of Police, Vigilance Cell, dated 31.05.2021, was forwarded to the petitioner only on 12.07.2021 and he had received it only on 04.08.2021. The said show cause notice dated 12.07.2021 issued by the Directorate of Tribal Welfare required the petitioner to submit his explanation within a period of two weeks from the date of receipt of the show cause notice. The said show cause notice also states that in the event, the petitioner does not submit his explanation within the period of two weeks,



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the report of the Deputy Superintendent of Police, Vigilance Cell, will be forwarded to the State Level Scrutiny Committee. Therefore, the report of the Deputy Superintendent of Police, Vigilance Cell, should have been forwarded to the State Level Scrutiny Committee only after expiry of two weeks from 04.08.2021 i.e., 18.08.2021. However, the State Level Scrutiny Committee had gone ahead and passed the order impugned in the writ petition on 05.08.2021.

12. We find that the order of the State Level Scrutiny Committee refers to a letter dated 21.05.2021 from the Directorate of Tribal Welfare. It also states that the report of the Deputy Superintendent of Police dated 21.12.2020 has been forwarded to the State Level Scrutiny Committee under cover of the letter dated 21.05.2021. This is the little intriguing inasmuch as the report of the Deputy Superintendent of Police, Vigilance Cell, Salem, is dated 31.05.2021 only. Therefore, it could not have been forwarded to the State Level Scrutiny Committee on 21.05.2021. In fact, the Deputy Superintendent of Police had even signed the enquiry report only on 31.05.2021 and a perusal of the report shows that the statement of many of the witnesses were recorded by the Deputy Superintendent of Police on 30.03.2021 only. Therefore, there could not have been a report of the Deputy Superintendent of Police, Vigilance Cell, on 21.12.2020. In such circumstances, we are unable to fathom as to how the State Level Scrutiny Committee had made copious reference to the report of



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the Deputy Superintendent of Police, Vigilance Cell, in its order dated 05.08.2021. This irregularity in procedure, definitely amounts to denial of fair opportunity to the petitioner. Once we conclude that the State Level Scrutiny Committee has not afforded a fair opportunity to the petitioner by giving him an opportunity to place on record his objection or explanation to the conclusions of the Deputy Superintendent of Police, Vigilance Cell, the same would definitely have the effect of vitiating the entire enquiry. The procedure and conduct of the enquiry regarding the communal status has been elaborately set out in the judgment of the Hon'ble Supreme Court in **Kumari Madhuri Patil's case** referred to supra. Unless it is shown that the procedure prescribed has been followed meticulously, orders concluding that the community certificate of the petitioner is not genuine, cannot be sustained.

13. Yet another factor which would buttress our above said conclusion is the letter of the Directorate of Tribal Welfare dated 12.07.2021, which forwards the copy of the report of the Deputy Superintendent of Police, Vigilance Cell, to the petitioner and seeks his remarks within two weeks from the date of receipt of the same. The petitioner has specifically averred that he has received it only on 04.08.2021. No material has been placed before us to demonstrate that the claim of the petitioner regarding the receipt of the show cause notice dated 12.07.2021 is incorrect. After having called for an



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explanation from the petitioner, the State Level Scrutiny Committee should have waited for the explanation, but it had gone ahead to pass an order even before the expiry of the two weeks period on 05.08.2021. This necessarily vitiates the proceedings of the State Level Scrutiny Committee. We are, therefore, constrained to set aside the order impugned in the writ petition on the short ground that the petitioner has not been afforded a reasonable opportunity to prove his claim before the State Level Scrutiny Committee. No doubt, the order of the State Level Scrutiny Committee runs to several pages, but we find that most of it is discussion on the law relating to the procedure to be followed.

14. We are alive to the fact that the persons belonging to other communities shall not be allowed to usurp the benefits or concessions extended to depressed class people. The object that is sought to be achieved by verification of community certificate is, no doubt, laudable, but at the same time, such verification must be done strictly in accordance with law and any deviation therefrom cannot be countenanced by the Courts.

15. In the normal circumstances, we would have remitted the matter to the State Level Scrutiny Committee for re-consideration. In the case on hand, we find that the petitioner has attained the age of superannuation in 2013 and today, he is aged about 70 years. He has served the Bank for almost 32 years



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without any blemish. The retiral benefits of the petitioner have been considerably delayed because of the delay in the conduct of enquiry. We do not think that the petitioner should be made to face another enquiry at this ripe old age. We, therefore, allow the writ petition, set aside the order dated 05.08.2021 of the State Level Scrutiny Committee and direct the Bank to pay all the retiral benefits that are payable to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. We, however, make it clear that progeny of the petitioner will not be entitled to the status of Scheduled Tribe automatically. If they want to claim such status, they must prove that they belong to the Scheduled Tribe community namely, Konda Reddis, independent of the certificate issued to the petitioner. If such claim is made, the authorities concerned will consider it independently without reference to the impugned proceedings. In the circumstances, we leave the parties to bear their own costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M, J.) (L.V.G, J.)
30.09.2024

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

<https://www.mhc.tn.gov.in/judis>



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1. The State Level Scrutiny Committee III,
Adi Dravidar and Tribal Welfare,
Namakkal Kavingnar Maligai,
Secretariat,
Chennai – 600009.

2. Tmt.V.Priyadharshini, SFS,
Deputy Conservator of Forests/Member Secretary,
State Level Scrutiny Committee-III,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai – 600009.



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and
L.VICTORIA GOWRI, J.

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PRE-DELIVERY ORDER MADE IN
W.P(MD)No.15687 of 2021
DATED : 30.09.2024