

(2017) 04 MAD CK 0172

In the Madras High Court

Case No : 6893 of 2012 and M P (MD) No 1 of 2012

Esakki Mayilerinathan

APPELLANT

Vs

The State Level Scrutiny Committee Adi Dravidar and Tribal
Welfare Department Namakkal Kavignar Malaigai, & Ors.

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0172

Hon'ble Judges : T.S.Sivagnanam, P.Velmurugan

Bench : DIVISION BENCH

Advocate : T.S.Sivagnanam, P.Velmurugan

Final Decision : Allowed

Judgement

1. Heard Mr.R.Murali, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the first respondent and Mr.A.Haji Mohideen, learned counsel for the respondents 2 and 3 and perused the materials produced.

2. The writ petitioner, who is presently employed in the Southern Railway, has filed this writ petition challenging the order, dated 09.04.2012, passed by the first respondent / State Level Scrutiny Committee to consider the correctness and validity of the Community Certificate issued to her for Scheduled Tribe Community.

3. The petitioner's case is that she has not taken any employment with the Southern Railway based on her communal status as she was an open category candidate and she was also promoted under open category. But, however, after obtaining the Community Certificate, when she produced the same before her employer for being considered her as a reserved candidate, the genuineness of which was sent for verification before the first respondent, which has passed the impugned order. The petitioner does not challenge the impugned order on facts. But, she questions it on technical grounds by placing reliance upon the

Government Order, in G.O.(Ms) No.106, Adi Dravidar and Tribal Welfare (CV I) Department, dated 15.10.2012.

4. The Government Order, in G.O.(Ms) No.106, dated 15.10.2012, deals with formation of Vigilance Cells at Chennai, Salem, Tiruchirappalli, Madurai Regions and the said Government Order came to be issued only after the directives issued by this Court in several writ petitions and following the directions issued by the Honourable Supreme Court. When similar orders as that of the present case on hand were put on challenge before the Division Bench of this Court, the Division Bench interfered with such orders and set aside the same and remanded back the matter for fresh consideration. The Division Bench also took into consideration as to the applicability of the said Government Order to the cases, which were decided prior to the passing of the said Government Order, dated 15.10.2012.

5. At this stage, it would be beneficial to refer the decision of the case in S.Saravanan vs. The State Level Caste Scrutiny Committee, in W.P.(MD) No.14168 of 2011, dated 19.10.2016. The said decision was referred by the Division Bench in the case of Kumaravel vs. The Secretary to Government, W.P. (MD) No.13798 of 2009, dated 09.01.2017, after taking into consideration the decision in G.Venkitasamy and another vs. The Chairman, State Level Scrutiny Committee, reported in 2016 (1) LW 2891.

6. At this stage, an useful reference may be made to the operative portion of the said order, dated 19.10.2016 :

"8. Conducting of enquiry by the Vigilant Cell also came for consideration before the Hon"ble Division Bench of this Court in G.Venkitasamy & Another Vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai-9, reported in 2016-1-L.W.289. The Division Bench, taking into consideration the judgment cited supra as well as G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department in paragraph Nos.29 and 30, has observed as follows:

29. From the aforestated analysis, it is manifest that the authorities are required to investigate, identify and conduct the enquiry in the following manner:

i. The authority competent to issue the community certificate, on receipt of the application, shall investigate the application in an open and transparent fashion, affording opportunity of hearing.

ii. The candidate shall have full liberty to explain the documents placed by him or collected by the investigating agency and he shall have opportunity to cross examine the witnesses, if required. The entire exercise shall be completed at the earliest, preferably, within a period of three months.

iii. On receipt of the community certificate issued by the competent authority, the candidate or any other party interested therein may refer the matter to the State Level Scrutiny Committee for verification.

iv. On receipt of the application for verification, the State Level Scrutiny Committee shall refer the matter to the Vigilance Cell for enquiry.

v. The Vigilance Cell, as constituted, shall investigate into the social status claim of the applicant, visiting the local place of residence and original place from which the candidate hails and usually resides. The Vigilance Officer, assisted by the Inspector of Police, shall verify all the documents and collect relevant facts in an open and transparent manner from all the relevant places such as school, locality, etc. and persons such as parents and close relatives and also examine the school officials, parents/guardians and other close relatives of the concerned caste. The Vigilance Cell shall also record the anthropological and ethnological traits and rituals, customs, mode of marriage and other ceremonies of the community claimed by the candidate. Thereafter, on receipt of explanation from the candidate, on a proper examination of the same, a reasoned report shall be submitted to the State Level Scrutiny Committee.

vi. The State Level Scrutiny Committee, on receipt of the Vigilance Cell report, if it is found adverse, shall issue a show cause notice to the candidate with a copy of the report and all the documents submitted by the Vigilance Cell to the concerned candidate, calling upon him to file his reply/explanation/representation and also express his intention to examine witnesses, if necessary. In the event, the report supports the claim of the candidate, the State Level Scrutiny Committee shall not proceed further, but, to pass the order.

vii. The State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within a period of two weeks.

viii. Such verification shall be completed within a period of two months, after receipt of the Vigilance Cell report, preferably, by day-to-day proceedings [See paragraph 13(9) of Kumari Madhuri Patil (supra)].

30. All the authorities involved in the process shall adhere to the aforesaid parameters, which are supplemental to the guidelines laid down by the Supreme Court in Kumari Madhuri Patil (supra) and Anand (supra) in their letter and spirit.

9. Admittedly, as per the judgment cited supra, Vigilant Cell has been constituted only subsequent to the present impugned proceedings and G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department., 15.10.2012. Since the Hon'ble Supreme Court of India mandates constitution of Vigilant Cell which came into existence subsequent to the impugned order and in the light of the judgment rendered by the Division Bench in 2016-1-L.W.289, this Court is of the considered view that the impugned proceedings of the respondent warrant interference for the reason that without getting the opinion/report of the Vigilant Cell, conclusion has been arrived to the effect that the Community Certificate issued to the petitioner by the Revenue Divisional Officer is a bogus one.

10. In the result, this writ petition is partly allowed and the impugned proceedings are set aside and the matter is once again remanded back to the

respondent, who is directed to conduct fresh enquiry, upon conduct of enquiry in terms of G.O.Ms.No.106 Adi Dravidar and Tribal Welfare (CV I) Department, dated 15.10.2012 and after obtaining Vigilance Cell report and following the procedure contemplated in the said G.O, take a decision in accordance with law within a period of 10 weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner and till such time, it is not open to the petitioner to rely upon the Community Certificates dated 04.05.1988 issued by the Head Quarters Tahsildar, Pattukkottai and the permanent Community Certificate bearing No.3594154 issued by the Revenue Divisional Officer, Trichirappalli. No costs. Consequently, connected M.P.(MD) No.1 of 2011 is closed."

7. The learned Special Government Pleader appearing for the first respondent submitted that the Government Order, in G.O.(Ms) No.106 was issued on 15.10.2012, but the impugned proceedings are dated, 09.04.2012. Therefore, the past cases should not be reopened. It is further contended that the petitioner's father has stated that he belongs to Ottar Community, which is classified as Most Backward Class and he has not stated that he belongs to Kattunayakan Community and this is sufficient to hold that the petitioner's claim is baseless.

8. With regard to the first contention of the learned Special Government Pleader, the same was considered by the earlier Division Bench in the case of Saravanan (cited supra), wherein in Paragraph No.9, the Court referred to the decision in the case of G.Venkitasamy (cited supra) and held that since the Honourable Supreme Court had mandated constitution of the Vigilance Cells, even the cases, where orders were passed by the State Level Scrutiny Committee before passing of G.O.(Ms) No.106, dated 15.10.2012, are liable to be interfered with.

9. Thus, taking note of the above referred decision, we are satisfied that there is a technical flaw in the decision making process. Further, we make it clear that we have not made any observation on the merits of the petitioner's claim that she belongs to Scheduled Tribe Community and it is for the first respondent to consider the matter based on the materials produced before it.

10. In the result, the writ petition is partly allowed and the impugned order, dated 09.04.2012, passed by the first respondent, is set aside and the matter is remanded back to the file of the first respondent, who is directed to conduct a fresh enquiry in terms of G.O.Ms.No.106, dated 15.10.2012 and after obtaining necessary reports from the Vigilance Cell and following the due procedures as per the said Government Order, take appropriate action in the matter in accordance with law, within a period of three months from the date of receipt of a copy of this order. Till such decision is taken, the petitioner is not entitled to rely upon the Community Certificate, dated 01.08.1986, issued to her, for any purpose. No costs. Consequently, connected miscellaneous petition is closed.