

(2015) 06 MAD CK 0120

In the Madras High Court

Case No : Writ Petition No. 14933 of 2015 and M.P. Nos. 1 to 3 of 2015

J. Nagesh

APPELLANT

Vs

The District Collector, Chennai District and Others

RESPONDENT

Date of Decision : 16-06-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2015) 06 MAD CK 0120

Hon'ble Judges : Satish K. Agnihotri, J;M. Venugopal, J

Bench : Division Bench

Advocate : L. Chandrakumar, for the Appellant; R. Rajeswaran, Spl. G.P.,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The petitioner, stated to be Hindu Kattunayakan Scheduled Tribe, obtained community certificate dated 16.7.1981 from the Special Tahsildar (Draught Relief), Madurai and also from the Revenue Divisional Officer, Tiruchirappalli bearing Sl. No. 277900 dated 12.05.1989. On the basis of such certificate, the petitioner obtained appointment as Console Superintendent, Southern Railway, Ponmalai, Tiruchirappalli in the year 1982.

2. At the instance of the Southern Railway, the said community certificate was referred to the District Collector, Madurai for verification. In turn, the case was referred to the Revenue Divisional Officer, Tiruchirappalli for verification. The Revenue Divisional Officer, Tiruchirappalli, by proceedings dated 08.11.2011 has found that the community certificate issued by the Revenue Divisional Officer, Tiruchirappalli bearing SL. No. 277900 dated 12.5.1989 as not genuine.

3. There against, the petitioner preferred a writ petition, being W.P. No. 19073 of 2012. The High Court set aside the order dated 8.11.2011 passed by the Revenue Divisional Officer, Tiruchirappalli and directed the State Level Scrutiny Committee to decide the issue in regard to social status of the petitioner. The

State Level Scrutiny Committee held personal enquiry and also examined the case carefully. The committee also examined the customs, cultural aspects and traditional occupation of the individual. As a result, the State Level Scrutiny Committee, by order dated 03.12.2014 held that the petitioner belongs to Hindu Kattunayakan Scheduled Tribe Community and as such, he is entitled to fresh certificate.

4. On the basis of the said order, the petitioner came up with a writ petition, being W.P. No. 11198 of 2015, seeking for a direction to the District Collector Chennai and also to the Personal Assistant to the Collector (General), Chennai, for issuance of community certificate to the petitioner as well as to his two children belonging to Hindu Kattunayakan Scheduled Tribe community, on the basis of the decision of the State Level Scrutiny Committee dated 03.12.2014.

5. A division bench of this court by order dated 17.4.2015 directed the District Collector, Chennai to consider the application of the petitioner based on the decision dated 3.12.2014 of the State Level Scrutiny Committee and pass appropriate orders within a period of four weeks. Pursuant thereto, the second respondent-the Personal Assistant to the Collector (General) declined to issue the said community certificate as directed by this Court in W.P. No. 11198 of 2015 vide order dated 17.4.2015. Being aggrieved, the petitioner has come up with the second instant petition, seeking to quash the said order and to direct the authorities to issue the requisite community/social status certificate in favour of the petitioner and to his two children.

6. Pursuant to the notice, the first respondent has filed a counter affidavit, inter-alia, stating as under:

"12. With reference to grounds B of the affidavit, it is submitted that the petitioner has applied for Community Certificate on the basis of the order of the State Level Scrutiny Committee. From the perusal of State Level Scrutiny Committee order it is clear that he produces the Community Certificates issued by the Special Tahsildar, Madurai dated 16.07.1981 and another certificate by Revenue Divisional Officer, Thiruchirapalli dated 12.05.1989. During the State Level Scrutiny Committee enquiry, he produced the Community Certificate of Thiru S. Kannan who is paternal cousin brother of his father issued by the Head Quarters Deputy Tahsildar, Madurai South and the relationship certificate issued by the Tahsildar, Madurai South as supporting documents. But how the petitioner got another certificate in Chennai on 12.07.1982 is confusing and also against his statement given during the personal enquiry conducted on 3.03.2015 by the second Respondent. During the enquiry, he admitted that on transfer he came to Chennai only in the year 2008. Being a responsible Government Officer the applicant should follow the Government Orders and guidelines in force."

7. In the conspectus of the aforestated background, the question raised for consideration is as to whether the District Collector or the Revenue Divisional Officer, who is competent to issue community/social status certificate, is

competent to re-examine the entire issue in respect of the social status/caste of the petitioner and his children when the State Level Scrutiny committee, after examining the entire issue, had categorically come to the conclusion that the petitioner belongs to Hindu Kattunayakan Scheduled Tribe community and is entitled to community certificate of the said Scheduled Tribe.

8. The Supreme Court, while examining the issue of grant of social status certificate, in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp , laid down the procedure for issuance of social status certificate, as under:

"13. x 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.

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 and sub-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 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 pro forma, 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 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 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 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.

9. The said guidelines was referred to with approval in Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, AIR 1995 SC 1506 : (1995) 2 CTC 112 : (1995) 3 JT 684 : (1995) 2 SCALE 815 : (1995) 4 SCC 32 : (1995) 3 SCR 430 : (1995) 2 UJ 535 ,, Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, AIR 1995 SC 1506 : (1995) 2 CTC 112 : (1995) 3 JT 684 : (1995) 2 SCALE 815 : (1995) 4 SCC 32 : (1995) 3 SCR 430 : (1995) 2 UJ 535 , Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Others, (2004) 10 SCALE 344 : (2004) 9 SCC 481 : (2003) 5 SCR 746 Supp : (2004) 1 SLJ 151 : (2004) 1 UJ 634 , and G.M., Indian Bank Vs. R. Rani and Another, (2008) 1 JT 88 : (2008) 2 SCC(L&S) 956 : (2007) 12 SCR 1024 .

10. Thus, the guidelines (supra) issued by the Supreme Court still hold good. It is a clear settled position of law that the competent officer to issue social status certificate is the Revenue Divisional Officer or Deputy Collector or Deputy Commissioner. In some of the State, the Deputy Commissioner is known as Collector of the District. Thereafter, the said certificate requires verification by the State Level Scrutiny Committee. It is further laid down that the Vigilance Committee is to be constituted for verification of the status, whereunder the Vigilance Committee has to examine the 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. Once the report is found in favour of the petitioner, no further action is required to be taken by any officer, except to issue the certificate.

11. In that view of the matter, once the State Level Scrutiny Committee has given a conclusion after proper enquiry that the petitioner belongs to Hindu Kattunayakan Scheduled Tribe community, the Collector or any other authority has no competence or jurisdiction to initiate a fresh enquiry for verification of the status. In the case on hand, the first respondent as well as the second respondent has undertaken further enquiry on the basis of some documents beyond his competence and jurisdiction. Thus, such an exercise is unsustainable in the eye of law. The first and second respondents have no other option, except to issue the certificate on the basis of the conclusion arrived at by the State Level Scrutiny Committee.

12. As a sequel, we direct the first respondent to issue the certificate forthwith on or before 19.06.2015, so as not to deprive the petitioner's children of the benefit of admission to the academic course, as according to the learned counsel for the petitioner, counselling may commence at any point of time. Accordingly, the writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.