

(2007) 08 MAD CK 0192
In the Madras High Court
Case No : Writ Petition (MD) No. 4352 of 2007

K. Gangarani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 08 MAD CK 0192

Hon'ble Judges : A.P. Shah, C.J.; P. Jyothimani, J

Bench : Division Bench

Advocate : M. Suresh Kumar, for the Appellant; Raja Kalifulla, Government Pleader, a/b., V.R. Thangavelu, Government Advocate (Writs) for Respondent 1 and 2 and P.D. Aadikesavalu, for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Shah, C.J.—The Petitioner was appointed in the post of Steno Grade II in Food Corporation of India vide Order No. 285/89 EI dated 26.09.1989 in a vacancy reserved for Scheduled Tribe candidates on the basis of the Scheduled Tribe Community Certificate produced by her bearing No. 017464 dated 12.09.1989 issued by the Tahsildar, Tuticorin to the effect that she belonged to Hindu Kattunaicken caste. The said community certificate was sent for verification to the Revenue Divisional Officer who upon conducting an enquiry submitted a report dated 06.06.1990 stating that the Petitioner does not belong to Hindu Kattunaicken caste as claimed by her, and thereupon the District Collector, Tuticorin by order dated 23.11.1990 directed proceedings to be initiated for cancellation of the Petitioner Scheduled Tribe community certificate. The order of the District Collector was impugned by the Petitioner in W.P. No. 2038 of 1991, which came to be dismissed as premature on 31.10.1996 with an observation that it was expected that the revenue authorities shall complete the verification and enquiry with regard to the community of the Petitioner as early as possible in accordance with law.

2. Thereafter the District Collector, Tuticorin by proceedings bearing No. Na. Ka.E5/45543/91 dated 11.08.1998 cancelled the Scheduled Tribe community certificate of the Petitioner. The Petitioner again approached this Court in W.P. No. 13085 of 1999, and this Court, without going into the merits of the case, by order dated 14.12.1999 set aside the above order on the sole ground that it was without jurisdiction in as much as after 01.04.1997, the District Level Caste Scrutiny Committee established by the Government of Tamil Nadu vide G.O. Ms. No. 18 (2-D) alone could verify the community certificate with respect to its correctness and it was also observed that it is for that Committee to take further action, if it is necessary. The matter was then referred to the District Level Caste Scrutiny Committee in accordance with the aforesaid order of this Court and after enquiry by that Committee it was communicated to the Food Corporation of India by the second Respondent that all the community certificates issued in favour of the Petitioner including the Per-manent Community Certificate No. 017464 dated 12.09.1989 have been cancelled by the District Level Caste Scrutiny Committee on finding that the petitioner does not belong to Hindu Kattunaicken caste.

3. The Petitioner then filed W.P. No. 9064 of 2000 impugning the order bearing Na. Ka. No. E5/8170/2000 dated 25.05.2000 in and by which her community certificate was cancelled. this Court by order dated 05.09.2000 set aside the impugned order dated 25.05.2000 on the ground that the same had been passed by the District Collector instead by the District Level Vigilance Committee, despite the earlier order dated 14.12.1999 passed by this Court in W.P. No. 13085 of 1998. Shortly thereafter the District Level Vigilance Committee, Tuticorin after conducting a detailed enquiry, by affording opportunity to the petitioner, and examining all the contentions raised by her, passed a de-tailed order bearing No. Na. Ka.E5/8170/2000 dated 07.06.2001 holding that the Petitioner does not belong to Hindu Kattunaicken caste and hence, cancelled the Scheduled Tribe Community Certificate issued to her by the Tahsildar, Tuticorin. The Petitioner again approached this Court by way of W.P. No. 27210 of 2003, which came to be disposed of in the light of G.O. Ms. No. III dated 06.07.2005 which provided for re-constitution of the District Level Vigilance Committee by co-opting an Anthropologist as the third member, and it was directed that if the re-constituted Three Member District Level Committee is addressed to verify her communal status, then the Committee shall go into it and dispose of the proceedings in the manner known to law, after providing reasonable opportunity to her, in any event, within three months from the date of commencement of the proceedings. In view of the aforesaid order, the matter was referred to the Three Member District Level Vigilance Committee reconstituted as per G.O. Ms. No. III dated 06.07.2005, which again verified the validity of the community certificate of the Petitioner by duly conducting an enquiry and after affording reasonable opportunity passed a detailed order dated 13.04.2007 in proceedings No. Na. Ka.A4-87083/2003 holding that the Petitioner does not belong to Kattunaicken caste and cancelled the Scheduled Tribe community certificate that had been issued by the Tahsildar, Tuticorin earlier in her favour. By the impugned order, the

Committee also cancelled the certificates of the sisters of Petitioner namely, Vanaja and Vijayalakshmi and Mallika, which is the subject matter of separate writ petitions with which, we are not presently concerned.

4. Mr. M. Suresh Kumar, learned Counsel appearing for the Petitioner strenuously contended that the District Level Caste Scrutiny Committee is not constituted in accordance with the scheme suggested by the Supreme Court in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, and that the community certificate could be cancelled only by a three member State Level Caste Scrutiny Committee. Learned Counsel submitted that as per the dicta of the Supreme Court in *Madhuri Patils case (supra)*, the proper committee to verify the community status must be headed by a Joint Secretary/Additional Secretary or any other officer higher in the rank of Director of the concerned department, whereas the three member District Level Committee is headed by the District Collector. Learned Counsel further submitted that in as much as the present committee consist of only officers at the District Level, it has no jurisdiction to cause verification of community certificate/status of the Petitioner. Learned Counsel also submitted that even though the State Level Scrutiny Committee exists in the State, no appeal is provided to State Level Committee against the order of District Level Committee. In so far as merits of the case are concerned, he submitted that the order of the Committee is liable to be set aside on the ground of non-application of mind since various documents produced by the Petitioner has not been properly considered by the Committee.

5. In reply, Mr. R. Kalifulla, learned Government Pleader appearing for respondents 1 and 2 and Mr. P.D. Aadikesavalu, learned Counsel appearing for the third Respondent, submitted that the submission of the Petitioner that the community certificate could be cancelled only by a three member State Level Caste Scrutiny Committee is devoid of any merits. It is contended that on the suggestion of the Division Bench of this Court, the Government of Tamil Nadu reconstituted the District Level Vigilance Committees vide G.O. Ms. No. 111 dated 06.07.2005 whereby an Anthropologist was co-opted as the third member, and the Division Bench by order dated 22.07.2005 in W.A. No. 1645 of 2001 etc. batch has specifically recorded that the committee has been reconstituted in accordance with the law laid down by the Supreme Court in *Madhuri Patils case*. It is also submitted that this Court by orders dated 14.12.1999, 05.09.2000 and 01.08.2005 had directed the District Level Caste Scrutiny Committee to examine the validity of the Scheduled Tribe Community Certificate of the Petitioner and she did not prefer any appeal against any of those orders and instead participated in the proceedings of the District Level Caste Scrutiny Committee without any protest whatsoever. In view of this fact, the Petitioner is estopped from impeaching the constitution of the District Level Caste Scrutiny Committee on the ground that the same is not in accordance with the scheme suggested by the Supreme Court in *Madhuri Patils case*. It is further submitted that the scheme formulated by the Supreme Court in *Madhuri Patils case* postulates that the order passed by the three member Committee cancelling the community

certificates shall be final and conclusive and subject to the proceedings under Article 226 of the Constitution, and there is also no Governmental order in force at present providing for an appeal against the decision of the three member District Level Vigilance Committee canceling a community certificate. It is further submitted that the District Level Vigilance Committee has minutely examined the materials on record and upon affording opportunity to the Petitioner has recorded a finding to the effect that the petitioner does not belong to Hindu Kattunaicken caste and this Court exercising jurisdiction under Article 226 of the Constitution of India should not interfere with such findings of fact.

6. Before advertng to the rival submissions advanced at the Bar, it is necessary to take note of the different G. Os issued by the State Government from time to time conferring power on the competent authority for issuing Scheduled Tribe community certificate, as well as for verification of the community certificates. It appears prior to 10.11.89, the Tahsildar had power to issue certificate in respect of Scheduled Tribe except Konda Reddy community. As far as Konda Reddy community is concerned, the power to issue community certificate was vested with the Revenue Divisional Officer. Subsequently from 11.11.1989, the power to grant certificate in respect of Scheduled Tribe communities was entrusted to the Revenue Divisional Officer. Thereafter, in the wake of the decision of the Supreme Court in Madhuri Patils case, the State of Tamil Nadu vide G.O. (2D) No. 18 (Adi-Dravidar & Tribal Welfare Department) dated 01.04.1997 constituted a Three Member State Level Caste Scrutiny Committee consisting of (1) The Secretary, Scheduled Castes and Scheduled Tribes Welfare Department, (2) The Director of Scheduled Castes and Scheduled Tribes Welfare and (3) The Director, Hill Tribes Research Centre, Udhaga-mandalam to scrutinize or verify the social status certificates issued by the Revenue Divisional Officer and had also formulated a Two Member District Vigilance Committee comprising of (1) The District Collector and (2) District Adi-Dravidar Welfare Officer to review the social status certificates issued by the Tahsildars of the concerned Districts. The validity of the aforesaid G.O has been upheld by a learned single Judge of this Court in W.P. Nos. 13496 to 13500 of 2000 dated 11.08.2000 whereby the learned single Judge rejected the contention that the formation of District level Vigilance Committees is not in conformity with the guidelines laid down by the Supreme Court in Madhuri Patils case. The learned single Judge also took into note of the subsequent decision of the Supreme Court in Director of Tribal Welfare Vs. Laveti Giri and others, wherein it was held that it was not necessary for all the State Governments in the country to make rules on a par with those guidelines so as to be uniformly applicable throughout the country and that it would be for the Central Government to appropriately deal with the matter by giving some leverage to the State Governments to modulate the rules conformable to the law and the guidelines laid down therein, as far as possible to suit the conditions prevailing in the State concerned so that they could be worked out in a systematic manner without any difficulty in implementation.

7. In C. Kavitha Vs. State of Tamil Nadu and Others, , the Division Bench

comprising of V.S. Sirpurkar, J (as he then was) and M. Chockalingam, J upholding the above order of the learned single Judge observed as follows:

5. There is undoubtedly a State Level Caste Scrutiny Committee, which is in perfect consonance with the directions given by the Apex Court in Madhuri Patils case cited supra, inasmuch as it has Secretary, Adi-Dravidar and Tribal Welfare Department as Chairman, Director, Adi Dravidar and Tribal Welfare Department as Member Secretary and Director, Hill Tribes Research Centre, Ooty, an expert in the file, as Member. Therefore, it cannot be said that there is no such Committee and, indeed, presently we are concerned with the correctness or otherwise of the Petitioners claim that she belongs to Hindu-Kuru-mans, a Scheduled Tribe Community. In that sense, the Petitioner is completely confused about the G.O. (2D) No. 18, dated 1.4.1997 which, in addition to a State Level Scrutiny Committee, also formulates a District Vigilance Committee. The District Vigilance Committee is given the task of reviewing the community certificates issued by the Tahsildars in the concerned Districts, while the community certificates issued by the Revenue Divisional Officers in the State are to be reviewed by the State Level Scrutiny Committee. It is obvious that the District Vigilance Committee and the State Level Scrutiny Committee would naturally operate in different fields. The task of the District Vigilance Committee becomes all the more clear from Clause 2 (ii) of G.O.(2D) No. 18 dated 1.4.1997, which reads as follows: The District Vigilance Committee will examine 100 certificates at random issued in the district during the current year. This committee will verify whether the certificate have been issued in proper form, whether the signature of the authority is genuine and whether correct community certificate has been issued. If necessary, the committee or the chairman of the committee or the member of the committee may summon the Applicant for personal hearing. It can examine the certificates through the Revenue Divisional Officers. The community certificates issued for the purpose of admission to college, loan from TATCO and loan under the local author-ity development plan should find a place among those 100 certificates. The certificates regarding which complaints have already been received should com-pulsorily be verified..

6. The learned Counsel very earnestly argues that the power of canceling the community certificate once granted was that of the State Level Scrutiny Committee. The argument is completely incorrect as it has been pointed out that it is an admitted position that there is a Government Order in existence whereunder, it is specifically declared that after 11.11.1989, the Tahsildar would have no power to issue any community certificate. We fail to follow as to why the concerned authorities could not cancel the certificate issued by an officer, who had no authority to do so and where was the need for formation of a committee for that purpose. It was plain and simple that the said certificate was issued by the Tahsildar on 12.4.1990 and it is an admitted position that the Tahsildar did not have any such power to issue any such certificate after 11.11.1989. Therefore, on the face of it itself, the certificate must go and any effort on the part of the concerned authorities could not be stalled by finding faults with the

Government Order forming the District Vigilance Committee. Whether there was a committee or not, once a community certificate is issued, the concerned officers or, as the case may be the State Government could always go into the genuineness of the community certificate. In this case, since the community certificate was issued by the Tahsildar after 11.11.1989, it could not be said to be a genuine certificate at all. Under such circumstances, there was nothing wrong with the authorities to issue a show cause notice to the Petitioner for its cancellation. This precisely was done by the Apex Court in Madhuri Patil's case, cited supra, where it was found that the certificate relied upon by Madhuri Patil was issued by a person not competent to do so and it was precisely on that ground that her admission to Dental course was also cancelled along with the certificate of status.

8. It appears that in spite of the above order passed by the Division Bench, petitions challenging the validity of the constitution of the two member District level Vigilance Committee, which was established as per G.O. (2D) No. 18 dated 1.4.1997, were entertained. Thereafter, on the suggestion of the Division Bench of this Court (consisting of R. Balasubramanian, J & T.V. Masilamani, J) the Government of Tamil Nadu reconstituted the District Level Vigilance Committee vide G.O. Ms. No. Ill dated 06.07.2005 whereby an Anthropologist was co-opted as the third member and the aforesaid Division Bench by its order dated 22.07.2005 in W.A. No. 1645 of 2001 etc. batch (V. Vallinayagam v. Government of Tamil Nadu 2006 (1) L.W. 492 has specifically recorded that the committee reconstituted is in accordance with the law laid down by the Supreme Court in Madhuri Patils case and set aside the earlier orders cancelling the community certificates issued by the erstwhile two member District Level Vigilance Committees and remitted the matters for fresh consideration by the newly reconstituted three member District Level Vigilance Committee. Accordingly, the reconstituted committee has considered the community certificate of the Petitioner and came to the conclusion that she does not belong to Hindu Kondanaicken caste. In the light of the aforesaid decision of the Division Bench, it is impermissible for the Petitioner to question the constitution of the District Level Caste Scrutiny Committee.

9. In Director of Tribal Welfare v. Laveti Giri (supra), the Supreme Court had categorically observed that it would be for the Central Government to appropriately deal with the matter by giving some leverage to the State Governments to modulate the rules conformable to the law keeping in view the guidelines as far as possible to suit the conditions prevailing in the State concerned so that they could be worked out in a systematic manner without any difficulty in implementation. As pointed out by the Division Bench in Kavitha v. State of Tamil Nadu (supra) the District Level Vigilance Committee is given the task of reviewing the community certificates issued by the Tahsildars in the concerned Districts, while the community certificates issued by the Revenue Divisional Officers in the State are to be reviewed by the State Level Scrutiny Committee. It is obvious that the District Vigilance Committee and the State

Level Scrutiny Committee would operate in different fields. The task of District Level Vigilance Committee is to deal with the community certificates issued by the Tahsildars prior to 11.11.89, whereas the State Level Scrutiny Committee is constituted for the purpose of scrutinizing the certificates issued by the Revenue Divisional Officers. The Division Bench by judgment dated 01.08.2005 in W.P. No. 27210 of 2003 has already ruled that the reconstitution of District Level Vigilance Committee is in accordance with the scheme formulated in Madhuri Patils case.

10. The submission of Mr. M. Suresh Kumar, that the State has to provide appeal to the State Level Committee against the decision of the District Level Committee is required to be stated only to be rejected. In the first place it can be seen that the scheme formulated by the Supreme Court in Madhuri Patil's case postulates that the order passed by the Three Member Committee canceling the community certificates shall be final and conclusive and only subject to the proceedings under Article 226 of the Constitution. It appears that though at one stage, a letter was issued by the Secretary to the Government, Adi-Dravida Welfare Department dated 27.12.1999 stating that the order of the District Level Vigilance Committee shall be appealable to the State Level Committee, there is no appeal remedy provided in any of the Governmental Orders against the decision of the Three Member District Level Vigilance Committee. It is clarified by the learned Government Pleader that in view of the letter of the Secretary, the District Level Committees are mechanically making an endorsement in the order that the appeal would lie to the State Level Committee, though such an appeal is not provided by the State Government in any of its G.Os. In fact, learned Government Pleader has submitted before us that it is the policy decision of the Government not to provide any appeal against the decision of the District Level Vigilance Committee and in fact such policy decision is in conformity with the decision of the Supreme Court in Madhuri Patils case. Our attention was also drawn to the judgment of the Division Bench in W.A. No. 1714 of 2001 (The Scheduled Tribe Employees Welfare Association v. The Government of Tamil Nadu and five Ors.) decided on 08.08.2005 wherein it was held that absence of an appeal remedy to test the decision of the State Level Committee in the light of the judgment of the Supreme Court in Madhuri Patils case cannot be a ground to invalidate the Government Order. We, therefore, hold that there is no infirmity in the constitution of the three member District Level Vigilance Committee and the same is in conformity with the scheme formulated in Madhuri patils case. The decision by the District Level Vigilance Committee is final and no further appeal would lie to the State Level Committee and the remedy of the aggrieved party is to approach the High Court under Article 226 of the Constitution of India.

11. Coming then to the merits of the case on hand, the learned Counsel appearing for the Petitioner has taken us through the detailed order passed by the District Level Vigilance Committee. The Committee has conducted a thorough enquiry after affording opportunity of personal hearing to the Petitioner and upon detailed analysis of the documents produced on record, recorded a categorical finding that the Petitioner does not belong to Hindu Kattunaicken caste. The

Committee has noted that in the school register the Petitioners caste has been mentioned as Nayakkar and subsequently, it has been altered as Kattu-nayakan and it has been counter signed by the Headmaster. It is also noticed by the Committee that in the same register in the next column the Petitioner has been shown as belonging to Backward Class community and subsequently, after making alterations the Petitioner has been shown as falling under the category of Scheduled Tribe in the column Tribal. It is further noted by the Committee that in the college transfer certificates of the Petitioners sisters, the caste has been mentioned as Hindu Gourava. It is also observed by the Committee that the Petitioner has not cared to produce the school attendance register of her father and instead produced a service certificate, which on enquiry was found that the said certificate was already cancelled by the competent authority. The Committee has also interviewed the Petitioner with regard to her family habits, customs, etc., and on careful analysis with the help of an Anthropologist expert held that the family habits and the general mannerism of the Petitioner does not belong to the Kattunayakan caste and instead belong to Backward Gourava community. This factual finding given by the authority cannot be interfered with by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

12. In the result, this writ petition is dismissed. The interim relief stands vacated. It is open for the third Respondent to take appropriate action in the light of the judgment of the Supreme Court in *R. Vishwanatha Pillai Vs. State of Kerala and Others*, and the judgment of the Division Bench of this Court in *Kavitha v. State of Tamil Nadu* (supra). No costs. Consequently, connected miscellaneous petitions are closed.