

(2012) 10 MAD CK 0225

In the Madras High Court

Case No : Review Application No. 41 of 2011

M. Diwakar

APPELLANT

Vs

State Level Scrutiny Committee and Another

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 142, 226, 342

Citation : (2012) 10 MAD CK 0225

Hon'ble Judges : R. Subbiah, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Radhakrishnan, for the Appellant; M.E. Rani Selvam, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The question to be decided by us in this Review Application is "whether or not a Writ Appeal would lie against the order passed by a learned single Judge in a writ petition, which was filed challenging the orders of the State Level Scrutiny Committee (pertaining to the community status of Scheduled Tribes)". To answer the above legal question, a brief background of the case has to be narrated.

2. The petitioner filed an application before the second respondent/Revenue Divisional Officer, Salem on 7.11.1997 for issuance of a Scheduled Tribe Community certificate that he belongs to "Kurumans" community. The said application was rejected by the second respondent on 11.9.1998, which was challenged by the petitioner by filing W.P. No. 14578 of 1998 before this Court. The petitioner was provisionally admitted to B.E. course pursuant to the interim direction issued by this Court in the said writ petition. Subsequently, the said writ petition was disposed of, on 24.3.2000, with a direction to the second respondent to consider the question of community status of the petitioner afresh within a period of six months. Thereafter, by order dated 14.12.2000, the application of the petitioner was once again rejected by the second respondent, as a result, the

admission of the petitioner to B.E. course was also cancelled.

3. The petitioner challenged the said order of the second respondent dated 14.12.2000 in another writ petition in W.P. No. 8429 of 2001. During pendency of the said writ petition, on the application of the parents of the petitioner and 24 others, a study team headed by the Director, Tribal Research Centre, Ooty conducted an enquiry in the presence of the District Adi Dravidar and Tribal Welfare Officer, Salem and the said Committee concluded that the parents of the petitioner and 24 others mentioned in the study report belong to "Kurumans" community and observed that necessary certificates should be issued to them. In view of the same, by the order dated 8.7.2003, this Court directed the second respondent to reconsider the matter and take a final decision within a period of three weeks from the date of communication of the order.

4. Thereafter, the second respondent, by his order dated 16.8.2004, again rejected the representation of the petitioner. This order of the second respondent came to be challenged by the petitioner by filing W.P. No. 25485 of 2004 wherein a learned single Judge of this Court, by the order dated 10.11.2004 has directed the State Level Scrutiny Committee to consider the case of the petitioner within a period of four months from the date of receipt of the copy of the order.

5. Subsequently, the petitioner, made an application before the State Level Scrutiny Committee on 17.11.2004. After enquiry, the State Level Scrutiny Committee concluded that the petitioner belongs to "Kurumbar" community which is classified as Most Backward Class and directed the second respondent to issue "Kurumbar" community certificate to the petitioner, vide its proceedings dated 6.4.2005. Aggrieved, the petitioner filed a revision petition before the first respondent, which was rejected by the first respondent on the ground that there is no provision to review the order passed by the State Level Scrutiny Committee. Thereafter, the petitioner filed Contempt Petition No. 862 of 2005 in W.P. No. 25485 of 2004 before this Court on the ground that the order of the State Level Scrutiny Committee was passed beyond the period of four months prescribed by the Court and the report of the Anthropologist, was ignored. In the meantime, the petitioner also filed W.P. No. 30756 of 2005 challenging the proceedings of the State Level Scrutiny Committee dated 6.4.2005. The said writ petition was listed along with the Contempt Petition and a learned single Judge of this Court by the order dated 26.2.2007 quashed the order passed by the State Level Scrutiny Committee with a direction to the said Committee to issue necessary community certificate to the petitioner, declaring him as a member of the "Kurumans" community belonging to Scheduled Tribes.

6. Aggrieved by the said order of the learned single Judge, the respondents herein have filed Writ Appeal No. 897 of 2007 before this Court. Ultimately, by the judgment dated 20.4.2009, a Division Bench of this Court, speaking through one of us (Justice Elipe Dharma Rao) has observed as follows:

5. As seen from the facts and circumstances of the case, though there is a report

of the Director, Tribal Research Center, Department of Adi Dravidar and Tribal Welfare, Udagai, dated 31.12.2001, to the effect that the people of Pallakadu village, which is the native of the respondent, belong to Kuruman community and they are eligible to get Scheduled Tribe status under the name of kurumans and based on the above report, there is a recommendation of the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai-9, dated 21.8.2006, for inclusion of the said community in the list of Scheduled Tribes, the Central Government has not passed any orders till date. Unless and until the said community is included in the list of Scheduled Tribes under Article 342 of the Constitution of India, the petitioner is not entitled to get the community certificate as he belongs to "Kurumans community".

6. Therefore, in view of the above stated facts and circumstances of the case, the order passed by the learned single Judge is liable to be set aside and it is, accordingly, set aside. The writ appeal is allowed. No costs. However, it is open to the respondent to approach the appropriate authority in accordance with law.

7. After the above judgment, the respondent therein has come forward to file this review application. His main ground of attack to the order passed by the Division Bench of this Court is that the order impugned in the writ appeal was passed by a single Judge, who set aside the order of the State Level Scrutiny Committee constituted as per the judgment of the Honourable Apex Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and no writ appeal would ever lie against such an order and therefore, the very initiation of the Writ Appeal and the judgment passed therein are null and void in the eye of law, as per the above dictum laid down by the Honourable Apex Court. For this he relied on Clauses 11 to 13 of para No. 13 of the Kumari Madhuri Patil and Another v. Additional Commissioner, Tribal Development and Others (supra) case, which read as follows:

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.

8. The learned counsel appearing for the petitioner would place much reliance on the second sentence of above direction No. 13 that "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".

9. But, it is to be made clear that this second sentence of direction No. 13 in

Kumari Madhuri Patil and Another v. Additional Commissioner, Tribal Development and Others (supra) case was overruled by a Three Judge Bench of the Honourable Apex Court in Dayaram Vs. Sudhir Batham and Others, , holding as follows:

The right to file a Writ Appeal under the Adhiniyam (State Act) is a "vested right", to any person filing a Writ Petition. That right can be taken away only by an express amendment to the Act or by repeal of that Act, or by necessary intendment, that is where a clear inference could be drawn from some legislation that the legislature intended to take away the said right. The right of Appeal to a Division Bench, made available to a party to a Writ Petition, either under a statute or Letters Patent, cannot be taken away by a judicial order. The power under Article 142 is not intended to be exercised, when such exercise will directly conflict with the express provisions of a statute.

In view of the above, we hold that the second sentence of Clause 13 providing that where the Writ Petition is disposed of by a single Judge, no further Appeal would lie against the order of the Division Bench (even when there is a vested right to file such intra-Court Appeal) and will only be subject to a Special Leave under Article 136, is not legally proper and therefore, to that extent, is held to be not a good law. The second sentence of direction No. 13 stands overruled. As a consequence, wherever the Writ Petitions against the orders of the Scrutiny Committee are heard by a single Judge and the state law or Letters Patent permits an infra-Court Appeal, the same will be available.

10. In view of the above authentic pronouncement of the Honourable Apex Court, we have no hesitation to hold that the writ appeal preferred by the administration is very well maintainable.

11. The other point urged by the petitioner is that he belongs to "kuruman" community, and when the community "kurumans" figures at Serial No. 11 of the List of Scheduled Tribes, which is nothing but a plural form of "kuruman", unnecessarily, the respondents are dodging the issue of declaring his community. But, we are not able to appreciate this point, in view of the fact that the respondents are not authorised to either suffix or prefix any word or letter in the existing list of communities. Since the community being claimed by the petitioner viz. "kuruman" is not available in the list of Scheduled Tribes, in the absence of any clarification from the authorities concerned, such a prayer of the petitioner cannot be entertained.

Therefore, no error has been committed by the Division Bench of this Court while entertaining the writ appeal and allowing the claim of the administration on merits. Accordingly, this Review Application is devoid of merits and is, accordingly, dismissed. No costs.

Application dismissed.