

(2002) 04 MAD CK 0229

In the Madras High Court

Case No : Writ Petition No's. 10365 and 10573 of 2002 and WMP. No's. 14010, 14011, 14275 and 14276 of 2002

M. Vimala and M. Duraikannan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2002) 04 MAD CK 0229

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; D. Kumaresh Babu, G.A., for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—In W.P.No.10365 of 2002, the petitioner Vimala has prayed for the issue of a writ of certiorari to call for the records relating to G.O (2D) No.18 dated 1.4.1997 on the file of the 1st respondent and the consequential enquiry notice in Roc.No.54149/200 (D10) on the file of the 2nd respondent dated 6.9.2001 and quash the same.

2. In W.P.No:10573 of 2002 the petitioner Duraikannan has prayed for the issue of a writ of certiorari to call for the records relating to G.O (2D) No.18 dated 1.4.1997 on the file of the 1st respondent and the consequential enquiry notice in Rc.No.W7/104382/91, dated 12.3.2002 on the file of the 2nd respondent and quash the same.

3. Since the validity of the Government Order is the main issue, both the writ petitions are taken up together. The petitioner in writ petitions No.10365 of 2002 claims the social status of Hindu Kondareddy, a schedule tribe, while the petitioner in W.P.No.10573 of 2002 claims the status of a Hindu Kattu Naicken, a schedule tribe. The social status claimed by the petitioners is the subject matter

of verification by the second respondent in both the writ petitions.

4. In these writ petitions we are not concerned with the truth or genuineness of the social status claimed by the petitioners. But the limited question being that the Government Order constituting a District Level Committee is being challenged as invalid and incompetent and consequently the notice issued by the District Level Committee is being challenged as one without jurisdiction.

5. According to Mr. Doraisamy, learned counsel appearing for the petitioners in both the writ petitions, in terms of the judgement of the Apex Court in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, the Committee, if any, should consist of three members and the committee as formed by the State Government at the District Level consist of only two members and therefore the said committee is incompetent and being invalid committee cannot proceed further and the Government Order also is illegal and invalid.

6. In this respect the learned counsel for the petitioners relies upon the pronouncement of the Apex Court in *Madhuri Patil Vs. Additional Commissioner, Tribal Development*. The Apex Court while emphasising the necessity for verification of claims for ascertaining social status with expediency laid down certain guidelines, which read thus:-

"For that purpose, it is necessary to streamline the procedure for the issuance of a 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 concerned Directorate.

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 concerned department, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, 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 groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall 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 also should 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 concerned castes or tribes or tribal communities 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 concerned educational institution 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 and inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the Committee and the Joint/Addl. 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 seems expedient and consider the claims vis-a-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 canceling 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 of 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 effective posts or offices under the State or the Union or elections to any local body, legislature or the 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 concerned educational institution 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."

7. Again in Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, the same has been reiterated and their Lordships of the Apex Court directed the Government of India to examine in greater detail and

bring about a uniform legislature with necessary guidelines and rules prescribing the penal consequences on persons who flout the constitution and corner the benefits reserved for the real tribals etc. ,so that the menace of fabricating false records and to gain unconstitutional advantages by plain/spurious persons would be prevented.

8. Placing reliance upon the said two pronouncements, Mr. Doraisamy, learned counsel appearing for the petitioners contend that the Committee, if any to verify or scrutinise the social status of the individuals should consist of at least three members and not two members as has been constituted by the State Government by the impugned G.O.

This contention is being advanced with reference to Apex Court guidelines, extracted above. By the said guidelines the State Governments have been directed to constitute a committee of three Officers namely (1) Additional or Joint Secretary or any officer higher in rank of the Director of the Concerned Department (2) the Director Social Welfare/Tribal Welfare/Backward Class Welfare as the case may be, (3) and in case of scheduled castes another officer, who has intimate knowledge in the verification and issuance of the social status certificates.

9. It is pointed out that the Supreme Court further directed that each Directorate, namely the Director of Social Welfare/Tribal Welfare/Backward Class Welfare shall 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 who shall go to the local place of residence and original place from which candidate hails and usually resides and verify and collect all the facts of social status claimed by the candidate or the parent or guardian as the case may be and also examine the school records, birth registration if any and examine the parents, guardian or the candidate and forward his report, with all particulars in the pro-forma to the concerned department.

10. Per contra, the learned Government Advocate relies upon an unreported judgement of P.SHANMUGAM,J., in W.P.NOs.2276 of 2001 etc., batch, dated 27.7.2001, where the Learned Judge upheld the validity of the Government Order. In the said Order, P.SHANMUGAM,J., examined the three contentions and one of them being whether the Committees are constituted properly? P.SHANMUGAM,J., while following the Division Bench Judgement of this court in W.A.No.1731 of 2000, dated 3.1.2001 held thus:-

"A Division Bench of our High Court in W.A.No.1731 of 2000, dated 3.1.2001, considered the question whether the guidelines prescribed by the Supreme Court were followed by the State Government in the formation of the District Vigilance Committee. Their Lordships held that the State level caste scrutiny committee is in perfect consonance with the direction given by the Apex Court in Mathuri Patil's case. In addition to the State level Committee, the Government also

formulated District Level Vigilance Committee with the task of review of the community certificate issued by the Tahsildar or by the Revenue Divisional Officer. Both the District level as well as State Level committee would naturally operate in different fields. The Division Bench also held that 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. The Division Bench has approved the view taken by the learned Single Judge in W.P.No.14714 of 2000 dated 30.8.2000. Before the learned Single Judge almost similar contentions were raised namely that there are only two members and that there is no expert in the committee and that there is no reference to OBC community and member belonging to the OBC community is not in the committee. The learned Single Judge rejected all these contentions. Besides it is held that the District Level Committee is constituted independently by the Government for the purpose of verification and it is open to the District Level Committee to formulate its own procedure for verifying the community certificate."

11. As against the said pronouncement of P.SHANMUGAM,J., and the Judgement rendered in the Writ Appeal, Mr. Doraisamy, learned counsel appearing for the petitioners placed reliance on the pronouncements of the Division Bench of the Kerala High Court in Dr. C. Velayudhan Vs. State of Kerala and Others, , where a Division Bench of the Kerala High Court while deciding the case in respect of a Committee constituted at the State Level, held that the Committee should have been consisting of three Members and a Committee consist of lesser number of Members cannot be treated as a Committee in the eye of law. The pronouncement of Kerala High Court is factually distinguishable and in fact in the impugned G.O., the State Government has constituted such a scrutiny committee, with respect to which there is no controversy.

12. Mr. Doraisamy, learned counsel also relied upon a recent pronouncement of the Apex Court in Baswant Vs. State of Maharashtra & Others, reported in 2001 (4) Supreme 461, where the Apex Court held that a scrutiny committee constituted consisting of two members only not being in accordance with the decision rendered in Madhuri Patil's case, set aside the order passed by the two Member Committee. This again relate to state level scrutiny committee constituted as per guidelines laid down in Madhuri Patil's case. The contentions advanced by Mr.Doraisamy placing reliance upon the Division Bench judgement of the Kerala High Court and the latter pronouncement of the Apex Court in Baswant's case, though attractive, in my considered view, the same cannot be sustained as in the said cases, the courts were concerned with State Level Scrutiny Committee.

13. Let me first examine the Committee constituted by the State Government in G.O.No.(2D)18, dated 1.4.1997. In the Government Order, the judgement of the Apex Court in Madhuri Patil's case is recited as one of the items to be read. After calling for a report of the Principal Commissioner and Commissioner for Revenue

Administration, the State Government concluded that it is not necessary to introduce any change in the procedures in issuing of social status certificate as is being followed from 17.1.1986. However, the State Government constituted a District Level Scrutiny Committee consisting of the Collector of the District concerned and the District Adi Dravidar Welfare Officer as the Member-Secretary. The State Government also constituted a scrutiny committee at the level of the State consisting of (1) Secretary of the Adi Dravidar and Welfare and Tribal Welfare Department (2) Director of Adi Dravidar Department and (3) The Director of Tribal Welfare Department as a three Member Scrutiny Committee for the State.

14. According to the G.O., the certificates issued by the Revenue Divisional Officer shall be verified by the State level scrutiny committee and the State level committee shall also examine the orders of District Level Committee. Para 2(iii) specifically prescribes the functions of the State Level Scrutiny Committee. Therefore, it is clear from the G.O, the State Government has formed the three Member State Level Scrutiny Committee consisting of (1) The Secretary to the Government, Adi Dravidar and Tribal Welfare (2) The Director of the Adi Dravidar and Tribal Welfare and (3) The Director of Tribal Welfare and Research Centre, Uthagamandalam as one of its member. The constitution of the said three member committee at the state level has been ordered by the Government in terms of the judgement of the Apex Court in Madhuri Patil's case. The state Level Committee constituted in terms of the G.O is as per Apex Court guidelines.

15. However, the State Government in addition to the said committee has formed District Level Committee consisting of the District Collector and the Adi Dravidar Welfare Officer and the said District Level Committee had been constituted to verify the social status certificate issued by the Tahsildar, while the State Level Committee had been constituted to verify the social status certificates issued by the Revenue Divisional Officers in respect of scheduled tribes. The State level scrutiny committee has been constituted to verify the social status certificates issued by the RDO throughout the State as well as the proceedings of the District Level Committee and the State Level Committee has to check 3% of the certificates issued in favour of Adi Dravidars and 100% in favour of the schedule tribes.

16. The Supreme Court in Madhuri Patil's case has directed the formation of a Scrutiny Committee at the State Level and laid down the guidelines. The State Government by the impugned Government Order has formed a State level committee consisting of three members under the impugned G.O and the constitution of the said committee cannot be held to be not in conformity with the pronouncement of the Supreme Court.

17. In the present case, in respect of the District Level Committee the Supreme Court had not issued any directions and it is for the State Government to issue such administrative orders or instructions in respect of verification of social status claimed by the individuals residing within the District. In respect of the

District Level Committee, the committee has to verify the certificates issued by the Tahsildars and not by the Revenue Divisional Officers. Therefore in respect of the District Level Committee, the contention advanced that it is not in accordance with the judgement of the Supreme Court cannot be sustained at all. The State Government has in act formed a State Level Committee which is in accordance with the pronouncement of the Apex Court in Madhuri Patil's case as well as the later pronouncement in Director of Tribal Welfare, Govt., of A.P. Vs. Laveti Giri.

18. The Supreme Court had not indicated or laid down any guideline, nor it has directed formation of District Level Committees to verify the social status certificates issued by the Tahsildars or claims of individuals. The State Government on its own has formed it and it has the power to verify the social status certificates issued at the District Level and such formation of the committees at the District Level need not necessarily be in conformity with the judgement of the Apex Court.

19. The learned counsel for the petitioner relied upon certain unreported judgements of this court, wherein the learned Judges have directed that the formation of District Level Committees consisting of two members is not valid. In my considered view, such a question will not arise at all and the attention of the Learned Judges have not been drawn to the material portion of the Government Order. In this respect I am not persuaded to accept the view taken by D.MURUGESAN,J., in W.P.No.6674 of 2001, dated 18.10.2001, where the learned Judge has taken the view that as the Committee has been constituted, consisting of two members and not being in accordance with the directions issued by the Supreme Court in Madhuri Patil's case, the Committee is an invalid committee and consequently, set aside the proceedings of the second respondent. An identical view has been taken by K.P.SIVASURAMANIAM,J., in W.P.No.8573 of 2001, dated 26.4.2001.

20. However, K.GOVINDARAJAN,J., in W.P.Nos:13496 to 13500 of 2000, decided on 11.8.2000 has taken the view that there is no infirmity or illegality in the impugned Government Order so as to warrant an interference by this court.

21. In W.A.No.1731 of 2000, a Division Bench of this Court, while taking note of the fact that the State Government under the G.O. has not only formed the State Level Scrutiny Committee, but also formulated a District Level Vigilance Committees to review the social status certificates issued by the Tahsildars of the concerned Districts. The Division Bench pointed out that it is only the State Level Scrutiny Committee which will scrutinise or verify the social status certificates issued by the Revenue Divisional Officers.

22. The Division Bench had upheld the validity of the G.O. Not only I am bound by the decision of the Division Bench, but also I respectfully agree with the same. It is fundamental while interpreting the G.O., it is the foremost duty of the court to read the entire G.O. The decision of the Division Bench in W.A.No.1731

of 2000 etc., dated 3rd January, 2001 has not been brought to the notice of K.P.SIVASUBRAMANIAN, J., who has disposed of the W.P.No.8573 of 2001. Similarly the attention of D.MURUGESAN,J., was not drawn to the judgement of the Division Bench while the Learned Judge passed orders in W.P.No: 6674 of 2001.

23. Prima facie, this court was under the impression that there is a conflict of view and necessarily it has to be referred to a Division Bench, but in the light of the binding judgement of a Division Bench of this court in W.A.No.1731 of 2000 (Kavitha Vs. State of Tamil Nadu), dated 3.1.2001, it is not necessary to refer the matter to a Division Bench.

24. In view of the binding decision in W.A.No.1731 of 2000 etc., this court holds that the G.O., impugned is valid and it is not contrary to the pronouncement of the Apex Court either in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, or in the later pronouncement of the Apex court in Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, . The impugned G.O in no way contravenes the guidelines laid down by the Supreme Court in the two decisions. The contention advanced in this respect is a misreading and a misconception of the G.O., and while following the Division Bench judgement of this court in Kavitha Vs. State of Tamil Nadu, referred above, I respectfully agree with the view taken by P.SHANMUGAM,J.,

25. The contention advanced by Mr. Doraisamy, learned counsel appearing for the petitioners is rejected as unsustainable. I am not persuaded to accept the view taken by D.MURUGESAN,J., and K.P.SIVASUBRAMANIAN,J., whose attention was not drawn to W.A.No.1731 of 2000 etc., With respect to the said two Learned Judges, I am of the considered view that the attention of the learned Judges were not drawn to material portion of the government Order. It is not necessary to refer the matter to a larger Bench since there is a binding pronouncement by a Division Bench in Kavitha Vs. State of Tamil Nadu,

26. That apart, the attention of the learned Judges to material portion of the G.O. has not been drawn and the Government Advocate or the Special Government Pleader who appeared had failed to draw the attention of the Learned Judges to paragraph 2(iii) of the G.O., by which the State Government has maintained a dichotomy between the District Level Committee and the State Level Scrutiny Committee.

27. The District Level Committees have to confine themselves to the social status certificates issued by the Tahsildars in the Districts concerned, while the State Level Scrutiny Committee at the state level scrutinises the social status certificates issued by the Revenue Divisional Officers and the said committee also has the authority or power to examine the social status certificates verified by the District Level Committees and the functions of the two committees are distinct. The constitution of the Two Committees are totally different. The

Supreme Court issued guidelines for constitution of the State Level Vigilance and scrutiny committee and the State Government has formulated the District Level Committee which the State Government has formed in respect of which the Supreme Court has not issued any guidelines. Therefore, it is not necessary that the District Level Committee should consist of three members. Hence, the only contention advanced cannot be sustained.

28. In the two writ petitions, the social status certificates sought to be scrutinised or reviewed were issued by the concerned Tahsildars in favour of the petitioner. Therefore in view of the G.O., the District Level Committee is competent, as the certificates were issued by the Tahsildars and the respective petitioners have to go before the District Level Scrutiny Committee and substantiate their respective claims.

29. In the circumstances both the writ petitions are dismissed and the petitioners are directed to state their objections before the concerned District Level Committees within two weeks from today and take part in the proceedings before the District Level Scrutiny Committee.

Consequently, connected W.M.Ps are closed. No costs.