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Lalitha Bharani Vs The Government of Tamil Nadu and Others

Writ Petition No. 28702 of 2013 and M.P. No. 1 of 2013

Court: Madras High Court

Date of Decision: Nov. 26, 2013

Citation: (2013) 11 MAD CK 0194

Hon'ble Judges: R. Sudhakar, J; Pushpa Sathyanarayana, J

Bench: Division Bench

Advocate: S. Doraisamy for Mr. A. Selvam, for the Appellant; S.P. Prabhakaran, AGP for RR-1 to 6 and Ms. C.N.G. Niraimathi for R-7, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Sudhakar, J.
This writ petition is the second round of litigation of the petitioner claiming "Kurumans" (ST) community certificate. The

brief facts of the case necessary for the disposal of this petition are as follows:-

The 5th respondent Revenue Divisional Officer, issued a certificate dated 22.4.1998 stating that the petitioner belongs to "Kurumans" (ST)

community. On 6.5.2010, the petitioner was selected as Agricultural Officer by the 7th respondent Tamil Nadu Public Service Commission. The

7th respondent referred the "Kurumans" (ST) community certificate to the State Level Scrutiny Committee for verification. The State Level

Scrutiny Committee passed an order on 6.5.2010, while declining to accept the petitioner"s claim for scheduled tribe community, held as follows:-

7. The State Level Scrutiny Committee have carefully and independently examined the statements and documentary evidences furnished by Tmt.

D. Lalitha Barani and the Revenue Divisional Officer enquiry report and the original school records of her mother and the view of the

Anthropologist and found that individual"s mother Tmt. R. Mallika"s community has been clearly recorded as "Kurumbar" in all the school

records. On this background, the daughter of Tmt. R. Mallika, i.e., petitioner cannot claim that she had accepted her mothers community as

"Kurumans" (Scheduled Tribe) category. In view of the recorded evidences, the State Level Scrutiny Committee has unanimously decided that

Tmt. D. Lalitha Barani D/o Tmt. R. Mallika does not belong to "Kurumans" Scheduled Tribe Community and therefore the State Level Scrutiny

Committee reject the claim of the candidate as "Kurumans" (Scheduled Tribes) and therefore order that the Scheduled Tribe Community

Certificate bearing No. 3779763 dated 22.4.1998 issued to Tmt. D. Lalitha Barani D/o Tmt. R. Mallika by the Sub-Collector, Chengalpattu,

Kanchipuram District is not genuine and therefore be cancelled by the Revenue Divisional Officer concerned.

2. The cancellation of the scheduled tribe community certificate granted to the petitioner was challenged in W.P. No. 14563/2010 and this Court,

vide order dated 10.8.2011, set aside the order of the State Level Scrutiny Committee on the following grounds:-

5. As already referred, the petitioner has produced not only the Secondary School Leaving Certificate and School Transfer Certificate of her

mother, but also produced the other certificates including the certificate of one R. Jayaraman, who is the brother of Tmt. Malligai, the mother of the

petitioner, which states that he belonged to "Kurumban". There is absolutely no discussion on the above certificate. That apart, though in

paragraph 6 of the order, the committee refers to the enquiry said to have been conducted by the Anthropologist, there is absolutely no details as

to what sort of enquiry was conducted, who are all examined and whether the petitioner was given an opportunity at the time of enquiry.

6. Under these circumstances, we are not inclined to subscribe the view of the State Level Scrutiny Committee, particularly when "Kurumbar"

community is not one of the communities notified under any of the item in the Presidential order, viz., Scheduled Caste or Scheduled Tribe or other

communities. In that view of the matter, we set aside the impugned order and remit the matter to the State Level Scrutiny Committee for fresh

consideration and the State Level Scrutiny Committee shall pass orders within a period of three months from the date of receipt of a copy of this

order.

7. In the light of the above observation, before the committee decides the issue one way or other, the petitioner shall furnish with the enquiry report

of the Anthropologist so as to enable her to make objection, if any. The writ petition is allowed and the impugned order is set aside.

8. We are informed that pending writ petition, as the petitioner has been selected for the post in question, this Court had directed to keep the said

post vacant. The same position shall continue for a period of three months and in the event, the committee does not decide the issue one way or

other, the petitioner will be entitled for appointment on the basis of selection which would be subject to the outcome of the enquiry by the State

Level Scrutiny Committee.

3. Thereafter, the State Level Scrutiny Committee took up the matter for fresh enquiry and called upon the petitioner to submit relevant documents

and it is stated that the petitioner had submitted some documents, which are referred to in the present impugned proceedings. The State Level

Scrutiny Committee called upon the Anthropologist Member to make a verification and the Anthropologist Member has given a check list report

dated 16.8.2012.

4. In the meanwhile, the Vigilance Cell of the State Level Scrutiny Committee was directed to make an on-the-spot enquiry, which was conducted

and a report has been submitted in file No. 1276/13-02890 dated 18.9.13 to the Director of Tribal Welfare and also to the State Level Scrutiny

Committee on 19.9.13. It appears that a personal enquiry of the petitioner was conducted and on the basis of the materials, the impugned order

came to be passed on 25.9.13, which is challenged by the petitioner in the present writ petition.

5. For better clarity and appreciation of the present case and for deciding the issue, the relevant portion of the order of the State Level Scrutiny

Committee is extracted hereunder:-

8. The Deputy Superintendent of Police, Vigilance Cell, Chennai Region have sent his report on 19.09.2013. In his report he has been stated that

he enquired the parents of the individual in their residence at Tambaram. And also he has stated that he has verified the school records of the

individual. In his report it has been stated that he has gone to Kovilpatt, Thoothukudi District alongwith Thiru C. Maheswaran, Director, Tribal

Research Centre in where the individual is residing and enquired her cultural customs and habits with the Anthropologist. After direct and discreet

enquiry the vigilance officers has concluded that the ST Kurumans certificate issued to the individual by the Revenue Divisional Officer, Chengalpet

is genuine.

9. The State Level Scrutiny Committee cautiously and independently examined the statement given by the individual and the documentary

evidences, the report of the Revenue Divisional Officer, the report of the Deputy Superintendent of Police, Vigilance Cell and the report of the

Anthropologist at the time of enquiry held on 16.08.2012 and comes to the conclusion that Tmt. Lalitha Bharani, D/o Tmt. R. Mallika does not

belongs to Hindu Kurumans ST community on the following grounds:-

(i) The State Level Scrutiny Committee have already rejected the claim of the individual that the individual"s mother Tmt. R. Mallika"s community

has been clearly recorded as Kurumbar in all the school records. And his father Thiru Duraisamy belongs to Naicker BC community. On this

background, the daughter of Tmt. R. Mallika, i.e., petitioner cannot claim that she had accepted her mother"s community as Kurumans (Scheduled

Tribe) category.

(ii) On 16.08.2012, the Anthropologist have recorded that it is a clear cut case of Kurumba MBC.

(iii) The petitioner herself made deposition requesting the State Level Scrutiny Committee to issue Kurumbar Community Certificate (which is

classified as MBC community).

10. During the enquiry, the Committee observed that the vigilance cell officer had not applied his mind. The same person while sitting in the State

Level Scrutiny Committee states that the claim is not genuine. In the vigilance cell report he contradicts his own statement. Hence, the State Level

Scrutiny Committee decided to reject the vigilance cell report.

11. It is obvious that the Constitution intends to give benefits of social and economic advancement, social equality of status and dignity of persons

by providing reservation to ST in public services and educational institutions. It is the duty of the State to ensure that the benefits reach the real

Scheduled Tribes.

12. The appointment wrongly obtained on the basis of false social status certificate or misrepresentation or cheating the Revenue Department or by

some other means, necessarily has the effect of depriving the genuine Scheduled Tribes as enshrined in the Constitution and this is nothing but

cheating the Constitution as it defeats the very noble act of the Constitution and its purpose.

13. As no fresh evidences has been produced before the committee, the State Level Scrutiny Committee unanimously decided to reject the claim

of the individual and accordingly upholds the decision of State Level Scrutiny Committee Proceedings No. 17514/CV-II/2009 dated 06.05.2006.

6. The respondents have been noticed and the respondents have also filed their counter. To make the matter more clear, we called upon the

competent authority to submit the original files, and the files were produced before this Court. On going through the files, we find that there are

certain materials, which are more crucial for deciding the case on hand, but not considered by the committee and, therefore, there has been gross

injustice done to the petitioner, which is only on account of total non-application of mind by the Committee. We therefore proceed to go into the

issues raised by the petitioner on merits.

7. According to the petitioner, her sister Nandhini has been issued Kurumans Scheduled Tribe community certificate by the competent authority in

the year 1996. The committee relies upon the school records of her mother R. Mallika to come to the conclusion that her claim for "Kurumans"

(ST) community certificate cannot be accepted as her mother''s community is "Kurumbar". According to the petitioner, when there is no

community by name "Kurumbar" in the Presidential Notification as has been held in the earlier order passed by the Division Bench of this Court,

the authority should not have referred to the school certificates of her mother, which bears the community name as "Kurumbar". Assuming without

admitting the petitioner has made a request based on a "Kurumbar" community certificate, described as Most Backward Class, such a claim

cannot be countenanced when there is no such community by name "Kurumbar" in the Presidential Notification. The committee has not given any

reasons as to why the certificate of her uterine sister should be rejected. The reasons given by the Vigilance Cell of the State Level Scrutiny

Committee accepting the genuineness of the certificate already issued, has not been discussed, but simply brushed aside on the premise that on an

earlier occasion the Vigilance Cell has stated that the claim is not genuine.

8. Learned Addl. Government Pleader reiterated the stand taken in the order passed by the State Level Scrutiny Committee and the same is also

found in the counter filed by the respondents.

9. Having considered the rival submissions, we are inclined to set aside the order passed by the State Level Scrutiny Committee for the following

reasons:-

In the light of the specific order dated 10.8.2011, passed by the Division Bench of this Court in W.P. No. 14563/10, at para-6, wherein it has

been clearly held that when the community "Kurumbar" does not find a place in the Presidential Notification and that, therefore, it should be

eschewed for the purpose of enquiry, the committee had no jurisdiction to entertain and discuss the issue on the basis of any document, which is

referable to a community described as "Kurumbar. The entire exercise should have been done de hors the Kurumbar community document be it a

school certificate or others. The committee should have independently applied its mind as to whether the petitioner belongs to "Kurumans" (ST)

community or not. To that extent, we find that many of the statements made in the proceedings of the State Level Scrutiny Committee is totally

irrelevant and untenable in law. It could have been avoided for the purpose of the present case under ST community claim.

10. We now proceed to analyse para-8 of the order, where reference is made to the report dated 18/19.9.13 of the Vigilance cell of the

committee. The report of the vigilance cell states that enquiry was made in the presence of Anthropologist. The Vigilance Cell comes to the

conclusion that the certificate issued to the petitioner by the Revenue Divisional Officer is genuine. In this regard, it will be useful and relevant to

refer to the report of the Vigilance Cell. The relevant portion of the Vigilance Cell report is found at Running Page-5 and internal page-157 of the

current file at page-161 and 163 and for better appreciation, the same is quoted hereunder:-

11. We find that the Vigilance Cell, in its above report, has enclosed document at Sl. No. 2, which is the community certificate issued in the name

of the mother of the petitioner, viz., Mallika, showing her as "Kurumans" (ST) community. We also find that the said certificate is enclosed in the

current file at page-187 and the same is quoted hereinbelow for easy reference:-

12. Similarly, we also find that the certificate issued to the petitioner"s sister, Nandhini, is found enclosed in the report of the Vigilance Cell at Sl.

No. 3 and is found in the current file at page-187 and the same is quoted hereinbelow for easy reference:-

13. The above documents, though submitted by the Vigilance Cell, have not been adverted to by the State Level Scrutiny Committee. On the

contrary, they have referred to the school transfer certificate, etc., which are totally irrelevant, as it refers to a community "Kurumbar" which does

not exist in the Presidential Notification.

14. In the light of the Vigilance Cell report and the documents as above, we fail to understand as to how the committee could have come to a

conclusion that the certificate issued to the petitioner is not genuine. In the light of those earlier records, the report of the Anthropologist should

have been discussed. The Committee should have given a finding that the certificates already issued to the mother and sister of the petitioner cannot

be accepted for one reason or other, which has not been done despite being mentioned in the Vigilance Cell report.

15. Needless to state, this Court has time and again held that so long as there is a certificate issued by the competent authority and has not been

cancelled in a manner known to law, it has to be accepted as validly issued. Any benefit flowing therefrom should not be denied on mere

conjectures and surmises.

16. We also find that the transfer certificate of Lalitha Bharani, the petitioner herein, available at page-191 of the current file shows that she belongs

to "Kurumans", which is a Scheduled Tribe community. We are therefore unable to accept that she deposed before the State Level Scrutiny

Committee that she wants a certificate of "Kurumbar" (MBC).

17. If there is a difference in the findings of the Vigilance Committee, the State Level Scrutiny Committee is bound to discuss as to what is the

discrepancy between the earlier report of the vigilance cell and the present one. It is to be noted the present Vigilance Cell enquiry has been done

in the presence of the anthropologist. We, however, do not find any reasons in the order of the State Level Scrutiny Committee to reject the

certificate issued to the uterine sister and the certificate issued to the mother under the category of "Kurumans" (ST) community. All other

statements and findings made on the basis of the school certificate of the mother referring to her community as "Kurumbar" is totally irrelevant for

the reasons stated earlier. The same should not be repeated in the next enquiry that we propose to order while setting aside the present

proceedings.

18. For all the reasons stated above, we find that the order passed by the State Level Scrutiny Committee is not sustainable, as the State Level

Scrutiny Committee has not considered the relevant factors as pointed out above. Accordingly, the impugned order passed by the 2nd respondent

- State Level Scrutiny Committee is set aside and the matter is remanded back to the 2nd respondent - State Level Scrutiny Committee to take a

final decision considering all aspects and also based on the documents pointed out above and pass an order within a period of four weeks from the

date of receipt of a copy of this order. It is also made clear that the petitioner should also be given an opportunity of hearing before passing any

order so as to avoid any allegation of violation of principles of natural justice. Consequently, connected miscellaneous petition is closed. However,

there shall be no order as to costs.