

ITEM NO.302

COURT NO.4

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.17084/2005

(Arising out of impugned final judgment and order dated 27/07/2005
in WP No. 12001/2002 passed by the High Court of Madras)

GENERAL MANAGER (P&A), O.N.G.C.LTD.

Petitioner(s)

VERSUS

B. KIRUPANJALI

Respondent(s)

(With appln. (s) for permission to submit additional document(s)
and interim relief and office report)

WITH S.L.P.(C) No.17104/2005

(With appln.(s) for exemption from filing c/c of the impugned
judgment and appln.(s) for exemption from filing O.T. and interim
relief and office report)

S.L.P.(C) No.17862/2005

(With interim relief and office report)

S.L.P.(C) No.18085/2005

(With interim relief and office report)

S.L.P.(C) No.18088/2005

(With appln.(s) for exemption from filing O.T. and interim relief
and office report)

S.L.P.(C) Nos.18334-18335/2005

(With interim relief and office report)

S.L.P.(C) No.18340-18341/2005

(With interim relief and office report)

S.L.P.(C) No.19389/2005

(With interim relief)

S.L.P.(C) No.19505-19506/2005

(With interim relief and office report)

S.L.P.(C) No.20244/2005

(With appln.(s) for permission to file additional documents and
interim relief and office report)

S.L.P.(C) Nos.1388-1389/2006

(With appln.(s) for directions and appln.(s) for exemption from
filing c/c of the impugned judgment and appln.(s) for exemption
from filing O.T. and office report)

S.L.P.(C) No.3321/2006

(With office report)

S.L.P.(C) No.4474/2006

(With appln.(s) for c/delay in refiling SLP and office report)

S.L.P. (C) Nos.24652-24653/2008

(With appln.(s) for modification of Court's order and interim relief)

S.L.P. (C) No.2598/2009

(With office report)

Date: 26/02/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. K. R. Sasiprabhu, AOR
Mr. Biju P. Raman, Adv.

Mr. Sunil Kumar Jain, AOR
Mr. Kaushik Choudhary, Adv.
Mr. T.N. Durga Prasad, Adv.

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For Respondent(s)

Mr. Romy Chacko, AOR

Mr. K. C. Dua, AOR

Ms. Malini Poduval, AOR

Mr. V. Ramasubramanian, AOR

Mr. Senthil Jagadeesan, AOR

Mr. Govind Manoharan, Adv.

Ms. Shruti Iyer, Adv.

Ms. Suchitra Kumbhat, Adv.

Mr. T. Harish Kumar, AOR

Mr. Biju Thankeppen, Adv.

Mr. Navneet Dugar, Adv.

Ms. Shiva Vijaya Kumar, Adv.

Mr. G. Balaji, AOR

Mr. M. A. Krishna Moorthy, AOR

Ms. K. V. Bharathi Upadhyaya, AOR

Mr. Dinesh Kothari, Adv.
Mr. Gopal Singh Chauhan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The interlocutory applications filed in the special leave petitions stand disposed of.

In this batch of special leave petition, the central challenge is to the order passed by the State Level Committee affirming the determination pertinent to the caste certificate by the District Level Committee. Be it stated, the District Level Committee had conducted an enquiry and determined the caste certificate of the respondent-employees. On appeals being preferred, the State Level Committee affirmed the same.

It is apt to note here that the facts in each of the special leave petitions is the same and, therefore, we think it appropriate to state the facts from S.L.P.(C) No.17084 of 2005, which arises from the order dated 27th July, 2005, passed by the Division Bench of the High Court of Judicature at Madras in Writ Petition No.20154 of 2001.

On a perusal of the order passed by the Division Bench, it is limpid that it has quashed the order passed by the State Level Committee determining the caste of the respondents, singularly on the ground that the District Level

Committee was not constituted as per the decision rendered in Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others (1994) 6 SCC 241.

Mr. K.R. Sasiprabhu and Mr. Sunil Kumar Jain, learned counsel appearing for the petitioners would submit that there has been reconstitution of the Committee in a different manner in Director of Tribal Welfare vs. Laveti Giri and Others (1997) 4 SCC 271. In the said case, the Court was dealing with the rules framed by the State of Andhra Pradesh. For proper appreciation, we may reproduce paragraph Nos.3, 4, 5, 6, 7 and 8, which read as under:-

"The petitioner has filed the present application for directions or clarifications, since, according to the petitioner, the guidelines issued by this Court are required to be worked out within the framework of the above Act. Accordingly, by order dated 20-8-1996, this Court directed the State Government to make rules in conformity with the Act and the guidelines issued by this Court, as far as possible, they need to be in line therewith. If they are not in conformity, then the matter can be looked into after the rules are made part of the record. In furtherance thereof, the A.P. Scheduled Castes, Scheduled Tribes and Backward Classes Rules for Issue of Community Certificates, 1997 (Draft Rules) have been made. Rules 1 to 19 deal with the manner, method and issuance of the certificates, cancellation of false certificates, procedure for verification, burden of proof of the claims, security and review by the committees. Rules 7 and 8 are relevant for this purpose.

Rule 7 provides for constitution of Scrutiny and Review Committee at the State Level and Rule 8 deals with Scrutiny Committee at the District Level. They are as under:

"7. Scrutiny and Review Committee (State level):

A Scrutiny and Review Committee shall be constituted at the State level with the following officers:

- (a) (1) Principal Secretary to Government, Social Welfare Department. - Chairman
- (2) Commissioner, Social Welfare - Member
- (3) Commissioner, Tribal Welfare - Member
- (4) Commissioner, Welfare of Backward Classes - Member
- (5) Inspector General of Police CBCID (PCR & Vigilance Cell) - Member
- (6) Additional Secretary/Joint Secretary/Deputy Secretary to the Government, Social Welfare Department. - Member

(b) This Scrutiny and Review committee shall meet once in three months or as often, depending on the necessity.

(c) Presence of three members will form the required quorum for the meeting of the Committee.

(d) This Committee shall review and monitor the functioning of the Scrutiny Committees at the District level (constituted under Rule 8), it shall render necessary advice to the Government on various policy decisions to be taken for streamlining the procedures or on any other issues related to the issuing of Community Certificates as per Act 16 of 1994.

(e) The Committee may also render necessary guidance and advice to the Government on cases referred to it, where divergent and conflicting enquiry reports are received by the Government, in respect of the community claims.

8. Scrutiny Committee (District level):

(a) In every District, a Scrutiny Committee shall be constituted with the following officers:

- | | | | |
|-----|---|---|----------------------|
| (1) | Joint Collector | - | Chairman |
| (2) | District Revenue Officer | - | Member
(Convenor) |
| (3) | Deputy Director (Social Welfare) | - | Member |
| | Deputy Director (Tribal Welfare)/District Tribal Welfare Officer | - | Member |
| | Deputy Director (Backward Classes Welfare)/District Backward Classes Welfare Officer | - | Member |
| (4) | Officer of the Research Organisation in the Commissionerate of SW/TW nominated by the Heads of the Department concerned | - | Member |
| (5) | Officer representing the PCR/Vigilance Cell in the District | - | Member |

(b) The Scrutiny Committee shall meet at least once in a month or as often, depending on the case referred to it.

(c) Presence of three members will from the required quorum for the meeting of the committee.

(d) (1) The Scrutiny Committee, on receipt of the cases referred to it by the Competent Authority under Rule 5(i), shall conduct enquiry regarding the doubtful within the period specified in the notice. This period should not be less than 15 (fifteen) days from the date of service of the notice on the applicant and in no case, on request, more than 30 (thirty) days should be allowed. This notice shall be served on the applicant through the Competent Authority who referred the case to the committee.

(2) The notice referred to in Form - V shall be served on the parent/guardian in case the applicant is a minor.

(3) Where the person on whom a notice in Form-V is served by the scrutiny Committee fails to respond on the data mentioned in the notice, the Scrutiny Committee May finalise its recommendations based on the material/documents/evidence made available to the

Committee by the Competent Authority.

(4) The Scrutiny Committee shall cause enquiry, following the due process of law, to verify the genuineness or otherwise of the information furnished or recorded from such persons as called in enquiry as per Form V. It shall also cause to collect documentary evidence/ or any other related evidence about the correctness or otherwise of the information furnished or objections raised by any person during the enquiry.

(5) The Scrutiny Committee may examine the school records, birth registration certificates, if any, furnished by the persons during the enquiry. It may also examine any other person who may have knowledge of the community of the applicant. With reference to the claims of Scheduled Tribes, it may examine the anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., of that particular tribe, to finalise its recommendations to the Competent Authority.

(6) The Scrutiny Committee should give reasonable opportunity to the applicant to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode, may be published in the village or locality of the applicant and if any person or association, opposes such a claim, opportunity produce evidence in person before the committee may be given to him or her. After giving such an opportunity to that person, the Committee may made such enquiry as it deems expedient and finalise its recommendations, with brief reasons in support thereof, to the Competent Authority.

(7) The Scrutiny Committee may examine the report of enquiry conducted by the Revenue Department furnished to it by the Competent Authority. It may also obtain expert opinion from the Commissionerate if SW/TW through the officers of the Research organisations of these Commissionerates who are the members of the Scrutiny Committee, if deemed necessary. These enquiry

reports may be compared and then recommendations of the Scrutiny Committee may be finalised as to whether the community claim of that applicant is found to be false or genuine.

e) The Chairman of the Scrutiny Committee claim of the person in question or his or her children, is genuine or false with reasons thereof, within 45 days from the date of the receipt of the case referred to it by the Competent Authority."

5. Provisions have been made for appeals and review etc. Rule 15 prescribes action in case of false claims. Validity of Integrated Community Certificate has been dealt with in Rule 16. In case of loss of the original, Rule 17 empowers the officers to issue duplicate caste certificate. Rule 19 deals with Provisional admission or appointment pending the issuance of the caste certificates. Rule 20 repeals the existing Rules. Rule 21 saves the action taken etc. Schedules have been appended to supplement the rules.

6. A reading of the Rules would indicate that except some variation, in the matter of the constitution of Committees, in Rules 7 & 6 from the guidelines issued, all other provisions are in conformity with the guidelines issued by this court.

7. Though Shri Rao seeds to contend that notice may be issued to the central Government and other state Governments to make rules on par with above for finalisation of the rules so as to be uniformly applicable throughout the country, we think that we need not undertake such exercises. It would be for the Central Government to appropriately deal with the matter by giving some leverage to the State Government to modulate the rules conformable to the above law and the guidelines, as far as possible, to suit the conditions prevailing the state concerned so that they could be worked out in systematic manner without any difficulty in implementation.

8. Under the circumstances, we are of the view that the draft rules placed before us are substantially conformable to the directions issued by this Court. We, therefore, direct

the State Government to have them published in the State Gazette and enforce the Act and the Rules in the light of the law laid down by this Court."

As we find the basic constitution of the Committee has not been changed. In fact, the Court has approved the constitution of the Committee by the State of Andhra Pradesh. In Kumari Madhuri Patil (*supra*) in paragraph 13, the Court has directed as follows:-

"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, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (11) 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-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 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."

On a careful reading of the aforequoted paragraphs, it is crystal clear that there could not have been District

Level Committee consisting of only two members. The Division Bench has categorically found that the District Level Committee did not have the third member. It is noticeable that the State Government realizing the same, issued a Government Order G.O. (Ms.) No.111, Adi Dravidar and Tribal Welfare (ADW-10) Department dated 06.07.2005, reconstituting the District Level Committee and giving necessary composition of the members. It has taken note of the fact that the District Level Committee did not have an anthropologist, as has been required by this Court in Kumari Madhuri Patil (*supra*).

When the initial composition of the Committee was illegal, the affirmance of its order by the State Level Committee, needless to say, would not legalize the original order. Therefore, we do not find any infirmity in the order passed by the High Court.

In course of hearing, we have been apprised that some of the respondents-employees have been superannuated and some are not allowed to continue and some have some years of service. Regard being had to the facts of the case, we direct that the respondents who have been kept out of service shall be given 50% back wages. The employees who have retired as per the rules/regulations/circulars on attaining the age of superannuation, shall also be paid 50% back wages. The persons whose services have been terminated, but they

have not attained the age of superannuation, they should be reinstated within four weeks and be given 50% back wages within the said period.

With the aforesaid modification in the order of the High Court, the special leave petitions stand disposed of. There shall be no order as to costs.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master