

Case relating to Community Verification:

Parties : The Tamil Nadu Public Service Commission, Rep. By its Secretary Versus R. Manikandan & Another

Court : High Court of Judicature at Madras

Case No : W.A.(MD) No.104 of 2010

Judges: THE HONOURABLE MR. JUSTICE D. MURUGESAN, THE HONOURABLE MRS. JUSTICE R. BANUMATHI & THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

Appearing Advocates : For the Appellant: N.R. Chandran, Senior counsel for C.N.G. Niraimathi, Advocate. For the Respondents: R1 - M. Suresh Kumar, Advocate, R2 -R. Ravichandran, Addl. Govt. Pleader.

Date of Judgment : 12-08-2011

Head Note :-

Comparative Citations:

2011 (5) CTC 1, 2011 (4) LW 673, 2011 (6) MLJ 609, 2011 (4) LLN 736

Judgment :-

(Prayer: Writ Appeal against the order of this Court dated 03.11.2009 made in W.P. (MD)No.10944 of 2009 and referred to the Full Bench pursuant to the order of a Division Bench dated 17.02.2010.)

D. MURUGESAN, J.

1. Considering the important issue which crops up very frequently before this Court as to the power of the Tamil Nadu Public Service Commission to satisfy itself whether the scheduled caste and scheduled tribe certificates produced by the candidates appearing for selection against posts reserved for them are true and genuine or not, a Division Bench consisting of Honourable Mrs. Justice Prabha Sridevan and Honourable Mr. Justice B. Rajendran referred the matter for a decision by a Full Bench by order dated 17.02.2010. By that order, the Division Bench referred the question as to what extent the Tamil Nadu Public Service Commission has the power to examine the community certificates regarding their genuineness.

2. The above reference arose under the following circumstances: -(a) The Tamil Nadu Public Service Commission (hereinafter referred to as 'TNPSC'), the appellant herein, notified calling for applications to conduct examinations for selection of candidates for Group-II Services in the year 2008. On the strength of 'Hindu Konda Reddi Scheduled Tribe Community Certificate' issued by the Revenue Divisional Officer, Cheranmahadevi, dated 03.10.2008, the first respondent by name R. Manikandan (hereinafter referred to as 'the candidate'), participated in the examination and ultimately, he was selected in the written as well as in oral examinations as against the quota reserved for scheduled tribe candidates. Though the TNPSC published the results of the selected candidates on 16.10.2009, the name of the candidate was withheld. The candidate reliably understood on enquiry that his result would be declared only after the scrutiny of his community certificate is made by the competent Committee. On 21.10.2009, the candidate herein made a representation to publish his result. That representation was not considered.

(b) Hence, the candidate approached this Court by filing writ petition seeking for a direction to the TNPSC to publish the result and sponsor his name for appointment for Combined Subordinate Services Examination-I, 2008 (Group-II posts). The writ petition came to be allowed following a Division Bench judgment of this Court made in W.P. (MD) No.4672 of 2009 (Between (Arockiyam vs. The Tamil Nadu Public Service Commission, Rep. by its Secretary and another) dated 19.06.2009 holding that the TNPSC has no jurisdiction to sit over the validity of the community certificate issued by a competent authority. The Division Bench had, in fact, relied upon the earlier judgment of a

Division Bench of this Court reported in 2004 WLR 372 (K.K.Senthilkumaran & another vs. The Secretary, Tamil Nadu Public Service Commission). Consequently, the learned Judge directed the TNPSC to declare the result treating the candidate as a scheduled tribe and to pass appropriate orders in accordance with law.

(c) The above direction is questioned by the TNPSC in this writ appeal. When the writ appeal came up for hearing, as already mentioned, the Division Bench directed as follows: -"6. Therefore, while the latter Division Benches have concluded (W.P.No.23189/2008 and W.P. (MD) No.4672/2009) that TNPSC merely has to receive the certificate and accept it as such, the earlier Division Bench, following which all the subsequent orders have been passed, indicates that there is a limited power of examination. This is a very important issue which crops up very frequently before us and therefore this issue has to be clarified, so that the power of the TNPSC when the community certificates are produced before it is decided. The question that is referred is, to what extent the TNPSC have power to examine the Community Certificates regarding their genuineness."

(d) In view of the above reference, the question falls for our consideration is, "Whether TNPSC could verify the genuineness of the community certificates for selection or their power to test the correctness of the information given in the certificates is limited only to see as to whether the certificates are true or not ?"

3. Before we answer the issue referred, we would like to refer the judgments of this Court on the issue. In K.K.Senthilkumaran & another vs. The Secretary, Tamil Nadu Public Service Commission, (2004 WLR 372), a Division Bench was considering the issue where one Thiru.Senthilkumaran and his sister Mrs.K.Jayashree Vijaya Chitra were selected as Assistant Surgeon and Labour Officer respectively as against the posts earmarked for scheduled caste candidates, as they claimed that they belong to the community 'Puthirai Vannan', a Scheduled Caste community. The community certificates issued in favour of them were confirmed by the District Collector, Chennai, within whose territorial jurisdiction, they were ordinarily residing. At the time of their selection, they were directed to produce the community certificates and after scrutiny, the TNPSC went on to record as follows: -"It is seen from the above fact that the Collector did not cause proper enquiry in this regard. His report is based on the community certificate of the father of the candidate which is not correct. The Commission has analysed the issue in depth and has decided that Dr.K.Senthilkumaran does not belong to Puthirai Vanna community (scheduled caste)."

The above order was questioned before this Court and the Division Bench, having noticed that the certificates issued in favour of the above two candidates were confirmed by the District Collector, ultimately in paragraph 7 observed as follows: -"7. The question, however, is whether TNPSC could have actually acted as the appellate authority to the orders passed by the Tahsildar and the Collector. If the TNPSC went on to quash the selection for the reasons extraneous or by using the powers which were never there, could it be said to be action with the jurisdiction of TNPSC? Could it even be called to be a bona fide action on the part of TNPSC? In our opinion, what TNPSC has done in this case is they have assumed to themselves the appellate powers over the Tahsildar's and Collector's orders. Then they went on to examine the correctness of the order of the Collector. In our opinion, this was not possible. The role of TNPSC in examining the certificates would only be limited to see as to whether the certificates were 'true and genuine' or not. The 'correctness' of the information given in the certificates could not be tested by the TNPSC. In this case, the 'correctness' of the community certificate of the appellants was tested by the Collector, Madras, within whose territorial jurisdiction the appellants were ordinarily residing, who had the necessary authority to do so. Once that was done, TNPSC could not assume for itself the powers to sit over the judgment of the Collector. In our opinion, the whole exercise in cancelling the provisional selection was absolutely uncalled for. Therefore, the action taken by TNPSC was itself a non est action. The Court could entertain the writ petition only to the limited extent of quashing the finding by the TNPSC that the petitioners were not Scheduled Caste candidates."

By the above order, the Division Bench found that the TNPSC cannot examine the correctness of the

order of the District Collector and the role of TNPSC in examining the certificates would only be limited to see as to whether the certificates were true and genuine or not.

4. A similar question came up before a Division Bench of this Court at Madurai Bench, in W.P. (MD) No.4672 of 2009 (Between Arockiyam and The Tamil Nadu Public Service Commission and another). In that case as well, the candidate obtained a Hindu Pallan Scheduled Caste community certificate from the Tahsildar, Sivakasi, dated 05.09.2005. On the strength of the said certificate, he applied to the TNPSC for direct recruitment to the posts included in Group-I service for the year 2006-2007. He was successful in the written examination and he also participated in the interview. Though the list of successful candidates was published, his name did not find a place in the list and on enquiry, he came to know that his result had been withheld for scrutinisation of his community status. The Division Bench, following an order of a learned single Judge (N.Paul Vasanthakumar, J.) reported in 2006 (5) CTC 252 (R.Suguna vs. The Tamil Nadu Public Service Commission, rep. By its Secretary) and the Division Bench judgment of this Court in K.K.Senthilkumaran's case (2004 WLR 372), referred supra, holding that the TNPSC has no jurisdiction to sit over the validity of the community certificate issued by a competent authority, allowed the writ petition and directed the TNPSC to declare the result considering the candidate as Scheduled Caste candidate and thereafter, pass appropriate orders in accordance with law.

5. Subsequently, a Division Bench consisting of Honourable Mrs.Justice Prabha Sridevan and Honourable Mr.Justice B.Rajendran, while passing interim orders in M.P. (MD) No.2 of 2010 in W.A. (MD) No.104 of 2010 dated 17.02.2010, placed reliance on the judgments of this Court in R.Suguna's case (2006 (5) CTC 252) and K.K.Senthilkumaran's case (2004 WLR 372) (cited supra), ultimately directed the TNPSC to examine the certificate to the extent directed in Senthilkumaran's case and pass orders both with regard to the certificate and with regard to the declaration of results. This order was taken on appeal before the Supreme Court in Special Leave to Appeal (Civil) No.14176 of 2010 and the same was dismissed by order dated 13.05.2010.

6. Similarly, the question came up for consideration before another Division Bench consisting one of us (D.MURUGESAN,J.) in W.A. (MD) No.471 of 2010 (Between The Tamil Nadu Public Service Commission, Rep. By its Secretary and V.Theivanaivalli and Others). In that case, the candidate obtained a scheduled tribe community certificate from the Revenue Divisional Officer having jurisdiction over the residence of the candidate and on the strength of such certificate, she enrolled her name in the employment exchange. As her name was sponsored by the employment exchange for consideration to the post of Junior Assistant in the Commercial Taxes Department, she became successful and in spite of the same, her name was not forwarded by the TNPSC solely on the ground that the scheduled tribe certificate produced by her had been forwarded to the State Level Scrutiny Committee for verification and till such time the orders are received from the State Level Scrutiny Committee, she would not be appointed. On a challenge to the said order, the Division Bench ultimately found that the TNPSC has no power to withhold the results. The relevant paragraph in the said judgment dated 16.08.2010, for the disposal of the reference under question reads as under: -"5. The first respondent is one of the candidates who took the special qualifying examination and became successful. In spite of the same, her name was not forwarded by the TNPSC solely on the ground that the Scheduled Tribe certificate produced by her had been forwarded to the State Level Scrutiny Committee for verification and till such time the orders are received from the State Level Scrutiny Committee, she would not be appointed. In our opinion, the stand taken by the Tamil Nadu Public Service Commission cannot be accepted and is totally unjustified. When the certificate is issued by the competent authority to a person or individual, it should be presumed to be valid till such time it is cancelled by the competent authority in the manner known to law. This law has been laid down by the Apex Court in the judgment into R.Kandasamy v. Chief Engineer, Madras Port Trust, (1997) 7 SCC 505 and the said law holds the field as of now. In fact, a Division Bench of the Principal Seat has referred to the above cited decision in W.P.No.34615 of 2007 dated 6.11.2007 and in W.A.Nos.1173 and 1174 of 2005 dated 23.01.2008. Therefore, the certificate issued in favour of the first respondent by the concerned Revenue Divisional Officer would certainly enure to the benefit of the first respondent for securing employment. She cannot be denied the regularisation solely on the ground

that the Tamil Nadu Public Service Commission has forwarded the said certificate for verification and she has to wait till the State Level Scrutiny Committee decides one way or other. This practice cannot be adopted in all cases if the Scheduled Tribe candidates apply for appointment and in that event, all those who apply and are consequently selected for the post earmarked for Scheduled Tribe candidates, should have to necessarily wait till such time the State Level Scrutiny Committee decides on their community certificates. If such procedure is allowed, that will result in denial of the legitimate rights of such candidates for appointment. In that view of the matter only, the Courts have held that even when a certificate is sought to be verified, till such time a final decision is taken, based on the certificate which the candidate or the individual is having, the selection or appointment, as the case may be, should not be denied. This law has been laid down by the Apex Court in the judgments in *Sudhakar Vithal Kumbhare vs. State of Maharashtra and others*, (2004) 9 SCC 481 and in *General Manager, Indian Bank vs. R.Rani and another*, (2007) 12 SCC 796."

7. A survey of the above judgments yields two principles evolved by Courts, viz., (i) the TNPSC has no jurisdiction to verify the correctness of the information given in the certificates; and (ii) the TNPSC cannot withhold the results on the ground that the correctness of the information given in the certificates including the genuineness of the same is under verification by the Committee constituted for the purpose.

8. To give an authoritative finding, we are inclined to refer the object of reservation and the duties of the TNPSC.

9. Part VI of the Constitution of India deals with special provisions relating to certain classes. Among other reservation provided under various Articles, Article 341 relating to Scheduled Caste and Article 342 relating to Scheduled Tribe provide as follows: - "341. Scheduled Castes. - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of the group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes. - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

10. The above Articles were made keeping in tune with the fundamental rights conferred under clause (4) of Article 15 empowering the State to make any special provision for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes; under clause (4) of Article 16 empowering the State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State; and under clause (4A) of Article 16 empowering the State to make any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State

are not adequately represented in the services under the State. Clause (4) of Article 15 is a special provision as against Article 14 relating to the equality clause to enable the State to make law for advancement of the Scheduled Castes and Scheduled Tribes. Clause (4) of Article 16 is on the basis of law that could be enacted by the State for the advancement of any socially and educationally backward classes or for the advancement of Scheduled Castes and Scheduled Tribes in matters of reservation of appointments and Clause (4A) of Article 16 relates to such benefits in the matter of promotion.

11. In this context, it would be useful to refer some of the decisions of the Apex Court considering the above provisions of the Constitution of India. In *Kailash Sonkar v. Maya Devi*, (1984) 2 SCC 91, a Bench of three Judges of the Apex Court, considering the historical perspective confronting the framers of the Constitution in drafting the Constitution, stated that one of the important objectives to be translated into action was to take special care of the Backward Classes and members of the Dalits and Tribes by bringing them to the fore through pragmatic actions and providing adequate opportunities for their amelioration and development, education, employment and the like.

12. While considering the issue of reservation with reference to Articles 15(4) and 16 (4) of the Constitution of India, speaking for the Bench in the Apex Court in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217, His Lordship Justice Ratnavel Pandian, in paragraphs 146 and 147 has observed as follows: -"146. The basic policy of reservation is to off-set the inequality and remove the manifest imbalance, the victims of which for bygone generations lag far behind and demand equality by special preferences and their strategies. Therefore, a comprehensive methodological approach encompassing jurisprudential, comparative, historical and anthropological conditions is necessary. Such considerations raise controversial issues transcending the routine legal exercise because certain social groups who are inherently unequal and who have fallen victims of societal discrimination require compensatory treatment. Needless to emphasise that equality in fact or substantive equality involves the necessity of beneficial treatment in order to attain the result which establishes an equilibrium between two sections placed unequally.

147. It is more appropriate to recall that "There is equality only among equals and to equate unequals is to perpetuate inequality."

13. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*, (1995 Supp. (2) SCC 549) and *R. Chandevaramappa v. State of Karnataka*, [(1995) 6 SCC 309], the Apex Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15 (4) and 46, or in appointment to an office or a post under the State under Article 16 (4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste, etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

14. In *Valsamma Paul v. Cochin University*, (1996) 3 SCC 545, the Apex Court found that,

"..The concepts of 'equality before law' and 'equal protection of the laws' guaranteed by Article 14 and its species Articles 15(4) and 16(4) aim at establishing social and economic justice in political democracy to all sections of society, to eliminate inequalities in status and to provide facilities and

opportunities not only amongst individuals but also amongst groups of people belonging to Scheduled Castes (for short 'Dalits'), Scheduled Tribes (for short 'Tribes') and Other Backward Classes of citizens (for short 'OBCs') to secure adequate means of livelihood and to promote with special care the economic and educational interests of the weaker sections of the people, in particular, Dalits and Tribes so as to protect them from social injustice and all forms of exploitation.

In the very same judgment, by quoting the speech of Dr. Ambedkar, the Apex Court observed that,

"Dr. Ambedkar in his closing speech on the draft Constitution stated on 25-11-1949 that

"what we must do is not to be attained with mere political democracy; we must make our political democracy a social democracy as well. Political democracy cannot last unless there lies on the base of it a social democracy".

Social democracy means 'a way of life which recognises liberty, equality and fraternity as principles of life'. They are not separate items in a trinity but they form union of trinity. To diversity one from the other is to defeat the very purpose of democracy. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. Articles 15(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for the protection of society. The right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular, Articles 14, 15, 16, 21, 38, 39 and 46 of the Constitution, is to make the quality of the life of the poor, disadvantaged and disabled citizens of society, meaningful. Equal protection in Article 14 requires affirmative action for those unequals by providing facilities and opportunities. While Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, place of birth, Article 15(4) enjoins upon the State, despite the above injunction and the one provided in Article 29(2), to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Dalits and Tribes. Equally, while Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, Article 16(4) enjoins upon the State to make provision for reservation for these sections which in the opinion of the State are not adequately represented in the services under the State.

15. The issue as to how the verification as to the genuineness of the social status certificate should be made came up for consideration before the Apex Court in *Kumari Madhuri Patil and Another vs. Additional Commissioner, Tribal Development and Others*, (1994) 6 SCC 241 :: AIR 1995 SC 94, having noticed the importance of the benefits that could be made available only to the candidates/persons who deserve and for that purpose of framing guidelines, the Apex Court took note of the following object of reservation: - "The object of Articles 341, 342, 15(4), 16(4) and 16(4-A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities wherefrom they suffer. So also considering the typical characteristic of the tribal including a common name, a contiguous territory, a relatively uniform culture, simplistic way of life and a tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from such persons do not suffer any disabilities. Therefore, the condition precedent for a person to be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, one must belong to a tribe and suffer disabilities wherefrom they belong."

Having realised the importance of reservation in the admission to educational institutions and for employment and the benefit of the same should be made available to those who are really entitled to, the Apex Court issued the following guidelines in *Kumari Madhuri Patil's case*: - "13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or

posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of 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 Directorate concerned.
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 department concerned, (II) 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.

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 elective posts or offices under the State or the Union or elections to any local body, legislature or 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 educational institution concerned 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."

16. Directions 1 and 2 of paragraph 13 in the above judgment, issued in respect of fresh applications to be made for grant of social status certificate. While such an application is made to the competent authorities concerned, 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 Directorate concerned. For the purpose of verification and issuance of social status certificate, the State Governments were directed to constitute a Committee consisting of three officers, viz., (i) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (ii) 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 and 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.

17. Pursuant to the above directions of the Apex Court, various Government Orders were passed by the Tamil Nadu State Government conferring powers on the Committees to verify the genuineness of the community certificates in respect of Scheduled Caste and Scheduled Tribe candidates. Originally, as per G.O.Ms.No.2137, Adi Dravidar and Tribal Welfare Department, dated 11.11.1989, for the purpose of obtaining a fresh social status certificate, claiming to be a scheduled caste candidate, one should apply to the Tahsildar, in whose jurisdiction the candidate resides and in respect of the candidate claiming to be a scheduled tribe, he should apply to the Revenue Divisional Officer, in whose jurisdiction such candidate resides. Subsequently, various Government Orders were issued and finally, the Government of Tamil Nadu by issuing G.O. (Ms.) No.111, Adi Dravidar and Tribal Welfare (ADW-10) Department, dated 06.07.2005, constituted a three-member Committee at the District level to verify the genuineness of the community certificates issued to Scheduled Castes/Scheduled Tribes, with a further direction that the District Collector shall co-opt an anthropologist, who is serving in any of the Government Departments or Educational Institutions, as a member in the District Vigilance Committee. Thereafter, the Government decided to constitute two Committees, one at the District level and another at the State level and issued G.O. (2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 and the Constitution of the Committees are as follows: -

District Level Vigilance Committee Functions

1. District Collector Chairman To scrutinize the genuineness of the community certificates issued as Scheduled Caste and to pass final Orders. If aggrieved by the orders, appeal will lie only with the High Court

2. District Adi Dravidar Member Madras under Article 226 of and Tribal Welfare Secretary the Constitution of India and then with Supreme Court under Article 136 of the Constitution of India.

3. An Anthropologist Member State Level Scrutiny Committee Functions

1. Secretary to Government, Chairman To scrutinize the Adi Dravidar and Tribal genuineness of the community Welfare Department certificates issued as Scheduled Tribes and to pass final Orders. If aggrieved by the orders, appeal will lie only with the High Court

2. District/Commissioner Member Madras under Article 226 of Tribal Welfare Secretary the Constitution of India and then with Supreme Court under Article 136 of the Constitution of India.

3. An Anthropologist Member

The above Constitution of two Committees would be in conformity with the direction No.(4) of paragraph 13 of Kumari Madhuri Patil's case, cited supra.

18. Verification of genuineness of the community certificate vests only with the respective Committees constituted by the Government as per the directions of the Apex Court in Kumari Madhuri Patil's case, cited supra and such power of verification of genuineness of community certificates or the correctness of the same is not available to the TNPSC.

19. Nevertheless, could it be said that the TNPSC having been assigned with a duty on its members, who are constitutional appointees, shall accept the certificates as such for the purpose of selection and forwarding the names of the candidates. While considering the above issue, we must keep in mind the object of reservation and the benefit of the same must only go to the deserving candidates and not to unscrupulous candidates who manage to get such a certificate and produce the same for the purpose of selection and appointment. With the above principle in mind, the power of the TNPSC on the issue should be considered.

20. Mr.N.R.Chandran, learned senior counsel appearing for the appellant/TNPSC, would submit that in the wake of direction No.(3) read with paragraph 4 of G.O. (2D) No.108, dated 12.09.2007, the TNPSC would be entitled to insist a certificate from the above Committees in respect of the candidates, as the case may be, for the purpose of selection and forwarding the name for consequential appointments.

21. Paragraph 4 of G.O. (2D) No.108, dated 12.09.2007 reads as under: -"4. All the HODs, District Collectors, Universities, Educational Institutions, Central/ State/Public Sector Undertakings in respect of persons belonging to their Institutions and other recruiting agencies which are implementing constitutional reservation benefits to Scheduled Castes/Scheduled Tribes are directed to follow the orders issued in para 2 and 3 above strictly for the verification of the genuineness of Community Certificates issued as Scheduled Castes/Scheduled Tribes."

The above G.O. is issued in exercise of the power under Article 162 of the Constitution of India. Article 162 provides that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. By that Article, in the absence of any laws for which the State would be entitled to make, the State would be empowered to issue Government Orders which could be enforced as if it is a law. In paragraph 4 of the G.O.(2D) No.108, dated 12.09.2007, the State has directed all HODs, District Collectors, Universities, Educational Institutions, etc. including the recruiting agencies, viz., TNPSC, which are implementing constitutional reservation benefits to the Scheduled Castes/Scheduled Tribes, to follow the directions contained in para 2 and 3 of the said G.O. In para 2 of the said G.O., the Government had directed the Constitution of Committees at two levels, one is the District Level Vigilance Committee for verification of the genuineness of the community certificates issued to the scheduled caste candidates and the other is the State Level Scrutiny Committee for scrutinising the genuineness of the scheduled tribe community certificates. Para 3 of the G.O., of course, relates to the pendency of such verification at the District level before passing the said G.O., with which we are not concerned for the disposal of this writ appeal.

22. In view of the above specific directions, the TNPSC is entitled to forward the scheduled caste/scheduled tribe community certificates to the Committee, which is competent to verify in terms of G.O. (2D) No.108, dated 12.09.2007.

23. At the time when such verification is sought for by the TNPSC, what could be the power of the Commission in respect of such of those candidates, whose certificates are sought to be scrutinised by the respective Committees in case they are selected. It has been held by the judgments, which we have referred to in earlier paragraphs that in such cases, the TNPSC has no power to withhold the results of such candidates for the sole reason that the certificates are sent for verification. This law

appears to be well settled. We do not find any other reason to take a different view. We may add that for example, a candidate armed with a certificate issued by a competent authority appears for the selection process for admission to educational institution, particularly to professional course, if allowed to wait till the verification process is made and completed, there is every likelihood that the candidate may lose his course for that academic year. That apart, in the event, at a later point of time, the certificate is found to be genuine, he may not be admitted in view of the cut-off date prescribed by the Apex Court for admission to professional course, namely M.B.B.S. Course, as the end of September of each year. There is one more reason for the said finding that such candidate will not be admitted in the next year for the sole reason that he was selected in the previous year, as he has to again compete with the other candidates for admission. Insofar as the appointments are concerned, if the selection of the candidate is withheld and the others are given postings, ultimately if the certificate is found to be genuine, he may not only lose his monetary benefits for that period, but may also lose his seniority. The issue is also to be looked into on the other aspect, namely that in case a candidate who seeks for selection for an educational institution or for an appointment with a certificate, which is found to be false later, and if he is admitted or selected immediately, it would result in depriving the chance of a legitimate candidate for his admission or appointment, as the case may be.

24. In order to get over the above situation, the Apex Court in direction No.3 of paragraph 13 in Kumari Madhuri Patil's case, cited supra, has directed that application for verification of caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission in the educational institution or an appointment to a post. This direction mandates that all the candidates who anticipates an admission or appointment to a post shall necessarily make an application for verification of the certificate well in advance, viz., six months in advance before the respective Committees. The above direction is for a definite purpose, viz., at the time when admissions are made or appointments are sought for, such certificate verified by the competent Committee will ensure the entitlement of that candidate for being considered for admission or appointment as against the seat earmarked for the respective reserved category.

25. Keeping in mind the importance of selection of candidates for the appointment to the Public Service, the Constitution of India under Article 315 directed that there shall be a Public Service Commission for the Union and Public Service Commission for each States. The members of the Public Service Commission are appointed in terms of the provisions of Article 316 and on such appointment, they become the Constitutional Functionaries. Article 320 relates to the functions of Public Service Commission among other things and one of the duties of the Public Service Commission is to conduct examination for appointments to the services of the Union and the services of the State respectively. Being a constitutional functionary, the Public Service Commission is entrusted with the task of ensuring the constitutional mandate as to the reservation. To ensure the highest standards in the recruitment process, the Commission has been given highest degree of latitude in its operations and for that purpose, the Constitution of India itself ensures the independence of the commission coming from political, executive or from any side. As against the functions of appointing authority to verify the community certificates produced at the time of seeking for appointments, the TNPSC being a constitutional functionary, to ensure that the reservation made under the Constitution is strictly applied and only such of those eligible candidates are considered and selected as against the posts reserved, would have more responsibility while considering the certificates produced by the candidates. The responsibility of TNPSC cannot be reduced to one of mere recruiting agency without there being a corresponding responsibility to ensure the constitutional mandate of reservation as to the prima facie satisfaction in regard to the truthfulness of the certificate, which may not result in verification of the genuineness of the same and for that reason, the TNPSC is entitled to forward the certificate for verification to the competent Committee. To this extent, the Public Service Commission should have the power to go into the truthfulness of the certificate, and not the power to scrutinize the genuineness or correctness of the certificate of a candidate, who seeks an appointment. The truthfulness of the certificate would be with reference to the production of the caste verification certificate from the Scrutiny Committee by the candidates as provided in direction No.3 of paragraph 13 of the judgment in Kumari Madhuri Patil's case. This would only be a limited power to ensure that

the certificate produced by the applicant who is selected for the appointment under the reserved category is genuine and at the guise of reservation, the applicant who is not otherwise entitled, should not secure an appointment to a post which is reserved for the Scheduled Caste/Scheduled Tribe candidate.

26. In this context, we may also refer to the relevant clauses in the instructions given to the candidates by the TNPSC while calling for applications. Clause 15 of the Instructions relates to production of evidence for claims made in the application. Sub- clause (f) of the said clause relates to community certificate. That clause provides that a candidate claiming scheduled tribe status should obtain a certificate from the R.D.O./Asst. Collector/Sub Collector/Personal Assistant (General) to the Collector of Chennai/District Adi-Dravidar Welfare Officer. For the candidates applying under scheduled caste category, such candidates should obtain the certificate from Taluk Tahsildar. The clause further provides that the community certificate should have been issued by the competent authority prescribed under the Government Order. Sub-clause (iv) of Clause 5 relating to other conditions, states that the claim of the candidates with regard to the community is accepted only on the information furnished by the candidate in the application. Hence, the candidature will be provisional and subject to the Commission satisfying itself about the community status. The said clause also states that mere admission to the interview or inclusion of the name in the list will not confer on the candidate any right of appointment as it is provisional at all stages and the Commission reserves its right to reject any candidature at any stage even after the selection has been made. By that clause, even if a selection is made, it shall be subject to verification of the genuineness of the community certificate and the selection is provisional only subject to cancellation at a later point of time for acceptable reason.

27. In that view of the matter and for the reasons discussed, we answer the reference in the following manner: -

A) The scrutiny of the genuineness of the Scheduled Caste certificates can be made only by District Level Vigilance Committee constituted by the State Government in terms of G.O. (2D) No.108, Adi Dravidar and Tribal Welfare Department, dated: 12.09.2007;

B) The scrutiny of the genuineness of the Scheduled Tribe certificates can be made only by State Level Scrutiny Committee constituted by the State Government in terms of G.O. (2D) No.108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

C) Such scrutiny of certificates, be it Scheduled Caste or Scheduled Tribe, cannot be made by the Tamil Nadu Public Service Commission;

D) For the purpose of processing the application and allowing a candidate to take part in the written examination and the consequential oral examination, the Service Commission would be entitled to verify as to whether the Candidate has produced a Caste Verification Certificate obtained from the respective Committees and in the event such certificate is produced, the selection of the candidate cannot be withheld and the name should be forwarded to the appointing authority for making appointments;

E) In the event a candidate does not produce such a Caste Verification Certificate and in the event he is selected, his name cannot be withheld and can be forwarded for appointment with a clear indication that the selection is subject to the verification of the community certificate;

F) In terms of paragraphs 10 and 15 of the directions of the Apex Court in Kumari Madhuri Patil's case, which we have extracted, a candidate who is selected and appointed subject to verification of the community certificate, shall not claim any benefit of such selection and in case if the certificate is found to be false, the candidate should consequently lose his employment. With the above directions, we answer the issue referred before us.

28. Applying the above principle, the facts of the present case must be considered. The first respondent, on the strength of 'Hindu Konda Reddi Scheduled Tribe Community Certificate', applied

for the post of Group-II services and was selected as against the vacancy reserved for Scheduled Tribe candidates. While referring his certificate to the State Level Scrutiny Committee for verification as to its genuineness, the TNPSC has withheld the selection. In view of our discussion, the TNPSC cannot withhold the result of the first respondent and to this extent, we do not find any reason to interfere with the order in the writ petition. The TNPSC shall now declare the result and forward his name to the Government for appointment. The appointment shall be subject to the verification of the community certificate by the State Level Scrutiny Committee.

29. Before we part with this, we would like to observe that in view of the recurrent problems/difficulties that are being faced not only by the candidates but also the appointing authority/recruiting agency, the verification of genuineness of the certificates at the earliest is absolutely necessary. Though two Committees, one at the District Level and the other at the State Level, were already constituted, we are given to understand that the Committees do not sit regularly because of other works, which results in delay in verification process. In view of the same and keeping in mind the object of reservation in the Constitution; the entitlement of the candidates either to get admission to educational institutions or appointments to the posts earmarked and the verification of the genuineness of the certificate should be made and the proceedings should be completed in a period not exceeding two months on day-to-day basis, as directed by the Supreme Court in Kumari Madhuri Patil's case, in direction No.9 in paragraph 13, we deem it necessary to direct the Government to constitute the Committees on permanent basis, so as to enable the legitimate and genuine candidates to avail their rights provided under the Constitution of India without undergoing any ordeal in the matter of admission or appointment or undergoing a long drawn litigation.

30. With the above directions and observation, we answer the issue and dispose of the writ appeal accordingly. No costs.