

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.Nos.21933 and 21934 of 2014

1. Minor Chandru
Represented by his next friend
and guardian, father M.Anbu
 2. Minor Giridharan
Represented by his next friend
and guardian, father M.Anbu
 3. Mrs.Geetha ... Petitioners in W.P.No.21933 of
2014
 1. Minor Narmadha
Represented by her next friend
and guardian, father Mr.M.Munirathinam
 2. Minor Jothish,
Represented by his next friend
and guardian, father Mr.M.Munirathinam
... Petitioners in W.P.No.21934 of
2014
- Vs.
1. District Level Vigilance Committee,
Rep. by its Chairman/District Collector,
Tiruvannamalai District,
Vengikkal,
Tiruvannamalai District-606 604.
 2. The Tahsildar,
Chengam Taluk Office,
Chengam Town,
Tiruvannamalai District-606 701.

.. Respondents in both the Writ Petitions

Writ Petition No.21933 of 2014 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order

of rejection passed in proceedings O.Mu.E2/18513/2013, dated -12-2013 on the file of the second respondent, to quash the same and to direct the second respondent to forward the application and connected documents to the first respondent to conduct enquiry as contemplated in G.O.(2D).No.108, dated 12.09.2007, Adi Dravidar and Tribal Welfare (CV-I) Department.

Writ Petition No.21934 of 2014 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings O.Mu.E2/9087/2013, dated -12-2013 on the file of the second respondent, to quash the same and to direct the second respondent to forward the application and connected documents to the first respondent to conduct enquiry as contemplated in G.O.(2D).No.108, dated 12.09.2007, Adi Dravidar and Tribal Welfare (CV-I) Department.

For petitioners : Mr.R.Karthikeyan
For respondents: Mr.R.Ravichandran, Addl.G.P.

ORDER

(The Order of the Court was made by V.Dhanapalan,J)

The orders under challenge have been passed by the second respondent-Tahsildar, Chengam, in proceedings in O.Mu.E2/18513/2013 and O.Mu.E2/9087/2013, dated -12-2013, signed on 18.12.2013, in rejecting the claim of the petitioners for issuance of Kuruvan Community Certificate to them, seeking to quash the same and for consequential direction to forward their applications and connected documents to the first respondent-District Level Vigilance Committee to conduct enquiry as contemplated in G.O.(2D).No.108, dated 12.09.2007, Adi Dravidar and Tribal Welfare (CV-I) Department.

2. The petitions are filed by the respective fathers of the minor writ petitioners. The facts pleaded reveal that the deponents to the affidavits filed in support of the Writ Petitions, are the fathers -- M.Anbu and M.Munirathinam, respectively of the petitioners 1 and 2 in both the Writ Petitions and the third petitioner in W.P.No.21933 of 2014 is the wife of the said M.Anbu. The said M.Anbu who is the father of the first and second petitioners in W.P.No.21933 of 2014 and who is also the husband of the third petitioner in W.P.No.21933 of 2014, was working as Driver in the Tamil Nadu Electricity Board and it is claimed that he belonged to Kuravan Community and as per the Tamil Nadu State Government Order in G.O.Ms.No.1773, dated 23.6.1984, the said Community comes under the Scheduled Caste Community. The said M.Anbu has also been issued with a Community Certificate, dated 19.03.1999 by the second respondent-Tahsildar, stating that he belongs to the said Kuravan Community and in the service records of the said M.Anbu, it is also shown that his caste

is Kuravan and in the school records also, it was stated that he belonged to the said Kuravan Community. It is also the case of the deponent-father of the writ petitioners in W.P.No.21934 of 2014 that he also belongs to Kuravan Community and as per the said G.O.Ms.No.1773, dated 23.06.1984, the said Community Kuravan comes under the Scheduled Caste Community. It is their further case that the petitioners 1 and 2 in W.P.No.21933 of 2014 are minors, studying VII and III Standards respectively in Sri Ramakrishna Matriculation Higher Secondary School, Chengam and that the petitioners in W.P.No.21934 of 2014 are also minors, studying IX and VII Standards respectively in Maharishi Higher Secondary School, Chengam and in order to get scholarship and also for higher education for both the minors in both the Writ Petitions, their respective fathers made applications dated 11.11.2013 to the second respondent for issuance of the Community Certificates, stating that they belong to Kuravan Community, which is a Scheduled Caste. It is further submitted that along with the applications, they have also filed the school study certificates stating that the caste of the children is Kuravan as issued by the respective School authorities. The affidavits sworn to before the Notary Public are also enclosed with the said applications indicating the caste which the minors belong to as Kuravan Community. In respect of the third petitioner-wife, her husband, the deponent in W.P.No.21933 of 2014 has also filed the said application seeking for issuance of Community Certificate indicating as Kuravan. Along with the said applications, they have also annexed a copy of the Community Certificate issued to one Ambika, who is the sister-in-law of the said M.Anbu as belonging to Kuravan Community issued by the Tahsildar, Tiruvannamalai. Further, the Community Certificate of one Ammu, who is a relative of the petitioners, stating that she belongs to Kuravan Community, was also annexed with the said applications. Further, a sale deed, dated 18.06.1999 in the name of one Raji, who is a relative of the petitioners, was also annexed, wherein it is stated that the said Raji belongs to Kuravan caste.

3. While so, the second respondent, even though received the said applications along with all the above annexures, did not reply and hence, the petitioners made applications to the Chief Minister's Special Cell and based on the same, the first respondent sent a letter to the second respondent to hold enquiry and pass necessary orders. Subsequently, the second respondent conducted enquiry and passed the impugned orders, stating that the Community Certificate of the fathers of the minors in both the Writ Petitions, was not renewed and further they have not produced the Community Certificate of their ancestors or their blood relatives and accordingly rejected both the applications of the petitioners, vide the impugned orders, signed on 18.12.2013, against which, the present Writ Petitions are filed for the relief stated supra.

4. The petitioners assail the said orders dated 18.12.2013 on various grounds, namely the impugny on the basis of non-

consideration of vital documents annexed to the applications of the petitioners, for taking a decision, that the enquiry as contemplated under G.O.(2D).No.108, dated 12.09.2007 had not been conducted, that the principles laid down by the Supreme Court in the decision reported in 1994 (6) SCC 241 (Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others) had not been followed while conducting enquiry and therefore, the rejection of the applications of the petitioners in the impugned proceedings, is without application of mind and the same is a non-speaking order and hence, they are legally infirmed and liable to be set aside.

5. The second respondent on his behalf and also on behalf of the first respondent, has filed counter affidavit, inter-alia stating that the said M.Anbu, residing at Thukkapettai Village, Chengam, submitted application for issuing Community Certificates to his children Minor Chandru and Minor Giridharan and also to his wife Geetha, certifying that they belong to Hindu Kuravan Caste under Scheduled Caste Community, that the second respondent scrutinised the application with reference to the documents filed in support of the application and conducted appropriate enquiry and passed the impugned order on 18.12.2013, rejecting the request, stating the reasons that the applicant has not submitted during the enquiry any Community Certificate already issued to any of his blood relatives; the applicant stated that his ancestors originally were residing at Tiruppattur Taluk and now the applicant's family is residing at Thukkapettai Village in Chengam Taluk, but he has not produced any Community Certificate issued in Tiruppattur Taluk to prove that they belong to Kuravan Caste and that the applicant produced the Community Certificate issued to him in 1999 that he belonged to Kuravan Caste, which was outdated and not renewed. Hence, the Writ Petitions are false, baseless and unsustainable.

6. It is also the stand of the respondents in the counter that the entries in the service register of the deponent need not necessarily be a factor for consideration of the request for issuance of the Community Certificate to his children and wife, when the community status was not proved by the petitioners. The school certificates issued to the children as claimed by the petitioners and the service book entries of the applicant, are not proper materials for consideration, as the deponent's Community Certificate was outdated. Further, the Community Certificate of Ambica, the sister-in-law of the deponent and that of Ammu, a relative of the petitioners, could not be relied upon, as they are not blood relatives of the petitioners, so also, the sale deed, dated 18.06.1999 in the name of one Raji, who is stated to be a relative of the petitioners.

7. It is further claimed by the respondents in the counter that the enquiry conducted by the second respondent was in order and as contemplated in the relevant rules and in the manner known to law.

Further, the petitioners, during enquiry, stated that their ancestors originally were residing at Tiruppattur Taluk and now the petitioners' families are residing at Thukkapettai Village in Chengam Taluk, but they have not produced any Community Certificate issued to any of their ancestors in Tiruppattur Taluk stating that they belong to Kuravan caste. The enquiry in that regard was conducted, which was summary in nature. The enquiry so conducted by the second respondent is fully in compliance with the requirements of G.O.(2D).No.108, dated 12.09.2007 of the Adi Dravidar and Tribal Welfare (CV-I) Department. If the petitioners are aggrieved by the orders, dated 18.12.2013, they are entitled to prefer appeal before the Revenue Divisional Officer, Tiruvannamalai and also entitled to file Review Petition before the District Collector, Tiruvannamalai against the Revenue Divisional Officer's order and without exhausting the appellate remedies, they are not entitled to seek for remedy under Article 226 of the Constitution of India by filing the present Writ Petitions. Hence, for the above reasons, the impugned orders of rejection are sustainable and the Writ Petitions are liable to be dismissed.

8. Mr.R.Karthikeyan, learned counsel for the petitioners vehemently contended that the second respondent-Tahsildar, with pre-determined mind and without looking into the material documents placed before him along with the applications as annexures, interpreted his own line of thought and rejected the applications of the petitioners, as if the documents are outdated and not reliable and also not of the blood relatives of the deponents. Learned counsel for the petitioners, by pointing out that the Community Certificate issued to the father of the petitioners 1 and 2 in W.P.No.21933 of 2014, namely M.Anbu, is a genuine document issued by the competent authority at the relevant point of time and the same has been duly produced even before his employer before whom he was working and the same was also entered in his service register in the TNEB and when that being the position, the second respondent's decision to reject the applications, is not fair and proper and against the settled principles of law without analysing the documentary evidence and its credibility. The attitude of the second respondent in doubting the veracity of the Community Certificate issued by the competent authority is not proper and hence, the impugned orders are against the principles settled in law and they suffer from legal infirmity and hence, they are liable to be set aside.

9. On the other hand, Mr.R.Ravichandran, learned Additional Government Pleader appearing for the respondents contended that the second respondent-Tahsildar, on verification of the relevant documents, came to the conclusion that the documents are not supporting their case and the documents are not that of the blood relatives and further the Community Certificate of the deponent M.Anbu is outdated and therefore, the rejection of the claim of the petitioners is no way contrary to law and cannot be found fault with.

He further contended that the enquiry was conducted as contemplated in the said G.O.(2D).No.108, dated 12.09.2007 and hence, there is no infirmity or illegality in the impugned orders passed by the second respondent.

10. We have heard the learned counsel appearing for the parties and perused the material documents available on record.

11. A circumspection of facts reveals that the father of the petitioners 1 and 2 in W.P.No.21933 of 2014 was working as a Driver in TNEB who had the benefit of getting Community Certificate of Kuravan issued by the competent authority at the relevant point of time and he has now decided to apply for his sons (petitioners 1 and 2) to pursue their higher education on scholarship and he also applied for his wife, the third petitioner in W.P.No.21933 of 2014. It is seen that the children are in education in the respective schools and therefore, their father being the natural guardian, applied before the authority for issuance of Community Certificate on 11.11.2013 and to substantiate their claim, they have produced the Community Certificate issued to themselves, namely in respect of M.Anbu and M.Munirathinam, and in addition to that, they have annexed the Community Certificate of one Raji, their relative and also of that of one Ambika and Ammu. They have also enclosed the school certificates issued by the respective school authorities in support of their children's claim. It is also claimed by the deponent-father in W.P.No.21933 of 2014 that his service records in TNEB also shows that his community Kuravan had been entered by the employer.

12. A perusal of the impugned orders shows that the rejection of issuance of Community Certificate was based on the following reasons:

(i) There is no Community Certificate of any blood relative of the petitioners in support of their claim;

(ii) The ancestors of the petitioners were stated to have resided in Tiruppattur and that now the petitioners are now stated to be residing in Tukkapettai Village of Chengam Taluk of Tiruvannamalai District and there is no Community Certificate issued to their ancestors in Tiruppattur;

(iii) The fathers of the petitioners, namely M.Anbu and M.Munirathinam have been issued with the Community Certificates of the year 1999, which have not been renewed and they have become outdated;

(iv) There is no documentary proof of any of the relatives of their ancestors to prove their claim and

(v) There is no proper document submitted by the petitioners to prove that they belong to Kuravan Community.

13. To examine the above orders of rejection, whether it is legally infirmed or not, it is seen that the father of the petitioners 1 and 2 in W.P.No.21933 of 2014, had been issued with Community Certificate by the competent Tahsildar as early as on 19.03.1999, which document has also been produced before his employer-TNEB and entered in his service register and connected records. Besides the Transfer Certificate issued by the Headmaster of Government Higher Secondary School, Koratti, Vellore District also shows that the wife of the said Anbu, namely Geetha, who is the third petitioner in W.P.No.21933 of 2014, belongs to Kuravan (SC) Community, which document has also been annexed to the application before the Tahsildar. Further, the sale deed, dated 18.06.1999 of one Raji also shows that they belong to Kuravan caste, which has also been produced before the authority. The Community Certificates of one Ambika and Ammu have also been enclosed with the applications to prove that they belong to Kuravan caste.

14. The second respondent has taken a stand as to the validity of the Community Certificate of the father of the petitioners 1 and 2 in W.P.No.21933 of 2014 on the ground that it has become outdated and the Community Certificate of the sister-in-law of the deponent (M.Anbu), namely Ambika and that of Ammu are not relevant for consideration and could not be relied upon and that the sale deed of the said Raji, dated 18.06.1999, who is also stated to be a relative of the petitioners, is also not reliable. It is the claim of the respondents that the enquiry had been conducted in the manner known to law and hence, the impugned orders of rejection are sustainable.

15. It is true that the second respondent-Tahsildar is the competent authority and having power to examine and verify as to what is the genuinity of the documents annexed by the petitioners in their applications seeking for issuance of Community Certificate. In that process, he found that the Community Certificate of the said Anbu and that of the said Munirathinam, have become outdated. When the competent authority like that of the second respondent has already issued a Community Certificate to the said Anbu and also to the said Munirathinam in 1999, it is not known as to how it could be possible for the authority competent in the same position to doubt the genuineness of the said Certificate issued to them at the relevant point of time, one of which has also been produced before the Department (TNEB) and entered in his service register also (for M.Anbu). It is not for the second respondent to doubt the veracity of the Community Certificate issued to the said Anbu and Munirathinam, without giving an opportunity to the concerned persons, namely the holders of the Community Certificates, M.Anbu and M.Munirathinam. It is not known as to under what analogy the second respondent has rejected the documents annexed in respect of Ambika and Ammu to

conclude that they are not relevant for consideration. It is not known as to whether the authority has applied his mind to come to such a conclusion on verification by giving an opportunity to the petitioners, as also in respect of the sale deed, dated 18.06.1999, in the manner as expected of him. It is claimed that the enquiry had been conducted as per G.O.(2D).No.108, dated 12.09.2007. Further, the credibility of the evidence has to be decided in the manner known to law and the second respondent cannot simply look into the documents and consider and reject the same on flimsy reasons and doubt the documents enclosed by the applicants-fathers of the minor petitioners without any rhyme or reason.

16. Looking into every aspect of the matter and for the foregoing reasonings, the decision taken by the second respondent to reject the claim of the applicants for issuance of Community Certificate, is not in accordance with law and there is total non-application of mind on the part of the second respondent before coming to such a conclusion and without giving the real reasons for rejecting the claim, he has passed the non-speaking impugned orders, which is not acceptable in the eye of law. The main reason stated that the residence of the petitioners is not in Tiruppattur and they have not enclosed any certificate issued by the Tiruppattur authorities to prove their caste. These are all materials which give clear impression to this Court that the second respondent has not at all verified the genuineness of the documents placed before him along with the applications filed by the petitioners and therefore, the matter needs re-consideration by him in accordance with law based on the Madhuri Patil's case (cited supra) and also by conducting proper enquiry as per the requirements of the relevant Government Orders issued from time to time on the subject.

17. Upon considering all the above aspects of the matter and the submissions made on either side, we are of the considered opinion that the impugned orders cannot be allowed to stand on legal scrutiny as they are legally infirmed on the ground of non-application of mind and as they are also non-speaking orders. Therefore, we set aside the impugned orders and remit the matters back to the second respondent for re-consideration of the matter in accordance with law, taking into account the aspects mentioned in this order.

18. Though the petitioners have prayed for quashing of the impugned orders with consequential direction to the second respondent to forward the applications and connected documents to the first respondent-Committee to conduct the enquiry as contemplated in G.O. (2D).No.108, dated 12.09.2007 of Adi Dravidar and Tribal Welfare (CV-I) Department, the first respondent-Committee is not competent to consider the applications of the petitioners at this point of time, when the competent authority (second respondent) has not looked into the matter properly and hence, we are not inclined to issue such a direction prayed for by the petitioners and we only remit the matters

back to the second respondent for re-consideration in accordance with law, keeping in mind the observations made in this order. Accordingly, the second respondent shall conduct proper enquiry, conclude it and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above observations, the Writ Petitions are allowed and remanded. No costs.

Sd/-

Assistant Registrar

/true copy/

Sub Asst Registrar

cs

Copy to

1. District Level Vigilance Committee,
Rep. by its Chairman/District Collector,
Tiruvannamalai District,
Vengikkal,
Tiruvannamalai District-606 604.
2. The Tahsildar,
Chengam Taluk Office,
Chengam Town,
Tiruvannamalai District-606 701.

+1 CC to M/s MR. R. KARTHIKEYAN, ADVOCATE SR.NO 11727
+1 CC to the Government Pleader, Advocate SR.NO.11668

CO-UG

JD 20/03/2015

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