

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.2124 of 2015

V.Palani

.. Petitioner

Vs.

The Revenue Divisional Officer,
Tiruttani,
Tiruvallur District.

.. Respondent

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the proceedings in Na.Ka.1638/2010/A7 dated 14.09.2012 and the consequential order passed in Na.Ka.No.1496-2014-A3 dated 16.12.2014 on the file of the respondent, quash the same and to direct the respondent to issue community certificate to the petitioner's children viz., P.Selvendrakumar and P.Sandhiya that they belong to "Kattunayakan" (ST) community based upon the community certificate already issued to the petitioner.

For petitioner : Mr.S.Doraisamy

For Respondent : Mr.N.Sakthivel, GA

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Questioning the legality and validity of the order dated 14th September, 2012 passed in Na.Ka.1638/2010/A7 and the consequential order dated 16th December, 2014 passed in Na.Ka.No.1496-2014-A3 passed by the respondent, the petitioner has filed the instant writ petition.

2 The relevant facts, as projected by the petitioner, in brief are that the petitioner claiming to be a member of Kattunayakan (ST) community, obtained community certificate on 29th June, 1989 by the then competent officer, the Tahsildar, Pallipet. Thereafter, another community certificate in proper format was issued by the same officer on 3rd August, 1989. On the strength of the said community

certificate, he was working as Head Constable (RPF), Southern Railways. On the basis of the said community certificate, he preferred an application on 17th May, 2010 to the Revenue Divisional Officer (for short "RDO"), Tiruttani for issuance of the community certificate in favour of his children, i.e., P.Selvendrakumar and P.Sandhiya, enclosing certain documents. The said application was rejected on 26th July, 2011 asking him to approach the RDO, Arakkonam. Feeling aggrieved, the petitioner's son, i.e., P.Selvendrakumar preferred a writ petition, being W.P.No.17748 of 2012, which was allowed holding that the direction to approach the RDO, Arakkonam was unsustainable. The matter was remanded back to the RDO, Tiruttani to consider the application on merits and pass orders within a period of eight weeks therefrom. In the meantime, the petitioner preferred one more application on 10th August, 2011 to the RDO, Ranipet, with which this case is not concerned.

3 Pursuant to the order of this Court passed in W.P.No.17748 of 2012, the RDO, Tiruttani, once again, considered the petitioner's application and rejected the same on 14th September, 2012, holding that the petitioner belongs to Sigari community. The petitioner sent a representation, pointing out that there is no community, such as Sigari and the petitioner was granted valid, proper Kattunayakan (ST) community certificate issued by the then competent officer, Tahsildar, Pallipet, which is still valid. In that view of the matter, the case of his children be considered. The respondent vide another impugned order dated 16th December 2014, rejected the same. Being dissatisfied, the petitioner has filed the instant writ petition, challenging the correctness of the aforesaid both orders.

4 Thiru S.Doraisamy, the learned counsel appearing for the petitioner would submit that once the certificate has been issued by the competent officer, the other officer of the same status is not competent to ignore the certificate issued in favour of the father of the children, i.e., the petitioner. The learned counsel further submits that the authority has not adhered to the guidelines laid down by the Supreme Court in catena of decisions. The enquiry was conducted in discreet manner without affording proper opportunity of hearing to explain his case.

5 Thiru N.Sakithivel, learned Government Advocate appearing for the respondent, in response, would submit that the Tahsildar, Pallipet conducted enquiry in discreet manner and visited the village personally and interviewed the other family members. On enquiry, it is found that the petitioner belongs to Kuravar community, not Kattunayakan community. Thus, the application of the petitioner was rejected.

6 Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

7 This court, while considering the issue of discrediting the certificate issued by the competent officer to the parents of the children in a writ petition, being W.P.No.22426 of 2015 [K.Gokul Chandran Vs. The District Collector, Chennai and others], by order dated 24th July, 2015 had categorically stated as under :

"6. Needless to state that if any doubt crops up in the mind of the competent authority qua the genuineness of the community certificate issued to the petitioner while considering his application for grant of the same certificate for his sons, the only course open to the competent authority is to refer the same to the State Level Scrutiny Committee, but, not to take a contrary stand by dis-crediting the same. The said community certificate is subject to further verification by the State Level Scrutiny Committee. In other words, if the competent authority has any doubt about the genuineness of the community certificate issued to the petitioner, he has no competence to ignore the same, unless the same is set aside or modified by the higher authority, i.e., the State Level Scrutiny Committee and he can only refer the matter to the State Level Scrutiny Committee."

The respondent is invariably discarding the certificate issued by the competent officer without referring the same to the State Level Scrutiny Committee, as observed herein-above, followed in a catena of decisions rendered by this Bench.

8 There is one more infirmity in this matter. The Supreme Court in Kumari Madhuri Patil Vs. Additional Commissioner, Tribal Development & Others ¹ has evidently observed that the enquiry has to be conducted in a transparent and open manner. In the event the enquiry is adverse, the petitioner is entitled to show cause notice with a copy of the enquiry report. The petitioner is entitled to an opportunity to adduce evidence and raise objections, if any in the enquiry conducted by the competent officer.

9 In the case on hand, indisputably the enquiry was conducted in discreet manner and the respondent has taken a decision on the basis of the discreet enquiry without giving opportunity to the petitioner, as mandated in Kumari Madhuri Patil (supra) and referred to with approval subsequently in Director of Tribal Welfare, Government of A.P. Vs. Laveti Giri and Anr.², Baswant Vs. State of

1 (1994) 6 SCC 241

2 (1995) 4 SCC 32

Maharashtra & Ors.³, Sudhakar Vithal Kumbhare Vs. State of Maharashtra and Ors.⁴, and G.M., Indian Bank Vs. R.Rani⁵.

10 For the reasons mentioned herein-above, we set aside the impugned orders dated 14th September 2012 and 16th December, 2014, remitting the matter back to the respondent to consider the same afresh in a fair and transparent manner, affording an opportunity of hearing to the petitioner, as aforesaid, and take consequential decision, within a period of six weeks from the date of receipt of copy of this order.

11 Resultantly, the writ petition is allowed. No order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vvk

To

The Revenue Divisional Officer,
Tiruttani,
Tiruvallur District.

+1 cc to Mr.S.Doraisamy, Advocate, sr.46133
+1 cc to Government Pleader, sr.46224

W.P. No.2124 of 2015

vgi co
kra 9/9

सत्यमेव जयते

WEB COPY

³ JT 2000 (10) SC 280

⁴ (2004) 9 SCC 481

⁵ (2007) 12 SCC 796