

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 25.9.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P. No.22031 of 2015

Jeeva ... petitioner

versus

- 1 Union of India
rep. by its Chief Secretary Govt. of
Puducherry Chief Secretariat Puducherry
605 001
- 2 Government of Puducherry
rep. by its Secretary Educational
Department Puducherry 605 001
- 3 The Convenor
Centralised Admission Committee (CENTAC)
Pondicherry Engineering College Campus
Puducherry 605 014
- 4 The Tahsildar cum Executive
Magistrate Taluk Office Oulgaret
Puducherry ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 4th respondent vide Letter No.1647/ TOO/ TAH/2015 on 15.7.2015 and quash the same and to direct the respondents to issue SC community certificate to the petitioners daughter viz. S.Subashini.

For petitioner : Mr.M.Govindaraj for Mr.D.Sreenivasan

For Respondents :Mrs.N.Mala, Additional Government Pleader(Pondy)

O R D E R

(made by K.K.SASIDHARAN, J.)

The ignorance of the Tahsildar, Oulgaret, Puducherry, with regard to the legal position regarding issuance of community status certificates to the members of Schedule Caste, compelled the petitioner to knock the doors of this Chartered High Court to render justice.

Brief facts :-

2. The petitioner is a member of Hindu Adi Dravida Community. Her husband was born in an inter-caste marriage. The father-in-law of the petitioner was a Muhammadian. Her mother-in-law belongs to Hindu Adi Dravida Community. The husband of the petitioner and his brothers and sisters practiced Hinduism. The marriage of the petitioner with Thiru.M.Suburayan was solemnized in accordance with Hindu custom in 1997. In the said wedlock, two daughters were born to the petitioner, namely, Miss. Subashini and Miss.Swathi. The children were brought up with Hindu morals, customs and they were recognized as Hindu Adi Dravida by the petitioners, local people and other members of Hindu Adi Dravida Community. The children were admitted in local school at Pondicherry and they were given scholarships meant for Schedule caste students besides fee exemption.

3. The elder daughter of the petitioner completed her higher secondary course. Since she wanted to join professional course against seats reserved for schedule caste students, application was submitted by the petitioner for issuance of community certificate. The application was rejected by the 4th respondent solely on the ground that the father-in-law of the petitioner practiced Islam faith. The said order is under challenge in this Writ Petition.

4. The 4th respondent in his counter affidavit submitted that field enquiry conducted by the Village Administrative Officers revealed that paternal grandfather of the petitioner's daughter was a Muslim and that the husband of the petitioner was not issued with Schedule Caste Certificate so far and as such, the application was rightly rejected.

5. We have heard Mr.M.Govindaraj, learned counsel for the petitioner and Mrs.N.Mala, learned Additional Government Pleader on behalf of the respondents.

Discussion:-

6. The petitioner is a member of Hindu Adi Dravida Community. The Competent Authority issued a community certificate to the petitioner in accordance with the Constitution (Pondicherry) Scheduled Castes Order, 1964. Similarly, her brothers and sisters were all issued Schedule Caste Community Status Certificates treating

them as Schedule Castes of Pondicherry, otherwise known as Schedule Caste origin. The community certificates referred to above are found in the typed set of papers. Therefore, it is clear that the petitioner is a member of Schedule Caste Community.

7. The certificate issued by the Headmaster, Government Middle School, Pethuchettipet, Puducherry, shows that the husband of the petitioner belongs to Hindu Adi Dravida Community. He was born on 15 October 1958 well before the Presidential Notification. Therefore, he should be treated as a Schedule Caste origin. The birth certificate of Thiru.Suburayan is also on record.

8. The Tahsildar, Oulgaret, issued community certificate to Miss.Subashini, and Swathi, daughters of the petitioner on 9 May 2014 and 25 February 2015, respectively. It was an integrated community certificate indicating the caste, nativity, citizenship and income.

9. The transfer certificate issued by Principal, Vidya Bhavan Higher Secondary School, Uppalam, Puducherry, also shows the community status of Miss.Subashini.

10. The present application for community status certificate was rejected only on the ground that paternal grandfather of the child professed Islam till death. The field verification reports submitted by the Village Administrative Officer of Karuvadikuppam and Saram Village, were taken as the basic materials to reject the application.

11. The documents produced by the learned Government Pleader would show that the Village Administrative Officers, on the basis of local enquiry, reported the following facts to the Tahsildar :-

(a) Thiru.Suburayan, husband of the petitioner was brought up in Hindu culture by her mother Mrs.Sakuthala, belonging to Hindu Schedule Caste;

(b) The father of Thiru.Subarayan professed Islam;

(c) The children are living with the petitioner in Vinoba Nagar, which is a Schedule Caste Colony;

(d) The children of the petitioner by name Subashini and Selvi are brought up in the same environment as that of the petitioner following Hindu culture and custom.

12. From the above reports, instead of taking positive materials, the Tahsildar has taken a negative factor viz., the practice of Islam by the father-in-law of petitioner, to reject the application for Schedule Caste Certificate. It would appear as if the Tahsildar was looking for a ground to reject the application.

13. The Tahisldar in the order impugned in this Writ Petition, and in the counter affidavit, stated that the rejection was on the basis of field enquiry report. However, the fact remains that even the field enquiry reports submitted by both the Field Officers supported the case of the petitioner.

14. The Supreme Court in Rameshbhai Dabhai Naika v. State of Gujarat, (2012) 3 SCC 400, observed that in case the child born in intercaste marriage was accepted by the Schedule Caste Community of the mother, the child is entitled to Schedule Caste Community Status certificate. The Supreme Court said :-

55. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated as a member of the community to which her mother belonged not only by that community but by the people outside the community as well.

15. The documents available on record would clearly show that Miss.Subashini, daughter of the petitioner belongs to schedule caste community and she is entitled to the status of Schedule Caste origin. The application submitted by the petitioner was rejected on a flimsy reason which has no relevance to decide the community status. The petitioner is therefore entitled to succeed.

16. The next question is as to whether the matter should be remitted to the fourth respondent for fresh consideration.

17. The application was submitted for the purpose of applying for a professional course. The learned Government Pleader submitted that the counselling originally fixed today is postponed to 28 September 2015. The last date of making admission for MBBS Course is 30 September 2015. The cutoff date was prescribed by the Supreme Court of India. The Centralized Admission Committee (CENTAC) formed by the Government of Pondicherry, is concluding the admission process

on Monday, 28 September 2015, so as to enable the selected candidates to join the course before 30 September 2015.

18. Even as per the submission of the fourth respondent, the petitioner belongs to Schedule Caste Community. Her children are brought up as members of Schedule Caste Community. In view of the admitted case of the parties, that the petitioner and her daughters are members of Hindu Adi Dravida community, there is no need for a further enquiry in the matter by the 4th respondent.

19. The Supreme Court in Comptroller and Auditor General v. K.S. Jagannathan, AIR 1987 SC 537, indicated that in appropriate cases, even a positive direction can be given. The Supreme Court said :-

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

20. Similar question came up for consideration before a Division Bench of this Court in M.Varadhan vs. District Collector, Karur District, 2011(1) CWC 753, of which, one of us (K.K.S.J.) was a party. The Division Bench having found that the application for community certificate was rejected without any valid reason, directed the competent authority to issue certificate.

21. Most recently, a Division Bench of this Court in P.Pushpakumar vs. the Revenue Divisional Officer, Dharmapuri District, (W.P.No.21322 of 2015 dated 16 July 2015), issued a similar positive direction to issue schedule caste community status certificate.

22. In view of the materials produced by the petitioner and the documents filed by the 4th respondent, including the enquiry reports, indicating that the petitioner and her children are following the Hindu Custom, we are of the considered opinion that the petitioner has made out a case for issuance of Schedule Caste Community Certificate.

Disposal :-

23. In the result, the impugned order dated 15 July 2015 is set aside. The fourth respondent is directed to issue Schedule Caste Community Status Certificate to Selvi Subhashini, daughter of the petitioner, on or before 3 p.m. on Monday 28 September 2015.

Direction to CENTAC :-

24. In view of the positive direction to issue Schedule Caste Community Certificate, we direct the Convenor, CENTAC to consider the case of Selvi.Subashni, for admission to profession course, taking into her rank position as Schedule Caste Candidate, without insisting her to produce the Schedule Caste Community Certificate.

25. In the upshot, we allow the Writ Petition. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1 The Chief Secretary
Govt. of Puducherry,
Chief Secretariat Puducherry
605 001

2 The Secretary,
Educational Department,
Government of Puducherry,
Puducherry 605 001

- 3 The Convenor
Centralised Admission Committee (CENTAC)
Pondicherry Engineering College Campus
Puducherry 605 014
- 4 The Tahsildar cum Executive
Magistrate Taluk Office Oulgaret
Puducherry

+1 cc to Mr.D.Sreenivasan, Advocate sr.52122

aa25/09/2015

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