

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.30488 of 2013

R.Thirupathy

.. Petitioner

Vs.

1. The District Collector,
Dharmapuri District, Dharmapuri.

2. The Revenue Divisional Officer,
Dharmapuri Revenue Division, Dharmapuri.

3. The Tahsildar, Palacode Talulk,
Dharmapuri District.

.. Respondents

Writ Petition 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 impugned order of the third respondent herein made in O.Mu.No.1266/2013(A2), dated 19.09.2013, quash the same and consequently direct the respondents herein to issue the Panniandi-Scheduled Caste Community Certificate to the petitioner.

For petitioner : Mr.R.Sivaprakasam for Mr.D.Rameshkumar
For respondents: Mr.R.Rajeswaran, Spl.G.P.

ORDER

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

What is challenged in this Writ Petition is the order, dated 19.09.2013, rejecting the claim of the petitioner for issuance of the Community Certificate for Panniandi Community, which is a Scheduled Caste Community, seeking to quash the same and for consequential direction to the respondents to issue the Panniandi Scheduled Caste Community Certificate to the petitioner.

2. It is the case of the petitioner that he belongs to Panniandi Community, which is a Scheduled Caste Community. In the vicinity of Dharmapuri and Krishnagiri Districts, large extent of Panniandi Community people are residing and they originally carried on their family occupation of rearing pigs. Subsequently, due to modernisation

and global development, the said Community people started to change their avocation according to their suitability and now-a-days, the said family occupation of rearing pigs disappeared, but however, some of the families still continue the same. The Revenue Department refused to issue the Community Certificate as Scheduled Caste of Panniandi and Kosangi Communities. There were several representations and demonstration by the said Community people, demanding to recognise their Community and for issuance of the said Community Certificate, based on which, the Deputy Secretary of the Scheduled Caste and Scheduled Tribes Welfare Department, Secretariat, Chennai, issued a Communication, dated 02.09.2013 in Letter No.13959/Sa.Ma-1/2013-1, directing the District Collectors of Krishnagiri and Dharmapuri Districts to issue the Community Certificate of Panniandi and Kosangi as Scheduled Caste Communities, based on the respective applications. Accordingly, the Certificates have been issued by the respondents to several persons who are relatives, nephews, nieces, etc., of the petitioner. Several relatives of the petitioner were issued with the Community Certificate of Panniandi from the years 1982 to 1988, 2009 and 2010 by the Revenue Department.

3. It is the further case of the petitioner that in order to get a Community Certificate, he has made an application to the first respondent on 01.07.2013, requesting to issue the Panniandi Community Certificate, which is classified as a Scheduled Caste. The first respondent forwarded the said application to the third respondent for necessary action and the same was also received. Subsequently, without proper enquiry and without recording the statement from the petitioner and his family members, the third respondent passed the impugned order, dated 19.09.2013, rejecting the claim of the petitioner, stating that on enquiry, they found that the petitioner belonged to Johi Community, which is a Most Backward Class Community and the third respondent also observed that only based on the School Certificate produced by the petitioner, the Panniandi Community Certificate could not be issued to him. Thereafter, the petitioner made an application under the Right to Information Act to the third respondent, requesting to furnish the statements recorded from the public and also the enquiry report of the Revenue Inspector, Palacode and other particulars, regarding the action taken on his application. The second respondent sent an enquiry report regarding the clarification for issuance of Panniandi Community Certificate for the Panthi Johi and plain Johis, and, by proceedings, dated 24.07.1996 in ROC.No.13043/93/A3, the then Revenue Divisional Officer clarified that Panniandi Community Certificate was issued to the people who belonged to Panthi Johi Community, which is genuine and they migrated from Andhra Pradesh to Tamil Nadu and doing the traditional profession of breeding pigs. Now-a-days, the traditional profession had been modified according to their convenience and hence, the Community cannot be changed. This aspect was not considered by the third respondent while passing the impugned order. Hence, the impugned order of the third respondent is arbitrary and illegal. The issuance of

Community Certificate in respect of the said Community is essential for the petitioner's career and also for his children and he is unable to enjoy the benefits and grants of the Government and other authorities. No opportunity of personal hearing was afforded to the petitioner to put forth his case and hence, the impugned order is vitiated on the ground of violation of principles of natural justice. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

4. The respondents have filed counter affidavit, stating that on 01.07.2013, the petitioner made an application to the first respondent, requesting to issue the Community Certificate of Panniandi, which comes under the Scheduled Caste Community, and the said application was forwarded to the third respondent and the same was received on 20.11.2013. On 05.01.2014, the third respondent, along with Deputy Tahsildar, made local inspection in the area where the petitioner is residing and collected a statement from the local people, which clearly showed that the petitioner does not belong to Panniandi Community. On 04.03.2014, the third respondent made a special visit along with other officials, conducted an enquiry in the local area, collected materials from Registrar Officer and School and submitted a report, which was also served on the petitioner. The third respondent obtained statement from the President of the 1st Grade Village, which showed that the petitioner does not belong to the Community which he is claiming. The petitioner submitted the School Transfer Certificate, which shows Panniandi Community, but that alone cannot be taken into account to decide the issue, because, all the parents of the children at the time of joining in the School, would make an entry in the Admission Forms as they like. So, on the sole documentary proof, the authority of issuing the Community Certificate cannot come to the conclusion without any other supporting documents to the claim of the petitioner.

5. It is further averred by the respondents in the counter affidavit that the petitioner has filed some other Community Certificates of their distant relatives and also of third parties of different villages, as supporting documents to his claim, which cannot be taken into account, as they are all not blood relatives of the petitioner. The petitioner is managing to subvert the system and usurp the benefits envisaged under the Constitution for the Scheduled Caste. The petitioner is seeking to grab the educational and economic benefits for his children, and if this is allowed to go on, the real Scheduled Caste would not get chance and will be sidelined from the educational and economic landscape of our country, thereby, defeating the very purpose of our Constitution. The Village Administrative Officer, in his report, dated 05.07.2013, stated that the writ petitioner does not belong to Panniandi Community. The Revenue Inspector, in his statement, dated 30.08.2013, stated that the report of Sub-Registrar, Palacode, dated 22.08.2013, clearly stated on the basis of the Birth Register from 1942 to 2013 that there is no entry

as Panniandi Caste in the Jerthalav Village. Therefore, on the basis of these facts collected from various sources, the third respondent passed the impugned order, dated 19.09.2013, rejecting the claim of the petitioner. The petitioner actually belongs to Johi (MBC) by birth alone and he cannot seek for such a claim of Panniandi (SC) Community. Hence, the Writ Petition is liable to be dismissed.

6. In the above background of pleadings, learned counsel for the petitioner, by pointing out the impugned order, submitted that the third respondent conducted enquiry and came to the conclusion that the petitioner belongs to Johi Community, which is a Most Backward Class Community and he does not belong to Panniandi Scheduled Caste Community, and thereby rejected the claim of the petitioner for issuance of the Community Certificate in respect of Panniandi Scheduled Caste. Learned counsel for the petitioner also brought to our notice the averments made by the very same third respondent-Tahsildar, in paragraph 2 of the counter affidavit, that on 05.01.2014, the third respondent along with Deputy Tahsildar, made local inspection in the area where the petitioner is residing and collected a statement from the local people on 05.01.2014 itself, which clearly ventilated that they do not belong to Panniandi Community. Thus, it is seen that there is a factual error, as the Tahsildar has not looked into the material information and without application of mind, passed the impugned order, dated 19.09.2013, even prior to the inspection, which was conducted only on 05.01.2014. Therefore, the impugned order is completely vitiated in law.

7. Learned Special Government Pleader appearing for the respondents, by noticing the above submissions, stated that it is an error committed by the third respondent, and therefore, the matter may be remitted back to the respondents for fresh consideration.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. On a perusal of the impugned order and the counter affidavit filed by the respondents, it is clear that the third respondent-Tahsildar has conducted enquiry in the area concerned only on 05.01.2014 in respect of the claim of the petitioner and based on the request of the petitioner, dated 01.07.2013 for issuance of the Community Certificate as well as based on the Revenue Inspector's report, dated 16.07.2013, it is not known as to how the third respondent has sworn to the counter affidavit stating that local inspection was conducted on 05.01.2014 and a decision was arrived at on the basis of the statement collected from the local people on that day, namely on 05.01.2014 itself, which is an error apparent on the material facts, because, the third respondent, without application of mind, passed the impugned order on 19.09.2013 itself, even prior to 05.01.2014. The enquiry as claimed by the third respondent was not conducted prior to the passing of the impugned order, and therefore,

the third respondent-Tahsildar, without application of mind, has passed the impugned order and hence, the impugned order suffers from legal infirmity as well as the factual matrix of the matter, and the same cannot be allowed to stand. Hence, the impugned order is liable to be set aside.

10. Accordingly, the impugned order is set aside. The Writ Petition is allowed. The matter is remitted back to the third respondent-Tahsildar for fresh consideration and for conducting enquiry and to give a clear decision on the issue. The enquiry proceedings will have to be conducted on supervision by the second respondent-Revenue Divisional Officer. Thereafter, the claim of the petitioner for issuance of Panniandi Community Certificate (Scheduled Caste) has to be considered in accordance with law. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. The District Collector, Dharmapuri District, Dharmapuri.
2. The Revenue Divisional Officer, Dharmapuri Revenue Division, Dharmapuri.
3. The Tahsildar, Palacode Taluk, Dharmapuri District.

+2ccs to Mr.D.Rameshkumar, Advocate Sr 1665
+1cc to Govt. Pleader Sr 2316

EV (CO)
km/28.1.

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