

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.06.2016	Pronounced on 18.07.2016
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DATED: 18.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition Nos.15117, 14611 and 14706 of 2016

and

Writ Petition Nos.18359 to 18361 of 2016

M.Ulagappan ...Petitioner in WP.No.15117/2016
M.Vadivel ...Petitioner in WP.No.14611/2016
M.Selvarasu ...Petitioner in WP.No.14706/2016
K.Periyasamy ...Petitioner in WP.No.18359/2016
T.K.Kariyappan ...Petitioner in WP.No.18360/2016
N.Ravichandran ...Petitioner in WP.No.18361/2016

Vs.

The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

... Respondent in all the Wps

Prayer in W.P.No.15117 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No:Na.Ka.8486/2015/A4 dated 07.12.2015 issued by the respondent and quashing the same and directing the respondent to issue a "Kurumans" Scheduled Tribe community certificate to the petitioner's daughter, namely U.Tamizhpavai, immediately.

Prayer in W.P.No.14611 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No:Na.Ka.10649/2015/A4 dated 28.11.2015 issued by the respondent and quashing the same and directing the respondent to issue a "Kurumans" Scheduled Tribe community certificate to the petitioner, immediately.

Prayer in W.P.No.14706 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No:Na.Ka.8480/2015/A4 dated 28.11.2015 issued by the respondent and quashing the same and directing the respondent to issue a "Kurumans" Scheduled Tribe community certificate to the petitioner, immediately.

Prayer in W.P.No.18359 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No:Na.Ka.819/2015/A4 dated 28.11.2015 issued by the respondent and quashing the same and directing the respondent to issue a "Kurumans" Scheduled Tribe community certificate to the petitioner's children viz., Narasimman and Jayapriya, immediately.

Prayer in W.P.No.18360 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No:Na.Ka.811/2015/A4 dated 28.11.2015 issued by the respondent and quashing the same and directing the respondent to issue a "Kurumans" Scheduled Tribe community certificate to the petitioner and his children viz., Kirubanandhan and Mahendiran, immediately.

Prayer in W.P.No.18361 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No:Na.Ka.813/2015/A4 dated 28.11.2015 issued by the respondent and quashing the same and directing the respondent to issue a "Kurumans" Scheduled Tribe community certificate to the petitioner, immediately.

For Petitioners : Mr.M.Radhakrishnan
(in all the WPs)

For Respondent : Mr.P.S.Sivashanmugasundaram
(in all the WPs) Special Government Pleader

COMMON ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

The grant of Community Certificates by the competent authorities has now often become a cumbersome process and at times has paved way for multiple litigations and this batch of Writ Petitions is yet another case on the same lines.

2.We have heard the submissions of Mr.M.Radhakrishnan, learned counsel appearing on behalf of the Writ Petitioners in all the Writ Petitions and the submissions of Mr. P.S.Sivashanmugasundaram, learned Special Government Pleader on behalf of the Respondent and perused the relevant records.

3.There are 6 Writ Petitions that have been filed by different Writ Petitioners challenging the rejection order passed by the Respondent and consequentially praying for issuance of "Kuruman" Scheduled Tribe Community Certificate.

4.Writ Petition No.15117 of 2016 has been filed by M.Ulagappan and it has been submitted by him that he belongs to "Kuruman" (Scheduled Tribe) Community and by an Application dated 18.12.2014, he has requested for issuance of community certificate to his daughter U.Tamizhpavai. Since the same was not considered, he has approached this Court by filing W.P.No.22514 of 2015 and this Court has passed an Order directing the Respondent to decide the matter in accordance with law and on merits within a period of four weeks. The Respondent by order dated 07.12.2015 has rejected the applications and has informed that the Community Certificates of Ulagappan, certificate of his wife Shivasankari and his son Balamanikandan shall be referred to the State Level Scrutiny Committee and until the said Committee decides the genuineness of the certificates, no action shall be taken on his daughter's application.

5.Writ Petition Nos.14611 of 2016 and 14706 of 2016 have been preferred by M.Vadivel and Mr.Selvarasu respectively and it is their submission that they have requested for issuance the same community certificate and have preferred an application dated 01.06.2015 and this Court, in Writ Petition Nos.26229 of 2015 and 26230 of 2015 has directed the Respondent to pass appropriate orders within a period of two weeks. However, the State Level Scrutiny Committee has negated their request and has

directed them to file an Appeal before the Appellate authority as per G.O.Ms.No.235 Revenue (RA 3 (2)) Department dated 26.06.2015.

6.Writ Petition No.18361 of 2016 has been preferred by N.Ravichandran and it is his case that he has made an application on 14.08.2014 for issuance of the same community certificate and he has also enclosed the proceedings dated 28.04.2008 and 27.03.2014 of the State Level Scrutiny Committee declaring his paternal uncle's son S.Kaviyarasan and another paternal uncle's daughter K.Devi to be belonging to "Kurumans" Scheduled Tribe Community. He has also sent a certificate issued by the Tahsildar dated 20.11.2010 showing the relationship between him and the other two persons who have been issued the community certificate. Since no action was taken, he has preferred W.P.No.23591 of 2015 and this Court has directed to pass appropriate orders within a period of eight weeks. However, by order dated 28.11.2015, the Respondent has negated the claim of the Petitioner.

7.Writ Petition No.18360 of 2016 has been preferred by T.K.Kariyappan for issuance of the certificate to him and his children Kirubanandhan and Mahendiran. It is his case also that he is related to S.Kaviyarasan and K.Devi and in spite of the relationship of him with the persons who were already given the certificates has been acknowledged by the certificate dated 30.04.2015, no action was taken and accordingly W.P.No.27155 of 2015 was filed before this Court and direction to that effect was also given to take appropriate action within a period of six weeks. However, by order dated 28.11.2015, the Respondent has negated the claim of the Petitioner.

8.Writ Petition No.18359 of 2016 has been filed by K.Periasamy praying for issuance of Community Certificate for his children Narasimman and Jeyapriya and the relationship between them and S.Kaviyarasan and K.Devi was also proved by a relationship certificate dated 30.04.2015. Since no action was taken on the application, W.P.No.28154 of 2015 was filed and this Court directed the Respondent to pass appropriate orders within a period of six weeks. However, by order dated 28.11.2015, the Respondent has negated the claim of the Petitioner.

9.The learned counsel appearing on behalf of the Writ Petitioner has vehemently contended that the rejection orders passed by the Respondent in all the Writ Petitions are clearly unsustainable in law and especially once when a blood relative

of the Writ Petitioners has been given "Kurumans" Community Certificate, then there is no reason for not granting the certificates to the Petitioners. It has also been pointed out that in one case i.e. W.P.No.15117 of 2016, the parents have been given the certificates and the Respondent doubting that has referred the matter to the State Level Scrutiny Committee and in the instant Writ Petition by order dated 25.05.2015, this Court has summoned the Revenue Divisional Officer who has passed the impugned orders to appear before this Court and after the intervention of the learned Additional Advocate General, the matter was adjourned and penultimate placed before us. Even before us, the matter was adjourned on two occasions and after hearing the learned counsel for both parties, this Court dispensed with the presence of the Revenue Divisional Officer.

10.Now, the primary issue that has arisen before this Court is with regard to the manner in which the applications of the Petitioners have been rejected and it has been contended by the learned Counsel for the Petitioner that this Court in a long line of decisions, has put a quietus to the controversy with regard to the grant of Community Certificates especially with regard to the "Kurumans" Scheduled Tribe Community.

11.To canvass his case, the learned counsel for the Petitioners would rely upon the following Judgments:

(L.Hirday Narain v. Income-Tax Officer, Bareilly) reported in AIR 1971 SC 33, Order passed by this Court in W.P.No.26047 of 2008 (U.Sangeetha v. The Assistant Collector, Thirupathur, Vellore District and others), W.P.No.34354 of 2007 (U.Surendra Kumar v. The District Collector, Vellore District, Vellore) and W.P.No.35025 of 2007 (C.Ulagaraju v. The District Level Vigilance Committee, Collector's Office, Vellore District, Vellore-9), W.P.No.3159 of 2015 (M.Kumaresan v. The Revenue Divisional Officer, Krishnagiri), W.P.No.9512/2015 (L.Pushparaj v. The Revenue Divisional officer, Dharmapuri), W.P.No.14434 of 2015 (V.Ravi v. The Revenue Divisional Officer, Harur, Dharmapuri District), W.P.Nos.17231, 17232, 17495 and 17496 of 2015 (P.Govindarasu and another v. The Revenue Divisional Officer, Harur, Dharmapuri District) [reported in (2016) 3 CTC 119], W.P.No.19251 of 2016 (D.Ruthiran v. The Revenue Divisional Officer, Dharmapuri, Dharmapuri District), W.P.No.10760 of 2016 (K.Maruthan v. The Revenue Divisional Officer, Harur, Dharmapuri District), Order passed by the Madurai Bench of this Court in W.P (MD).No.13774 of 2009

(P.Nagarajan v. The District Collector, Madurai District, Madurai and another).

12.Per contra, the learned Special Government Pleader would rely upon the following Judgments:

Order passed by this Court in W.P.No.1819 of 2010 (C.Dorali and Ors. v. Union of India (UOI) rep. by the Secretary and others), W.P.No.11933 of 1983 and 3238 of 1984 (K.L.Karibeeran and another v. State of Tamil Nadu and another) and Order passed by the Madurai Bench of this Court in W.P.No.6909 of 2015 (Sannasi v. The Commissioner / Secretary, State Level Scrutiny Committee, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai - 600 009 and others) to substantiate that the Respondent has passed the impugned orders only in accordance with law.

13.It has been contended by the learned Special Government Pleader that the Petitioners do not actually belong to the "Kurumans" Scheduled Tribe Community and they are not entitled to the grant of the said certificate. It has also been contended by the learned Special Government Pleader that there are contradictory entries in the school admission records and other records and in fact, in certain registers, the Community of the parents has been recorded as MBC only and not as ST community and it has also been submitted that the procedure prescribed by the judgment of this Court in P. Govindarasu and Anr vs. The Revenue Divisional Officer, Harur reported in 2016 (3) CTC 119 has been duly followed and thus prayed that all the Writ Petitions be dismissed.

14.At this juncture, the learned counsel appearing for the Petitioner brought to the notice of this Court that the relationship certificate (Vamsavali Uravinar Sandru) has been issued to all the Petitioners and it has been submitted that the Petitioners have common ancestry and are related with S.Kaviyarasan and K.Devi who have already been granted the community certificates and therefore there is no justifiable reason for denying the certificates to the Writ Petitioners once when it has been certified that they are related to the persons those who have already been issued with the same certificates.

15.The manner in which community certificates have been issued especially to the "Kurumans" ST Community has been a subject matter of several litigations before this Court and in certain cases where the authorities have acted in a

stereotypical manner whereby which they have mechanically rejected all the applications in derogation of the guidelines issued by this Court. Since this became a perennial problem, the Division Bench of this Court recently in P.Govindarasu & Anr vs. The Revenue Divisional Officer, Harur reported in 2016 (3) CTC 119 has elaborately considered the issue at hand and has passed a detailed direction as follows:

"13. Even though in number of occasions, this court has held that the competent authority cannot rely upon the community "Kurumbar" for rejecting the applications seeking Kurumans scheduled tribe community certificate, the authorities are repeatedly violating the same by rejecting the applications on the ground that the applicants belong to Kurumbar (MBC) Community. Hence, on that ground also, the impugned order passed by the respondent is liable to be set aside.

14. So far as conducting enquiry for grant of Scheduled Tribe community certificate is concerned, a Division Bench of this court in which one of us (SATISH K.AGNIHOTRI, J.) is a member, in G.VENKITASAMY & ANOTHER v. THE CHAIRMAN, STATE LEVEL SCRUTINY COMMITTEE (2016-1-LW 289), has issued guidelines as follows:-

"29. From the aforestated analysis, it is manifest that the authorities are required to investigate, identify and conduct the enquiry in the following manner:

i. The authority competent to issue the community certificate, on receipt of the application, shall investigate the application in an open and transparent fashion, affording opportunity of hearing.

ii. The candidate shall have full liberty to explain the documents placed by him or collected by the investigating agency and he shall have opportunity to cross examine the witnesses, if required. The entire exercise shall be completed at the earliest, preferably, within a period of three months.

iii. On receipt of the community certificate issued by the competent authority, the candidate or any other party interested therein may refer the matter to the State Level Scrutiny Committee for verification.

iv. On receipt of the application for verification, the State Level Scrutiny Committee shall refer the matter to the Vigilance Cell for enquiry.

v. The Vigilance Cell, as constituted, shall investigate into the social status claim of the applicant, visiting the local place of residence and original place from which the candidate hails and usually resides. The Vigilance Officer, assisted by the Inspector of Police, shall verify all the documents and collect relevant facts in an open and transparent manner from all the relevant places such as school, locality, etc. and persons such as parents and close relatives and also examine the school officials, parents/guardians and other close relatives of the concerned caste. The Vigilance Cell shall also record the anthropological and ethnological traits and rituals, customs, mode of marriage and other ceremonies of the community claimed by the candidate. Thereafter, on receipt of explanation from the candidate, on a proper examination of the same, a reasoned report shall be submitted to the State Level Scrutiny Committee.

vi. The State Level Scrutiny Committee, on receipt of the Vigilance Cell report, if it is found adverse, shall issue a show cause notice to the candidate with a copy of the report and all the documents submitted by the Vigilance Cell to the concerned candidate, calling upon him to file his reply/explanation/representation and also express his intention to examine witnesses, if necessary. In the event, the report supports the claim of the candidate, the State Level Scrutiny Committee shall not proceed further, but, to pass the order.

vii. The State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within a period of two weeks.

viii. Such verification shall be completed within a period of two months, after receipt of the Vigilance Cell report, preferably, by day-to-day proceedings [See paragraph 13(9) of Kumari Madhuri Patil (supra)]."

15. The competent authorities, without following the directions and the guidelines issued by this court, rejecting the applications on erroneous consideration that the applicants belong to Kurumbar (MBC) Community which is not notified under the Presidential Notification. Hence, in addition to the above guidelines, we would like to issue further directions as follows:-

i) The competent authority while issuing the community certificate, should consider the Schedule Tribe community certificate issued in favour of the parents and close relatives of the applicants, subject to verification of the relationship and until the above certificates are cancelled by the higher authority namely State Level Scrutiny Committee, the competent authority should accept the same and issue Schedule Tribe Community Certificate to the applicants.

ii) The competent authority should not reject the application referring the name of Kurumbar (MBC) while deciding the claim for issuance of Kurumans (ST) community certificate as authorities are not entitled to refer the name of Kurumbar (MBC) for the purpose of deciding the issue of granting Kurumans(ST) Community Certificate.

16. In spite of several orders passed by this court, the competent authorities are repeatedly rejecting the applications without considering the community certificates issued to the parents and close relatives of the applicants and also referring to Kurumbar (MBC) for rejecting the claim. Hence, we direct the Government to give suitable instructions to all the competent authorities to follow the directions issued by this court while deciding the claim of Kurumans (ST) community certificates.

17. For the reasons stated above, the impugned orders passed by the respondent are set aside and the matter is remitted back to the respondent for considering the applications in the light of the orders passed by this court, after affording an opportunity to the petitioners and the respondent is directed to pass orders within a period of six weeks from the date of receipt of a copy of this order. With the above direction, the writ petitions are disposed of. No costs."

16.It has to be necessarily pointed out that in the above judgement itself, it has been made very clear that the authorities should take into consideration the fact with regard to previous grant of community certificate to the relatives and parents of the Applicants and after verifying these facts should grant certificates in appropriate cases. As it has been pointed out in several judgements that grant of community certificate has a direct impact on educational and employment prospects of individuals since the reservation policy mandates that a person seeking claim to a particular community must have a genuine certificate issued by the appropriate authority. In certain cases where the certificates that are to be issued in genuine cases are issued belatedly, then virtually, an individual would be robbed and deprived of his legitimate right and privilege. The authorities who are responsible for issuing the community certificates are no doubt expected to be cautious and circumspect. However, in the name of being cautious, they ought not to reject genuine cases in which certificates are to be granted.

17.In the instant batch of Writ Petitions, it could undoubtedly be seen that the Petitioners have made a claim clearly indicating the fact that their relatives have already been issued with "Kurumans" Scheduled Tribe community certificate and this has not been appreciated properly by the Respondents.

18.Though there are several reasons that are pointed out in the impugned order and the Counter Affidavit to justify the action of the Respondent, this Court finds that the reasoning is squarely unsustainable in law and in conflict with the law laid down by this Court in a catena of cases.

19.For the above said reasons, we are of the view that the impugned orders passed by the Respondent in all the Writ Petitions warrants interference since the same are unsustainable in law and accordingly the impugned orders are set aside. The State Level Scrutiny Committee shall verify the said applications and forward its report within a period of one month from the date of receipt of a copy of this order and the Respondent after obtaining the report shall issue certificates in accordance with law to the Petitioners within a period of one month thereafter.

20.It is needless to state that the relationship certificate and other relevant records produced by the Petitioners shall be duly taken into consideration by the

authorities while completing the above said exercise. Accordingly, the Writ Petitions are disposed off on the above stated terms. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

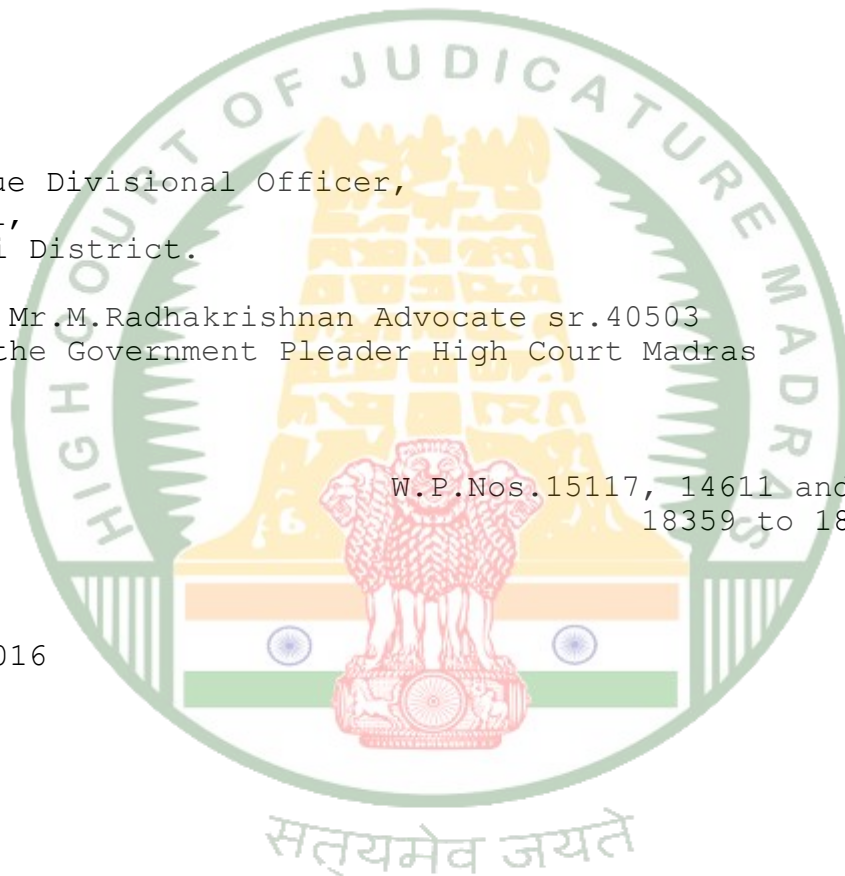
To

The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

+6 ccs to Mr.M.Radhakrishnan Advocate sr.40503
+1 cc to the Government Pleader High Court Madras
sr 40660

W.P.Nos.15117, 14611 and 14706 and
18359 to 18361 of 2016

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