

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.4.2016

Date of decision: 22.4.2016

CORAM

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition Nos.17231, 17232, 17495 and 17496 of 2015

P.Govindarasu ..Petitioner in W.P.Nos.17231 & 17232 of 2015

G.Ramasamy ..Petitioner in W.P.Nos.17495 & 17496 of 2015

-Versus-

The Revenue Divisional Officer,
Harur, Dharmapuri District. ..Respondent in all the WPS.

Prayer: Writ Petitions under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the Order of Rejection passed in proceedings in Pa.Mu.2102/2014(A1), Pa.Mu.2103/2014(A1), Pa.Mu.3872/2014(A1) and Pa.Mu.3873/2014(A1) respectively dated 13.4.2015 on the file of the respondent quash the same and direct the respondent to issue Community Certificate to the son/daughter of the petitioner viz. G.Gokulraj, G.Santhalakshmi, R.Sri Raja Rajeswari and R.Mohan respectively that he/she belongs to Kurumans (ST) Community based upon the Community Certificate already issued to the petitioner and his family members.

For Petitioners : Mr.S.Doraisamy

For Respondent : Mrs.A.Sri Jayanthi,
Special Government Pleader

ORDER

V.BHARATHIDASAN, J.

All the four writ petitions are filed questioning the order passed by the respondent rejecting the petitioners' applications for grant of community certificate and consequential direction to issue community certificate as Kurumans (ST) based on the community certificate already issued to the members of the petitioner's family.

2. Since the issue involved in all the writ petitions are common, all the writ petitions are considered and decided by this common order.

3. In the case of the petitioner in W.P.Nos.17231 and 17232 of 2015, petitioner is the father of two minor children viz., G.Gokulraj and G.Santhalakshmi, and he belongs to Kurumans Community which is notified as a scheduled tribe (ST) community, already a competent authority issued a community certificate to him as Kurumans (ST), when he applied for community certificate for his children, the respondent rejected the same holding that on examination of the birth certificates of residents of Pandarachettipatti Village before 1976, all of them are registered as Kurumbar and there is no registration in the name of Kurumans, and applicants are belongs to Kurumbar community which is a Most Backward Class (MBC) community and not belongs to Kurumans (ST) Community. In the case of the petitioner in W.P.Nos.17495 and 17496 of 2015, the petitioner belongs to Kurumans Community which is an ST community, a community certificate was already issued in the name of his wife R.Govindammal as Kurumans community, and out of his four children, his two daughters R.Indumathi and R.Ilamathi were issued with community certificates by the respondent that they belong to Kurumans (ST). But, when he applied for community certificate for his younger son R.Mohan and daughter Sri.Raja Rajeswari, the respondent rejected the applications stating that they belong to Kurumbar community which is an MBC community and they do not belong to Kurumans as claimed by the petitioner, challenging the orders passed by the respondent, the above four writ petitions were filed.

4. Mr.S.Doraisamy, learned counsel for the petitioners would contend that already a community certificate was issued in the name of the petitioner who is the father of the applicants in W.P.Nos.17231 and 17232 of 2015 and mother and two sisters of the applicants in W.P.Nos.17495 and 17496 of 2015 as Kurumans (ST), the above community certificates are still in force and not cancelled by the higher authority, once a community certificate was issued in favour of the parents, unless the same is cancelled by the higher authority, the respondent cannot reject the same holding that the petitioners family belongs to Kurumbar(MBC) Community and do not belong to Kurumans Community. The learned counsel would further submit that this court, in number of cases, has repeatedly held that the community by name "Kurumbar" is not one notified by Presidential Notification as MBC and therefore, the same cannot be a ground for rejecting the request for community certificate for Kurumans and the competent authority viz., the respondent is not entitled to refer the name of Kurumbar (MBC) for the purpose of deciding the claim of issuance of community certificates The learned counsel also placed reliance upon the following decisions:

- i). Order dated 11.2.2011 in W.P.No.3233 of 2011
- ii) Order dated 29.3.2012 in W.P.No.21535 of 2011
- iii) Order dated 5.11.2013 in W.P.No.1807 of 2013
- iv) Order dated 25.11.2013 in W.P.Nos.25963 and 25964 of 2013
- v) Order dated 1.7.2015 in W.P.No.19251 of 2015
- vi) Order dated 13.7.2015 in W.P.No.9512 of 2015
- vii) Order dated 28.1.2016 in Cont.P.No.2200 of 2015
- viii) Order dated 30.3.2016 in W.P.No.14699 of 2015

5. Per contra, learned Special Government Pleader appearing for the respondent, placing reliance upon the counter affidavit filed by the respondent, contended that as per the instructions issued by the Government, an enquiry was conducted and concluded that the families of the writ petitioners do not belong to Kurumans (ST), but only belongs to Kurumbar (MBC) the principles of natural justice was followed and final orders were passed after giving an opportunity of hearing to the petitioners on 21.10.2014. The learned Special Government Pleader further submitted that during the older years, there is no entry in the school records as Kurumans, but only as Kurumbar and further relying upon the counter affidavit, submitted that the respondent, being a revenue authority, got adequate knowledge about the Kurumans community people and after considering all relevant documents rightly rejected the applications for grant of community certificates as Kurumans(ST).

6. We have considered the rival submissions and perused the records. As contended by the learned counsel for the petitioners, the petitioner in W.P.Nos.17231 and 17232 of 2015, P.Govindarasu obtained community certificate from the Revenue Divisional Officer, Dharmapuri on 9.12.1994 as Kurumans (ST) . According to the petitioner, the above certificate is still valid and so far, no steps were taken by the higher authorities to cancel the same. Likewise, the petitioner's wife in W.P.Nos.17495 and 17496 of 2015 was issued with a community certificate as Kurumans (ST) by the Revenue Divisional Officer, Dharmapuri, the respondent herein on 23.7.1996, apart from that, his two daughters R.Indumathi and R.Ilamathi were also issued with community certificates by the respondent on 27.5.2009, the above fact was neither disputed nor denied by the respondent in his counter affidavit, but, when the petitioners applied for community certificates in favour of his other son and daughters, the same authority rejected the application.

7. We have carefully gone through the impugned order passed by the respondent as well as the counter affidavits filed in the writ petitions. Even though the applicants in all the four writ petitions produced the community certificates issued in favour of their parent and sisters, the respondents did not consider the certificates, but, rejected the applications on the only ground that they all belong to Kurumbar (MBC) community and do

not belong to Kurumans (ST). This Court in a number of cases repeatedly held that once the parents of the applicants were issued with community certificates, without any further verification, the children are also entitled to get the said community certificates. The authorities cannot doubt the certificate issued in favour of the parents by another competent authority unless it is set aside or modified by the higher authority viz., the State Level Scrutiny Committee. A Division Bench of this court in W.P.No.19251 of 2015 in which one of us (SATISH K.AGNIHOTRI, J.) is a member, (D.Ruthiran v. The Revenue Divisional Officer, Dharmapuri) has held as under:-

"We have been repeatedly observing that a community comprises of the members of the family and also members of the same group or tribe, caste, the children derive their community from their parents. If the parents were granted community certificate, without any further verification, their children, are entitled to the said certificate. The respondent has no authority to doubt the certificates issued in favour of the parents by the competent authority unless the same is set aside or modified by the higher authority i.e., State Level Scrutiny Committee."

8. In another judgment in W.P.No.9512 of 2015 dated 13.7.2015, in which one of us (SATISH K.AGNIHOTRI, J.) is a member, (L.Pushparaj v. The Revenue Divisional Officer, Dharmapuri) has held as under:-

"2. Identical issue came up for consideration before this Court in several writ petitions. We clearly observed that the children derive the community from their parents and as such if a certificate is granted to the parents, particularly, father, by a competent authority and the same is not doubted by any other competent authority or set aside or modified by the higher authority viz., the State Level Scrutiny Committee, the respondent has no jurisdiction to take a contrary view on the basis of certain entries made in the School Register and other documents.

3. We have examined all the documents enclosed with the writ petition. It is noticed that the certificates were issued in favour of the petitioner and his father and his brother by the competent officer. It is not the case of the respondent that the said certificates have been found as sham and

bogus by the higher authorities. In that view of the matter, there is no reason to reject the application of the petitioner on aforesaid ground, which may not sustain in view of the proper certificates issued to the father, uncle and grandfather by the competent authority."

9. In yet another judgment in W.P.No.1807 of 2013 dated 5.11.2013, (A.M.Sivakumar v. The Revenue Divisional Officer, Dharmapuri), a Division Bench of this court has held as under:

"6. At the outset, it is to be noticed that the community certificates issued to the petitioner and his wife stating that they belong to 'Kurumans' (Scheduled Tribe) Community are valid and have not been cancelled in the manner known to law. If such valid community certificates are produced before the authority, the same should be taken into consideration for all purposes, even for granting community certificates to the children."

10. This court, time and again, held that when the community certificate was issued in favour of the parents of the applicants by a competent authority, the other competent authority while examining the application for issuance of such certificates for his children, cannot wish away the said certificate on any ground, unless the same is set aside by a higher authority, as the children of a particular community derive their social status from their parents. In such circumstances, when the applicants produced a copy of the community certificate issued to his/her parents and his/her brothers and sisters, the respondent cannot reject their application on the ground that they only belong to Kurumbar (MBC) Community, without considering the above certificates. If at all, any doubt arises regarding the genuineness of the community certificate issued to their parents, the only course open to the competent authority is to refer the same to the State Level Scrutiny Committee for verification and the respondent cannot take a contrary stand and reject the application.

11. Apart from that, the respondent rejected the application only on the ground that the applicants are Kurumbar (MBC) and do not belong to Kurumans(ST). This court, in number of cases, has held that there is no community called Kurumbar notified under Presidential Notification and the same cannot be a ground for rejecting the request for issuing Kurumans (ST) community certificate. The community by name Kurumbar is not notified under the Presidential Notification as MBC, so the respondent / competent authority cannot hold that the petitioners belong to

Kurumbar (MBC) and reject the applications. A Division Bench of this court in W.P.No.3233 of 2011 dated 11.2.2011, (Ganesan v. The Revenue Divisional Officer, Harur, Dharmapuri District) has held as under:-

"As far as the second contention is concerned, we are of the considered view that the community known as Kurumbar is not the one notified under the Presidential Notification and therefore, the same cannot be a ground for rejecting the request for community certificate."

12. In yet another decision of this court in W.P.Nos.25963 and 25964 of 2013 dated 25.11.2013 (E.Mani and another v. The Revenue Divisional Officer, Tiruvannamalai) has held as under:

"8. We find much force in the plea made by the petitioners that the competent authority has relied upon the community Kurumbar for rejecting the application for Scheduled Tribe community certificate and we once again reiterate that the competent authority is not entitled to refer to the name of Kurumbar (MBC) for the purpose of deciding the claim for issuance of Scheduled Tribe Community Certificate. Even assuming that there are certificates issued in favour of one or other persons bearing the name of Kurumbar with or without MBC tag, the authority shall independently verify the claim as to whether the petitioner falls under the Scheduled Tribe community on the basis of relevant materials that would be submitted by the petitioner in the relevant case and also shall follow the procedures prescribed in G.O. Ms. No.106 dated 15.10.2012. The Director of Adi Dravidar and Tribal Welfare Department is directed to inform all the competent authorities to cease and desist from referring to the name of the community as Kurumbar (allegedly said to be MBC) for the purpose of deciding any claim whatsoever."

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 (20161LW 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 daytoday 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.

ssk

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

To:

The Revenue Divisional Officer,
Harur, Dharmapuri District.

+ 2 ccs to Mr. S. Doraisamy, Advocate Sr 25254, 25255

+ 3 ccs to The Govt. Pleader, Sr 25456, 25459, 25461

KR/27/4/16

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17495 and 17496 of 2015

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