

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM :

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Petition No.33050 of 2015

M.Ayyanar

.. Petitioner

Vs.

1.The District Collector,
Collectorate, Villupuram District.

2.The Revenue Divisional Officer
O/O.The Revenue Divisional Officer,
Tirukoilur Taluk, Tirukoilur
Villupuram District.

3.The Revenue Inspector
Tirukoilur Taluk, Tirukoilur
Villupuram District.

4.The Village Administrative Officer,
Tirukoilur Taluk, Tirukoilur
Villupuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent's order dated 18.07.2015 in Na.Ka.A2-4637-13 and quash the same directing the second respondent to issue the Community Certificate to the petitioner and to his minor daughter Tamizharasi, Vadvazhagan and Vadivukkarasi relying on earlier investigation of the Revenue Inspector, Tirukoilur Taluk report dated 22.05.2014 with exemplary costs.

For Petitioner : Mrs.V.Preetha

For Respondents : Mr.P.S.Sivashanmugasundaram,
Speical Government Pleader.

O R D E R

(ORDER OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

The writ petitioner, namely, M.Ayyanar came forward with this writ petition for a direction to the second respondent namely, the Revenue Divisional Officer, Tirukoilur, Villupuram District to issue him and his children, namely, Tamizharasi, Vadivazhagan and Vadivukkarasi Kattunayakan Community Certificate, which is a Scheduled Tribe.

2.Earlier, petitioner had approached this Court by filing WP.Nos.17666 and 17669 of 2015 for similar relief. This Court directed the authorities to conduct enquiry. The second respondent passed the impugned order dated 18.07.2015 declining to issue them Community Certificate as claimed by them. In the circumstances, the said writ petitions were dismissed as infructuous.

3.Now, the present writ petition has been filed by the petitioner to quash the said order dated 18.07.2015 and for issuing of Community Certificate to him and to his children.

4.According to the learned counsel for the petitioner, the impugned order dated 18.07.2015 suffers from several infirmities. It does not disclose a proper enquiry having been conducted. The learned counsel for the petitioner further submitted that the petitioner and his children belongs to Kattunayakan community, they have proper materials in support of the same, however, his claim has been rejected.

5.The second respondent/Revenue Divisional Officer, Tirukoilur filed counter disputing the claim of the petitioner. The learned Special Government Pleader also submitted that except the school transfer certificate of the children of the petitioner, no further acceptable proof has been produced, thus, his claim for community certificate has been rejected.

6.We have anxiously considered the rival submissions, perused the impugned order dated 18.07.2015, affidavit of the petitioner and the counter affidavit of the second respondent and the materials on record.

7. Recently, this Court in its order dated 21.12.2015 in WP.Nos.30368 and 31973 of 2015 (G.Venkitasamy and another V. The Chairman State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai-9), to which I am a party, observed as under :-

"17. The grant of social status certificate to a person is not a mere formality. It is to be borne in mind that both denial of social status certificate to a genuine person and grant of such certificate to a fake person, are unconstitutional.

18. The makers of the Indian Constitution, recognising the social and economic status of a particular community in India, had made provisions for grant of certain preferential treatment under Articles 15(4), 16(4), 341 and 342 of the Constitution of India. If a request for community certificate is rejected in a casual and mechanical manner without proper investigation, the very purpose of Constitutional objective would become otiose. Thus, it is expected that all the authorities involved in the process of identification, investigation and grant of social status certificate (in common parlance, called as "community certificate") need to be sensitised the importance of such certificate. Thus, a detailed enquiry, as considered and laid down by the Supreme Court, is required to be adhered to. Even if a single link is missed, it may lead to unexpected result, which may amount to violation of Constitutional objective and goal."

8. In G.Venkitasamy (supra) we have referred to several judgments of the Hon'ble Apex Court including Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others [(1994) 6 SCC 241]; Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and others [(2013) 4 SCC 465]; State of Maharashtra Vs. Milind and others [(2001) 1 SCC 4] and the relevant G.O. issued by the Government regarding the procedure to be followed in the matter of issuance of Community Certificate. We have laid down the procedure to be followed by the authorities in the matter of issuing Community Certificates. They run as under :-

"29. From the aforesaid 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)]."

9. Further, in G.Venkitasamy (supra) we have also directed the authorities as under :-

"30. All the authorities involved in the process shall adhere to the aforesaid parameters, which are supplemental to the guidelines laid down by the Supreme Court in Kumari Madhuri Patil (supra) and Anand (supra) in their letter and spirit."

10. In the light of the above, if we examine the impugned order dated 18.07.2015 of the second respondent rejecting the claim of the petitioner for Kattunayakan Community Certificate, it is clear that no proper procedure has been followed, no proper opportunity has been given, there is complete non observance of principles of natural justice. In the circumstances, the impugned order does not stand scrutiny of law.

11. The Learned Special Government Pleader also submitted that the second respondent is ready to consider the claim of the petitioner afresh, following the procedure laid down by this Court in G.Venkitasamy (supra).

12. In view of the foregoings, this writ petition is allowed and the impugned order dated 18.07.2015 passed by the second respondent/Revenue Divisional Officer, Tirukoilur is set aside and the matter is remitted back for fresh consideration, in the light of the direction given by us in G.Venkitasamy and another Vs. Chairman State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat, Chennai-9 (WP.Nos.30368 and 31973 of 2015, dated

21.12.2015). 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-VII)

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The District Collector,
Collectorate,
Villupuram.

2.The Revenue Divisional Officer,
O/O.The Revenue Divisional Officer,
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3.The Revenue Inspector
Tirukoilur Taluk,
Tirukoilur,
Villupuram District.

4.The Village Administrative officer,
Thirukoilur Taluk, Thirukoilur,
Villupuram District.

+1 CC to MR.V.Preetha Advocate. SR.NO.426
+1 CC to Govt.Pleader. SR.NO. 584

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CO-CTK
JD 01/02/2016

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