

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition Nos.30030 and 30031 of 2017

Dr.N.Senkar .. Petitioner
in W.P.30030/2017
R.Nischal .. Petitioner
in W.P.30031/2017

Vs.

The Sub Collector,
Hosur,Krishnagiri District. .. Respondent
in both Wps.

PRAYER in W.P.No.30030/2017: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings in Roc No.4917/2011/A2, dated 24.8.2017 on the file of the respondent, to quash the same and direct the respondent to issue community certificate to the daughters of the petitioner, viz., S.Mythri and S.Damini, that they belong to "Kurichchan (ST)" Community based on the community certificate already issued to the petitioner and his own brothers.

PRAYER in W.P.No.30031/2017: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings in Roc No.5344/2014/A2 dated 28.08.2017 on the file of the respondent, to quash the same and direct the respondent to issue community certificate to the petitioner that he belongs to 'Kurichchan Scheduled Tribe' Community based upon the community certificate already issued to his father N.Ramesh.

For Petitioners : Mr.S.Doraisamy

For Respondent : Mr.K.Venkatramani
Addl. Advocate General
For Mr.S.N.Parthasarathy
Government Advocate

ORDER

(Order of this Court was made by M.V.MURALIDARAN,J.)

Calling into question the orders passed by the respondent, in and by which the request of the petitioners for issuance of community certificate to the children of the petitioner in W.P.No.30030 of 2017 and to the petitioner himself in W.P.No.30031 of 2017 was rejected, the present writ petitions are filed.

2. A thumbnail sketch of the facts giving rise to the filing of these writ petitions, on the trot, is as under:

W.P.No.30030/2017:

3.1. The case of the petitioner in W.P.No.30030 of 2017 is that he belongs to "Kurichchan community", which is classified as a Scheduled Tribe Community and the same is also recorded in his school records way back in 1966. It is averred that while he was pursuing PUC, he obtained a community certificate from the Deputy Tahsildar, Denkanikotta, on 08.06.1972 to the effect that he belongs to Kurichchan (ST) community. At the time of admission to the MBBS Course, i.e., on 19.06.1973, he obtained another fresh community certificate from the Deputy Tahsildar, Denkanikotta, as per the direction of the Educational Authority also to the effect that he belongs to Kurichchan (ST) community and thereafter, at the time of admission to the M.S.Course, the petitioner obtained another certificate from the Deputy Tahsildar, Denkanikotta on 07.04.1981 to the very same effect. It is stated that in the service register also petitioner's social status is mentioned as Scheduled Tribe. It is further stated that his own brothers - N.Ramesh (father of the petitioner in W.P.No.30031 of 2017) and N.Aswath were also issued community certificates along the same lines.

3.2. It is averred that, on 17.02.2011, the petitioner preferred an application to the respondent seeking issuance of community certificates to his daughters, viz., S.Mythiri and S.Dhamini. Since the said application did not evoke any response, the petitioner filed a writ petition before this Court in W.P.No.14538 of 2011 and this Court passed an order on 07.07.2011 directing the respondent to dispose his application within a period of 3 months. However, the respondent rejected the claim of the petitioner. Assailing the same, the petitioner filed another writ petition in W.P.No.23332 of 2011, wherein, this court, by order dated 11.12.2012 set aside the order of rejection and remitted the matter to the respondent. Thereafter, it is alleged that the respondent again rejected the application holding that the petitioner belongs to Kunjidigar community.

Impugning the said order, the petitioner filed another writ petition in W.P.No.25005 of 2014. Once again, this Court, by order dated 11.9.2015, set aside the order of rejection and directed the respondent to reconsider the application afresh. Thereupon, the respondent, vide the impugned proceedings dated 24.08.2017, rejected the claim of the petitioner holding that the petitioner does not belong to Kurichchan (ST) Community. Challenging the said order, the petitioner filed W.P.No.30030 of 2017.

W.P.No.30031/2017

4.1. The case of the petitioner in W.P.No.30031 of 2017 is that he belongs to "Kurichchan community", which is a Scheduled Tribe community, and the same is also entered in his school records. His father N.Ramesh and the petitioner in W.P.No.30030 of 2017 are said to be brothers. His father N.Ramesh also obtained a community certificate to the effect that he belongs to "Kurichchan community" and the same is also said to have been entered in his service register.

4.2. It is averred that he made an application to the respondent on 24.12.2014 for issuance of community certificate, duly enclosing the requisite documents fortifying his plea. However, the said application did not evoke any response and the same prompted the petitioner to file W.P.No.33447 of 2015, wherein this Court, by order dated 16.10.2015, directed the respondent to pass orders following the procedure laid down in *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development* ((1994) 6 SCC 241). However, the respondent, by order dated 28.8.2017, rejected the request of the petitioner. Challenging the said order, the petitioner filed W.P.No.30031 of 2017.

5. As the issue involved in both these writ petitions is intertwined, we propose to dispose of these petitions by a common order as infra.

6. The learned counsel appearing for the petitioners would contend that prior to 14.05.1985, all the Gazetted Officers of the Government, including the Head Quarters Deputy Tahsildar, were empowered to issue community certificates to the persons belonging to Scheduled Tribes and it was only by issuance of government order in G.O.Ms.No.517, PI-M Department, dated 14.05.1985, it was modified to the following effect:

"2. Headquarters Deputy Tahsildars and independent Deputy Tahsildar were delegated with powers to issue community certificate in respect of Scheduled Castes/Scheduled Tribes and Backward Classes. Based on the suggestions of the Government of India, orders issued in the G.O third read above have been modified to the effect that in respect of Scheduled

Castes/scheduled Tribes, Revenue Officers below the rank of Tahsildar alone are not authorized to issue community certificates."

7. The learned counsel for the petitioner, to buttress the above said plea, placed reliance on the decisions of the Division Benches of this Court in (i) C.V.Kalaivanan v. The Sub Collector, Mettur Dam, Salem District, 2010 (3) CTC 673, and(ii) A.Madhusamy v. The Revenue Divisional Officer, Dharmapuri and others, (W.P.No.1837 of 2013, dated 15.04.2013) and submitted that the community certificates issued in respect of Scheduled Tribes by the Deputy Tahsildar between 14.02.1957 and 13.05.1985 are valid.

8. He further submitted that the petitioner in W.P.No.30030 of 2017 was issued community certificates on three occasions, to wit, on 08.06.1972, 19.06.1973 and 07.04.1981, and the father of the petitioner in W.P.No.30031 of 2017 was issued community certificate on 13.8.1974 and, therefore, the rejection of the claims now made by the petitioners is arbitrary and unreasonable.

9. On the contrary, Mr.K.Venkatramani, learned Additional Advocate General, while justifying the impugned orders, reiterated the stand taken by the respondent and submitted that the community certificates issued by the Deputy Tahsildar cannot be relied on and that the respondent, who is the competent authority to issue a community certificate, after conducting a discreet enquiry, based on the materials collected, passed the impugned orders, which do not warrant interference.

10. We have heard Mr.S.Doraisamy, learned counsel appearing for the petitioners and Mr.K.Venkatramani, Additional Advocate General, assisted by Mr.S.N.Parthasarathy, learned Government Advocate, appearing for the respondent and perused the documents available on record.

11. A perusal of the documents filed in support of the writ petitions reveals that the petitioner in W.P.No.30030 of 2017 was issued with community certificate on three occasions and his own brother (who is the father of the petitioner in W.P.No.30031 of 2017) was also issued with a community certificate, both to the effect that they belong to "Kurichchan (ST) Community". It is beyond any cavil that the said certificates issued by Deputy Tahsildar have not been set aside till date in a manner known to law.

12. Qua the competency of the Deputy Tahsildar to issue the said community certificates, it is apposite to refer to the decision of the Division Bench of this Court in C.V.Kalaivannan

case, supra, wherein it is held as follows:

"In the impugned order, the respondent has rejected the Community Certificate of the paternal uncle's son of the petitioner by name S.Ravichandran by observing that the Deputy Tahsildar was never the Competent Authority to issue Community Certificate and hence, no reliance can be placed on it.

The learned counsel for the petitioner relying on G.O.Ms.No.517 (PL-M) Department, dated 14.05.1985, submits that Headquarters Deputy Tahsildar and Independent Deputy Tahsildars were delegated with powers to issue Community Certificates in respect of Scheduled Castes/Scheduled Tribes and Backward Classes during the period from 14.02.1957 to 13.05.1985 and only by the above Government Order that power was withdrawn and the Tahsildar alone came to be authorized to issue Community Certificates. Withdrawal of power in the above notification was made in consonance with the direction of the Government of India. In view of the above, the finding of the respondent that the Deputy Tahsildar was never the competent authority to issue Community Certificate, is erroneous in law."

(emphasis supplied)

13. In the light of the decision, referred supra, the respondent is bound to take into consideration the community certificates issued to the petitioner in W.P.No.30030 of 2017 and his brother (father of the petitioner in W.P.No.30031 of 2017) by the Deputy Tahsildar, who is a competent authority, at the relevant time. In any event, such community certificates were issued prior to 11.11.1989.

14. In A.Madhusamy case, supra, after referring to the decision in Kalaivannan, another Division Bench of this Court, held as follows:

"As far as the case on hand is concerned, the certificate issued to the father has not been taken into account on the ground that the same had been issued by the Deputy Tahsildar and not by the Revenue Divisional Officer. But, as per the judgment of the Division Bench of this court reported in (2010) 3 CTC 673, referred above, the community certificate issued between 14.02.1957 and 13.02.1985, even if it is by the Deputy Tahsildar, is valid."

15. In the light of the decisions, supra, and the Government Order in G.O.Ms.No.517, (PL-M) Department, dated 14.05.1985, the community certificates issued by the Deputy Tahsildar are valid.

16. Having arrived at a conclusion that the community certificates issued by the Deputy Tahsildar, as stated above, are valid, let us now consider the question as to whether the claims made by the petitioners merit acceptance.

17. In *State of Bihar v. Sumit Anand*, (2005) 12 SCC 248, the Supreme Court upheld the order of the High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Supreme Court observed as under:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

18. In yet another decision reported in *A.M.Sivakumar v. The Revenue Divisional Officer, Dharmapuri*, 2014 (2) MLJ 231, 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."

19. That apart, another Division Bench of this Court in *C.Ravanan Vs The Revenue Divisional Officer, Vellore*, 2012 SCC Online Mad 5054, held as under:

"3. Going by the fact that nothing is spelt out in the impugned order as regards the certificate already

issued to the petitioner as belonging to Kattunayakan community - Scheduled Tribe, unless and until the said certificate is withdrawn, the question of rejection of the prayer of the petitioner for issuance of similar certificate to his children does not arise. In the circumstances, setting aside the order of the respondent dated 23.01.2003, this court directs the respondent to grant community certificate to the petitioner's children R.Vasuki, R.Sangeetha and R.Kalaiselvi that they belong to Kattunayakan Community, based on the community certificate dated 18.02.1993 issued to petitioner by the respondent herein."

20. The Hon'ble Supreme Court as well as this Court, time and again, held that when community certificates issued in favour of the parents by a competent authority subsist, the authorities are bound to consider the same, unless the same are set aside by a higher authority, while issuing community certificate to their children, as children of a particular community derive their social status from their parents.

21. In the case on hand, it is not the case of the respondent that the community certificates issued to the petitioner in W.P.No.30030 of 2017 and the father of the petitioner in W.P.No.30031 of 2017 have been set aside by the competent authority. Therefore, in the light of the law enunciated in the decisions referred supra, more particularly, the decision in Sumit Anand case, supra, in our considered opinion, the children of the petitioner in W.P.No.30030 of 2017 and the petitioner in W.P.No.30031 of 2017 are also entitled to such community certificates and the impugned proceedings cannot be sustained.

22. In the result:

(a) both the writ petitions are allowed and the impugned orders passed in proceedings in (i) Roc No.4917/2011/A2, dated 24.08.2017; and (ii) Roc No.5344/2014/A2, dated 28.08.2017 respectively, by the respondent in both the writ petitions, are set aside;

(b) the respondent is directed to issue community certificates to the daughters of the petitioner in W.P.No.30030 of 2017 viz. S.Mythri and S.Damini and

to the petitioner in W.P.No.30031 of 2017 to the effect that they belong to 'Kurichchan (ST)' Community;

(c) the said exercise shall be done within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

The Sub Collector,
Hosur,
Krishnagiri District.

+2cc to Mr.S.Doraisamy, Advocate SR.No.87805, 87804

Writ Petition Nos.30030 and 30031 of 2017

GN(20/12/2017)



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