

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.9632 of 2017

R.Manimegalai

.. Petitioner

vs.

The Revenue Divisional Officer,
Harur, Dharmapuri District.

.. Respondent

Prayer: 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 relating to the order of rejection passed in proceedings in Pa.Mu.734/2016 (A1) dated 22.09.2016 on the file of the respondent quash the same and direct the respondent to issue community certificate to the children of the petitioner viz. 1)K.Boopalaram, 2)K.Vasuki Malar and 3)K.Karthick Raja that they belong to Kurumans (ST) community in the light of the Government order in G.O.(2D):17, Adi Dravidar and Tribal Welfare (ADW.II) Department dated 16.08.1994 and the community certificate already possessed by the petitioner and her family members.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.K.Dhananjeyan
Special Government Pleader

ORDER

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

This writ petition has been filed for issuance of writ of Certiorarified Mandamus, calling for the records relating to the order of rejection passed in proceedings in Pa.Mu.734/2016(A1) dated 22.09.2016 on the file of the respondent quash the same and direct the respondent to issue community certificate to the

children of the petitioner viz. 1)K.Boopalaram, 2)K.Vasuki Malar and 3)K.Karthick Raja that they belong to Kurumans (ST) community in the light of the Government order in G.O.(2D):17, Adi Dravidar and Tribal Welfare (ADW.II) Department dated 16.08.1994 and the community certificate already possessed by the petitioner and her family members.

2.The case of the petitioner is that he belongs to Kurumans Community, which comes under the category of Schedule Tribe Community. The petitioner is doing agriculture work and hence she has not obtained any community certificate, since it was not required for the petitioner at that time. Whereas her own brother by name Mr.R.Vadivel and her own sister by name Mrs.R.Jagathammal, obtained community certificate from the respondent viz. The Revenue Divisional Officer, Harur, Dharmapuri District, on 22.07.1996. Since her own brother Mr.R.Vadivel and the petitioner's brother's wife were died in the year 2008 and 2004 respectively, being the sister of late R.Vadivel, this petitioner is the guardian of the children of Mr.R.Vadivel. Therefore, in the said circumstances, on 13.07.2015, this petitioner has submitted a petition before the respondent / Revenue Divisional Officer, Harur, Dharmapuri District, seeking for issuance of community certificate to the petitioner, her children and her brother's children viz. (1) K.Boopalaram, (2)K.Vasuki Malar, (3)K.Karthick Raja, (4) V.Krishanthi and (5)V.Vetrivel that they belong to Kurumans (ST) community.

3.Along with the said application, the petitioner has submitted the following certificates:

- 1.My earlier application dated 28.03.2014, 19.05.2015.
- 2.Community certificate of my own brother R.Vadivel.
- 3.Community certificate of my own sister R.Jagathammal.
- 4.Service register of my brother R.Vadivel.
- 5.Service register of my sister R.Jagathammal.
- 6.School T.C. of V.Krishanthi.
- 7.School T.C. of V.Vetrivel.

Thereafter, there was no enquiry conducted by the respondent. But, the application submitted by the petitioner, was kept pending.

4.Therefore, the petitioner has approached this Court and filed a writ petition in W.P.No.16546 of 2016 to issue community certificate to the petitioner, her children and her deceased brother's children viz.(1)K.Boopalaram, (2)K.Vasuki Malar, (3) K.Karthick Raja, (4)V.Krishanthi and (5)V.Vetrivel that they belong to Kurumans (ST) community based upon the community certificate already issued to the petitioner's sister and brother.

5.Considering the petitioner's case, the Division Bench of this Court on 29.04.2016 has passed the following orders:

"4.We have been repeatedly observing that a community comprises not only the members of a family, but, also the members of the same group or tribe. In the case on hand, when the petitioner's own siblings have been issued with Kurumans (ST) community certificate, as aforesaid, the said certificates do have a high probative value. However, it is well within the power of the competent officer concerned to examine the relationship of the said persons with the applicant, her children and her deceased brother's children.

5.Recently, in G.Venkitasamy and V.Balasubramaniam vs. The Chairman, State Level Scrutiny Committee and Secretary to Government, Adi Dravidar and Tribal Welfare Department, Namakkal Kavingar Maaligai, Fort St. George, Chennai - 9, a Division Bench of this Court, wherein, one of us (Satish K.Agnihotri, J.) was a Member, while dealing with the subject of issuance of community certificates, laid down certain guidelines in sync with the directions issued by the Supreme Court in Kumari Madhuri Patil and another vs. Additional Commissioner, Tribal Development and Others.

6.The learned Special Government Pleader appearing for the respondent submits that a direction may be issued to the respondent to examine the petitioner's application dated 13 July 2015, in the light of the directions issued by this Court in G.Venkitasamy and V.Balasubramaniam (supra).

7.In view of the above submission of the learned Special Government Pleader, it is ordered accordingly. The respondent shall pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order."

6.Pursuant to the order passed by the Division Bench of this Court, the respondent issued community certificate to the petitioner and her brother's children viz. V.Krishanthi and V.Vetrivel on 22.09.2016, whereas the respondent has rejected the claim of the petitioner in respect of her children by name (1)K.Boopalaram, (2)K.Vasuki Malar and (3)K.Karthick Raja, in proceedings in Pa.Mu.734/2016(A1) dated 22.09.2016 stating that they belong to Boyar community.

7.It is the case of the petitioner that when the petitioner and her brother's children belong to Kurumans community, how the respondent has rejected the request of the petitioner's claim for issuance of certificate to her children. Therefore, she has

filed a Contempt Petition in Cont.P.No.527 of 2017 for non issuance of the community certificate to the petitioner's children and the said Contempt Petition is pending before this Court. During the pendency of the said Contempt Petition, this petitioner has filed the present writ petition, challenging the order rejecting the request made by the petitioner for issuance of certificate of the children in Pa.Mu.734/2016(A1) dated 22.09.2016.

8.The writ petitioner has challenged the impugned order on various grounds stating that the rejection order passed by the respondent on the ground that the petitioner's husband by name Kumaran, who belongs to different community, by namely Boyar community, which falls under the Most Backward Class category. It is admitted fact that the petitioner marriage was inter caste marriage, since the petitioner belongs to Kurumans community and her husband belongs to Boyar community, which comes under the Most Backward Class category, the marriage of the petitioner and her husband was opposed by the parents of her husband and relatives. Therefore, after marriage, her husband Kumaran is living with the petitioner along with the petitioner's family and their community members. After the marriage, the petitioner community members were accepted the petitioner's husband as their relatives and he follows all the traditions, customs of their community and in all other respects, he is deemed to be a member of Kurumans (ST) community. The petitioner also states that her children, who are living with their community members are brought up only as Kurumans (ST) community by following the ceremony, tradition and customs of their community.

9.It is the case of the petitioner that while rejecting the request made by the petitioner by refusing to issue the community certificate to the petitioner's children, the respondent has not conducted any enquiry with respect to whether the community members of that area had accepted her husband and children that they follow the ceremony, tradition and customs of the petitioner's community. The petitioner also states that if the respondent conducted an enquiry in a proper manner, definitely the petitioner would have produced the witnesses that the petitioner's children were brought up only in accordance with their customs, tradition of Kurumans (ST) community.

10.Apart from this, the petitioner also states that the Government of Tamil Nadu has issued the Government Order in G.O. (2D):17, Adi Dravidar and Tribal Welfare (ADW.II) Department dated 16.08.1994, in which para-3 of the above Government Order, it is stated as follows:

"In modification of orders issued in G.O.Ms.No.477, Social Welfare Department, dated 27.06.1975, the Government direct the Scheduled Caste/Scheduled Tribe certificates to the off-springs

of inter-caste married couple, where one of the spouses is member of Scheduled Caste/Scheduled Tribe community will be issued after verification of the acceptance given by the members of Scheduled Caste/Scheduled Tribe community living in that area."

11.As per the above G.O. Dated 16.08.1994, the children of the inter-caste married couple, where one of the spouse belong to Scheduled Tribe community, the children may be issued Scheduled Tribe community certificate after verification of the acceptance given by the members of that community living in the said area.

12.Considering the said G.O., in a writ petition filed by one V.Rajalakshmi in W.P.No.43820 of 2006 by an order dated 28.10.2008, this Court passed the orders as follows:

"5.On a perusal of the impugned order, it appears to us, that though the Government order is relied upon, there was no proper opportunity given for the petitioner to let in evidence with reference to the directions contained the Government Order particularly, para 2 and 3 of the same. Hence, the impugned order is liable to be set aside.

6.Accordingly, the writ petition is allowed. The impugned order is set aside and the matter is remitted back to the Revenue Divisional Officer, Ponneri for enquiry afresh. The Revenue Divisional Officer is directed to afford reasonable opportunity for the petitioner to let in evidence in support of her claim for community certificate in tems of benefit given in the Government order in G.O.(2D):17 Adi Dravidar and Tribal Welfare (ADW.II) Department, dated 16.08.1994 and pass necessary orders within two months from the date of receipt of copy of this order or on production of the copy of this order directly by the petitioner."

Therefore, the petitioner sought for the quashment of the said rejection order dated 22.09.2016, on the above said grounds and seeking direction to the respondent to issue community certificate to the petitioner.

13.Though the respondent has filed counter affidavit denying the allegations made in the affidavit. The respondent states that since the petitioner's husband Kumaran belongs to Boyar community, which falls under the Most Backward Class category, the respondent rightly rejected the request made by the petitioner for issuance of community certificate.

14.The respondent also states that the other grounds were exposed by the writ petitioner are purely after thoughts in order to get Schedule Tribe Community Certificates so as to

avail all sort of benefits extended to the Schedule Tribe Community people by the State and Central Governments. The respondent also states that caste is a ascribed status one person's caste is decided by his birth and in this way K.Boopalaram S/o Kumaran born to Boyar community. His father mentioned his child Boopalaram in his 6th Standard as Boyar the Most Backward Community and completed his school and also studied upto graduation under Most Backward Class Boyar category. It is true that the respondent also obtained the certificate of the petitioner's husband Kumaran, where he studied Elementary School study certificate, 6th Standard certificate, 12th Standard Certificate.

15.The respondent also states that the College Transfer Certificate of the petitioner's children did not produced by the petitioner, but her husband has given in his statement that her son completed his graduation under M.B.C. Boyar category. Second child Vasuki Malar studied 10th Standard under M.B.C. Boyar Category. Third child Karthik Raja also completed his 10th Standard under M.B.C. Boyar category. The respondent also states that the respondent also conducted field enquiry and visited the house of the petitioner there, the respondent found that Hindu gods like Shiva, Parvathi, Ganesh, Muruga, Lakshmi, Saraswathi, Adhi Parasakthi, Lord Venkatachalapathy, Gods were worshipped by them. He also worshipped Kathir Perumal as their Kula deivam which is Boyar's Kula deivam. So the children of the petitioner did not follow the culture of Kurumans and followed the culture of Boyar. Therefore, the respondent rejected the request made by the petitioner.

16.The respondent also states that the order of rejection issued by the respondent dated 22.09.2016 is liable to be maintained well neither on facts nor on the face of the law. Apart from this, the respondent also states that the petitioner having alternative remedy to file an appeal before District Collector, Dharmapuri, as per G.O.Ms.No.235 Revenue [RA3(2)] Department dated 26.06.2015 instead to approach this Court under Article 226 of the Constitution of India. Therefore, the respondent sought for dismissal of the writ petition.

17.We heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.K.Dhananjeyan, learned Special Government Pleader appearing for the respondent. We also perused the entire records produced by both the parties.

18.It is admitted fact that this petitioner belongs to Kurumans Community, which is a Schedule Tribe community, whereas her husband belongs to Boyar community, which comes under the M.B.C. Community. Both the petitioner and her husband were married, which is love marriage and the petitioner's husband's family has not accepted the marriage of their son viz. Kumaran.

Therefore, after the marriage the petitioner's husband is living with the petitioner and her family members.

19. At the time of admission of the petitioner's children, it is the case of the respondent that the petitioner's children community was mentioned as Boyar, Kurumbar and Kurumans. Apart from this, the respondent also states that in the certificate of the petitioner's children viz. 10th standard and 12th standard School Transfer certificate, the petitioner's children community was mentioned as Boyar community.

20. The Government of Tamilnadu has issued Government Order in G.O.(2D):17, Adi-Dravidar and Tribal Welfare (ADW.II) Department dated 16.08.1994, in which in para-3 of the above order, it is stated as follows:

"In modification of orders issued in G.O.Ms.No.477, Social Welfare Department, dated 27.06.1975, the Government direct the Scheduled Caste/Scheduled Tribe certificates to the off-springs of inter-caste married couple, where one of the spouses is member of Scheduled Caste/Scheduled Tribe community will be issued after verification of the acceptance given by the members of Scheduled Caste/Scheduled Tribe community living in that area."

21. Thus being the case, as per the above Government Order, the children of the inter-caste married couple, where one of the spouses is member of Scheduled Caste/Scheduled Tribe community will be issued after verification of the acceptance given by the members of Scheduled Caste/ Scheduled Tribe community living in that area. Therefore, in the case on hand, though the petitioner belongs to Kurumans community, the above G.O.(2D):17, Adi Dravidar and Tribal Welfare (ADW.II) Department dated 16.08.1994, is squarely applicable in the petitioner's case, since if any one of the spouses wants to get the certificate in their community, the said G.O. is enabling the respondent authority to issue the said certificate to the petitioner's children. Therefore, when the petitioner, who belongs to Kurumans and applied the Scheduled Tribe community certificate, the respondent have to say no issuance of the Kurumans (ST) community certificate to the petitioner's children.

22. Earlier, the Division Bench of this Court has clearly held that the community comprises not only the members of a family, but also the members of the same group or tribe. In the case on hand, when the petitioner's own siblings have been issued with Kurumans (ST) community certificate, as aforesaid, the said certificates do have a high probative value. The petitioner's community peoples were accepted the marriage of her husband, who belongs to Boyar's community and the petitioner's relatives treated the petitioner's husband as their relative and

he follows all the traditions, customs of their community and in all other aspects. Therefore, the respondent should not say that the children of the petitioner to get only their father Mr.Kumaran community certificate. When the Government Order in G.O.(2D):17, dated 16.08.1994 has very clearly held that one of the spouses is member of Scheduled Caste/ Scheduled Tribe community, the children will be issued community certificate after verification of the acceptance given by the members of Scheduled Caste / Scheduled Tribe community living in that area, the respondent without properly verified or conducted the enquiry had simply rejected the request of the petitioner that the petitioner's children's father viz. Kumaran is belongs to Boyar community and they are also follow the Boyar community. Therefore, the impugned rejection order of the request of the petitioner to issue the community certificate to the children is totally wrong. Hence, there is a necessity arose to this Court for the interference of the order passed by the respondent in the impugned order in Pa.Mu.734/2016(A1) dated 22.09.2016 and accordingly, the impugned order is liable to be set aside.

23.In the result:

(a) this writ petition is allowed by setting aside the impugned order in Pa.Mu.734/2016(A1) dated 22.09.2016 passed by the respondent;

(b) the respondent is directed to consider the petitioner's request of issue community certificate to the petitioner's children by making proper enquiry as per G.O.(2D):17, Adi Dravidar and Tribal Welfare (ADW.II) Department dated 16.08.1994 and pass orders on merits and as per law within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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vs

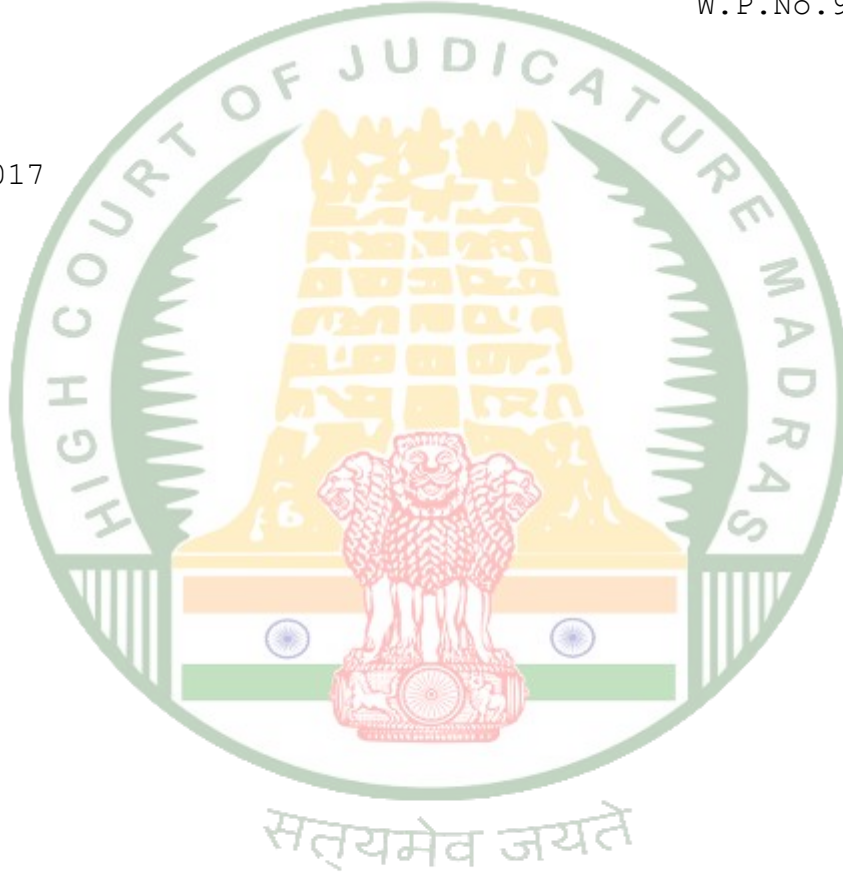
To

The Revenue Divisional Officer,
Harur, Dharmapuri District.

+1 cc to Mr.S.Doraisamy Advocate sr 41406
+1 cc to the Government Pleader sr 41722

W.P.No.9632 of 2017

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