

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM

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

W.P.No.9735 of 2014

K.M.Senthil Kumar

... Petitioner

vs.

The Revenue Divisional Officer,
Dharmapuri.

... 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 Na.Ka.9020/2013/A4 dated 11.03.2014 on the file of the respondent quash the same and direct the respondent to issue community certificate to the petitioner's children viz 1.S.Prasanth and 2.S.Dinesh that they belong to Kurichchan (ST) Community.

For Petitioner : Mr.S.Doraisamy

For Respondent : A.Kumar Special Government Pleader

ORDER

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

This writ petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of rejection passed in proceedings in Na.Ka.9020/2013/A4 dated 11.03.2014 on the file of the respondent quash the same and direct the respondent to issue Community certificate to the petitioner's children viz 1.S.Prasanth and 2.S.Dinesh that they belong to Kurichchan (ST) Community.

2. It is the case of the petitioner that he is a resident of Konampatti Village, Palacode Taluk, Dharmapuri District and he belongs to Kurichchan Community. The said Kurichchan Community is classified as a Schedule Tribe community by the State Government. The petitioner has two sons namely S.Prasanth and S.Dinesh. While so the petitioner applied for issuance of community certificates to his sons on 16.09.2011 before the respondent. Since the said applications remained heedless, the petitioner filed writ petition in W.P.No.3521 of 2012, wherein this court vide an order dated 15.02.2012 directed the respondent to pass order on the petitioner's application within a period of eight weeks thereon. In pursuance to the order of this court the respondent called upon the petitioner for an enquiry to be held on 23.04.2012 along with supporting original documents. Accordingly the petitioner attended the enquiry and in support of his claim has produced the original community certificate of his close relatives. Thereafter the respondent has issued a communication dated 30.04.2012, stating that the community certificates produced by the petitioner were forwarded to the State Level Scrutiny Committee for getting genuiness, it was further informed that on receipt of genuine report from the committee, an appropriate orders will be passed.

3. Being so, on 12.07.2012 the respondent issued a notice calling upon the petitioner to appear before him for an enquiry to be held on 19.07.2012. Accordingly the petitioner appeared before the respondent on the same day, however there was no enquiry conducted. Subsequently on 21.07.2012 the respondent again issued a notice calling upon the petitioner to appear before him for an enquiry to be held on 27.07.2012. Hence the petitioner appeared before the respondent again on 27.07.2012, however there was no enquiry conducted. Whereas the respondent without conducting any enquiry, besides without proper appreciation of the material document vide his order dated 21.08.2012 in a hasty manner has dismissed the petitioner's application. Challenging the said rejection order the petitioner filed a writ petition in W.P.No.18572 of 2013, wherein this Court set aside the order of rejection and remitted the matter back to the respondent for fresh consideration. Wherefore the respondent called upon the petitioner for an enquiry to be conducted on 30.01.2014 and accordingly the petitioner has appeared for the enquiry and has submitted all the material documents and the community certificate of his close relatives, so as to prove the claim that he belonged to Kurichchan community. However, again without proper appreciation of the material documents and the importance of the certificates, the respondent again has rejected the petitioner's application for issuance of community certificate to his sons that they belong

to Kurichchan community. The said rejection order is impugned in this writ petition.

4. We heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.A.Kumar, learned Special Government Pleader appearing for the respondent.

5. The learned counsel for the petitioner submitted that the order of the respondent is liable to be set aside in limine that the respondent failed to appreciate the importance of the original community certificates of his close relatives, disclosing their communal status as "Kurichchan". The order of the respondent came to passed in sheer violation of the guidelines issued by the Hon'ble Supreme Court of India in Kumari Madhuri Patil case reported in AIR 1995 SCC 94, wherein it was held that a community certificate is to be issued after conducting a due enquiry. Whereas in contrary to the order of the Hon'ble Apex Court, the respondent being a revenue authority without conducting enquiry and without calling report from the research officer has chosen to pass the impugned order. It was further contended that the rejection of the petitioner's application by holding that the petitioner cited relatives do not fall within the ambit of the blood relatives is also erroneous, since they all are lineal descendants of a common ancestor namely Errammal. The respondent failed to appreciate that it was sufficiently proved that they were close relatives of the petitioner and they remain undisputed.

6. Per contra the learned counsel for the respondent filed counter affidavit and additional counter affidavit and submitted that only after conducting an enquiry the impugned order came to be passed on merits. During the course of enquiry having found that the relatives cited by the petitioner are not close and direct relatives but only distant relatives on his wife's and mother's side. They were neither on the father nor on brother's side. Furthermore they are resident of one another village. The petitioner belongs to Kunchigar/Kunjidiyar community. Further the community certificate pertaining to the petitioner's relative Mr.E.Sankaranarayanan was not genuine. Only on appreciation of the said facts the petitioner's application for issuance of community certificate to his sons that they belong to Kurichchan community was rightly rejected vide the impugned order.

7. On hearing the rival submissions and on careful perusal of the impugned order, this Court finds that the petitioner's application came to be rejected on the ground that the relatives cited by the petitioner are not close and direct relatives but only distant relatives on his wife's side and mother's side. It is seen that the petitioner so as to establish his communal status as "Kurichchan" has relied upon the community certificates of his relatives namely E.Sankaranarayanan, D.N.Sangeetha, D.N.Saranya, M.Sankari and E.Madesh. Hence, it is needful to look into their relationship with the petitioner.

1. The said Mr.E.Sankaranarayanan is petitioner's Maternal Uncle.
2. The said D.N.Sangeetha and D.N.Saranya are petitioner's wife's aunt's daughters.
3. The said Mr. E.Madesh is petitioner's maternal aunt's son.
4. The said Mr. M.Sankari is petitioner's maternal aunt's granddaughter.

8. At this juncture this court finds from the family genealogy issued by Village Administrative Officer, that all the cited relatives of the petitioner are lineal descendants of a common ancestor namely Erammal. The petitioner and Mr.E.Sankaranarayanan were found to be born in the very same line, meaning thereby, through common ancestor Erammal. Whereas this court's attention was drawn to page No. 3 of the additional typed set of papers containing the proceedings of The State Level Scrutiny Committee certifying that the above Mr.E.Sankaranarayanan belong to Kurichchan Scheduled Tribes Community. The relevant portion is extracted hereunder:

"6.The Anthropologist, Member of the Committee examined the unique customs, cultural aspects and traditional occupation of the individual and recorded the same and approved the fact that the anthropological and cultural aspects of the individual are in concordance with that of the "Hindu Kurichchan" Scheduled Tribes community and categorically stated that the individual belongs to "Hindu Kurichchan" Scheduled Tribes Community.

7. The State Level Scrutiny Committee has carefully examined the deposition made by the individual original records, the views of the Anthropologist and the proceedings of State Level Scrutiny Committee confirming the genuineness of Revenue Divisional Officer's certificate issued to his relative.

8. After careful examination, the committee has decided that Thiru.E.Sankaranarayanan, S/o. Thiru.M.Enchari Gounder belongs to Hindu "Kurichchan" Scheduled Tribes Community. Accordingly, the State Level Scrutiny Committee hereby confirms that the Hindu "Kurichchan" Schedules Tribes Community certificate bearing SI.No.2640926 (ROC No.2615/95/A3) dated 11.03.1996 issued by the Revenue Divisional Officer, Dharmapuri to Thiru.E.Sankaranarayanan, S/o.Thiru.M.Enchari Gounder is genuine".

9. Therefore it is obvious that the contention of the respondent that the certificate of Mr.E.Sankaranarayanan is not genuine found to be erroneous. The genuineness of the certificate is found to be declared as genuine and valid by the State Level Scrutiny Committee. Further vide page 7 of the typed set of papers it is seen that Mr.E.Sankaranarayanan has executed a promissory deed disclosing his relationship with the petitioner as maternal uncle and his community as "Kurichchan". That apart the community certificates of the other cited relatives were also found to be filed in the typed set of papers disclosing their communal status as "Kurichchan Community".

10. It is needless to say that Mr.E.Sankaranarayanan being the petitioner's maternal uncle will definitely fall within the domain of close relatives. In this context it would be relevant to note the decision of our Hon'ble Apex Court made in The State of Bihar & Ors v. Sumit Anand, wherein the Hon'ble Apex Court held that the respondent therein was entitled for issuance of the caste certificate in the light of the caste certificate issued to his family members and his maternal uncle.

11. Further, this Court in N.Rajeshwari v. The District Collector, Nellai Kattabomman District, Tirunelveli and others reported in 2000(1) MLJ 267 (W.P.No.19793 of 1992, dated 24.09.1999) following the decisions rendered by the Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port

Trust, reported in 1997 (7) SCC 505 and Gayatrilaxmi Bapurao Nagpur v. State of Maharashtra reported in 1996 (3) SCC 685, has categorically held that the community status cannot be decided based on the avocation practiced by the person concerned and the overall view of the manner shall be borne in mind and if acceptable documents are available, the community certificate shall be issued, particularly, when the relatives are issued with Community Certificate, which have not been cancelled.

12. Thus it is needless to say that the community status cannot be decided based on avocation practiced by the person concerned and the overall view of the matter shall be borne in mind and if acceptable documents are available, the community certificates shall be issued, particularly when the relatives are issued with Community certificate, which have not been cancelled.

13. In the case on hand admittedly the petitioner and all the cited relatives of the petitioner are the lineal descendants of a common ancestor namely Erammal. All the cited close relatives of the petitioner were found to be issued with community certificate disclosing their communal status as "Kurichchan". The State Level Scrutiny Committee after due enquiry and on the basis of the material documents and examination of cultural aspects, customs, has certified that the above Mr.E.Sankaranarayanan belong to Kurichchan Scheduled Tribes Community and have also issued a certificate to that effect. Therefore it is obvious that all the relatives of the petitioner hold their communal status as Kurichchan community.

14. Therefore in the light of the above said decisions of the Hon'ble Apex Court and this Court, we hold that the petitioner is entitled to succeed in this writ petition.

15. In the result:

(a) this writ petition is allowed and the impugned order is hereby set aside;

(b) the respondent is directed to issue Community Certificate to the petitioner's sons namely S.Prasanth and S.Dinesh to the effect that they belong to Kurichchan (ST) Community;

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

Sd/-
Assistant Registrar IV

//True Copy//

Sub Assistant Registrar

vs

To

The Revenue Divisional Officer,
Dharmapuri.

+1cc to M/s.S.Doraisamy, Advocate, S.R.No.22887/2017
+1cc to the Government Pleader, S.R.No.23293/2017



W.P.No.9735 of 2014

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