

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.07.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.10776 of 2017

G.Kalaivani

.. Petitioner

Vs.

The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of rejection passed in Na.Ka.No.11807/2015/A4 dated 27.02.2017 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. J.Santhosh Kumar and 2.J.Kiruthiga that they belong to "Kurumans (ST) Community" based upon the community certificate possessed by the close relatives namely Sakthivel, Rajendran and Saipriya of the petitioner.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.K.Venkataramani
Additional Advocate General
For Mr.M. Elumalai
Government Advocate

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides.

2. The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records relating to the order of rejection passed in Na.Ka.No.11807/2015/A4 dated 27.02.2017 on the file of the Respondent / Revenue Divisional Officer, Dharmapuri and to quash the same. Further, the Petitioner had prayed for issuance of direction to the respondent to issue Community

Certificate to the children of the Petitioner viz., 1.J.Santhosh Kumar and 2.J.Kiruthiga that they belong to "Kurumans (ST) Community" based upon the Community Certificate possessed by the close relatives namely Sakthivel, Rajendran and Saipriya of the Petitioner.

3.According to the Petitioner, she belongs to Kurumans Community which is classified as a Scheduled Tribe Community. It is further stated that in Petitioner's School Transfer Certificate, her community indicated as Kurumans (Scheduled Tribe) and also her close relatives viz., B.Sakthivel was issued with the Community Certificate by the Respondent on 18.01.1996 that he belongs to Kurumans (ST) Community and another relative viz., Saipriya was issued with the Community Certificate by the Respondent on 05.08.2015 that she belongs to Kurumans (ST) Community and the said Saipriya's father Rajendran was also issued with the Community Certificate on 26.08.1985 by the Tahsildar, Dharmapuri that he belongs to Kurumans (Scheduled Tribe) Community.

4.At the outset, it is to be pointed out that on the basis of the above documents, the Petitioner has filed an application for issuance of Community Certificate for her Son and Daughter and the said application was rejected by the Respondent by an order dated 10.07.2015. Aggrieved against the order of rejection, the Petitioner filed a Writ Petition in W.P.No.34960 of 2015 before this Court and when the matter was taken up for hearing on 02.11.2015, it was submitted by the Learned Government Advocate appearing for the Respondent that the permission may be granted to the Respondent to withdraw the order dated 10.07.2015, it was passed in complete non-application of mind. In view of the above request made by the Respondent, this Court had passed the order and the operative portion of the order which runs as follows:

"6.In view of the aforesaid submission of the Learned Government Advocate, it is ordered accordingly. Needless to state that the authority concerned is required to advert to all the documents submitted by the petitioner in support of her claim. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order."

Subsequently, the Respondent issued a notice for an enquiry on 04.01.2016, the Petitioner appeared before the Respondent and produced the following documents.

- 1.School Transfer Certificate of the Petitioner
- 2.Community Certificate of Sakthivel
- 3.Community Certificate of Saipriya
- 4.Community Certificate of Rajendran
- 5.Petitioner's great grandfather's land document executed on 10.06.1939 in which his community is mentioned as Kurumans.

However, the Respondent had passed an order dated 27.02.2017 in Na.Ka.No.11807/2015/A4 rejecting the Petitioner's application

holding that she does not belong to Kurumans (ST) Community.

5.It comes to be known that the Respondent/Revenue Divisional Officer, Dharmapuri, had passed the impugned order 27.02.2017 rejecting the Petitioner's request for issuance of Community Certificate to her Children, namely, J.Santhosh Kumar and J.Kiruthiga. Therefore, as an affected person, against the order of negating her request for issuance of Community Certificate dated 27.02.2017, the Petitioner has filed the instant Writ Petition before this Court.

6.At this juncture, it is pertinent for this Court to make a significant mention that in G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015, the Government of Tamilnadu based on the orders passed by the Madurai Division Bench of this Court in W.P.(MD) No. 1355 of 2015 dated 05.02.2015 between D.Thirupathi V. The District Collector, Tirunelveli District, Tirunelveli and another, had constituted an Appellate Authority for an 'Appeal' remedy in regard to the issuance of Community Certificate, which runs as under:

S1 .	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
1	Backward Classes / Most Backward Classes/ Denotified Communities	Zonal Deputy Tahsildar	Tahsildar	District Collector
2	Scheduled Castes	Tahsildar	Revenue Divisional Officer	District Collector
3	Scheduled Tribes	Revenue Divisional Officer	District Collector	District Collector & Chairman District Level Vigilance Committee

7. It also comes to light that the Government of Tamilnadu had passed G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 (As regards redressal of grievances of Scheduled Tribes) whereby and whereunder after careful consideration and examining the subject matter in issue had issued an amendment to G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 to the Paragraph No.4 in the Tabular Column for Sl.No.3 and the entries relating thereto by substituting the same as under:

S1 .	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
"3	Scheduled Tribes	Revenue Divisional Officer.	District Collector	State Level Scrutiny Committee"

8. It is to be noted that the object of Article 226 of the Constitution of India is to provide a quick and an inexpensive remedy to the aggrieved parties. Therefore, it would be incorrect to incorporate all the proceedings of a suit into a proceeding under Article 226 of the Constitution of India as per decision of the Hon'ble Supreme Court in Babubhai V. Nandal AIR 1974 SC 2105.

9. It is to be borne in mind that as 'Writ Proceeding' is summary in nature, 'Disputed questions' of fact cannot be decided in Writ Jurisdiction as per decision of the Hon'ble Supreme Court in Sumedha Nagpal V. State of Delhi (2000) 9 SCC 745. Undoubtedly, the power conferred upon the Hon'ble Supreme Court and the High Court under Articles 32 and 226 of the Constitution of India is 'plenary power' and such power is not at all an incomplete power, nor fettered by any legal restraint. Although the power of Judicial Review is at the hands of High Court under Article 226 of the Constitution, notwithstanding the fact that the Constitution of India does not impose any limitation upon the aforesaid power, the Courts themselves have evolved certain self imposed limitations or restraints in regard to the exercise of this extraordinary and unlimited discretionary power, as a matter of prudence and policy. In short, in Law, the whole field of Article 226 of the Constitution is purely a discretionary one.

10. Coming to the aspect of an 'Executive Power' of the State, it is to be pointed out that the same is coextensive with that of the State Legislature. The power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise is not covered by the existing Rules, as per decision Union of India V. Central Electrical & Mechanical Engineering Service (CE & MES) Group A (Direct Recruits) Association reported in CPWD-2008-1 SCC at Page 354. It cannot be forgotten that the executive instructions which are given by the State exercising its power under Article 162 of the Constitution of India cannot circumvent a statutory provision. In fact, Article 162 of the Constitution does not enjoin the State Government to pass executive Orders which are contrary to Law, which was already made on the subject, by the State, in as much as it would amount to rewriting Art. 162 of the Constitution of India.

11. That apart, in order that the Executive instructions have the force of statutory Rules, it is to be exhibited that they

were issued either under the authority showered under the State Government by some statute or under some provision of the Constitution, as per decision of Hon'ble Supreme Court G.J.Fernandez V. State of Mysore reported in AIR 1967 SC Page 1753.

12. In short, Article 162 of the Constitution requires that where the State has power to make Laws, it can issue executive instruction as per decision Kamala Godera V. State of Rajasthan reported in AIR 2000 Rajasthan 130. Although the State Legislature has the power to make a Law relating to a subject, the executive action by the appropriate Government is not rendered invalid just because there is no Legislation to support such action, as per decision of Hon'ble Supreme Court Naraindas V. State of Madhya Pradesh in AIR 1974 SC Page 1232.

13. At this juncture, this Court aptly recalls and recollects the decision of Hon'ble Supreme Court in Madhukar Sadbha Shivarkar V. State of Maharashtra and Others (2015) 6 Supreme Court Cases 557 at Special Page Nos.559 and 560 wherein it is held as follows:

"In the backdrop of the Judgment passed in the criminal cases which have attained finality before the Supreme Court, the State Government, after examining the representations given by the landowners in these cases with reference to the relevant land records of the landholders of the villages, has rightly exercised its statutory power by appointing the Sub-Divisional Officer as an enquiry officer at the first instance and later on Deputy Commissioner of Pune was appointed to enquire into the matter which is in the large public interest.

(Para 26)

The order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by paying fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The allegation of fraud in relation to getting the landholdings of the villages by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the

surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law through such orders have attained finality, it if is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. Fraud unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. The land owners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and acceptable to justify the impugned judgment and order of the High Court.
(Para 27)

The legal submissions made on behalf of the appellants that the State Government has no power either under Section 45(2) or under Section 14(4) of the 1961 to appoint an enquiry officer to enquire into the landholdings of the villages referred to therein are untenable contentions of the appellants which have been rightly rebutted by urging an alternative legal plea that the power exercised by the State Government to pass the orders impugned in the writ petitions is traceable to its executive power under Article 162 of the Constitution of India. This is the most tenable submission, having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by the Supreme Court in these proceedings at this stage.

(Paras 28 and 32)

Also in the aforesaid decision at Paragraph No.32 at Page No.572 among other things, it is observed as follows:

".....In our considered view, the orders impugned in the writ petitions which are affirmed by the High Court, are perfectly legal and valid and therefore, the same do not warrant interference by this Court in exercise of power of this Court under Article 136 of the Constitution, but on the other hand, the aforesaid orders of the State Government can also be traceable to executive power of the State Government under Article 162 of the Constitution of India having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by

giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by this Court in these proceedings at this stage...."

14. When a Government Order or a Statute provides for an adequate, effective, viable and efficacious alternative remedy and if such an alternative remedy is not cumbersome, then, in that event, it is open to the Petitioner to avail such remedy / machinery constituted under the said Government Order or under the Act, so that, the purport and intent of the Government in providing a certain forum is not whittled down in any manner.

15. Indeed, the remedy of preferring an appeal enjoined in the amendment G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 was brought by the Government of Tamilnadu based on the observations of the Hon'ble Division Bench of this Court in W.P.(MD) No.1355 of 2015 dated 05.02.2015 to the effect that for all the caste certificate cases which naturally require a factual adjudication, at least one appeal remedy, for 'Scheduled Caste', 'Scheduled Tribes' and 'Backward class' should be provided, which may be in the form of scrutiny by the District Level Vigilance Committee etc., Moreover, in W.P.(MD). No.6340 of 2015 (between R.Raja V. The Revenue Divisional Officer, Madurai, Madurai District), the Hon'ble Division Bench of this Court on 30.06.2015 had permitted the Petitioner therein to prefer an Appeal before the District Collector, Madurai, within ten days from the date of receipt of the order (based on the Government Order).

16. In short, the action of the Government of Tamilnadu in introducing an 'Appeal' remedy before the District Collector as per G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 (by way of amendment to G.O.(Ms).No.235 Revenue [RA3 (2)] Department dated 26.06.2015) does not suffer from any vice or material irregularities and patent illegalities in the eye of Law. Moreover, two Orders of the State Government are in the 'Interest of Public at Large', in the considered opinion of this Court.

17. It is to be relevantly pointed out that a Court of Law as an inherent power to fix a reasonable specified time for performing an act (in the absence of any procedural or codified statute) with a view to secure the ends of justice or to prevent an abuse of process of Court. However, while determining the time limit, a Court of Law is to act with utmost care and circumspection and is resorted to a prudent course of action by exercising its thinking judicial discretion and in short is not to act an arbitrary, capricious, cavalier and whimsical manner.

18. Be that as it may, in view of the fact that the present

Writ Petition viz., W.P.No.10776 of 2017 is filed by the Petitioner assailing the Impugned Order of the Respondent / Revenue Divisional Officer, Dharmapuri District dated 27.02.2017, rejecting her request for issuance of Community Certificate to her wards and also this Court taking note of the tenor and spirit of the G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 and also looking into the contents of G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016, is of the considered view that the amended G.O. (Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 issued by the Secretary to Government of Tamilnadu provides for an 'Appeal' remedy to the District Collector (as an Appellate Authority) and thereafter, to the State Level Scrutiny Committee (For Redressal of Grievances) and therefore, in all Fairness, Equity and Fair play this Court, directs the Petitioner to prefer an Appeal before the District Collector, Dharmapuri, as against the impugned order of the Respondent dated 27.02.2017 within a period of two weeks from the date of receipt of a copy of this Order. Liberty is granted to the Petitioner to raise all factual and legal pleas by enclosing necessary documents to support her case before the Appellate Authority / District Collector, Dharmapuri. In such event of the Petitioner preferring an Appeal, (of course, well within the time adumbrated by this Court) it cannot be gainsaid that the Appellate Authority, viz., District Collector, Dharmapuri, is to provide an adequate opportunity of hearing to the Petitioner by adhering to the 'Principles of Natural Justice' in true letter and spirit.

19. That apart, in case, the Petitioner seeks time for filing of additional documents or to lead oral / documentary evidence, then, in that event, the Appellate Authority, viz., District Collector, Dharmapuri, shall provide enough opportunity to the Petitioner by keeping in mind the 'Principles of Natural Justice'. The District Collector, Dharmapuri / Appellate Authority, is directed to pass necessary orders on the 'Appeal', as expeditiously as possible, in an Unbiased, Free, Just, Fair, impartial and dispassionate manner of course, in the manner known to Law and in accordance with Law, in any event, not later than six weeks thereafter.

20. Soon after disposing of the Appeal within the time specified by this Court, the District Collector, Dharmapuri (Appellate Authority) is also directed to send a compliance report to the Registrar (Judicial) of this Court in regard to the orders so passed.

21. Before parting with this Case, this Court makes a relevant mention that it is high time for the Government of Tamilnadu to give an anxious consideration in respect of enacting a complete and comprehensive Law in regard to issuance and verification of Community Certificates of Scheduled Caste

and Scheduled Tribe and other Backward Classes quite in tune with the guidelines / direction issued in the Hon'ble Supreme Court decision Kumari Madhuri Patil & Another V. Additional Commissioner Tribal Development, Thane & Others reported in AIR 1995 SC 94 and the modifications made in the later Judgments of the Hon'ble Supreme Court of India on the subject, which governs the field. To put it succinctly, the neighbouring states like Kerala, Andhrapradesh and Maharashtra had already enacted necessary legislations for issuance and verifications of the Community Certificates of Scheduled Caste and Scheduled Tribe and other Backward Classes and the same are in live force. This Court fervently opines that if the Government of Tamilnadu enacts a codified Law pertaining to the procedure for issuance and verification of Community Certificate of Scheduled Caste and Scheduled Tribe and Other Backward Classes in the State, then, there is ample scope for wiping out / erasing out 'Bogus / Fictitious Community Certificates' obtained by the concerned persons, to secure the benefits in an unlawful manner.

22. With the aforesaid observations the present Writ Petition stands disposed of. No costs.

kal

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Revenue Divisional Officer,
Dharmapuri District,
Dharmapuri.

2. The Registrar Judicial
(for favour of information and
necessary follow up action)
High Court, Madras

+1cc to M/s S.Doraisamy, Advocate Sr.52422
+1cc to Government Pleader Sr.52778

W.P.No.10776 of 2017

PVS (CO)
RVR 04/09/2017