

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.06.2017

DELIVERED ON: 18.08.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.5891 of 2017
and
WMP.No.6315 of 2017

P.Mariappan

... Petitioner

vs.

- 1.The Chairman, State Level Scrutiny Committee and
The principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai - 600009.
- 2.The Member Secretary,
State Level Scrutiny Committee and
Director of Tribal Welfare,
Chepauk, Chennai - 600005.
- 3.The Member,
State Level Scrutiny Committee and Anthropologist,
Director of Tribal Research Centre,
M.Palada, Ooty-643004.
- 4.The District Collector,
Thoothukudi District, Thoothukudi.
- 5.The District Adi-Dravidar and Tribal Welfare Officer,
Thoothukudi.
- 6.The Deputy Superintendent of Police,
SC/ST Vigilance Cell,
Madurai Region.
- 7.The Assistant Collector/Sub-Collector,
Thoothukudi.

8.The Revenue Divisional Officer,
Thoothukudi.

9.The Commandant,
Defence Services Staff College,
Wellington-643231,
The Nilgiris District.

... Respondents

Prayer: 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 relating to the impugned proceedings issued by 1st to 3rd Respondents in No.30863/CV.2/2008-15, dated 17.11.2016, and to quash the same and consequently direct the Respondents 1st to 4th to restore the Community Certificate issued to the Petitioner by the 7th respondent on 26.09.1997.

For Petitioner : Mr.G.Sankaran
for Mr.R.Baskaradoss

For Respondents : Mr.A.Kumar, (for R1 to R8)
Special Government Pleader
Mr.Su.Srinivasan (for R9)

ORDER

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

The prayer in the writ petition is for the issuance of Writ of Certiorari Mandamus calling for the records relating to the impugned proceedings issued by the 1st to 3rd respondent in No.30863/ CV.2/ 2008- 15, dated 17.11.2016, and to quash the same and consequently direct the respondents 1st to 4th to restore the community certificate issued to the petitioner by the 7th respondent on 26.09.1997.

2.It is the case of the petitioner that he passed SSLC in the month of March 1996. He belongs to Hindu "Malakkuravan" caste and the same is classified as Scheduled Tribe community. In the school Transfer Certificate of the petitioner issued by the Government Higher Secondary School, Vallanad it has been specifically mentioned as Hindu - Malakkuravan as Scheduled Tribe. The 7th respondent had issued a community certificate to the petitioner as Scheduled Tribe community as Hindu - Malakkuravan vide Community Certificate No. 3952299 dated 26.09.1997. The 7th respondent has issued the community

certificate to the petitioner after conducting through enquiry and recording the statement from the people of the petitioner's village.

3.It is the further case of the petitioner that he was appointed as "SYCR" in Defense Services Staff College, Wellington and he joined duty on 27.02.2006. In the appointment order of the petitioner, it has been stated that his appointment was provisional and it is subject to the verification of his caste certificate through proper channel. Thereupon the petitioner was asked to attend the State Level Scrutiny Committee for the enquiry to be held on 02.05.2014 and the petitioner also attended the enquiry on the said date. Thereafter, the committee decided to refer the above case to the SC/ST Vigilance Cell, Madurai Region. Pursuant to the same, the Deputy Superintendent of Police, Madurai Region SC/ST Vigilance cell has submitted his report on 24.07.2014 wherein it is stated that as per the enquiry conducted by him and the Anthropologist in the petitioner's native Village, the community status of the petitioner is Hindu - Malakkuravan and the community certificate issued to the petitioner as Scheduled Tribe "Malakkuravan" by the 7th respondent is a genuine one. Thereupon the petitioner was once again asked to attend the State Level Scrutiny Committee enquiry held on 08.08.2015 and the petitioner also appeared before the Committee on the said date and produced the relevant documents to substantiate his community status.

4.During the enquiry, the State Level Scrutiny Committee has observed that the Vigilance Cell has not obtained the statements from other villagers of the same habitation. Therefore once again the case of the petitioner was referred to the vigilance cell for obtaining statement from other villagers and other community people of the same habitation. Further as per the request of the committee the petitioner has submitted a copy of his service register and of his own brother Thiru. Alagar. Again the petitioner was called upon to appear before the State Level Scrutiny Committee for enquiry on 20.10.2016 and the petitioner attended the same. Thereafter the respondents 1 to 3 herein by its proceedings No.30863/CV-2/2008-15, dated 17.11.2016 rejected the report of the 6th respondent and held that the claim of the petitioner that he belongs to Hindu "Malakkuravan" Scheduled Tribe community is not genuine and the State level Scrutiny Committee directed the 4th respondent by the impugned order dated 17.11.2016 to cancel the Scheduled Tribe - Hindu "Malakkuravan" community certificate issued to the petitioner by the 7th respondent. Challenging the same the present Writ Petition is filed for the relief stated supra.

5.The 1st respondent herein filed counter affidavit and contended that the petitioner obtained Hindu "Malakkuravan" Scheduled Tribe community certificate from the Assistant Collector, Tuticorin in C.No.3952300 (R.Dis.No.2849/97) dated 26.09.1997. Based on the above community certificate, the petitioner got appointment as SYCR at Defense Staff College, Wellington. The commander of Defense Staff College, Wellington requested the District Collector, Tuticorin to verify the genuineness of the petitioner's community certificate. Pursuant to the same, the District Collector, Tuticorin has forwarded the original record of the petitioner to the State Level Scrutiny Committee for enquiry. The Revenue Divisional Officer, Tuticorin after conducting a spot enquiry in the native place of the petitioner, given a report stating that the community certificate issued to the petitioner is not a genuine one. Thereafter the petitioner was directed to appear for enquiry before the State Level Scrutiny Committee on 02.05.2014. In the said enquiry, the committee has referred the case of the petitioner to the SC/ST Vigilance Cell, Madurai Region. After enquiry the SC/ST Vigilance Cell has submitted a report on 24.07.2014. Thereafter again the petitioner was asked to attend the State Level Scrutiny Committee enquiry held on 08.08.2015. The petitioner appeared before the committee and produced all the relevant documents to substantiate his case. In the meantime dissatisfied with the report of the vigilance cell that the statements were obtained only from the petitioner's close relatives, whereas the 6th respondent omitted to obtain statements from the habitants of the village belonging to other communities, the respondents 1 to 3 called for a fresh report after obtaining the statements of other inmates of the village belonging to some other community. Accordingly a fresh report came to be submitted by the 6th respondent on 05.07.2016.

6.The 1st respondent further averred in the counter affidavit that the petitioner has not established his case by producing materials of his blood relatives to show that they belong to Hindu "Malakkuravan" Scheduled Tribe community. The state level scrutiny committee has carefully considered the case of the petitioner and independently examined the records, the statements and documentary evidences furnished by the D.S.P, SC/ST Vigilance Cell, Madurai. The committee found that the report submitted by the Vigilance Cell is not satisfactory and hence the committee has differed from the vigilance cell report and has come to the conclusion that the petitioner do not belong to Hindu "Malakkuravan" Scheduled Tribe community and his claim that he belongs to Hindu "Malakkuravan" Scheduled Tribe community is not genuine.

7.The impugned order was passed after following all the due procedure and giving a reasonable opportunity of hearing to the petitioner and as per the guidelines issued by the Hon'ble Apex Court in the case of KUMARI MADHURI PATIL. The petitioner's near relatives Transfer Certificate, Community Certificate and service book were not accepted as evidence in support of his claim as he could not produce any document to prove his blood relationship with the said relatives obtained from competent authority. Hence, the petitioner's community claim cannot be accepted.

8.The 9th respondent filed his counter affidavit and states that the genuineness of the caste certificate has to be verified by the 9th respondent through concerned district authorities at the time of initial appointment, which is mandatory, as per Government of India, Department of personnel and training orders office Memorandum No.36022/1/2007-Estt (Res), dated 20.03.2007. Accordingly, the 9th respondent office carried out the verification with the Assistant/Sub Collector, Thoothukudi.

9.The 8th respondent in his report had stated that the certificates issued to the petitioner by the 7th respondent is not a genuine one as brought out vide orders dated 17.11.2016 of the state level scrutiny committee, the respondents 1 to 3.

10.We have heard Mr.G.Sankaran for Mr.R.Baskaradoss, learned counsel appearing for the petitioner and Mr.A.Kumar, learned Special Government Pleader appearing for the respondents 1 to 8 and Mr.Su.Srinivasan, learned counsel appearing for the 9th respondent and perused the materials available on record.

11.The learned counsel for the petitioner would submit that the petitioner belongs to Hindu "Malakkuravan" caste and the same is classified as Scheduled Tribe community. In the school Transfer Certificate of the petitioner issued by the Government Higher Secondary School, Vallanad it has been specifically mentioned as Hindu - Malakkuravan as Scheduled Tribe. The 7th respondent had issued a community certificate to the petitioner as Scheduled Tribe community as Hindu - Malakkuravan vide Community Certificate No. 3952299 dated 26.09.1997. Further the petitioner relied upon the following documents to show that the community of the petitioner is "Malakkuravan"- Schedule Tribe:-
1. Schedule Tribe community Certificate dated 23.01.1984 was issued to A.Ganapathy, the paternal uncle of the petitioner.

2. Schedule Tribe community Certificate issued by the Government of Tamil Nadu dated 26.09.1984 to A. Ganapathy, the paternal uncle of the petitioner.

3. Verification of genuineness of community Certificate dated 30.04.1985 issued to A.Ganapathy by DRO, Tirunelveli, the paternal uncle of the petitioner.

4. Schedule Tribe community Certificate dated 04.12.1985 issued to petitioner's Father.

5. Nativity Certificate dated 04.12.1985 issued to petitioner's Father.

6. Interview intimation dated 16.06.1987 sent by the Southern Railway to the petitioner's Father under Scheduled Tribe quota.

7. Appointment order dated 17.02.1988 issued to the petitioner's Father by Southern Railway.

8. Income certificate-cum-community certificate dated 13.08.1990 issued to petitioner's Father.

9. Community certificate dated 13.08.1990 issued to the petitioner's brother P.Alagar issued by the Tahsildar.

10. Record sheet of A.Velammal, petitioner's Aunt dated 29.03.1993.

11. Transfer certificate of P.Alagar, petitioner's brother dated 10.07.1992.

12. Transfer certificate of the petitioner dated 20.06.1996.

13. Community certificate dated 18.01.1997 issued to G.kumar, petitioner's cousin.

14. Community certificate dated 29.04.1997 issued to Esakkiappan, petitioner's Nephew.

15. Community certificate dated 26.09.1997 issued to P.Alagar, petitioner's brother.

16. Community certificate dated 26.09.1997 issued to the petitioner.

17. Community certificate dated 26.09.1997 issued to P.Manikandan, the petitioner's cousin.

18. Caste certificate dated 25.06.1999 issued to A.Ganapathy, petitioner's uncle.

19. Transfer certificate of P.Manikandan the petitioner's cousin dated 16.07.2001.

20. Caste certificate dated 26.09.2003 issued to G.kumar, petitioner's cousin.

21. Caste certificate dated 09.12.2005 issued to G.kumar, petitioner's cousin.

22. Community certificate dated 09.12.2005 issued to P.Alagar, petitioner's brother.

23. Employment Exchange Registration ID card dated 04.01.2006 of the petitioner stating that the petitioner belongs to ST community.

24. Appointment order issued to the petitioner dated 27.02.2006.

25. Caste certificate dated 23.06.2010 issued to G.Haribaskar, petitioner's Cousin.

26. Transfer certificate dated 20.06.2013 issued to A.Bhuvaneswari, petitioner's Niece.

27. Community certificate dated 03.09.2013 issued to M.Shanmuga Sundaram, petitioner's Cousin.

28. Community certificate dated 03.09.2013 issued to M.Ramachandran, petitioner's Cousin.

29. Community certificate dated 03.09.2013 issued to M.Alagamuthu, petitioner's Cousin.

30. Verification of Schedule Tribe community Certificate of Thiru S. Kumar by the State Level Scrutiny Committee dated 23.09.2013.

31. Community certificate dated 18.02.2014 issued to E.Praveen by RDO.

32. Community certificate dated 18.02.2014 issued to E.Harishma by RDO.

33. Family tree of G. Kumar dated 19.05.2014 issued by RDO, Tuticorin.

34. Verification of Schedule Tribe community Certificate of G. Kumar by the State Level Scrutiny Committee dated 01.12.2014.

35. Report of the Tahsildar, Srivaikuntam to Assistant Collector, Tuticorin dated 20.05.2015 regarding verification of community of children of P.Alagar, petitioner's brother.

36. Service book first page of Mr.P.Alagar, petitioner's brother dated 12.06.2015.

37. Community certificate dated 12.06.2015 issued to A.Bhuvaneswai, petitioner's Cousin.

38. Community certificate dated 30.06.2015 issued to A.Singaperumal, petitioner's Cousin.

39. Community certificate dated 30.06.2015 issued to A.Singaperumal, petitioner's Cousin.

40. Family tree of Mr.Alagar, Grand-Father of the petitioner.

12.On close perusal of the impugned proceedings it is noticed by this Court that the respondents 1 to 3 have come to the conclusion that the petitioner do not belong to Malakkuravar Schedule Tribe community, in a differed opinion from that of the Vigilance cell report submitted by the Deputy Superintendent of Police, SC/ST Vigilance Cell, Madurai Region. It is disclosed that the Deputy Superintendent of Police, SC/ST vigilance cell, Madurai Region has submitted a report after investigation that the petitioner belong to Hindu - Malakkuravan Scheduled Tribe community. However, there is no say in the impugned order as to what was the finding of the 6th respondent in his latter report and as to how the respondents 3 and 4 arrived at a conclusion disregarding both the reports of the 6th respondent.

13.Further it is noticed by this Court that the family tree issued by the 8th respondent vide his proceedings in A2/2527/2014 dated 19.05.2014 annexed in page No.78 of the typed set of papers, which was submitted in furtherance of the request of the Adi-Dhravidar and Tribal Welfare Department, Tamil Nadu, it is revealed that the petitioner herein and the other persons referred as close relatives by the petitioner are common lineal descendants of one Thiru.G.Kumar. It is further noticed by this Court that the community certificates of a majority of persons stands annexed in the typed set of papers and every one posses community certificate as Hindu - Malakkuravan Scheduled Tribe community.

14.At this juncture, it is relevant to note here that the earlier proceedings of State Level Scrutiny Committee in proceedings number 16812/CV-11/2013-5 dated 01.12.2014 holding that the community certificate issued to Mr.G.Kumar son of Ganapathy to the effect that he belongs to Malakkuravan Scheduled Tribe community is a genuine one. The said proceedings of State Level Scrutiny Committee in proceedings number 16812/CV-11/2013-5 dated 01.12.2014 is annexed in page No.79 of the typed set of papers. It is noteworthy that the preceding officers remain the same, who passed the impugned order too. It is further relevant to note here that the petitioner also relies upon the certificates, which after due Scrutiny was found genuine by the respondents 1 to 3 themselves. It is further

revealed that the Anthropologist member of State Level Scrutiny Committee after examination of the cultural aspects and customs of Thiru. G.Kumar has opined that he belong to Hindu - Malakkuravan community.

15.Moreover on bare perusal of the typed set of papers it is noticeable that both the petitioner's paternal and maternal uncles, besides their off-spring were issued with Community Certificate as Hindu - Malakkuravan community. Furthermore the petitioner's blood brothers namely P.Alagar and P.Manikandan were being issued with community certificate as Hindu - Malakkuravan community.

16.In this context it would be relevant to note the decision of the Hon'ble Apex Court made in the case of 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.

17.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 the case of R.Kandasamy v. The Chief Engineer, Madras Port Trust, reported in 1997 (7) SCC 505 and Gayatrilaxmi Bapurao Nagpur v. State of Maharastra 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.

18.Thus for the fore going reasons, we are of the considered opinion that the impugned order is liable to be set aside and the petitioner's contention is liable for due consideration in the light of the above legal propositions and the facts involved in the case.

19.In the result:

(a) this writ petition is allowed and the impugned order in No.30863/CV.2/2008-15, dated 17.11.2016, is set aside;

(b) the matter is remitted back to the first respondent State Level Scrutiny Committee for fresh consideration;

(c) the State Level Scrutiny Committee shall decide upon the matter afresh, after giving due notice to the petitioner and proper appreciation of the records available and such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

- 1.The Chairman, State Level Scrutiny Committee and
The principal Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai - 600009.
- 2.The Member Secretary,
State Level Scrutiny Committee and
Director of Tribal Welfare,
Chepauk, Chennai - 600005.
- 3.The Member,
State Level Scrutiny Committee and Anthropologist,
Director of Tribal Research Centre,
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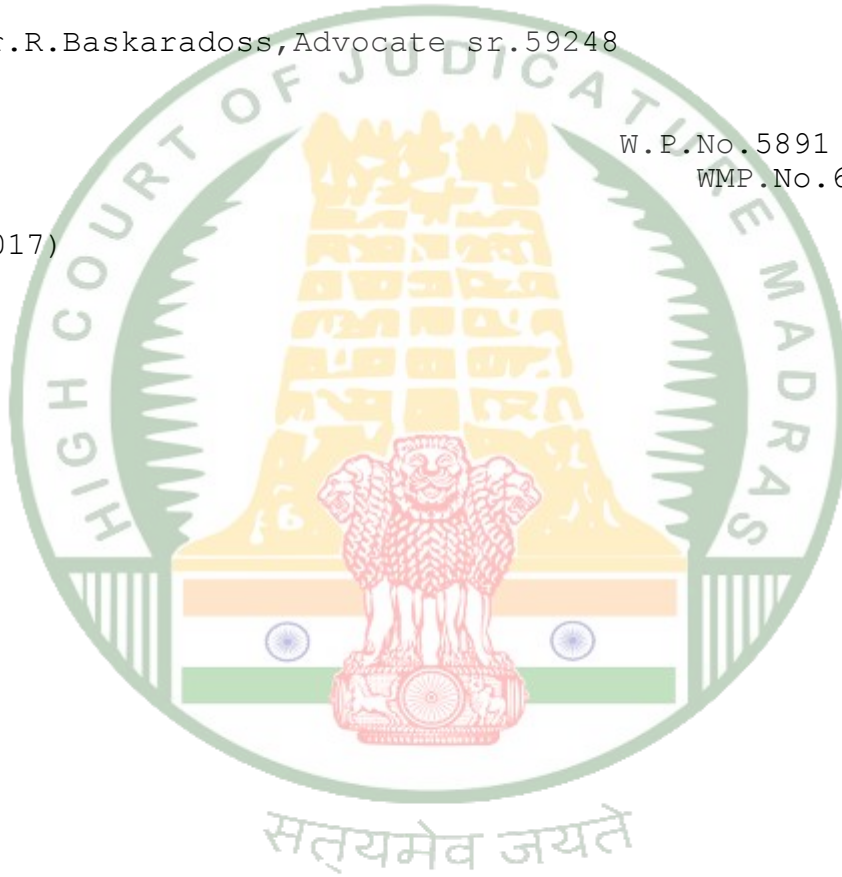
+1cc to Government Pleader sr.60394

+1cc to Mr.Su.Srinivasan,Advocate sr.59401

+1cc to Mr.R.Baskaradoss,Advocate sr.59248

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