

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.8998 of 2017 and
WMP Nos.9907 & 9908 of 2017

N.Vijayakumari

.. Respondent

Vs.

1.The Secretary to Government,
Adi-Dravidar & Tribal Welfare Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Villupuram District,
Villupuram.

3.The Revenue Divisional Officer,
Villupuram.

4.The Secretary,
Srirangapoopathi Engineering College,
Alampoondi Village,
Gingee Taluk,
Villupuram District.

..Respondents

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 passed by the third Respondent by his proceedings in Na.Ka.No.A5/1098/2014 dated 25.08.2014 and quash the same and consequently, direct the Respondents to issue Community Certificate to the Petitioner as Hindu Kattu Nayakkan (r).

For Petitioner : Mr.S.Mazhaimenipandiyan

For Respondents : 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.At the outset, this court points out that Ms.Jeenath Banu, Third Respondent/Revenue Divisional Officer, Villupuram, is present, pursuant to the order of this Court dated 07.06.2017 and 17.07.2017 respectively. Her presence is recorded and also her presence in the near future, is dispensed with.

3.The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records of the Third Respondent / Revenue Divisional Officer, Villupuram in Proceedings bearing in Na.Ka.No.A5/1098/2014 dated 25.08.2014 and to quash the same. Further, the Petitioner had prayed for issuance of direction to the

Respondents to issue Community Certificate to her as Hindu Kattu Nayakkan [r] Community.

4.According to the Petitioner, she belongs to Scheduled Tribe (Hindu Kattunayakkan(r) Community. Presently, she has completed final year in Civil Engineering in Sri Ranga Poopathi Engineering College, Alampoondi Village, Gingee Taluk, Villupuram District.

5.The Petitioner 's father is a coolie. Her School Certificate indicates that she belongs to Indian, Hindu, Kattunayakar Community. Her elder sister N.Viajya's School certificate has also mentioned as Hindu, Indian, Kattu Nayakkan. The Petitioner 's father had studied upto 4th Standard. Her two elder sisters studied upto 10th Standard. It is the specific case of the Petitioner that no one in their family was issued community certificate and as such, they were not able to continue their study, although they had secured good marks. Her brother also not able to study and he went for coolie work. The Petitioner 's father had applied for Community Certificate in favour of the Petitioner before the Third Respondent on 07.05.2013 in Jamabanthi with Tahsildar, Villupuram Taluk. The Subordinates of the Tahsildar, Revenue Inspector and the Village Administrative Officer came to the Petitioner 's Village and cause enquiry with the village people and also with them. However, the officers concerned had not issued community certificate in her favour.

6.The categorical plea of the Petitioner is that the Third Respondent/Revenue Divisional Officer, Villupuram, subordinates informed that there is no Hindu Kattu Nayakan Community in Villupuram District and hence, they had not issued certificate to her. However, the Revenue Divisional Officer, Thirukovilur, had issued a certificate in favour of her maternal uncle

Mr.S.Mannangatti as Hindu Kattu Nayakkan on 10.07.1992 itself. The Petitioner had produced a the said certificate to the officer concerned. But they had not considered the certificate issued dated 10.07.1992 in favour of her maternal uncle. That apart, in Villupuram Taluk itself, some other persons had secured Scheduled Tribe Certificate in Perungalampoondi Village.

7.To obtain a Scholarship, the Fourth Respondent/The Secretary, Srirangapoopathi Engineering College, Alampoondi Village, Gingee Taluk, Villupuram District, had required the Petitioner to produce community certificate forthwith and therefore, the Petitioner in this regard, made an application on 11.02.2014 before the Third Respondent/Revenue Divisional Officer, Villupuram, seeking for issuance of community certificate in her favour. The Third Respondent/Revenue Divisional Officer, Villupuram, had informed the Petitioner that 'the Tahsildar will come and make enquiry' and if it is found out that the Petitioner belongs to Scheduled Tribe Community, definitely he would issue community certificate immediately. Although two months have been lapsed, no officer came to the Petitioner 's residence and cause an enquiry with them. Therefore, the Petitioner left with no other option except to file the Writ Petition in W.P.No.13861 of 2014, in which on 21.05.2014, this Court had passed the following order:

"... considering the above said facts, we only direct the Second Respondent to consider the claim of the Petitioner seeking community certificate and dispose of the said application dated 11.04.2014 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order."

8.At this juncture, the Learned Counsel for the Petitioner brings to the notice of this Court that the Petitioner made a representation along with the order copy on 09.06.2014 through the Learned Counsel and thereafter, the Petitioner approached the third Respondent/Revenue Divisional Officer, Villupuram, on numerous occasions and ultimately, the Third Respondent had passed an order dated 25.08.2014 by his proceedings in Na.Ka.A.5/1088/2014 stating in the finding that "on the direct and indirect enquiry and based on the documents available were scrutinised carefully and the statements given by the VAO, RI, Tahsildar and the general public, there is no evidence to prove that she belongs to Kattu Nayakan Caste and in the Village (Statement) people says she belongs to Nayakar, Kuravar and Vanniyar. And the different documents of the family members of the Petitioner were brought on the enquiry so that she did not belongs to Kattu Nayakan so that as per the rules no certificate will be issued to the Petitioner ."

9.Learned Counsel for the Petitioner invites the attention

of this Court that the Third Respondent/Revenue Divisional Officer, Villupuram, had not made any enquiry with the Petitioner's relatives and caste people. Therefore, the Petitioner had filed an Appeal to the Second Respondent/District Collector and the Third Respondent/Revenue Divisional Officer, on 22.09.2014 with relevant documents. The main grievance of the Petitioner appears to be that the Second and Third Respondents had not considered his 'Appeal' and hence, he made a representation before the First Respondent/Secretary to Government, Adi-Dravidar & Tribal Welfare Department, Fort St. George, Chennai-600 009 on 18.12.2014 and that representation was forwarded to the Third Respondent/Revenue Divisional Officer, Villupuram and till date, the Third Respondent had not passed any orders. Although more than six months had elapsed and because of the absence of the community certificate, the Petitioner is not able to apply for scholarship.

10.Learned Counsel for the Petitioner informs this Court that the Petitioner had paid 1st and 2nd year Fees before the Fourth Respondent/College, however, the Petitioner has not paid 3rd and 4th year fees.

11.In this connection, this Court pertinent to mention of the Division Bench order of this Court in W.P.No.6340 between R.Raja and the Revenue Divisional Officer, Madurai, Madurai District dated 30.06.2015 whereby and whereunder at paragraphs 3 and 4, it is observed as under:

"3.Mr.N.Manohar, learned Special Government Pleader for the State, has been taking time on the ground that discussions are being held to provide an appeal remedy, as per the orders of the Hon'ble First division Bench made in W.P.(MD).No.1355 of 2015, dated 05.02.2015, so far, the same does not been done. Matters are periodically adjourned.

4.Needless to state that admission in professional, arts and science colleges are made on the basis of merit and rule reservation. Unless and until, the students belonging to SC/ST/BC/MBC and denotified Communities are issued with community certificates, well in advance or the rejection is tested by an appellate authority, directed to be provided by the Hon'ble First Bench, they would find it difficult to get admission, if they are otherwise qualified. From 05.02.2015, the matter is yet to be decided by the Secretary to the Government, Adi Dravidar and Tribal Welfare Department, State of Tamil Nadu.

12.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

13. 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"

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.
27)

(Para

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...."

20. 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.

21. 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.,

22. 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.

23. Be that as it may, in view of the fact that the present Writ Petition viz., W.P.No.8998 of 2017 is filed by the Petitioner assailing the Impugned Order of the Third Respondent / Revenue Divisional Officer, Villupuram District dated 25.08.2014 rejecting her request for issuance of Community Certificate to her 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 Second Respondent/District Collector, Villupuram, as against the impugned order of the Third Respondent dated 25.08.2014 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, Villupuram.

24. 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 Second Respondent-Appellate Authority, viz., District Collector, Villupuram, is to provide an adequate opportunity of hearing to the Petitioner by adhering to the 'Principles of Natural Justice' in true letter and spirit.

25. That apart, in case, the Petitioner seeks time for filing of additional documents or to lead oral / documentary evidence, then, in that event, the Second Respondent-Appellate Authority, viz., District Collector, Villupuram, shall provide enough opportunity to the Petitioner by keeping in mind the 'Principles of Natural Justice'. The Second Respondent/District Collector, Villupuram, 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.

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

27. 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.

28. With the aforesaid observations, the present Writ Petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Adi-Dravidar & Tribal Welfare Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Villupuram District,
Villupuram.

3.The Revenue Divisional Officer,
Villupuram.

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

+1cc to the Government Pleader SR.No.52783

GP(CO)
GN(16/08/2017)

W.P.No.8998 of 2017 and
WMP Nos.9907 & 9908 of 2017



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