

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

AND

THE HON'BLE MR. JUSTICE N.AUTHINATHAN

Review Application (Writ) Nos.102 and 103 of 2017

in

W.P.Nos.9535 and 11852 of 2016

Review Application (Writ) No.102 of 2017

1. K.Annamalai
2. A.Preethi
3. A.Senthilkumar

.. Petitioners

Vs

The Revenue Divisional Officer
Tiruttani, Tiruvallur District.

.. Respondent

PRAYER in Review Application (Writ) No.102 of 2017: Petition under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the order passed in W.P.No.9535 of 2016, dated 10.3.2017.

Review Application (Writ) No.103 of 2017

V.P.Pandurangan

.. Petitioner

Vs

The Revenue Divisional Officer
Tiruttani, Tiruvallur District.

.. Respondent

PRAYER in Review Application (Writ) No.103 of 2017: Petition under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the order passed in W.P.No.11852 of 2016, dated 10.3.2017.

(In both the Cases)

For Petitioners : Mr.S.Doraisamy

For Respondent : Mr.M.Elumalai
Government Advocate

COMMON ORDER

(Order of this Court was made by *M.V.MURALIDARAN,J.*)

By means of these petitions, the petitioners are seeking to review the common order dated 10.3.2017 passed by a Division Bench of this Court (*to which one of us – M.V.Muralidaran is a member*) in W.P.Nos.9535 and 11852 of 2016.

2. Succinctly put, the material facts giving rise to the present review petitions, are as follows: As against the order passed by the respondent refusing to issue community certificates to the second and third petitioners in Review Application No.102 of 2017, who are the children of the first petitioner therein, and to the son and grandchildren of the petitioner in Review Application No.103 of 2017,

and forwarding the claims of the petitioners to the State Level Scrutiny Committee for taking final decision on the issue whether the castes of “Kondhalakulam” and “Kondareddis” are one and the same or not, the petitioners have filed the writ petitions, referred supra.

3. This Court, by order dated 10.03.2017, refused to interfere with the order passed by the respondent and directed the State Level Scrutiny Committee to decide the issue in question, as stated supra, after affording an opportunity to the petitioners and dispose of the same within eight weeks from the date of receipt of a copy of this order. Seeking review of the aforesaid order the present petitions are filed.

4. The main grounds on which review is sought by the petitioners herein, as put forth by the learned counsel for the petitioners, are as under: सत्यमेव जयते

i. The first petitioner in Review Application No.102 of 2017 and the petitioner in Review Application No.103 of 2017 were issued with community certificates to the effect that they belong to “Kondareddis” Community way back in 1979 and 1978 respectively and the same remain unchallenged till date and, therefore, their children and grandchildren are certainly entitled to such communal status.

ii. A Division Bench of this Court has held that

"Kondhalakulam" and "Kondareddis" communities are one and same and the instructions of the Government have no effect and since the respondent is of view that the petitioners belong to Kondhalakulam, as a natural corollary, the petitioners' children and grandchildren, as the case may be, should be issued community certificates and such earlier order of the Division Bench was not brought to the notice of the Division Bench before passing the order passed in the writ petitions, review of which is sought herein.

iii. Since a Division Bench of this Court of coordinate strength has categorically held that "Kondhalakulam" and "Kondareddis" communities are one and same, the same can at best be tested before the Supreme Court, if so advised, and, therefore, this Court, vide the order of which review is sought, ought not to have directed the State Level Scrutiny Committee to decide the question as to whether Kondhalakulam and Kondareddis Communities are one and same.

5. Per contra, the learned Government Advocate appearing on behalf of the respondent submitted that "Kondhalakulam" and "Kondareddis" are two distinct communities. To fortify the said plea, reliance is placed on a letter No.12018/12/85-SCD (R.Cell), dated 20.4.1987 from the Ministry of Welfare, New Delhi, Government of India, addressed to the Deputy Secretary to Government Social Welfare Department, Madras, wherein it has been stated that "In other

words, Konthalakulam has nothing to do with Konda Reddis and in view of this persons belonging to Konthalakulam cannot get certificate in the name of Kondareddis community."

6. He further pleaded that the Division Bench, vide the order of which review is sought, had rightly referred the issue as to whether Kondhalakulam and Kondareddis Communities are one and the same to the State Level Scrutiny Committee and since the State Level Scrutiny Committee is not arrayed as respondent in these review petitions, the same are not maintainable and, therefore, review of the said order is unwarranted.

7. We have heard Mr.S.Doraisamy, learned counsel appearing for the Review Petitioners and Mr.M.Elumalai, learned Government Advocate appearing for the respondent in both the cases and perused the documents available on record.

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8. A Division Bench of this Court in *The Management of Bharat Heavy Electricals Ltd. rep. by its Chairman and Managing Director, vs. V. Pradeep Nalankilli and K. Vijayakumaran*, (2009) 4 MLJ 783, after referring to a catena of decisions on the scope of review, held as under:

(a) A review can be granted only if there was a mistake apparent on the face of the record.

(b) A mistake apparent on record must be an obvious and apparent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions.

(c) An error which is not self evident and is to be deducted by process of reasoning can hardly be said to be an error apparent on the face of the record.

(d) Even if two views are possible on the issue raised, that by itself cannot be a ground for reviewing the order as it does not fall within the scope of review jurisdiction.

(e) In a review, it is not open to the Court to re-appreciate the evidence and reach a different conclusion even if that is possible.

(f) If on appreciation of the evidence produced, the Court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

(g) In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected.

(h) The expression 'exercise of due diligence used in Order 47 Rule 1 CPC should be an exercise which ought to have been made prior to the filing of the review and not one after the pronouncement of the order under review.

9. In the case on hand, admittedly, the order passed by a Division Bench holding that “Kondhalakulam” and “Kondareddis” communities are one and same, was not brought to the notice of this Court while passing the order dated 10.03.2017. Judicial discipline demands that this Court should follow the decision rendered by another Division Bench of co-ordinate strength. Therefore, in order to prevent miscarriage of justice and to rectify the error, we propose to review the order passed on 10.03.2017.

10. A Division Bench of this Court, by judgment dated 25.06.2002 passed in W.A.No.1576 of 2002 held as under:

“The issue raised in this writ appeal is as to whether the communities 'Kondalakulam' and 'Konda Reddy' are one and the same. The said issue has already come up

therefore a Division Bench of this Court in W.P.No.13979 of 1998 and it has been held that both the communities are one and the same."

11. That apart, in a recent decision, a Division Bench of this Court in *M.D.Rekha v. The Tamil Nadu State Level Scrutiny Committee* [Order dated 8.11.2017 passed in W.P.Nos.22955 of 2013, etc.] held that the letter No.12018/12/85-SCD (R.Cell), dated 20.04.1987 from the Ministry of Welfare, New Delhi, Government of India, addressed to the Deputy Secretary to Government Social Welfare Department, Madras, is merely a letter issued by the Government of India, and not a document with the assent of the President of India and that Konthalakulam community and Kondareddis community are one and the same. It was further held that the said administrative instructions of the Government would not have the effect of nullifying the law laid down by this Court.

12. The ratio laid down in the decisions, referred supra, squarely applies to the issue involved in this case. Therefore, the earlier order passed by this Court on 10.03.2017, insofar as it relates to directing the State Level Scrutiny Committee to decide the question as to whether Kondhalakulam and Kondareddis Communities are one and same is, in our considered opinion, uncalled for.

13. For the foregoing reasons, these review petitions are allowed with the following directions:

- a) The common order dated 10.03.2017 made in W.P.Nos.9535 and 11852 of 2016 is recalled;
- b) The writ petitions are allowed by setting aside the orders challenged in the writ petitions, namely, the proceedings of the respondent in Na.Ka.No.2555/2013/A1, dated 14.01.2016 and Na.Ka.No.787/2014/A3, dated 14.01.2016 respectively.
- c) The respondent is directed to issue community certificates as prayed for in the writ petitions within four weeks from the date of receipt of a copy of this order, in the light of the directions passed herein above.

(M.V.M.,J.) (N.A.N.J.)

24.11.2017

vs

Index : Yes

Internet : Yes

Note: Issue order copy on 08.12.2017

To

The Revenue Divisional Officer
Tiruttani, Tiruvallur District.

M.V.MURALIDARAN,J.
AND
N.AUTHINATHAN,J.

VS



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