

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.33220 of 2017

B.C.Vinayagam

.. Petitioner

Vs

1.The Collector,
Thiruvallur,
Thiruvallur District.

2.The Revenue Divisional Officer,
Tiruttani, Thiruvallur District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Mandamus to direct the 1st respondent to dispose of the appeal dated 29.06.2016 in the light of the finding given in W.P.No.22955 of 2013 (M.D.Rekha Vs Tamil Nadu State Level Scrutiny Committee) by an order dated 08.11.2017 and Review Application in (Writ) Nos.102 and 103 of 2017 in W.P.No.9535 of 2016 and W.P.No.11852 of 2016 by an order dated 24.11.2017 and to issue community certificate to the petitioner's sons, viz., Sathish Kumar and Mathivanan, that they belong to Kondareddis (ST) Community based upon the community certificate already issued to the petitioner.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.S.N.Parthasarathy
Government Advocate

ORDER

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

The writ petition has been filed seeking issuance of a writ of Mandamus directing the first respondent to dispose of the appeal dated 29.06.2016 in the light of the decisions of this Court in (i)M.D.Rekha Vs Tamil Nadu State Level Scrutiny Committee [Order dated 08.11.2017 made in W.P.No.22955 of 2013, etc. batch]; and (ii) K.Annamalai and others v. The Revenue Divisional Officer [Order dated 24.11.2017 in Review Application (Writ) Nos.102 and 103 of 2017], and to issue community certificates to the petitioner's sons, namely

Sathish Kumar and Mathivanan, to the effect that they belong to "Kondareddis", a Scheduled Tribe Community, based upon the community certificate already issued to the petitioner.

2. The facts in a nutshell are as under: It is the case of the petitioner that he belongs to "Kondareddis" Community, which is a Scheduled Tribe and to that effect he obtained community certificate from the Head Quarters Deputy Tahsildar, Pallipattu, on 19.07.1982 and the said fact is also recorded in his school certificate. The said community certificate remains unchallenged till date and is in vogue.

3. It stated that, on 30.05.2011, the petitioner's son (Sathish Kumar) preferred an application to the Collector, Chennai, seeking issuance of the community certificate and since the said application did not evoke any response, he was constrained to file W.P.No.15784 of 2012, wherein this Court, by order dated 21.06.2012 directed the petitioner's son (Sathish Kumar) to file a fresh application before the P.A. to the District Collector, Chennai.

4. It is stated that pursuant to the aforesaid order, the petitioner's son preferred an application before the P.A. to the District Collector, Chennai. The Collector, on 26.07.2012, informed the petitioner's son to approach the Revenue Divisional Officer concerned, since their native is Pallipattu Village in Tiruttani Taluk. Thereafter, the petitioner preferred an application to the second respondent to issue community certificate to his two children. Since the said application did not evoke any response, the petitioner filed W.P.No.2241 of 2015, wherein this Court passed an order on 17.08.2015 directing the second respondent to pass orders on his application within a period of four weeks.

5. It is averred that thereafter the second respondent on 18.09.2015 rejected the claim of the petitioner on the ground that the petitioner belongs to Konthalakulam community and not Kondareddis community. Assailing the same, the petitioner filed another writ petition, being W.P.No.31725 of 2015, and this Court by order dated 07.06.2016 directed the petitioner to file an appeal before the District Collector, who is the Appellate authority. Accordingly, the petitioner appealed to the first respondent on 29.06.2016 and since the same was not disposed of till date, the petitioner has preferred this writ petition for the relief stated supra.

6. The main plank of the argument advanced by the learned counsel for the petitioner is that the main ground for rejection of the application made by the petitioner, as is evident from the order of the second respondent, is that the petitioner belongs to Kondakulam community and not Kondareddis community, and in the light of the decisions of this Court in (i) M.D.Rekha Vs Tamil Nadu State Level Scrutiny Committee [order dated 08.11.2017 made in W.P.No.22955 of 2013, etc.

batch]; and (ii) K.Annamalai and others v. The Revenue Divisional Officer [Order dated 24.11.2017 in Review Application (Writ) Nos.102 and 103 of 2017], the said ground does not hold water, as it was emphatically held that Kondala is colloquial usage of Kondareddis community and both are referable to the same caste.

7. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that "Kondalakulam" 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 20.04.1987 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."

8. We heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.S.N.Parthasarathy, learned Government Advocate appearing for the respondent and perused the documents available on record.

9. A perusal of the documents filed in support of the writ petition reveals that the petitioner was issued with a community certificate on 19.07.1982 to that effect that he belongs to "Kondareddis", a Scheduled Tribe Community. The above certificate was issued by the Deputy Tahsildar concerned and the same has till date not been set aside in a manner known to law.

10. Qua the competency of the Deputy Tahsildar to issue the said community certificate, it is apposite to refer to the decision of the Division Benches of this Court in C.V.Kalaivanan v. The Sub Collector, Mettur Dam, Salem District, 2010 (3) CTC 673, wherein it is emphatically held as under:

"In the impugned order, the respondent has rejected the Community Certificate of the paternal uncle's son of the petitioner by name S.Ravichandran by observing that the Deputy Tahsildar was never the Competent Authority to issue Community Certificate and hence, no reliance can be placed on it.

The learned counsel for the petitioner relying on G.O.Ms.No.517 (PL-M) Department, dated 14.05.1985, submits that Headquarters Deputy Tahsildar and Independent Deputy Tahsildars were delegated with powers to issue Community Certificates in respect of Scheduled Castes/Scheduled Tribes and Backward Classes during the period from 14.02.1957 to 13.05.1985 and only by the above Government Order that power was withdrawn and the Tahsildar alone

came to be authorized to issue Community Certificates. Withdrawal of power in the above notification was made in consonance with the direction of the Government of India. In view of the above, the finding of the respondent that the Deputy Tahsildar was never the competent authority to issue Community Certificate, is erroneous in law."

11. In the light of the decision, referred supra, the respondents are bound to take into consideration the community certificate issued to the petitioner by the Deputy Tahsildar, who is a competent authority, at the relevant time.

12. In *State of Bihar v. Sumit Anand*, (2005) 12 SCC 248, the Hon'ble Supreme Court upheld the order of the Hon'ble High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Hon'ble Supreme Court observed as under:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

13. The ratio laid down in the decisions, referred supra, squarely applies to the issue involved in this case. In the case on hand, it is not the case of the respondent that the community certificate issued to the petitioner has been set aside by the competent authority.

14. That apart, in a recent decision, this Bench in *M.D.Rekha Vs Tamil Nadu State Level Scrutiny Committee* [Order dated 08.11.2017 made in W.P.No.22955 of 2013, etc. batch], following a series of earlier decisions rendered by this Court, 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.

15. The said decision was reiterated by another Division Bench in *K.Annamalai and others v. The Revenue Divisional*

Officer [Order dated 24.11.2017 in Review Application (Writ) Nos.102 and 103 of 2017].

16. Therefore, in the light of the decisions referred supra, the children of the petitioner, in our considered view, are entitled to issuance of community certificates and the ground raised by the second respondent for rejection of the claim of the petitioner, on the face of it, cannot be sustained and, in view of the settled position of law, we find no justification in the appeal being kept pending by the first respondent for over 18 months.

17. For the foregoing reasons, this writ petition is disposed of with a direction to the first respondent to consider the appeal filed by the petitioner on 29.06.2016 in the light of the decisions of this Court in (i) M.D.Rekha Vs Tamil Nadu State Level Scrutiny Committee [Order dated 08.11.2017 made in W.P.No.22955 of 2013, etc. batch]; and (ii) K.Annamalai and others v. The Revenue Divisional Officer [Order dated 24.11.2017 in Review Application (Writ) Nos.102 and 103 of 2017], and the observations made herein above and direct issuance of community certificates to the petitioner's children, namely, Sathish Kumar and Mathivanan, to the effect that they belong to Kondareddis (ST) Community, within a period of four weeks from the date of receipt of a copy of this order. No costs.

vs

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Collector,
Thiruvallur, Thiruvallur District.

2.The Revenue Divisional Officer,
Tiruttani, Thiruvallur District.

+1cc to Mr.S.Doraisamy, Advocate Sr.No.90942
+1cc to Government pleader sR.No.91435

sm:18.1.2018

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