

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.16206 to 16208 of 2016

M.Perumal .. Petitioner in WP.No.16206/2016
M.Kaliappan .. Petitioner in WP.No.16207/2016
P.Thangavel .. Petitioner in WP.No.16208/2016

vs.

The Revenue Divisional Officer,
Dharmapuri. Respondent in all Wps.

Prayer in WP.No.16206 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of rejection passed in proceedings No.Na.Ka.9631/2015/A4 dated 02.12.2015 on the file of the respondent quash the same and direct the respondent to issue community certificate to the petitioner and his sons viz. 1) P.Naveenkumar and 2) P.Jayakumar that they belong to "Kurumans (ST) community" based upon the community certificate already issued to his brother Parthiban and cousin N.Chinnasamy which was verified by the State Level Scrutiny Committee in Proceedings No.8966/CVIII/2012 dated 31.10.2013.

Prayer in WP.No.16207 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of rejection passed in proceedings No.Na.Ka.9632/2015/A4 dated 02.12.2015 on the file of the respondent quash the same and direct the respondent to issue community certificate to the petitioner and his children viz. 1) K.Manikandan and 2) K.Nithya that they belong to "Kurumans (ST) community" based upon the community certificate already issued

to his brother Parthiban and cousin N.Chinnasamy which was verified by the State Level Scrutiny Committee in Proceedings No.8966/CVIII/2012 dated 31.10.2013.

Prayer in WP.No.16208 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of rejection passed in proceedings No.Na.Ka.9681/2015/A4 dated 03.12.2015 on the file of the respondent quash the same and direct the respondent to issue community certificate to the petitioner and his sons viz. 1) Veerapathran and 2) Srinivasan that they belong to "Kurumans (ST) community" based upon the community certificate already issued to his relative N.Chinnasamy which was verified by the State Level Scrutiny Committee in Proceedings No.8966/CVIII/2012 dated 31.10.2013.

For Petitioners : Mr.S.Doraisamy
(in all the WPs)

For Respondent : Mr.K.Venkataramani
(in all the WPs) Additional Advocate General
Assisted by Mr.K.Dhananjeyan
Special Government Pleader

COMMON ORDER

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

The writ petitions have been filed for issuance of writ of Certiorarified Mandamus, calling for the records relating to the order of rejection.

2.The case of the petitioner in W.P.No.16206 of 2016 is that he belongs to Kurumans community, which is a Scheduled Tribe community. The petitioner studied upto S.S.L.C. and his parents are illiterates and he is doing coolie work and earning daily wages. The cases of the petitioner in all three writ petitions are one and the same and the issue involved in these writ petitions are one and the same and therefore, we proceed to discuss the case of the petitioner in W.P.No.16206 of 2016 and pass common order in all the three writ petitions. The petitioner in W.P.Nos.16206 and 16207 of 2016 are brothers and the petitioner in W.P.No.16208 of 2016 is also a close relative of the petitioners in the above writ petitions.

3. On 30.11.2011 and 03.10.2015, this petitioner preferred an application to the respondent requesting to issue a fresh community certificate as Kurumans (ST) to the petitioner and his children (1) Naveenkumar and (2) Jayakumar. Along with his application, the petitioner has enclosed the community certificate of his cousin one Mr. Chinnasamy, whose community certificate was verified by the State Level Scrutiny Committee and found to be genuine and community certificate of the petitioner's own brother one Mr. M. Parthiban was also enclosed.

4. When his application was not considered by the respondent for a quiet long time, this petitioner has approached this Court and filed a writ petition in WP.No.28593 of 2015 and this Court by order dated 11.09.2015 passed an order as follows:

"2. The only relief sought in this writ petition is a direction to the 1st respondent/Revenue Divisional Officer, Dharmapuri, to consider the petitioner's application dated 30.11.2011 in the light of the various certificates and documents filed by him, including the proceedings of the second respondent/State Level Scrutiny Committee issued in favour of the petitioner's cousin by name N. Chinnasamy.

4. It is beyond our comprehension as to how and why, the first respondent has taken about four years to take a decision on the petitioner's application. Even otherwise, on the request of the learned Special Government Pleader, appearing for the respondents, we further grant six weeks time to the 1st respondent to consider the application dated 30.11.2011, considering all the certificates produced by the petitioner, including the proceedings of the State Level Scrutiny Committee in respect of his blood relative, which has a probative value and also conduct proper enquiry and pass appropriate orders on its own merits and in accordance with law."

5. Pursuant to the order passed in the above writ petition in WP.No.28593 of 2015, dated 11.09.2015, the respondent has directed the petitioner to appear for enquiry on 13.11.2015 along with all the relevant records to prove his community stating as Kurumans (ST). Accordingly, this petitioner also appeared and produced the following certificates:

1. Petitioner's School TC
2. Community certificate of the petitioner's cousin Chinnasamy
3. State Level Scrutiny Committee verification report in respect of community certificate of Chinnasamy
4. Genealogical Family tree issued by the Tahsildar
5. Community certificate of the petitioner's brother Parthiban
6. Service extract of the petitioner's brother Parthiban"

6. The petitioner also gave statement before the respondent. The respondent also conducted spot enquiry. Therefore the respondent by impugned proceedings in No.Na.Ka.9631 of 2015 of A4 dated 02.12.2015 rejected the request of petitioners in W.P.No.16206 and 16207 of 2016 on 02.12.2015 and on 03.12.2015 for the petitioner in W.P.No.16208 of 2016, challenging the same the petitioners have come with the respective writ petitions.

7. A counter affidavit has been filed by the respondent, denying the allegations and stated that the order impugned in this writ petition is well considered order. The respondent has stated that it is the admitted fact that the petitioner has made an application to the respondent for issuing community certificate to the petitioner and his children namely (1) Naveenkumar and (2) Jayakumar, along with a copy of the community certificate of the petitioner's cousin one Mr.N.Chinnasamy, whose community certificate was verified by the State Level Scrutiny Committee and found to be genuine.

8. The respondent also stated that the said N.Chinnasamy is not a direct close blood relative to the petitioner's father side Mr.S.Narasimhan and Sainammal, who are the parents of the said S.T. Certificate holder of N.Chinnasamy. The said Sainammal is an elder sister of Tmt.Parvathi, who is the mother of the present petitioner. The Scheduled Tribe Certificate holder of N.Chinnasamy is not at all close blood relative of the petitioner's father Mathaiyan side.

9. The respondent also states that the petitioner's father side relations can be considered as close blood relative for the purpose of considering the communal social status. Therefore, for the above reasons, the petitioner's request was rejected on 02.12.2015, which is a detailed self contained speaking order and it can be maintained well in all aspects.

10.The respondent also states in the counter that the instructions/directions of the State Government issued in Letter No.34606/ADW/II/88-5 dated 17.10.1985 are as follows:

"The concerned authority while issuing the community certificate should conduct proper enquiries about the community status of the individual and also analyze critically as it is their Primary responsibility and done through scrutiny to the best of his knowledge prior to issue of such certificates."

11.The respondent also states that the then Secretary to Government, Adi Dravidar and Tribal Welfare Department by instruction dated 13.12.2013 to all the District Collectors to instruct the Revenue Divisional Officers / Assistant Collectors / Sub-Collectors to that effect that they should undertake proper enquiries before ever to issue such community certificates under the Schedule Tribe categories, eventhough, the parent's community status was confirmed by the SSLC. Hence, the legal heirs of such a Schedule Tribe certificate holders are always entitled to get such community certificate subject to due verifications properly of the certificate by the concerned authorities. Accordingly, such exercise has been undertaken by the respondent and that the action of the respondent could not be considered or decided is against the directions and guidances of this Court and the Hon'ble Courts.

12.The respondent also states that the candidates, who belongs to the MBC and BC were obtained bogus community certificate by suppressing their own birth community status, in order to get the S.T. community certificates to avail and enjoy the financial and all other benefits actually offered to the people, who belongs to S.T. communities for their upliftment by the State and Central Governments, in all respects and aspects. The constitutional rights vested with the S.T. people should not be defeated by way of issue of such S.T. community certificates to the people who were actually born in the MBC tradition.

13.The respondent also states that during the time of admitting in the schools, their community status were mentioned that as Kurumban/Kurumbar/Kurumba and there is no single entry as Kurumans cannot be seen in the aforesaid old records. Thereafter, all the peoples, who belongs to MBC took a stand that their community status should be recorded as Kurumans under S.T. category, purposefully and wantonly so as to uplift their life status in order to get educational seats and job opportunities very quickly than that of the OC/BC/MBC/SC people.

14.The respondent also states that the relatives of the petitioners community status were recorded as Kurumba/Kurumban/Kurumbar while they were admitting in the elementary school by their parents and not only the petitioners community status but also their close relatives community status was recorded in the same manner. Therefore, the respondent states that he was forced to come to conclusion that the petitioners and their family members are having MBC community status alone and not as S.T. status on the basis of public records.

15.The respondent also states that as per the existing instructions, he has processed the request of the petitioners and found that the petitioners does not belong to Kurumans (ST) actually by birth too and the family members are belong to MBC category only according to their actual life styles and customs etc. and the rejection order dated 02.12.2015 is well considered order, there is no violation of principles of natural justice and the order was passed utmost sprit of interest and faith to safe guard the S.T. people in order to uplift their down trodden social status by all measures as per the constitutional provisions and guarantee conferred on them.

16.The respondent also states that he is having high regard and respect about the laws and very particularly about all kind of judicial pronouncements by implementing them including the orders, the directions, the instructions of the Government in all respects and aspects for ever being a most obedient and sincere Government Servant, not only by holding the post of the Revenue Divisional Officer but also in any other posts promptly and render by the service to the people without any kind of reservations etc. and also without bias at any point of time and event. Therefore, he prayed this Court for dismissal of these writ petitions, since the well considered orders not required for any interference by this Court.

17.We have heard Mr.S.Doraisamy, learned counsel appearing for the petitioners and Mr.K.Venkataramani, Additional Advocate General, Assisted by Mr.K.Dhananjeyan, learned Special Government Pleader appearing for the respondent. We have also carefully considered the rival submissions on either side and perused the entire materials available on record.

18.It is the case of the petitioners is that when on 30.11.2011 and 03.10.2015, this petitioner preferred an application to the respondent requesting to issue a fresh community certificate to the petitioner and his children (1) Naveenkumar and (2) Jayakumar. Along with the application, he has enclosed the community certificate issued to one of his cousin namely Mr.Chinnasamy, verified by the State Level Scrutiny Committee and found to be genuine and community certificate of the petitioner's own brother one Mr.M.Parthiban

was also enclosed. When the petitioner approached earlier before this Court and filed a writ petition in W.P.No.28593 of 2015, dated 11.09.2015, this Court passed an order as follows:-

"2.The only relief sought in this writ petition is a direction to the 1st respondent/Revenue Divisional Officer, Dharmapuri, to consider the petitioner's application dated 30.11.2011 in the light of the various certificates and documents filed by him, including the proceedings of the second respondent/State Level Scrutiny Committee issued in favour of the petitioner's cousin by name N.Chinnasamy.

4.It is beyond our comprehension as to how and why, the first respondent has taken about four years to take a decision on the petitioner's application. Even otherwise, on the request of the learned Special Government Pleader, appearing for the respondents, we further grant six weeks time to the 1st respondent to consider the application dated 30.11.2011, considering all the certificates produced by the petitioner, including the proceedings of the State Level Scrutiny Committee in respect of his blood relative, which has a probative value and also conduct proper enquiry and pass appropriate orders on its own merits and in accordance with law."

19.Pursuant to the order of this Court in the above writ petition in W.P.No.28593 of 2015, dated 11.09.2015, this petitioner has approached this Court to prove the community of the petitioner and also produced the following documents before the authorities:

- "1.Petitioner's School TC
- 2.Community certificate of the petitioner's cousin Chinnasamy
- 3.State Level Scrutiny Committee verification report in respect of community certificate of Chinnasamy
- 4.Genealogical Family tree issued by the Tahsildar
- 5.Community certificate of the petitioner's brother Parthiban
- 6.Service extract of the petitioner's brother Parthiban"

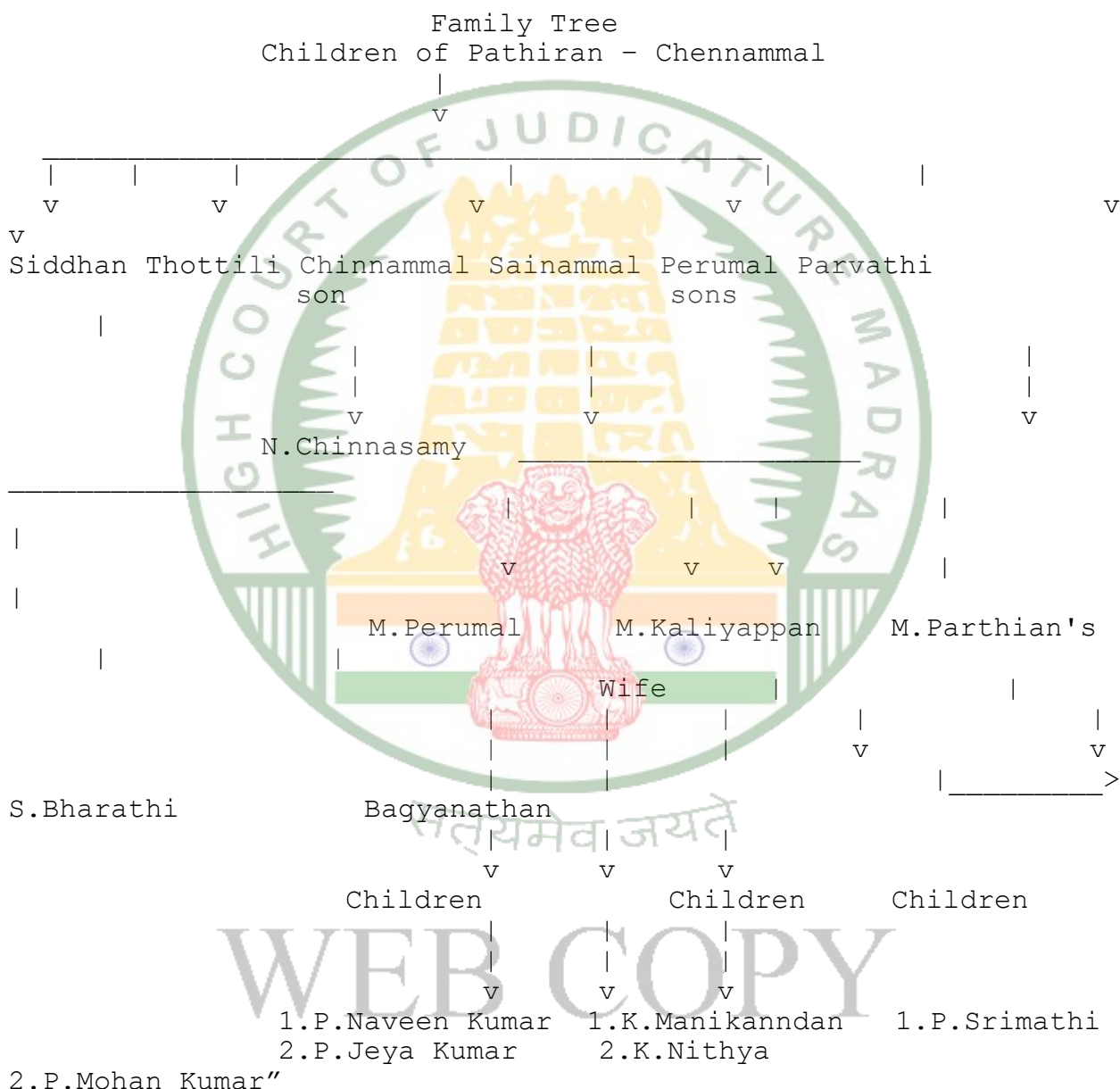
20.But without considering the documents produced by this petitioner, particularly this community certificate issued to one Chinnasamy, who is the cousin of this petitioner and the petitioner's brother Mr.Parthiban service extract which shows that the petitioner belongs to the S.T. Kurumans community, the respondent has simply rejected their request by stating that the petitioner's school certificate, it was mentioned as Kurumba/Kurumban/ Kurumbar that the certificate produced by the petitioner Mr.Perumal son of Madhaiyan and other relatives

certificates are contradictory.

21.As per the Genealogical family tree issued by the Tahsildar, Dharmapuri on 21.08.2014, it is stated as follows:

"O.Mu.14061/14/A2

S.No.
Dated: 21.08.2014
Tahsildar Office,
Dharmapuri



22.On verification of the Family tree issued by the Tahsildar Office, Dharmapuri, it is made clear that the said N.Chinnasamy is the son of one Sainammal and this petitioner

Mr.M.Perumal is the son of one Parvathi, who is the own sister of Sainammal and daughter of Pathiran and Chennammal.

23.When the community certificate belongs to N.Chinnasamy was properly verified by the State Level Scrutiny Committee and issued the genuineness of the community of the said Chinnasamy as Kurumans (ST) on 31.10.2013 in proceedings No.8966/CVIII/2012, the State Level Scrutiny Committee has passed orders as follows:

"6.The State Level Scrutiny Committee have carefully examined the documents produced by the individual, oral statements given by him, enquiry report of the Deputy Superintendent of Police, Scheduled Caste/Scheduled Tribe Vigilance Cell, Salem region and the views of the Anthropologist. The Committee has decided that Thiru.N.Chinnasamy S/o. Thiru.S.Narasimman belongs to Hindu "Kurumans" Scheduled Tribe Community. Accordingly, the State Level Scrutiny Committee hereby unanimously confirms that the Hindu 'Kurumans' Scheduled Tribe Community Certificate bearing No.2640939, dated 25.03.1996 issued by the Revenue Divisional Officer, Dharmapuri to Thiru.N.Chinnasamy S/o. Thiru.S.Narasimman, residing at 3/296, Savulupatti, Collectrate Post, Dharmapuri District - 636 705, is a genuine one."

24.As per the above, the State Level Scrutiny Committee issued the genealogical certificate by stating that the Hindu 'Kurumans' Scheduled Tribe Community Certificate bearing No.2640939, dated 25.03.1996 issued by the Revenue Divisional Officer, Dharmapuri to Thiru.N.Chinnasamy S/o. Thiru.S.Narasimman, residing at No.3/296, Savulupatti, Collectrate Post, Dharmapuri District - 636 705 is a genuine one.

25.We have perused the impugned order of the respondent wherein at para-8, the respondent has erroneously stated that the petitioner has failed to prove what way Mr.Chinnasamy is a blood relative of the petitioner. Further, in the impugned order no where the respondent has discussed about the close blood relative of the petitioner namely Mr.Parthiban. As we discussed above, the Tahsildar of Dharmapuri has issued the genealogy certificate to be above said Mr.Chinnasamy on 21.08.2014 wherein the relationship of the petitioner and Mr.Chinnasamy and Mr.Parthiban have been clearly mentioned. But the respondent failed to consider the above said vital document while deciding the community status issue of the petitioner. This would go to show the non-application mind of the respondent. The impugned order of the respondent is liable to be quashed on the ground of non-application of mind also.

26. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and can't be supplemented by fresh reasons. In this case, the respondent has rejected the claim of the petitioner mainly relying upon the community status of the petitioner's villagers as per the spot visit report of the V.A.O. This respondent has supplemented the fresh reason for rejection of the community certificate and the same is not a justified reason.

27. Thus being the case, when the petitioner's mother's own sister's son Mr. N. Chinnaasamy, was issued with ST community certificate by the very same Revenue Divisional Officer on 25.03.1996 and the same was confirmed as genuine by the State Level Scrutiny Committee, dated 31.10.2013 and the family tree also confirmed to prove the relativity between the petitioner and the said N. Chinnaasamy, the respondent / Revenue Divisional Officer, Dharmapuri, without properly verifying the community certificate of the said Chinnaasamy and genuineness certificate issued by the State Level Scrutiny Committee, rejecting the request of the petitioner is totally wrong and it was passed against the order of this Court and the Hon'ble Supreme Court in *Kumari Madhuri Patil* and another case reported in AIR 1995 SC 94.

28. At this juncture, we wish to state that in India, community is derived by birth and not acquired. Admittedly, Mr. Chinnaasamy and Mr. Parthiban are the close blood relatives of the petitioner and they were issued with community certificate as Kurumans by the Revenue Divisional Officer, Dharmapuri, the respondent herein. Having recognized them as Kurumans which is a Schedule Tribe, it is not appropriate to reject for issuance of community certificate to the petitioners and their children.

29. For the reason stated *supra*, we are of the considered opinion that the impugned orders of the respondent are called for interference by this court and the same are liable to be set aside and accordingly set aside.

30. In the result:

(a) all the three writ petitions are allowed and the impugned orders passed in proceedings Nos. (1) Na.Ka.9631/2015/A4 dated 02.12.2015; (2) Na.Ka.No.9632/2015/A4 dated 02.12.2015 and (3) Na.Ka.No.9681/2015/A4 dated 03.12.2015 respectively, by the Respondent in all the writ petitions, are set aside;

(b) the matters are remanded back to the respondent for fresh consideration by giving personal opportunities to the petitioners and to pass orders within a period of three months, for issuing community

certificate to the petitioners and their children;

(c) the said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

The Revenue Divisional Officer,
Dharmapuri.

+3 CCs to Mr.S. Doraisamy, advocate sr 20041,20040,20042
+1 Cc to Govt. Pleader sr 20246

W.P.Nos.16206 to 16208 of 2016

RR (CO)
sp (17/08/2017)



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