

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:30.08.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESSAVALU

W.P.No.23273 of 2017 and
WMP No.24311 of 2017

Elavarasi

.. Petitioner

Vs.

1. Government of Tamilnadu
Rep. By its Secretary,
Department of Adi-Dravida & Tribes Welfare,
Fort St. George, Chennai - 600 009
2. The District Collector,
Villupuram District
Villupuram
3. The Revenue Divisional Officer,
Kallakurichi, Villupuram District

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus in calling for the records pertaining to the impugned proceedings in Na.Ka.No.A7/724/2017 dated 21.07.2017, passed by the 3rd Respondent and to quash the same, consequently directing the 3rd Respondent to issue Community Certificates for her children, viz., S.Sanjay and S.Kivya as Hindu-malayali (Scheduled Tribe Caste)

For Petitioner : Mr.R.Prabudoss

For Respondents: Mr.M.Elumalai

Government Advocate

ORDER

[Order of the Court was made by M.VENUGOPAL, J.]

Heard both sides. By consent, the main Writ Petition itself is taken up for final disposal.

2. The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records of the records pertaining to the Impugned Proceedings in Na.Ka.No.A7/724/2017 dated 21.07.2017, passed by the 3rd Respondent / Revenue Divisional Officer, Kallakurichi and to quash the same. Further, the Petitioner had sought for passing of an Order by this Court in directing the 3rd Respondent to issue Community Certificates to her children, viz., S.Sanjay and S.Kivya to the effect that they belong to as Hindu-Malayali (Scheduled Tribe Caste)

3. According to the Petitioner, she is a widow belonging to Hindu Scheduled Tribe Caste. As a matter of fact, the native place of her husband is Mottampatti Village, Villupuram District, due to his employment, he has shifted the family to the address at Plot no.54, 14th Street, Balaji Nagar, Anagaputhur, Pallavaram, Kanchipuram District.

4. The Petitioner has one Son and one Daughter, by name S.Sanjay and S.Kivya aged about 9 and 6 years respectively. When the Petitioner has approached the school authority for admission to her children, they required her to produce Community Certificate and in this regard, she had submitted an application before the Revenue Divisional Officer, Tambaram for obtaining Hindu Scheduled Tribe Caste Certificate.

5. It comes to be known that on verification, the Revenue Divisional Officer, Tambaram had refused to issue the Petitioner, a Community Certificate for her children by referring the Letter vide ref. Ne.Mu.Ka.No.28176 dated 05.11.2011 issued by the Deputy Secretary Department of Adi-Dravidar & Schedule Tribe Welfare, Government of Tamilnadu in and by which it was mentioned that at the time when list of schedule published with regard to the Schedule Caste and Schedule Tribe, wherever they lived, from that place only, they have to approach for the purpose of securing the Community Certificates. Therefore, on 28.04.2016, Revenue Divisional Officer, Tambaram had advised the Petitioner to obtain Community Certificate from the 3rd Respondent / Revenue Divisional Officer, Kallakurichi, Villupuram District.

6. At this stage, the Learned Counsel for the Petitioner submits that the Petitioner had submitted an application before the 3rd Respondent / Revenue Divisional Officer, Kallakurichi, Villupuram District on 24.05.2016 for obtaining Community Certificates to and in favour of her children. However, in the said application, no orders were passed. Whenever the Petitioner approached the 3rd Respondent to issue Community Certificates for her children, she had submitted that since she had shifted her residential place to Anagaputhur, Pallavaram,

Kanchipuram District, she has to apply before the Revenue Divisional officer, Tambaram for her children. Therefore, she was perforced to file a Writ Petition in W.P.No.17832 of 2017 praying for passing of an order in directing the 3rd Respondent / the Revenue Divisional officer, kallakurichi to issue Community Certificates to and in favour of her children. During the pendency of the said Writ Petition, the 3rd respondent had rejected an application in Proceeding in Na.Ka.No.A7/724/2017 dated 21.07.2017 stating the above said reason and therefore, she was permitted to withdraw the said Writ Petition with liberty to challenge the rejection order of the 3rd Respondent on 03.08.2017.

7. The Learned Counsel for the Petitioner contends that the Order passed by the 3rd Respondent suffers from material irregularity and patent illegality and also due to non-application of mind. Furthermore, the 3rd Respondent had failed to appreciate the tenor and spirit to Paragraph No.4 of G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005 in a proper and real perspective.

8. The Learned Counsel for the Petitioner points out that the 3rd Respondent only by misinterpretation of the tenor and spirit of G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005 had stated that the Petitioner should reside in her native place, but, since she had shifted her residence to Chennai, therefore, her claim was rejected which is contrary to the tenor and spirit to G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005.

9. Apart from that, it is projected on the side of the Petitioner that the 3rd Respondent had failed to take into account the Community Certificates of the Petitioner and her husband, which were issued by the very same 3rd Respondent / Revenue Divisional Officer, Kallakurichi as 'Hindu -Malayalee'.

10. The Learned Counsel for the Petitioner adverts to the Order dated 10.07.2017 in W.P.No.17355 to 17357 of 2017 passed by the Division Bench of this Court between Minor C.Muhil and two others V. The District Collector, Villupuram District and another wherein at Paragraph no.10, it is observed as under:

10. A perusal of paragraph no.3 of G.O.Ms.No.61, Adi Dravidar and Tribal Welfare (ADW-10) Department dted 04.04.2005 would indicate that the place of permanent abode have been clarified and it is the categorical stand of the grandfather of the writ petitioners in the writ petitions (deponent of the affidavits in the writ petitions) that his permanent residence is at Palayapalapattu Village, Sankarapuram

Taluk, Villupuram District and the 2nd Respondent has expressed the view that once the place of permanent abode is shifted, the concerned persons are not entitled for Community Certificates. However, this Court is of the view that the said reason is unsustainable for the reason that freedom of movement is enshrined and guaranteed in the Constitution of India and one cannot except a person to reside in his permanent abode for the purpose of eking out his livelihood and if that view is taken, it also belies logic and common sense and it would also introduce a new clarification / criteria, which is not contemplated under the Government Order. It is an undisputed fact that the deponent of the affidavits - grandfather of the minor petitioners has been issued with a Community Certificate and vide proceedings of the Tamilnadu State Level Scrutiny Committee in No.29080/CV-II/2008 dated 01.03.2010, the same was found to be genuine."

11. At this juncture, a mere running of the eye of the G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005 relating to the clarificatory order in Paragraph Nos.3 and 4 reads as under:

"3. In case of persons born, after the date of notification of the relevant president order, the place of residence for the purpose of acquiring Scheduled Caste / Scheduled Tribes status in the place of permanent abode, of their parents at the time of notification of the presidential order, under which they claim to belong to such a caste / Tribe.

4. In the letter 3rd read above the Government of India has also clarification is the place of permanent abode of the parents as mentioned in the above first read above would mean.

The term their parents used in the said phrase, will include not only the parents but also the grand parents, subsequent genera also. Therefore only a scheduled caste certificate is issued to a person born after the date of notification of a particular presidential order based on the permanent abode of his parents, then his children grand children, i.e., successive generation will also continue to be entitled to claim the status of scheduled Tribes in the state of their ancestors, who were residing on the date of notification of the particular Presidential Order"

12. From the foregoing, it is to be borne in mind by the Concerned Authorities that the clarification issued by the Government of Tamilnadu in G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005 and the clarification issued by the Government of India, Ministry of Tribal Affairs, New Delhi in Letter F.No.12016/37/2004-T.A. (RL) dated 04.03.2005 are to be adhered to at the time of issuance of Scheduled Caste / Scheduled Tribe.

13. As far as the present case is concerned, the 3rd Respondent while passing the impugned order had not borne in mind the tenor and spirit of G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005 and also the clarifications issued by the Government of India in Letter F.No.12016/37/2004-T.A. (RL) dated 04.03.2005 and this has resulted in serious miscarriage of justice. Viewed in that perspective, this Court holds that the Impugned Order in Proceedings Na.Ka.No.A7/724/2017 dated 21.07.2017 passed by the 3rd Respondent bristles with serious infirmities in the eye of Law. Therefore, this Court left with no option but to interfere with the said Impugned Proceedings of the 3rd Respondent dated 21.07.2017 and sets aside the same. Consequently, the Writ Petition succeeds.

14. In fine, the Writ Petition is allowed. The Impugned Proceedings in Na.Ka.No.A7/724/2017 dated 21.07.2017 passed by the 3rd Respondent / the Revenue Divisional Officer, Kallakurichi, Villupuram District is set aside by this Court for the reasons assigned in this present Writ Petition. The entire subject matter in issue is remitted back to the 3rd Respondent / the Revenue Divisional Officer, Kallakurichi, Villupuram District, who is directed to take into consideration the G.O.Ms.No.61 Adi Dravidar and Tribal Welfare (ADW-10) Department dated 04.04.2005 and the Clarifications issued by the Government of India, Ministry of Tribal affairs, New Delhi in Letter F.No.12016/37/2004-T.A. (RL) dated 04.03.2005 and to pass a fresh order based on the Petitioner's Application dated 24.05.2016 on merits without driving her to go from one place to another. It cannot be gainsaid that the 3rd Respondent / the Revenue Divisional Officer, Kallakurichi, Villupuram District shall pass necessary and speaking order on merits, in a fair, just, unbiased and dispassionate manner, in any event, within a period of two weeks from the date of a receipt of copy of this order. Liberty is granted to the Petitioner to submit before the 3rd Respondent all the supporting documents, which she relies upon and also she is permitted to raise all factual and legal pleas before the 3rd Respondent, who shall take into account of the same and pass a reasoned order without precipitating the matter any further. Soon after passing of an order within the time adumbrated by this Court, the 3rd Respondent / the Revenue

Divisional officer, Kallakurichi, Villupuram District shall send a 'Compliance Report' by addressing a communication to the Registrar Judicial of this Court without fail. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd
To

1. Government of Tamilnadu
Rep. By its Secretary,
Department of Adi-Dravida & Tribes Welfare,
Fort St. George, Chennai - 600 009
2. The District Collector,
Villupuram District
Villupuram
3. The Revenue Divisional Officer,
Kallakurichi, Villupuram District
4. The Registrar Judicial
(For Favour of information and
necessary follow up action),
High Court, Madras

+ 1 cc to Mr.R. Prabudoss, Advocate Sr.62536

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