

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.09.2017

Coram

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

W.P.No.24493 of 2017

K.Kembi

.. Petitioner

Vs.

The Revenue Divisional Officer,
Harur, Dharmapuri District.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondent to issue community certificate to the petitioner's son K.Nagul that he belongs to Kurumans (ST) Community based upon the community certificate already issued to the parents.

For Petitioner : Mr.V.Elangovan

For Respondent : Mr.M.Elumalai
Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioner and Mr.M.Elumalai, Learned Government Advocate accepts notice on behalf of the Respondent. By consent, the Writ Petition itself is taken up for final disposal.

2.The stand of the Petitioner is that he belongs to Kurumans Community which is notified as Schedule Tribe Community as per the Constitution (Scheduled Tribes) Order 1950 as amended by the Scheduled Tribes Orders (Amendment) Act, 1976. She obtained community certificate from the Revenue Divisional Officer, Dharmapuri on 23.07.1996. Her Husband K.Kumaravel (since deceased) also belong to Kurumans (ST) Community who had obtained community certificate from the Revenue Divisional Officer, Dharmapuri on 26.02.1996. The aforestated certificates were issued to them after due enquiry and the said certificates are still holds good because of the fact that they have not been cancelled by any authority as on date. The Petitioner claims that in a School records, her community is entered as Kurumans (ST)

Community. She has a son by name K.Nagul, aged 14 years, studying 10th standard. She has preferred an Applications before the Respondent/Revenue Divisional Officer, Harur, Dharmapuri on 30.05.2012 and 08.08.2015 seeking for issuance of Community Certificate to her son mentioning that he belongs to Kurumans (ST) Community and along with the Application, she had enclosed the following four documents:

- 1.My community certificate.
- 2.My husband's community certificate.
- 3.My School Transfer certificate
- 4.Family Card.

After an enquiry being conducted by the Village Administrative Officer, Revenue Inspector and Tahsildar, a Report was sent to the Respondent/Revenue Divisional Officer, Dharmapuri. But the grievance of the Petitioner is that till date no order is passed by the Respondent although a reminder was sent on 13.07.2016. Despite the same, till date no certificate is issued by the respondent.

3.At this stage, the Learned Counsel for the Petitioner strenuously takes a plea that once the parents is possessing a valid community certificate, children are entitled to secure the similar community certificate from the Respondent, by applying the ratio laid down in the decision of the Hon'ble Supreme Court in State of Bihar V. Sumit Anand reported in (2005) 12 SCC 248. Therefore, the plea taken on behalf of the Petitioner is that the Respondent is bound to issue the community certificate.

4.Conversely, it is the submission of the Learned Government Advocate for the Respondent that the Respondent/Revenue Divisional Officer, Harur, Dharmapuri will pass necessary orders based on the Applications of the Petitioner dated 30.05.2012 and 08.08.2015, of course within the time determined by this Court.

5.In this connection, it is not out of place for this Court to aptly point out the decision of the Hon'ble Supreme Court in Anand V. Committee for Scrutiny and Verification of Tribe Claims and others reported in (2012) 1 Supreme Court Cases 113, at special page 120 & 121, wherein, in paragraph 22 & 23, it is observed and laid down as follows:

"22.It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a

caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the scheduled tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a scheduled tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim.

23. Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim.

The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

6. In as much as the Petitioner's Application seeking for issuance of Community Certificate to her son viz., K.Nagul that he belongs to 'Kurumans (ST) Community' is pending ever since 30.05.2012 and the same has not seen the light of the day, at this stage, this Court, without delving deep into the merits of the matter and also not expressing any opinion in the subject matter in issue, based on Equity, Fair Play and Good Conscience, simpliciter, directs the Respondent to look into the representation of the Petitioner dated 30.05.2012 and 08.8.2015 praying for issuance of Kurumans (ST) Community Certificate to her son and to dispose of the same on merits and in accordance with Law, within a period of four weeks from the date of receipt of copy of this order. Liberty is granted to the Petitioner to furnish even the copy of the representations dated 30.05.2012 and 08.08.2015 addressed to the Respondent, coupled with the copy of document Nos.1 to 4 which she relies upon [as made mention of in para 3 of her Affidavit in the Writ Petition]. The Respondent shall pass necessary orders within the time frame determined by this Court, of course, in a fair, free, unbiased and dispassionate manner uninfluenced and untrammelled with any of the observations made by this Court in this Writ Petition. It is needless for this Court to make a pertinent mention that the Respondent shall adhere to the Principles of Natural Justice in providing necessary opportunities to the Petitioner to establish her claim. The Respondent, after complying with the order of this Court in disposing of the representations of the Petitioner dated 30.05.2012 and 08.08.2015 within the time determined by this Court, shall send a Compliance Report addressed to the Registrar (Judicial) of this Court, without fail.

7. With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Sgl

To

1.The Revenue Divisional Officer,
Harur, Dharmapuri District.

2.The Registrar (Judicial)
High Court, Madras.
(For information and necessary
follow up action)

+1 Cc to Mr.S. Doraisamy, Advocate sr 66920.

+1 Cc to The Govt. Pleader sr 66827.

W.P.No.24493 of 2017

SK(CO)
sp(22/09/2017)



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