

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.07.2017

Coram

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

W.P.No.15993 of 2017 and
W.M.P.No.17282 of 2017

R.S.Priya

.. Petitioner

Vs.

- 1.The Tahsildar,
Sankarapuram Taluk,
Villupuram District.
- 2.The Revenue Divisional Officer,
Kallakuruchi Taluk,
Villupuram District.
- 3.The District Collector,
Villupuram District,
Villupuram.
- 4.The Chairman cum Secretary,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George,
Chennai - 9.
- 5.The Director,
Tribal Welfare Department,
Government of Tamil Nadu,
Chepauk, Chennai - 600005.
- 6.Controller of Examination,
Tamil Nadu Dr MGR Medical University,
No.69, Anna Salai, Guindy, Chennai - 600 032.
- 7.The Principal,
Adhiparasakthi Dental College & Hospital,
Melmaruvathur - 603 319
Kancheepuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 3rd Respondent to dispose of the Appeal on merits pending on the file of the 3rd Respondent dated 01.08.2016 against the order of the 2nd respondent bearing Na.Ka.No.A7/3067/2016 dated 28.06.2016 in the matter of issuance of Community Certificate of Malak Kuravan, from Sankarapuram Taluk to the Petitioner within the time stipulated by this Court and consequently refrain the 6th and 7th Respondent from any manner interfering or disrupting the education of the Petitioner in continuing her studies in BDS Course for the Academic year 2016-2017 for want of production of the said Community Certificate, until the disposal of the appeal by the 3rd Respondent in the aforesaid matter.

For Petitioner : Mr.A.Palaniappan

For Respondents 1 to 5 : Mr.A.Sri Jayanthi
Special 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 the Learned Special Government Pleader appearing for the Respondents 1 to 5.

2.According to the Petitioner, she belongs to Malak Kuravan Community, which is a Scheduled Tribe Community in Sankarapuram Taluk, Villupuram District. It is the plea of the Petitioner that the Tahsildar, Kallakuruchi/Competent Authority had issued Community Certificate to her father [vide Certificate No.1798326 dated 18.09.1990]. Furthermore, the said Certificate bears the District Code No.04, Taluk Code No.06, Village Code No.023. As a matter of fact, the said Community is recognised as a Scheduled Tribe as per G.O.Ms.No.242 SWD dated 30.07.89/The Scheduled Caste and Scheduled Tribes Orders (Amendment) Act 1976 [vide Serial No.23 as provided in the Community Certificate issued to her father].

3.The clear-cut stand of the Petitioner is that all her close relatives, belonging to the aforestated 'Malak Kuravan' Community do belong to the said community and she had appended the Community Certificate issued in respect of her close relatives affirming the fact that she only belongs to the 'Scheduled Tribe Community'. Added further, it is the submission of the Learned Counsel for the Petitioner that the Petitioner's community is declared as a Scheduled Tribe Community and presently the Revenue Divisional Officer of the concerned Taluk

and District alone is entitled to grant a Scheduled Tribe Community Certificate.

4.Expatiating his submission, the Learned Counsel for the Petitioner projects an argument that the Petitioner belongs to the Malak Kuravan Community (Scheduled Tribe Community) and the land situated in Survey No.142/2 measuring an extent of 0.50 cents situated in Ulagalapadi Village was granted to her grandfather, since he was belonging to the aforesated Scheduled Tribe Community, as per proceedings dated 29.07.1998 issued by the Assistant Commissioner (Land Settlement) Office, Villupuram.

5.The Learned Counsel for the Petitioner contends that on account of the very poor socio-economic background for the purpose of eking their livelihood, the Petitioner had migrated from the Hills which constitute their terrain, to the other small villages in Villupuram District. To sustain themselves and for their livelihood, they were forced to migrate from the place of origin being Kalvarayvan Hills, Villupuram District to other Villages and Towns in the Villupuram District. Moreover, the Petitioner's Community Certificate is scattered in various Villages and Towns in Villupuram District [including Ulagalapadi Village, Sankarapuram, Royasamuduram Village, Mallur Village, Arasaramapattu Village, Thirukovilur, Madapattu Village, Keeraur Village, all situated in Villupuram District].

6.The Learned Counsel for the Petitioner takes a stand that the Petitioner's father had applied for the Community Certificate in her favour in terms of Application dated 21.03.2016. In fact, the said Application was forwarded by the 1st Respondent/Tahsildar, Sankarapuram Taluk, Villupuram District, after conducting all the preliminary enquiries in the place of residence at Sankarapuram Taluk. The aforesated Application (which was forwarded by the 1st Respondent) was received by the 2nd Respondent on 01.06.2016. Later, the Petitioner's father had sent a representation to the 3rd Respondent, which was forwarded in turn to the 2nd Respondent for the purpose of processing the issuance of Community Certificate, on 03.06.2016.

7.It is represented on behalf of the Petitioner that the 2nd Respondent, who is the Competent Authority to issue the Certificate of Scheduled Tribe (Malak Kuravan) Community to the Petitioner was holding the matter notwithstanding the urgency at her instance for the purpose of pursuing higher studies after completing the Higher Secondary Education Exams. In the interregnum, the Petitioner had filed W.P.No.19309 of 2016 seeking Writ of Mandamus directing the Director of Medical Education and Medical Council of India to receive her Application for MBBS course for the academic year 2016-2017 conducted by the Respondents and to proceed with all the other

incidental selection process by accepting an undertaking by her providing that she shall produce the Community Certificate that she belongs to Malak Kuravan Scheduled Tribe from Sankarapuram Taluk Villupuram District within the time adumbrated.

8.It comes to be known that the Petitioner was not in a position to secure the admission in the MBBS course and the above Writ Petition became an infructuous one. In a similar fashion, W.P.No.20526 of 2016 projected by the Petitioner claiming for similar direction to accept the undertaking given by her for the purpose of joining the Bachelor of Veterinary Science Course, became infructuous, according to the Learned Counsel for the Petitioner.

9.The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner joined the Bachelor of Dental Science Degree Course for the academic year 2016-2017 in the Adhiparasakthi Dental College and Hospital, Melmaruvathur. In reality, the aforesaid admission was given to her with a rider that she should produce the necessary Community Certificate affirming that she belongs to Scheduled Tribe Community being Malak Kuravan Community within the specified time. The Petitioner is continuing the said course and that she has to produce the Community Certificate which is to be given by the 2nd Respondent affirming the Community as 'Malak Kuravan Community' etc.

10.The Learned Counsel for the Petitioner submits that the 2nd Respondent/Revenue Divisional Officer, Kallakuruchi Taluk, Villupuram District passed an order on 28.06.2016 proceeding in Na.Ka.A 7/3067/2016, negating the request for issuance of Community Certificate to the Petitioner as one belonging to Malak Kuravan (ST) on untenable and baseless grounds and in this regard, she had preferred an Appeal before the 3rd Respondent viz., the District Collector, Villupuram on 01.08.2016. It transpires that the said Appeal is pending as on date without any progression of the matter. Therefore, the Learned Counsel for the Petitioner prays for passing of an order by this Court in directing the 3rd Respondent to dispose of the Appeal filed by the Petitioner on merits which is pending on his file against the order of the 2nd Respondent bearing No.Naka.A7/3067/2016 dated 28.06.2016 in the matter of issuance of Community Certificate of Malak Kuravan, from Sankarapuram Taluk to the Petitioner within the time stipulated by this Court etc.

11.The Learned Counsel for the Petitioner brings it to the notice of this Court that as regards the Report of erstwhile Revenue Divisional Officer, Kallakurichi stating that there is no settlement of Malak Kuravan Community in Kalvarayan Hills, Villupuram and the surrounding areas and out right Community Certificate sought by the Malak Kuravan community in the said

area was subjected to rejection by the authorities concerned.

12. At this stage, the Learned Counsel for the Petitioner takes a fervent plea that the outright rejection of community certificate to numerous persons in the said locality transformed into complaints to the State Human Rights Commission of Tamil Nadu in SHRC Case No.349823558/2000/RRS, orders dated 14.12.2000, whereby and whereunder, it was observed that Malak Kuravan Community Certificate is to be issued to suitable/appropriate persons who produce evidence and further, it was opined that the applicants concerned were deprived of the Community Certificate for a long time even though they had produced enough evidence etc. Furthermore, it is to be pointed out on behalf of the Petitioner that the State Government was required to direct the Revenue Divisional Officer, Kallakuruchi to issue Community Certificate to all the applicants at once and each of the Applicant, the compensation of Rs.1000/- was directed to be paid as compensation by the State Government for violation of Human Rights and it was also ordered that the compensation amount so paid was to be recovered from the concerned Revenue Divisional Officer.

13. The Learned Counsel for the Petitioner proceeds to state that the 5th Respondent/Director, Tribal Welfare Department, Government of Tamil Nadu, Chepauk, Chennai had issued a communication to the renowned Anthropologist in the subject matter in issue for submitting a report in respect of an 'Ethnographic Study' on 'Malak Kuravan/Malai Kuravan'. On clarification regarding their tribal status in Thiruvannamalai District and Villupuram District of Tamil Nadu. In regard to the same, one Dr. Jakka Parthasarathy, a renowned Social Anthropologist furnished a detailed Field Study Report on the aforesaid issue viz., as to whether Malak Kuravan Community is prevalent in Thiruvannamalai District and Villupuram District. In short, the entire gamut of the report clearly contains necessary details pertaining to numerous aspects of Malak Kuravan Community (including the aspects of their isolated lifestyle, distribution and population, Exogamous Division and family names, their cycle rituals etc.

14. Besides the above, the Learned Counsel for the Petitioner points out before this Court that various questions were asked in regard to one Kathiravan [who was the Revenue District Officer of Kallakurichi Division] and who had passed the detailed order of rejection of all applications seeking issuance of Community Certificate as 'Malak Kuravan' in terms of the purported order which was confirmed by the District Vigilance Committee headed by the District Collector dated 28.10.2005 vide Na.Ka.No.11/31416/2004. Furthermore, when an interested person raised necessary questions in this regard the Public Information Officer had stated that those informations were not available.

As such, it is the unerring stand of the Petitioner that the outright rejection by the then Revenue Divisional Officer which was sought to be relied on by the 2nd Respondent/Revenue Divisional Officer, Kallakurchi Taluk, Villupuram District and ultimately, rejected the claim made by the Petitioner that she belongs to Malak Kuravan Community, was not correct in the eye of Law.

15.The Learned Counsel for the Petitioner draws the attention of this Court that the various studies conducted by the renowned Anthropologist clearly reveals the Village, the family name of the Petitioner Sechelu being observed in the report. Also that, the Petitioner's several relatives (including close relatives) had obtained the Community Certificates mentioning their name 'Malak Kuravan' which is classified as Scheduled Tribe. Suffice it to point out that 44 individuals were provided with Community Certificates in Sankarapuram Taluk and one Parthasarathy of Arasarampattu Village was issued a Community Certificate in the year 2010 which was questioned at later point of time and the genuineness of the certificate issued was confirmed by the State Level Scrutiny which confirms that there is Malak Kuravan Community in Sakarapuram Taluk and the earlier approach of the authorities concerned that there was no Malak Kuravan Community in the aforesaid Taluk and outright rejection of the Community Certificate to all the persons concerned was not only illegal, but in negation of the constitutional rights of the persons concerned, who were residentially deprived of the Community Certificates on baseless and untenable reasons.

16.The Learned Counsel for the Petitioner contends that the 2nd Respondent had refused to issue Community Certificate of Malak Kuravan Community in Sankarapuram Taluk to the Petitioner dated 28.06.2016 which is per se against Law and sans merits.

17.As an aggrieved person, as against the order of the 2nd Respondent dated 28.06.2016, the Petitioner, who had preferred an Appeal before the 3rd Respondent/District Collector, Villupuram District, Villupuram, preferred an Appeal on 01.08.2016. It transpires that it has not been disposed of till today. To put it succinctly, the said Appeal has not seen the light of the day.

18.In view of the limited prayer sought for by the Petitioner viz., for passing of an order by this Court in directing the 3rd Respondent/District Collector, Villupuram District, to dispose of the Appeal which is pending on his file from 01.08.2016 [as against the order dated 28.06.2016 of the 2nd Respondent in regard to the subject of issuance of Community

Certificate of Malak Kuravan from Sankarapuram Taluk to the Petitioner], this Court, on the basis of Equity, Fair Play, Good Conscience, as a matter of prudence and to prevent an aberration of Justice and to promote substantial cause of Justice, without traversing upon the merits of the matter and also not delving deep into the same, simpliciter, directs the 3rd Respondent/ District Collector, Villupuram District, Villupuram to dispose of the Appeal filed by the Petitioner on 01.08.2016 (admittedly pending on the file of the 3rd Respondent) with an open, free, just, fair mind and that too in an unbiased and dispassionate manner, within a period of three weeks from the date of receipt of copy of this order. Since the Petitioner is said to be a Student at Bachelor in Dental Science Decree Course before the Adhiparasakhi Dental College and Hospital, Melmaruvathur, Kancheepuram District (7th Respondent), the 3rd Respondent/District Collector, Villupuram District, Villupuram, in the paramount interest and well being of the Petitioner, without any further loss of time and without elongating or procrastinating and precipitating any further, is to pass necessary appropriate orders in the subject matter in issue, of course, after providing due necessary opportunities to the Petitioner. It cannot be gainsaid that the said reasoned speaking order is to be passed on merits uninfluenced and untrammelled with any of the observations made by this Court in this Writ Petition. It is open to the Petitioner to raise all factual and legal issues before the 3rd Respondent/ District Collector, Villupuram District, Villupuram.

19. Before parting with the case, it is made candidly clear that an Interim Order passed by this Court in W.P.No.15993 of 2017 and W.M.P.No.17282 of 2017 on 28.06.2017 in directing the Respondent Nos.6 and 7 not to cancel the admission of the Petitioner in the first year BDS course, on the ground of non-production of the Community Certificate, shall hold good and will govern the field till the orders are passed by the 3rd Respondent, within the time specified by this Court. After disposing of the Appeal within the time specified by this Court, the 3rd Respondent/District Collector, Villupuram District, Villupuram, shall inform/apprise the Registrar (Judicial) of this Court by submitting a detailed, complete and comprehensive Report in regard to the disposal of the Appeal within the time granted by this Court.

20.With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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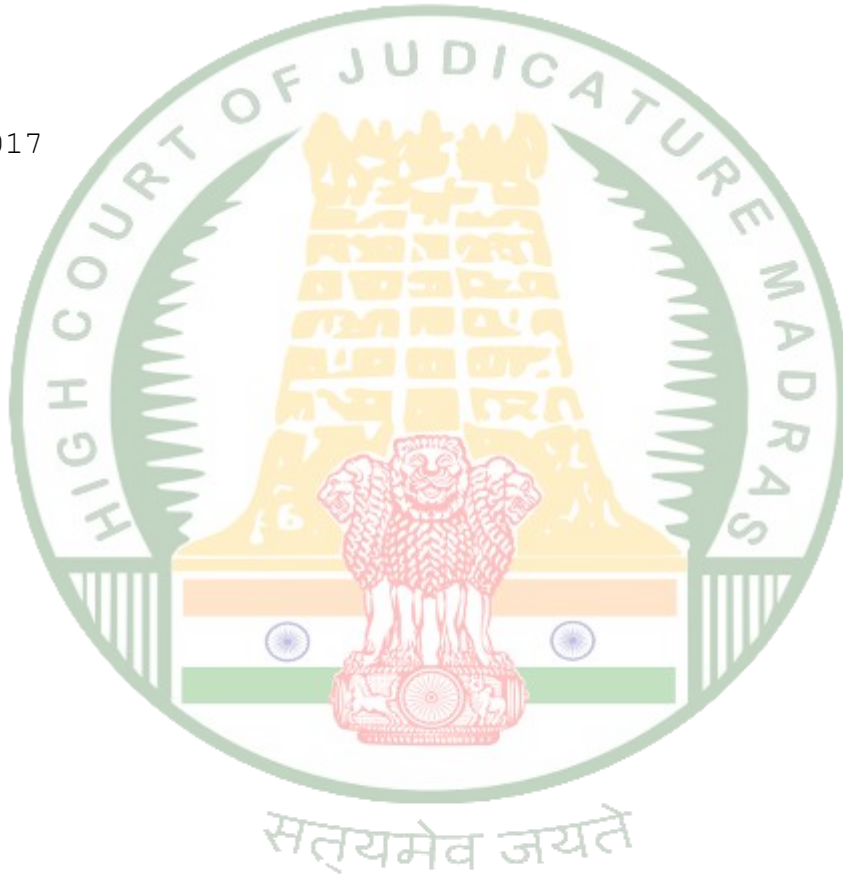
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- 7.The Principal,
Adhiparasakthi Dental College & Hospital,
Melmaruvathur - 603 319
Kancheepuram District.

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

+1 cc to Mr.A.Palaniappan Advocate sr 50623
+1 cc to the Government Pleader sr 51022

W.P.No.15993 of 2017

rj(co)
aa25/07/2017



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