

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.07.2017

Coram

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

W.P.No.16407 of 2017 and
W.M.P.No.17744 of 2017

Kruthika Devi B.M.

... Petitioner

v.

1. State rep. By
The Commissioner and Secretary
Social Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
Krishnagiri District,
Krishnagiri.
3. The Sub Collector,
Hosur, Krishnagiri District.
4. The Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

... Respondents

सत्यमेव जयते

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the third respondent Sub Collector in Roc.5567/2015 (A2) dated 07.06.2017 denying Community Certificate to the petitioner student and quash the same and consequently direct the third respondent to issue Community Certificate to the petitioner student stating that she belongs to "Konda Reddis" which is a Scheduled Tribe based on the Final Community Certificate issued to her father P.M.Munireddy on 07.07.1990 by the previous Sub Collector.

For Petitioners : Mr.P.T.Perumal

For Respondents : Mr.K.Venkataramani
Additional Advocate General
For Mr.M.Elumalai
Government Advocate

O R D E R

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

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records from the 3rd Respondent/Sub Collector, Hosur, Krishnagiri District in Roc.5567/ 2015 (A2) dated 07.06.2017 and to quash the same. Further, she had sought for passing of a direction by this Court to the 3rd Respondent to issue Community Certificate to her as 'Konda Reddis', which is a Scheduled Tribe, based on the Final Community Certificate issued to her father P.M.Munireddy on 07.07.1990 by the previous Sub Collector.

2.According to the Petitioners, she belong to 'Konda Reddis' Community, which is listed as Scheduled Tribe in the State of Tamil Nadu. Her father Dr.P.M.Muni Reddy was issued with 'Konda Reddy' Community Certificate by the Tahsildar, Hosur on 09.08.1977. His Community Certificate was called into question by numerous third parties and departments. As a matter of fact, more than 46 enquiries were conducted by the authorities and agencies on the genuineness of the certificate issued to her father.

3.The stand of the Petitioner is that her father earlier filed W.P.No.13352 of 1985 before this Court and the Court passed an order stating that there is no scope for repeated enquiries and that the notice issued by the Sub Collector, Hosur was quashed. Thereafter, the State Government preferred an Appeal in W.A.No.1054 of 1986 and the same was dismissed. Ultimately, the Sub Collector, Hosur issued Konda Reddy Community Certificate to her father on 07.07.1990 stating that the certificate was issued based on the order in W.P.No.13352 of 1985 and the Judgment in W.A.No.1054 of 1986.

4.Proceeding further, the plea of the Petitioner is that when her brother Shesha Karthik applied for Community Certificate submitting his father's enquiry, court records and final certificate, the 3rd Respondent/Sub Collector, Hosur unnecessarily conducted a fresh enquiry and her father submitted his brother's school and transfer certificates. The 3rd Respondent/Sub Collector, Hosur, Krishnagiri District in a predetermined fashion passed a lengthy order on 27.06.2014 raising doubts on the certificate of her father and referred the matter to the State Level Vigilance Committee.

5.It comes to be known that her brother filed W.P.No.17180 of 2014 before this Court seeking to quash the Sub Collector's order with a direction to issue Community Certificate and that on 30.04.2015, the Division Bench of this Court passed an order allowing the Writ Petition by directing the Sub Collector to issue Community Certificate to her brother on the strength of the certificate issued to her father. Based on the aforesaid background, the Petitioner had applied for the issuance of Konda Reddy Community Certificate on 10.09.2015 enclosing various certificates and documents (including of Court Orders). Her father submitted the copy of the order in W.P.No.13562 of 1991 filed by her father's brother Dr.M.Venkatesa Reddy and also in W.P.No.13352 of 1985, this Court has passed an order on 24.04.1986 in directing the 2nd Respondent to consider the claim of the Petitioner therein that he belongs to Konda Reddy Community and pass orders on the application seeking for issuance of Community Certificate in accordance with Law within four weeks from the date of receipt of copy of this order.

6.It is to be noted that the Petitioner's father had submitted a copy of the order in W.P.No.18113 of 2002 and that the said writ petition was connected to W.P.No.13562 of 1991, which was filed by her father's brother Dr.V.Venkatesa Reddy, wherein it was, inter alia, observed as under:

"... After going through all the materials and particulars in light of the order passed by this Court in W.P.No.13352 of 1985 dated 24.04.1986 and Writ Appeal No.1054 of 1986 dated 25.04.1989 as well as the admission of the 1st Respondent that the Petitioner is a brother of P.M.Munireddy, the petitioner is entitled to succeed in the Writ Petition. Accordingly, the 1st Respondent cannot be permitted to cause verification of the petitioner's community status once again. Consequently the Writ Petition is allowed."

7.The principal grievance of the Petitioner is that in spite of the aforestated documents and various Court orders, the Sub Collector dragged on the matter in the subject matter in issue and therefore, she filed W.P.No.35791 of 2015 and on 05.11.2015, this Court had directed the Sub Collector to consider and pass orders on the application of the Petitioner after due enquiry. Furthermore, the 3rd Respondent/Sub Collector, Hosur, Krishnagiri District conducted enquiries on 30.09.2016, 05.04.2017, 17.04.2017, 08.05.2017 and 22.05.2017 and that enquiry went on endlessly, which perforced her to file W.P.No.12786 of 2017 praying for necessary directions to be issued in respect of Community Certificate based on the documents already submitted. On 17.05.2017, this Court had passed an order in directing the 3rd Respondent to consider her case on the basis of documents submitted by her father and also her father submitted the copy of the order on 25.05.2017.

8.The Learned Counsel for the Petitioner projects an argument that the 3rd Respondent/Sub Collector, Hosur, Krishnagiri once again called into question the genuineness of her father's 'Konda Reddy' Community Certificate by passing an order on 07.06.2017 (notwithstanding the fact that there was proper supporting documents and Court orders] with a biased and predetermined mind. That apart, the 3rd Respondent took into consideration of unconnected 'Family Tree' and the certificates of unknown third persons mentioning that they are all her father's brothers and sisters. Therefore, the impugned order of the 3rd Respondent dated 07.06.2017 to determine on the genuineness of the Community Certificates produced by the Applicant (Writ Petitioner) as evidence referring her case to the State Level Scrutiny Committee for scrutiny/verification etc. is a colourable exercise of power by the State Authority with an motive to deny her request for issuance of Community Certificate.

9.Besides the above, it is represented on behalf of the Petitioner that the 3rd Respondent/Sub Collector, Hosur, Krishnagiri District by passing an impugned order in Roc.No.5567/2015(A2) dated 07.06.2017 ultimately in referring the matter to the 4th Respondent/ Committee has endeavoured to unsettled an issue which was settled in a long drawn legal battle before a Court of Law.

10.Per contra, it is the submission of the Learned Additional Advocate General for the Respondents that the Petitioner has a remedy of preferring an Appeal as against the

order of the 3rd Respondent dated 07.06.2017 as per G.O.(Ms.) No.235 dated 26.06.2015 coupled with G.O.(Ms)No.147 dated 17.03.2016 before the 2nd Respondent/District Collector, Krishnagiri and thereafter, if the Petitioner is aggrieved, he is entitled to prosecute further proceedings before the 4th Respondent/State Level Scrutiny Committee. As such, the filing of the Writ Petition is not maintainable per se in the eye of Law.

11.This Court has heard the Learned Counsel for the Petitioner and the Learned Additional Advocate General for the Respondents and noticed their contentions.

12.At this juncture, it is pertinent for this Court to make a significant mention that in G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015, the Government of Tamilnadu, based on the orders passed by the Madurai Division Bench of this Court in W.P.(MD) No. 1355 of 2015 dated 05.02.2015 between D. Thirupathi V. The District Collector, Tirunelveli District, Tirunelveli and another, had constituted an Appellate Authority for an 'Appeal' remedy in regard to the issuance of Community Certificate, which runs as under:

Sl. No.	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
1	Backward Classes / Most Backward Classes /Denotified Communities	Zonal Deputy Tahsildar	Tahsildar	District Collector
2	Scheduled Castes	Tahsildar	Revenue Divisional Officer	District Collector
3	Scheduled Tribes	Revenue Divisional Officer	District Collector	District Collector & Chairman District Level Vigilance Committee

13. It also comes to light that the Government of Tamilnadu had passed G.O.(Ms).No.147, Revenue [RA-3(2)] Department, dated 17.03.2016 (As regards redressal of grievances of Scheduled Tribes), whereby and whereunder, after careful consideration and examining the subject matter in issue had issued an amendment to G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 to the Paragraph No.4 in the Tabular Column, for Serial No.3 and

the entries relating thereto, by substituting the same as under:

S1	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
"3	Scheduled Tribes	Revenue Divisional Officer.	District Collector	State Level Scrutiny Committee"

14. It is to be noted that the object of Article 226 of the Constitution of India is to provide a quick and an inexpensive remedy to the aggrieved parties. Therefore, it would be incorrect to incorporate all the proceedings of a suit into a proceeding under Article 226 of the Constitution of India as per decision of the Hon'ble Supreme Court in Babubhai V. Nandal reported in AIR 1974 SC 2105.

15. It is to be borne in mind that as 'Writ Proceeding' is summary in nature, 'Disputed questions' of fact cannot be decided in Writ Jurisdiction as per decision of the Hon'ble Supreme Court in Sumedha Nagpal V. State of Delhi, (2000) 9 SCC 745. Undoubtedly, the power conferred upon the Hon'ble Supreme Court and the High Court under Articles 32 and 226 of the Constitution of India is 'plenary power' and such power is not at all an incomplete power, nor fettered by any legal restraint. Although the power of 'Judicial Review' is at the hands of High Court under Article 226 of the Constitution, notwithstanding the fact that the Constitution of India does not impose any limitation upon the aforesaid power, the Courts themselves have evolved certain self imposed limitations or restraints in regard to the exercise of this extraordinary and unlimited discretionary power, as a matter of prudence and policy. In short, in Law, the whole field of Article 226 of the Constitution is purely a discretionary one.

16. Coming to the aspect of an 'Executive Power' of the State, it is to be pointed out that the same is coextensive with that of the State Legislature. The power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise is not covered by the existing Rules, as per decision Union of India V. Central Electrical & Mechanical Engineering Service (CE & MES) Group A (Direct Recruits) Association reported in CPWD 2008 1 SCC at Page 354. It cannot be forgotten that the executive instructions which are given by the State exercising its power under Article 162 of the Constitution of India cannot circumvent a statutory provision. In fact, Article 162 of the Constitution does not enjoin the State Government to pass executive Orders which are

contrary to Law, which was already made on the subject, by the State, in as much as it would amount to rewriting Art. 162 of the Constitution of India.

17. That apart, in order that the Executive instructions have the force of statutory Rules, it is to be exhibited that they were issued either under the authority showered under the State Government by some statute or under some provision of the Constitution, as per decision of Hon'ble Supreme Court in G.J.Fernandez V. State of Mysore reported in AIR 1967 SC Page 1753.

18. In short, Article 162 of the Constitution requires that where the State has power to make Laws, it can issue executive instruction as per decision Kamala Godera V. State of Rajasthan reported in AIR 2000 Rajasthan 130. Although the State Legislature has the power to make a Law relating to a subject, the executive action by the appropriate Government is not rendered invalid just because there is no Legislation to support such action, as per decision of the Hon'ble Supreme Court in Naraindas V. State of Madhya Pradesh reported in AIR 1974 SC Page 1232.

19. At this juncture, this Court aptly recalls and recollects the decision of the Hon'ble Supreme Court in Madhukar Sadbha Shivarkar V. State of Maharashtra and Others (2015) 6 Supreme Court Cases 557 at Special Page Nos.559 and 560 wherein it is held as follows:

"In the backdrop of the Judgment passed in the criminal cases which have attained finality before the Supreme Court, the State Government, after examining the representations given by the landowners in these cases with reference to the relevant land records of the landholders of the villages, has rightly exercised its statutory power by appointing the Sub-Divisional Officer as an enquiry officer at the first instance and later on Deputy Commissioner of Pune was appointed to enquire into the matter which is in the large public interest. (Para 26)

The order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records

have been destroyed and fabricated to substantiate their unjustifiable claim by paying fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The allegation of fraud in relation to getting the landholdings of the villages by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law through such orders have attained finality, if it is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. Fraud unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. The land owners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and acceptable to justify the impugned judgment and order of the High Court.

(Para 27)

The legal submissions made on behalf of the appellants that the State Government has no power either under Section 45(2) or under Section 14(4) of the 1961 to appoint an enquiry officer to enquire into the landholdings of the villages referred to therein are untenable contentions of the

appellants which have been rightly rebutted by urging an alternative legal plea that the power exercised by the State Government to pass the orders impugned in the writ petitions is traceable to its executive power under Article 162 of the Constitution of India. This is the most tenable submission, having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by the Supreme Court in these proceedings at this stage. (Paras 28 and 32)

Also, in the aforesaid decision, at Paragraph No.32 at Page No.572, among other things, it is observed as follows:

".....In our considered view, the orders impugned in the writ petitions which are affirmed by the High Court, are perfectly legal and valid and therefore, the same do not warrant interference by this Court in exercise of power of this Court under Article 136 of the Constitution, but on the other hand, the aforesaid orders of the State Government can also be traceable to execute power of the State Government under Article 162 of the Constitution of India having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by this Court in these proceedings at this stage....."

20. When a Government Order or a Statute provides for an adequate, effective, viable and efficacious alternative remedy and if such an alternative remedy is not cumbersome, then, in that event, it is open to the Petitioner to avail such remedy / machinery constituted under the said Government Order or under the Act, so that, the purport and intent of the Government in providing a certain forum is not whittled down in any manner.

21. Indeed, the remedy of preferring an Appeal enjoined in the amendment G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 was brought by the Government of Tamil Nadu based on the observations of the Hon'ble Division Bench of this Court in W.P.(MD) No.1355 of 2015 dated 05.02.2015 to the effect that for all the caste certificate cases which naturally require a factual adjudication, at least one appeal remedy for 'Scheduled Caste', 'Scheduled Tribes' and 'Backward Class' should be provided, which may be in the form of scrutiny by the District Level Vigilance Committee etc. Moreover, in W.P.(MD).No.6340 of 2015 [between R.Raja V. The Revenue Divisional Officer, Madurai, Madurai District], the Hon'ble Division Bench of this Court on 30.06.2015 had permitted the Petitioner therein to prefer an Appeal before the District Collector, Madurai, within ten days from the date of receipt of the order [based on the Government Order].

22. Furthermore, the action of the Government of Tamil Nadu in introducing an 'Appeal' remedy before the District Collector as per G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 (by way of amendment to G.O.(Ms).No.235 Revenue [RA3 (2)] Department dated 26.06.2015) does not suffer from any vice or material irregularities and patent illegalities in the eye of Law. Moreover, two Orders of the State Government are in the 'Interest of Public at Large', in the considered opinion of this Court.

23. It is to be relevantly pointed out that a Court of Law has an inherent power to fix a reasonable specified time for performing an act [in the absence of any procedural or codified statute] with a view to secure the ends of Justice or to prevent an abuse of process of Court. However, while determining the time limit, a Court of Law is to act with utmost care and circumspection and is to resort to a prudent course of action, by exercising its thinking judicial discretion and in short, is not to act in an arbitrary, capricious, cavalier and whimsical manner.

24. Be that as it may, in view of the fact that the present Writ Petition viz., W.P.No.16407 of 2017 is filed by the Petitioner assailing the Impugned Order of the 3rd Respondent/Sub Collector, Hosur, Krishnagiri District, dated 07.06.2017 rejecting her request for issuance of Community Certificate to her and also this Court, taking note of the tenor and spirit of the G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 and also looking into the contents of G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016, is of the considered view that the amended G.O.(Ms).No.147 Revenue [RA-3(2)] Department

dated 17.03.2016 issued by the Secretary to Government of Tamil Nadu provides for an 'Appeal' remedy to the District Collector (as an Appellate Authority) and thereafter, to the State Level Scrutiny Committee (For Redressal of Grievances) and therefore, in all Fairness, Equity and Fair Play, this Court directs the Petitioners to prefer an Appeal before the District Collector, Krishnagiri as against the impugned order of the 3rd Respondent dated 07.06.2017 within a period of two weeks from the date of receipt of copy of this Order. Liberty is granted to the Petitioners to raise all factual and legal pleas by enclosing necessary documents to support their case before the Appellate Authority / District Collector, Krishnagiri. In such event of the Petitioner preferring an Appeal, (of course, well within the time adumbrated by this Court), it cannot be gainsaid that the Appellate Authority, viz., the District Collector, Krishnagiri is to provide an adequate opportunity of hearing to the Petitioner by adhering to the 'Principles of Natural Justice' in true letter and spirit.

25. That apart, in case, the Petitioner seeks time for filing of additional documents or to lead oral/documentary evidence, then, in that event, the Appellate Authority, viz., the District Collector, Krishnagiri shall provide enough opportunity to the Petitioner by keeping in mind the 'Principles of Natural Justice'. The District Collector, Krishnagiri/Appellate Authority, is directed to pass necessary orders on the 'Appeal', as expeditiously as possible, in an Unbiased, Free, Just, Fair, impartial and dispassionate manner, of course, in the manner known to Law and in accordance with Law, in any event, not later than six weeks thereafter. Soon after disposing of the Appeal within the time specified by this Court, the District Collector, Krishnagiri (Appellate Authority) is also directed to send a compliance report to the Registrar (Judicial) of this Court in regard to the orders so passed.

26. Before parting with this case, this Court makes a relevant mention that it is high time for the Government of Tamil Nadu to give an anxious consideration in respect of enacting a complete and comprehensive Law in regard to issuance and verification of Community Certificates of Scheduled Caste and Scheduled Tribes and other Backward Classes quite in tune with the guidelines / directions issued in the Hon'ble Supreme Court decision Kumari Madhuri Patil & Another V. Additional Commissioner Tribal Development, Thane & Others reported in AIR 1995 SC 94 and the modifications made in the later Judgments of the Hon'ble Supreme Court of India on the subject, which governs the field. To put it succinctly, the neighbouring states like

Kerala, Andhrapradesh and Maharashtra had already enacted necessary legislations for issuance and verifications of the Community Certificates of Scheduled Caste and Scheduled Tribe and other Backward Classes and the same are in live force. This Court fervently opines that if the Government of Tamil Nadu enacts a codified Law pertaining to the procedure for issuance and verification of Community Certificate of Scheduled Caste and Scheduled Tribe and Other Backward Classes in the State, then, there is ample scope for wiping out/erasing out 'Bogus/Fictitious Community Certificates' obtained by the concerned persons, to secure the benefits in an unlawful manner.

27. With the aforesaid observations the present Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Commissioner and Secretary
Social Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
Krishnagiri District, Krishnagiri.
3. The Sub Collector,
Hosur, Krishnagiri District.
4. The Secretary to Government,
State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai - 600 009.

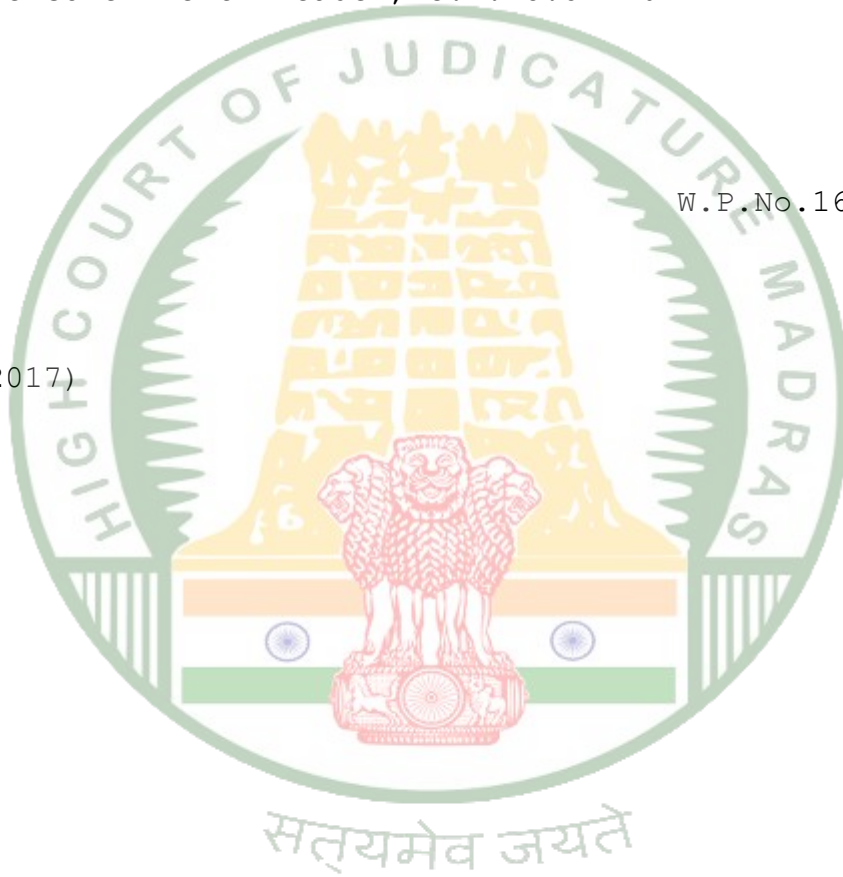
5. The Chief Secretary
Government of Tamil Nadu
Fort St. George, Secretariat,
Chennai - 600 009.

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

+lcc to the Government Pleader, S.R.No.52776

W.P.No.16407 of 2017

VG II(CO)
CU(23/08/2017)



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