

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 06.04.2017

Delivered on :: 28 .04.2017

CORAM:

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

W.P. Nos.18027, 21443, 20559 of 2014 and 33021 of 2016

W.P.No.18027 of 2014

P.A. Hemash petitioner

versus

- 1 Union of India
Rep by the District Collector (Revenue)
Revenue Department Puducherry
- 2 Tahsildar
Villianur Taluk Office Villianur Puducherry
- 3 Deputy Tahsildar
Villianur Taluk Office Villianur Puducherry
- 4 The Convener
Centralised Admission Committee (CENTAC)
Puducherry Engineering College Campus
Puducherry ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent with No.3272/TOV/CERT/2013 dt 30.7.2013 and to quash the same and consequently to direct the respondents to issue Scheduled Caste Community Certificate of Puducherry Origin to the petitioner.

W.P.No.20559 of 2014

P.I. Ashokaraamasekar ... petitioner

Vs

- 1 The District Collector
(Revenue) Revenue Department Puducherry

2 Tahsildar
Villianur Taluk Office Villianur Puducherry

3 Dr.S.B.Deepak Kumar I.A.S.
District Collector (Revenue) Revenue
Department Puducherry

4 Thiru S.Yeswanthaiyah
Tahsildar Villianur Taluk Office Villianur
Puducherry ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the 1st respondent regarding the order with No. 3270/DRDM/C2/SC-CAN/2014 dated 24.7.2014 and to quash the same.

W.P.No.21443 of 2014
P.A.Hemash petitioner

versus

1 The District Collector
(Revenue) cum District Magistrate and
Disaster Management Revenue Department
Puducherry

2 The Tahsildar
Villianur Taluk Office Villianur Puducherry

3 Dr.S.B.Deepak Kumar I.A.S.
District Collector (Revenue) Revenue
Department Puducherry.

4 S.Yeswanthaiyah
Tahsildar Villianur Taluk Office Villianur
Puducherry ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the first respondent regarding the order with No.3270/ DRDM/C2/SC-CAN/ 2014 dated 24.7.2014 and to quash the same

W.P.No.33021 of 2016

A.Pavethra rep. by the father
and natural guardian P.I.Ashokaraamasekar ... petitioner

versus

- 1 The Deputy Collector (Revenue)
(South) Revenue Department Puducherry
 - 2 The Tahsildar cum Executive
Magistrate Villianur Taluk Office
Villianur Puducherry
 - 3 The Convenor Centralised
Admission Committee (CENTAC) Pondicherry
Engineering College Campus Puducherry ..
- respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent with No.3053/DCRS/B7/ Cert Appeal/ 2015-16 dated 17.8.2016 and to quash the same and consequently to direct the 1st respondent to issue Scheduled Caste Certificate of Puducherry to the petitioner.

For petitioner : Mr.Vijay Narayan, Senior counsel,
for Mr.V.Ajaya Kumar

For Respondents : Mr.C.T.Ramesh,
Additional Government Pleader (Puducherry)

COMMON ORDER

K.K.SASIDHARAN, J.

The challenge in W.P.No.20559 of 2014 is to the order dated 24 July 2014 on the file of the Collector cum District Magistrate, Puducherry, cancelling the community status certificate issued to the petitioner and declaring that he is a Schedule Caste, migrated from the State of Tamil Nadu, entitled only to the status of Schedule Caste (Migrant). The very same order dated 24 July 2014, cancelling the community certificate of his son, is under challenge in W.P.No.21443 of 2014. The Writ Petition in W.P.No.18027 of 2014 challenges the order dated 30 July 2013 on the file of the Tahsildar, Villianur Taluk, Puducherry, rejecting the request made by the petitioner in W.P.No.21443 of 2014 for issuance of a Schedule caste certificate under the Constitution (Pondicherry) Scheduled Castes Order, 1964. The Writ Petition in W.P.No.33021 of 2014 is at the instance of the daughter of the petitioner in W.P.No.20559 of 2014 and the challenge is to the order dated 17 August 2016 on the file of the Deputy Collector (Revenue) South, upholding the order passed by the Tahsildar, Taluk Office, rejecting the application submitted for issuance of schedule

caste community certificate.

2. The Writ Petition in W.P.No.20559 of 2014 is a comprehensive Writ Petition filed by Thiru.P.I.Ashokaramsekar, Executive Engineer, Puducherry Housing Board, father of the petitioners in W.P.Nos.18027 of 2013 and 33021 of 2016, and the challenge is to the order cancelling his community certificate. Since the result of the Writ Petition in W.P.No.20559 of 2014 would decide the other three Writ Petitions, we are extracting the background facts in W.P.No.20559 of 2014 for appreciating the lis.

W.P.No.20559 of 2014 :-

Background facts:-

3. The petitioner obtained a community certificate on 17 February 1992 indicating that he belongs to schedule caste entitled to the benefits of the Constitution (Pondicherry) Scheduled Castes Order, 1964. Similarly, the son of the petitioner, Thiru.Hemash, obtained a Schedule Caste community certificate on 20 September 1999.

4. The petitioner, on the strength of the community certificate, secured employment in Puducherry Housing Board. He was initially appointed as Junior Engineer. It was a reserved post. The petitioner was subsequently promoted as Executive Engineer. The community certificate of the petitioner was the subject matter of several proceedings before this Court and revenue authorities.

5. The community status certificate issued to the petitioner declaring that he belongs to Hindu Adi Dravida was taken up for enquiry by the District Collector, Puducherry, pursuant to the Government Order in G.O.Ms.No.152 dated 24 November 2005, on the file of Department of Revenue and Disaster Management, Puducherry. The committee constituted by the Government, considered the claim of the petitioner and ultimately, held that he is not a schedule caste of Puducherry, coming under the purview of Constitution (Pondicherry) Scheduled Castes Order, 1964. The community certificate of the petitioner and his son were cancelled by order dated 24 July 2014. The application submitted by Ms.A.Pavethra, daughter of the petitioner was also rejected by the jurisdictional Tahsildar. The order was upheld by the Deputy Collector Revenue (South) Puducherry. Feeling aggrieved by the individual orders, the father and children have come up with these four Writ Petitions.

6. The District Collector, Puducherry, filed a counter affidavit justifying the impugned orders. According to the District Collector, the issue regarding the community status was not referred to the Vigilance Cell constituted by the Government, in view of availability of sufficient evidence indicating the ineligibility of the petitioner to obtain Schedule Caste (Origin) Certificate. The District Collector

contended that the procedure of referring the matter to the Vigilance Cell would arise only in case there are no documents available to take a decision in the matter.

Rival submissions:-

7. The learned Senior Counsel for the petitioners contended that none of the documents produced by the petitioner in W.P.No.20559 of 2014 were considered by the District Collector before cancelling the community certificates. The learned Senior counsel contended that the first respondent clearly admitted that the father of the petitioner in W.P.No.20559 of 2014 migrated to Puducherry after 1967. Since the cut off date is 5 March 1964, the first respondent ought to have considered the registered document produced by the petitioner including patta granted to his father for fixing the actual period of migration. It was further contended that the first respondent failed to adopt the process of verification indicated in the Government Orders relating to the scrutiny of Scheduled caste community certificate.

8. The learned Additional Government Pleader (Puducherry) contended that the name of the petitioner and his father were found in the ration card relating to their family house at Vanur in the State of Tamil Nadu. Their names were not found in the voter's list in the Union Territory of Puducherry before 1967. The learned Additional Government Pleader contended that the migration was after the cut off date and as such, the first respondent was correct in cancelling the community certificates.

Analysis:-

9. The presidential notification under Article 341 of the Constitution of India relating to Puducherry was issued on 5 March 1964. In view of the Constitution (Pondicherry) Scheduled Castes Order 1964, it is necessary in this matter to consider as to whether migration of the family of the petitioner to Puducherry was prior to 5 March 1964. In case the family was living at Puducherry before 5 March 1964, the members of the family are entitled to Schedule Caste (Origin) status. Similarly, in the event of migration to Puducherry after 5 March 1964, the family members are entitled only to the Schedule Caste (Migrant) status. The law in this aspect is well settled.

10. The father of the petitioner was a native of Vanur in the State of Tamil Nadu. The petitioner claimed that his family migrated to Puducherry before 5 March 1964 and they have been living in the Union Territory of Puducherry as on the day on which Constitution (Pondicherry) Scheduled Castes Order 1964 was issued by the President of India.

11. The petitioner claimed that he belongs to Schedule Caste (Origin) and obtained a community certificate from the

jurisdictional Tahsildar on 17 February 1992. The petitioner, on the strength of the said certificate, submitted application for appointment to the post of Junior Engineer in Puducherry Housing Board. The post was reserved for the members of the Schedule Caste Community or otherwise called as Puducherry Schedule Caste. There appears to be series of litigations challenging the community status of the petitioner at the instance of the Puducherry Housing Board Most Backward and other Backward Class Employees Union, rival employees and other third parties.

12. It was only subsequently and more particularly after issuing community certificate in favour of the son of the petitioner for his higher studies, on 20 September 1999, verification process appears to have been commenced by the District Committee.

13. There was no mechanism earlier to scrutinize the community status certificates obtained by the members of Schedule Caste and Schedule Tribe community. The Hon'ble Supreme Court therefore issued string of directions indicating the procedure to be followed for issuance and scrutiny of the community certificates. The judgment of the Hon'ble Supreme Court in Kumari Madhuri Patil and anr. vs. Additional Commissioner, Tribal Development & ors., (1994(6) SCC 241), and more particularly in paragraph 13, contain the guidelines and the procedure to be adopted for the issuance of social status certificates and scrutiny of community certificates.

Relevant Government Order :-

14. (a) The Government of Union Territory of Puducherry taking into account the directions given by the Hon'ble Supreme Court in Kumari Madhuri Patil, issued an order in G.O.Ms.No.152 Department of Revenue and Disaster Management dated 24 November 2005 constituting Committees to issue Caste/Community Certificates to the Schedule caste and other backward classes. The Government has also constituted a Village Level Committee as a recommending body for issuing community certificates. Clause No.10 of the Government Order provides that District Magistrate shall cancel the caste/ community certificate in consultation with the Members of the District Committee by giving reasonable opportunity to the affected applicant/parent/guardian.

(b) The District Committee was constituted under the Chairmanship of the District Magistrate. The Director, Adi Dravidar Welfare Department, Puducherry, Superintendent of Police (Vigilance), Head of Department/ Professor of Anthropology Department, Pondicherry University and two of the non-officials, selected by the existing members were made members of the District Committee. The Special Officer, office of the Additional Secretary (Revenue), Pondicherry in the cases of Pondicherry District was made the Member Secretary of the

Committee. The guidelines issued by the Hon'ble Supreme Court in Kumari Madhuri Patil were reproduced in paragraph 12 of the Government Order. Therefore, it is clear that the Government of Puducherry has evolved a mechanism for the verification of community status certificates.

15. The District Collector in the order impugned in the Writ Petition in W.P.No.20559 of 2014, indicated that name of Thiru.Perumal and Tmt.Indirani, parents of the petitioner were not found in the electoral rolls of Puducherry prepared in 1966. Their names were enrolled in Pondicherry only in 1975. It was further observed that in the settlement deed dated 11 July 1977 executed in favour of Tmt.Indirani, the residential address of Tmt.Indirani and Thiru.Perumal was mentioned as Poothurai, Vanur Taluk, Tamil Nadu. Similarly, the names of the petitioner, his wife, and brother were found included in the electoral roll relating to Poothurai Village, Tamil Nadu. Name of the petitioner and his wife were found in the voter's list relating to Vanur Assembly constituency in Tamil Nadu upto 2012. The report submitted by the Village Administrative Officer, Poothurai, and the field enquiry conducted by the officials of the Revenue Department were also taken as the basis to reject the community status claimed by the petitioner.

The principal issue:-

16. The core issue is as to whether the District Committee was correct in cancelling the community certificate of the petitioner and his son without following the mandatory procedure indicated in the order in G.O.Ms.No.152 dated 24 November 2005.

17. There is no dispute that in the subject case the enquiry was not conducted in accordance with the Government Order in G.O.Ms.No.152 dated 24 November 2005. This fact is evident from the counter affidavit filed by the District Collector stating that no such full fledged enquiry was conducted in view of the available evidence on record.

18. The correctness of the judgment in Kumari Madhuri Patil was considered by a three Judge Bench of the Hon'ble Supreme Court in Dayaram vs. Sudhir Batham and others, 2011(11) Scale 448. The Supreme Court approved the earlier judgment in Kumari Madhuri Patil and observed that by issuing such directions, the Court was not taking over the functions of the legislature but merely filling up the vacuum till the Legislature makes appropriate law.

19. The Hon'ble Supreme Court in Kumari Madhuri Patil very clearly indicated the role of Vigilance Cell in the matter of investigation relating to the community status. The following paragraph of the Judgment would make the position clear :-

5. Each Directorate should

constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc."

20. The committee constituted by the Government of Pondicherry in accordance with the order in G.O.Ms.No.152 was expected to follow the procedure indicated therein for verification of the community status. The constitution of the committee is admitted in the counter affidavit. When the statute says that a particular thing shall be done in a particular manner, it shall be done only in that manner. The District Committee was expected to refer the matter to the Vigilance Cell. There is a purpose behind issuing such direction. The Vigilance Cell would be in a position to conduct local enquiry, examine school records and record statements from persons who have immense knowledge of the social status of the members of

the Scheduled Caste and Scheduled Tribe community. The report submitted by the Vigilance Cell is a valuable piece of evidence to decide the community status of the individual. The reference to the Vigilance Cell is therefore not an empty formality.

21. The District Collector clearly admitted that the petitioner migrated to Pondicherry after 1967. Therefore, there is a bona fide dispute as to whether the petitioner was a resident of Puducherry prior to 5 March 1964. The scope of a Vigilance Cell investigation is more in a case of this nature.

22. (a) The petitioner after concluding the arguments and more particularly on 7 April 2017, circulated a typed set containing seven documents. The index to the typed set indicates that community certificate was issued to his sister on 28 December 1987, sister's daughters on 12 December 1988 and 13 July 1993 and his sister's son on 14 August 1996. Similarly, certificate was issued to the petitioner's brother's son on 26 June 1997 and to his step mother on 26 December 2007. Another community certificate was issued to the brother of the petitioner on 23 September 2009.

(b) We are not in a position to consider all these documents in view of the fact that none of the materials were produced before the District Collector or the District Committee, for verification. It is for the first time, the petitioner has produced documents and that too after conclusion of the arguments and reserving the matter for orders.

23. The petitioner must prove his relationship with those who have been issued with the community certificates. The jurisdictional Tahsildar would be in a better position to conduct field enquiry to cross check the particulars submitted by the petitioner. The petitioner ought to have produced all these materials before the District Committee, so as to enable the authorities to verify the documents and test its evidentiary value.

24. The background facts would clearly show that the District Committee violated the procedure evolved by the Government in the matter of scrutiny of community certificates. There is no point in saying that the available documents are sufficient to decide the issue and there is no need to refer the matter to the Vigilance Cell. The Vigilance Cell has got a definite role to play in the verification process. Since such a course was not adopted by the District Committee, the orders impugned in W.P.No.20559 of 2014 and 21443 of 2014 are liable to be set aside. The order challenged in W.P.No.18027 of 2014 and 33021 of 2016 are consequential orders, declining to issue community certificates on account of the order passed by the District Collector cancelling the community certificate issued

to the petitioner and his son, which is the subject matter in W.P.No.20559 of 2014 and 21443 of 2014. Those two orders are also liable to be set aside in view of the orders in W.P.Nos.20559 of 2014 and 21443 of 2014.

Directions and Disposal :-

25. In the result, the impugned orders are set aside. The District Committee is directed to consider the matter afresh in accordance with the procedure indicated in G.O.Ms.No.152 dated 24 November 2005. Since the community status issue must attain finality early, we issue the following time bound directions.

26 (a) The District Committee constituted by the Government of Puducherry in accordance with the order in G.O.Ms.No.152 dated 24 November 2005 is directed to refer the case of the petitioner in W.P.No.20559 of 2014 to the Vigilance Cell for investigation.

(b) The petitioner in W.P.No.20559 of 2014 is directed to file an affidavit before the District Committee indicating his residential address and name of the villages, where his family resided before and after migration to Pondicherry. He must indicate clearly when the family migrated to Pondicherry. He must also produce all documents in his possession to prove his residential status as on 5 March 1964. In case he is relying on Scheduled Caste Origin certificate issued to his near relatives, affidavit should contain details as to how they are related to him. Since all those documents would be verified by the Vigilance Cell and field officials of the Revenue Department, the petitioner would not be permitted to produce new documents before the District Committee after the investigation. The documents and affidavit should be produced before the District Collector, Pondicherry on or before 4 p.m. on 19 May 2017.

(c) The District Committee is directed to take sufficient copies of affidavit and documents and forward one copy to the Vigilance Cell and another to the jurisdictional Tahsildar, with direction to hold enquiry and file report on or before 1 July 2017.

(d) The Vigilance Cell must conduct detailed investigation in the villages or Commune indicated in the affidavit of the petitioner, more particularly the place where the family resided before and after migration. The Superintendent of Police (Vigilance) who is the member of the District Committee, must visit the villages personally along with the other police officers entrusted with the task and hold enquiry relating to the claim made by the petitioner that his family migrated to Pondicherry before the Presidential Order. It is open to the Vigilance Cell to examine witnesses and record their statements. The Vigilance Cell is permitted to conduct investigation even in

the village of the petitioner in Tamil Nadu, from where his family migrated to Pondicherry, if necessary, with the assistance of the officials of the Revenue Department at Vanur and other places in Tamil Nadu. The materials collected by the Vigilance Cell including the statements must be produced before the District Committee on or before 1 July 2017.

(e) The District committee should direct the Jurisdictional Tahsildar to conduct enquiry in the villages where the family resided after migration, taking into account the documents submitted by the petitioner. The Tahsildar must consider all the community certificates issued to the near relatives of the petitioner. It is open to the Tahsildar to record statements of the near relatives whose certificates were produced by the petitioner to prove his community status. The report must indicate their actual relationship with the petitioner. The report of such enquiry with documents and statements must be produced before the District Committee by 1 July 2017.

(f) The District Committee on receipt of enquiry report submitted by the Vigilance Cell and jurisdictional Tahsildar must furnish copies to the petitioner along with all documents including statements of witnesses on or before 14 July 2017. The petitioner in W.P.No.20559 of 2014 should be directed to submit his written response on or before 28 July 2017.

(g) The petitioner must submit his response on or before 28 July 2017. He should indicate as to whether he should be permitted to cross examine the witnesses examined by the Vigilance Cell and the jurisdictional Tahsildar.

(h) The District Committee on receipt of response from the petitioner must post the matter on a particular day on or before 31 August 2017. for examination of the witnesses, in case there is a request for such examination. Since the witnesses have to be examined on the date of their appearance, the District Committee must post the matter preferably at 11 a.m. for their examination so as to complete the cross examination by evening. The witnesses must be summoned to appear before the District Committee at Pondicherry. The venue shall be the office of the District Collector, Puducherry. The petitioner in W.P.No.20559 of 2014 should appear on the date of enquiry, on receipt of notice. The petitioner must cross examine the witnesses on the very same day, without seeking adjournment at any cost. The cross examination must be done by him personally. He would not be permitted to take the assistance of lawyers or others. The cross examination must be confined to the statements given by the witnesses. The Committee after completion of cross examination must furnish copies of deposition to the petitioner forthwith on acknowledgment.

(i) The Committee must thereafter post the matter for enquiry on any convenient date on or before 11 September 2017. The petitioner must be given one week notice to attend the enquiry and make his submissions. The petitioner without taking adjournment should attend the enquiry and submit his case. The committee after hearing the petitioner should close the enquiry and post the matter for orders. The petitioner would not be permitted thereafter to produce materials to support his claim on any account;

(j) The District Committee on consideration of the entire materials must pass orders on or before 29 September 2017 and forward a copy to the petitioner by registered post as well as personal service through jurisdictional Tahsildar.

(k) We make it clear that no judicial review would be entertained at the instance of the petitioner, during the various stages of enquiry indicated above as it is a time bound enquiry and summary in nature.

27. The jurisdictional Tahsildar is directed to take up the applications submitted by M/s.P.A.Hemash and A.Pavethra, petitioners in W.P.No.18027 of 2014 and 33021 of 2014 thereafter, and dispose of the same, taking into account the order passed by the District Committee in the case of their father in W.P.No.20559 of 2014.

28. In the upshot, we allow the Writ Petitions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

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- 1 The District Collector (Revenue)
Revenue Department Puducherry
- 2 Tahsildar
Villianur Taluk Office Villianur Puducherry
- 3 Deputy Tahsildar
Villianur Taluk Office Villianur Puducherry

- 4 The Convener
Centralised Admission Committee (CENTAC)
Puducherry Engineering College Campus
Puducherry
5. The District Collector (Revenue)
-cum- District Magistrate and
Disaster Management
Revenue Department, Puducherry.
6. The Deputy Collector (Revenue) (South),
Revenue Department, Puducherry.
7. The Tahsildar -cum- Executive Magistrate,
Villianur Taluk Office, Villianur, Puducherry.
8. The Director, Adi Dravidar Selfare Department,
Puducherry.
9. Superintendent of Police (Villianur),
Puducherry.
10. Head of Department
Professor of Arthropolgy Department,
Pondicherry University.
11. The Special Officer,
O/O the Additional Secretary (Revenue),
Pondicherry.

+1ccs to the Government Pleader Sr. 36508, 36509 & 36511

+1cc to Mr.V. Ajay Kumar, Advocate Sr. 26282

P.D. Order in
W.P. Nos.18027, 21443,
20559 of 2014 33021 of 2016

VD(CO)
VR(3/5/2017)

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