

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.18031 of 2014

K.Vasanth

.. Petitioner

vs.

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Revenue Divisional Officer,
Thiruvannamalai.
3. The District Adidravidar & Tribal Welfare Officer,
Thiruvannamalai.
4. State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George, Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 14.09.2007 in O.Mu.(A2)6470/2007, on the file of the second respondent herein and quash the same and direct the respondents to issue a community certificate to the petitioner as he belonging to "Kattu Naicken Community", scheduled Tribe Community in accordance with law.

For Petitioner : Mr.G.P.Arivuchudar

For Respondents: Mr.K.Dhananjayan
Special Government Pleader

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

The prayer in the writ petition is for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order dated 14.09.2007 in O.Mu.(A2)6470/2007, on the file of the second respondent herein and quash the same and direct the respondents to issue a community certificate to the petitioner as he belonging to "Kattu Naicken Community", scheduled Tribe Community in accordance with law.

2. The case of the petitioner is that Kattu Naicken Community is a Scheduled Tribe Community. The petitioner lives in Keelandhur, Thiruvannamalai along with his family and relatives. Since they belong to Kattu Naicken community, his relatives and family members were issued with the community certificate disclosing their communal status as "Kattu Naicken" community. In the mean time the petitioner applied on 10.01.2007 for issuance of community certificate before the 2nd respondent, who is the competent authority to issue the community certificate. The petitioner so as to substantiate his communal status as Kattu Naicken, has enclosed the community certificates of his close relatives along with the application. The documents relied upon by the petitioner are as follows:

1. Scheduled Tribe Community Certificate issued to Thiru.Mohan, who is close relative to the petitioner's father and an affidavit confirming the relationship.
2. Scheduled Tribe certificate issued to Thiru. Arunraj who is the petitioner's cousin.
3. Scheduled Tribe community certificate issued to Thiru.Shanmugam who is cousin brother of the petitioner's father and the enquiry report of the revenue department and registered document.
4. Scheduled Tribe Community Certificate issued to Thiru.Aruna Devi, Gunasekaran and Chandrasekaran who were all the children of the petitioner's grandfather's younger brother.
5. Scheduled Tribe community certificate issued to Mrs.Parameshwari, who is the daughter of the petitioner's father's elder brother.
6. Transfer Certificate of Thiru.K.Vasanth, K. Vanitha and K.Indhumathi.

3.However, the 2nd respondent without appreciation of the above documents and without conducting enquiry with the above said persons, chose to enquire petitioner father's brother

namely Muthalu alone and based on his sole version that the petitioner's father belong to "Shikari/Vettailkaran" community, has rejected the application of the petitioner vide the impugned order holding that the petitioner do not belong to Kattu Naicken community. The said act of the 2nd respondent is arbitrary and unlawful. Therefore the said order came to be challenged in W.P.No.29421 of 2012 before this court, wherein by giving liberty to the petitioner to exhaust the appeal remedy under the statute by filing appeal before the 3rd respondent, has dismissed the writ petition by an order dated 19.12.2012. Thereupon the petitioner filed an appeal on 11.01.2013 before the 3rd respondent namely the District Adi Dravidar and Tribal Welfare Officer, Thiruvannamalai, as against the rejection order dated 14.09.2007 passed by the 2nd respondent. However, there was no step taken by the 3rd respondent to hear the appeal filed by the petitioner. Wherefore, petitioner was constrained to file a Writ Petition in W.P.No.34729 of 2013 praying for a Writ of Mandamus directing the 3rd respondent to dispose of the appeal within the stipulated time as fixed by this Court.

4. On hearing upon the said writ petition in W.P.No.34729 of 2013, this Court having found that the appeal filed by the petitioner, before the 3rd respondent herein is not maintainable in terms of judgment of the Hon'ble Supreme Court in the case of Kumari Madhuri Patil v. Additional Commissioner, Tribal Department, reported in AIR 1995 SC 94 has dismissed the Writ Petition granting liberty to the petitioner to challenge the rejection order dated 14.09.2007 in a separate writ petition. Whereupon, the petitioner has come up with present Writ Petition in W.P.No.18031 of 2014 challenging the original order of rejection dated 14.09.2007.

5. We heard Mr.G.P.Arivuchudar, learned counsel appearing for the petitioner and Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents.

6. The learned counsel for the petitioner would submit that the petitioner has submitted as many as six documents namely

1. Scheduled Tribe Community certificate issued to one Mr. Mohan, who is a close relative to the petitioner's father and an affidavit confirming the relationship.

2. Scheduled Tribe certificate issued to one Thiru. Arunraj who is the petitioner's cousin.

3. Scheduled Tribe community certificate issued to one Thiru. Shanmugam, who is cousin brother of the petitioner's father

4. Scheduled Tribe Community Certificate issued to Thiru. Aruna Devi, Gunasekaran and Chandrasekaran, who were all the children of the petitioner's grandfather's younger brother.

5. Scheduled Tribe community certificate issued to Mrs. Parameshwari, who is the daughter of the petitioner's father's elder brother.

6. Transfer Certificate Thiru.K. Vasanth, K. Vanitha and K.Indhumathi.

7. But, the 2nd respondent has not taken any effort to look into the same. Whereas, by placing reliance on the version of Thiru.Muthalu, stating that the petitioner's father belong to Shikari/Vettaikaran community and hence the application of the petitioner was rejected by in the impugned order.

8. It is the further case of the petitioner that the community "shikari/vettaikaran", stated by the above said Muthalu denotes only the Kattu Nayaken Scheduled Tribe Community. In this context the learned counsel for the petitioner relied upon a report dated 23.03.2009 submitted to the secretary to government Adhi Dhraavidar and Tribal welfare, by the department of Anthropology, University of Madras in connection with an application of one Mr. Ramu belonging to Kattu Nayaken Scheduled Tribe community. The report reveals that the Kattu Nayaken Scheduled Tribe community is also known as Shikari community. Therefore counsel for the petitioner prays that the order of the 2nd respondent is illegal and unlawful, which is warranted interference by this Court.

9. Per contra, the 2nd respondent filed counter and contented that since the writ petitioner has not challenged the impugned order for a period of 4 years from the date of passing of order in the year 2007, the records pertaining to the petitioner was destroyed as per government office manual. The relevant portion of Government Office Manual is extracted here under:

"11. I submit as per Government Office Manual all documents referred as O.MU is destroyed within one year. The record clerk's statement and the order passed by the then Revenue Divisional Officer, Tiruvannamalai on 26.02.2010 clearly shows the records pertaining to the impugned order is destroyed. I herewith enclose the

orders passed by the then Revenue Divisional Officer, Tiruvannamalai to destroy the records." and hence prayed for dismissal of the writ petition by stating that the order on hand is appealable before the 1st respondent. Further the Transfer Certificate submitted by the petitioner cannot be relied upon since in the said Transfer Certificate, the Community of the petitioner was struck off from "Kuravar" community as "KattuNaicken" community.

10. We have perused the entire case records and hearing upon the counsels on either side and from the report dated 23.03.2009 submitted to the Secretary to Government, Adhi Dhraavidar and Tribal welfare, by the department of Anthropology, University of Madras in connection with an application of one Mr. Ramu belonging to KattuNayaken Scheduled Tribe community, it is noticed by this Court that the KattuNayaken Scheduled Tribe community is also known as Shikari community. The relevant portion is extracted here under:

"the British have referred the community as Shikari and took them along during hunting. The word Shikar means forest hunting, as their forest knowledge was rich. The community still posses various old documents referring them as Shikari nayakan and yavana nayakan".

11. Therefore, it is obvious for this Court to find that the Kattu Naicken Scheduled Tribe in practice is also called by the name "Shikari". It is further relevant that petitioner father's brother described their community as Shikari/Vettikaran Community. Whereas it would be further relevant that the report of the department of Anthropology, University of Madras discloses that the KattuNaicken/Shikar are forest hunters as their forest knowledge was rich, which in Tamil stands as "Vettaikaran".

12. It is seen from the records that one another ground for rejection as held by the 2nd respondent was that the petitioner's grandmother namely Backiyammal belonged to some other community namely "Vanniyar" which is not a Scheduled Tribe community. Whereas this Court is not inclined to accept such contention of the 2nd respondent which is unsustainable in the light of the modification order dated 16.08.1994 in G.O.(2D).No.17 in G.O.(MS) No. 477, Social Welfare Department dated 27.06.1975, Government holding that Scheduled Caste/ Scheduled Tribe certificates to the off-springs of inter-caste married couple, where, one of the spouses is a member of Scheduled

Caste/Scheduled Tribe Community will be issued after verification of the acceptance given by the members of Scheduled Caste/ Scheduled Tribe Community living in that area.

13. In so far as the allegation of the 2nd respondent that the school records of the petitioner was tampered, this court is not inclined to accept the same, in view of the decision of the Hon'ble Apex Court in the matter of Sayanna v. State of Maharashtra, reported in 2009 (7) SLR 1 holding that in the absence of any report or in the absence of any expert opinion, there cannot be any vague claim that the communal status in school records lying with the school authorities is tampered with. Therefore in the case on hand the school records of the petitioner lying with the educational authorities cannot be doubted.

14. In view of the foregoing reasons and the facts involved in the case, this Court comes to the conclusion that the reasons behind the rejection of petitioner's request are unsustainable.

15. At this juncture our attention was drawn towards the additional typed set of papers, annexed with the community certificates of both the petitioner's paternal and maternal uncles and of their off-springs namely Masilamani, S/o Govindhasamy, Arunadevi, D/o. Masilamani, Gunasekaran, S/o. Masilamani, Parameshwari D/o. K. Murugesan Arunraj, S/o Murugan, disclosing their community as "Kattu Nayaken" Scheduled Tribe Community.

16. Further this Court in N. Rajeshwari v. The District Collector, Nellai Kattabomman District, Tirunelveli and others reported in 2000 (1) MLJ 267 (W.P.No.19793 of 1992, dated 24.09.1999) following the decisions rendered by the Hon'ble Supreme Court in R. Kandasamy v. The Chief Engineer, Madras Port Trust, reported in 1997 (7) SCC 505 and Gayatrilaxmi Bapurao Nagpur v. State of Maharashtra reported in 1996 (3) SCC 685, has categorically held that the community status cannot be decided based on the avocation practiced by the person concerned and the overall view of the manner shall be borne in mind and if acceptable documents are available, the community certificate shall be issued, particularly, when the relatives are issued with Community Certificate, which have not been cancelled.

17. Therefore, in view of the above precedents and the facts on hand, we have no hesitation to set aside the impugned order and accordingly it is set aside.

18.In the result:

(a) this writ petition is allowed by setting aside the impugned order in O.Mu.(A2)6470/2007, dated 14.09.2007, on the file of the 2nd respondent;

(b) the 2nd respondent is hereby directed to conduct proper enquiry as per the orders of the Hon'ble Supreme Court in the case of Kumari Madhuri Patil v. Additional Commissioner, Tribal Department, reported in AIR 1995 SC 94, for deciding the application for issuance of Kattu Naicken Community Certificate to the petitioner;

(c) the 2nd respondent is directed to complete the said exercise within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vs
To

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Revenue Divisional Officer,
Thiruvannamalai.
3. The District Adidravidar & Tribal Welfare Officer,
Thiruvannamalai.
4. State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George, Chennai.

+1 CC to Govt. Pleader sr 41724
+1 CC to Law Square, sr 41449(11/10/2017)

W.P.No.18031 of 2014

VGII(CO)
sp(01/09/2017)