

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.Nos.17355 to 17357/2017

Minor C.Muhil	..	Petitioner in
		WP.No.17355/2017
Minor C.Rohan	..	Petitioner in
		WP.No.17356/2017
Minor B.Dhruv	..	Petitioner in
		WP.No.17357/2017

***The above minors are represented
by their next friend and grandfather Mr.P.C.Ramasamy

Vs

1.The District Collector
Villupuram District.

2.The Revenue Divisional Officer
Kallakurichi, Villupuram District.

.. Respondents
in all the writ petitions

Prayer in WP.No.17355/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned order in Na.Ka.No.A7/7294/2016 dated 16.06.2017 on the file of the 2nd respondent and quash the same, consequentially direct the 2nd respondent to issue Scheduled Caste Community Certificate – Hindu Malayali to the petitioner by considering the application dated 11.03.2017 within a reasonable time to be fixed by this Court.

Prayer in WP.No.17356/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned order in Na.Ka.No.A7/7409/2016 dated 16.06.2017 on the file of the 2nd respondent and quash the same, consequentially direct the 2nd respondent to issue Scheduled Caste Community Certificate – Hindu Malayali to the petitioner by considering the application dated 11.03.2017 within a reasonable time to be fixed by this Court.

Prayer in WP.No.17357/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned order in Na.Ka.No.A7/7295/2016 dated 16.06.2017 on the file of the 2nd respondent and quash the same, consequentially direct the 2nd respondent to issue Scheduled Caste Community Certificate – Hindu Malayali to the petitioner by considering the application dated 11.03.2017 within a reasonable time to be fixed by this Court.

For Petitioners in
all the writ petitions : Mr.R.Neelakandan for
Mr.P.Rajavel
For RR 1 & 2 : Mr.R.Vijayakumar, AGP

COMMON ORDER

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

By consent, the writ petitions are taken up for final disposal since the issue to be adjudicated is one and the same. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.

2 The paternal grandfather of the petitioners has

sworn the affidavits filed in support of these writ petitions and he would aver among other things that he belongs to "Kurumba Gounder" caste which comes under the Hindu Scheduled Tribe Community. The deponent would further aver that his native place is Palayapalapattu, Sankarapuram Taluk, Villupuram District and since he got employment in Railways, he was constrained to shift his residence from his native place to Chennai and however, his brothers and relatives are continue to reside in their native place.

3 The grandfather of the petitioners would further aver that his father belongs to the very same community and Patta No.298 issued by the jurisdictional Tahsildar would also vouch the same. He would further aver that he has also been issued with Hindu Malayali Scheduled Tribe Community Certificate and the Tamil Nadu State Level Scrutiny Committee, vide proceedings No.29080/CV-II/2008 dated 01.03.2010 has also affirmed that the Community Certificate issued in his favour, is a genuine one.

4 One of the sons of the deponent, viz., Raghunatha Vijai Chinnaiya Vasanthan @ Chinnaiya Vasanthan, out of wedlock, begot two minor sons, viz., Muhil and Rohan [petitioners in

WP.Nos.17355 & 17356/2017] and both of them are presently residing in Chennai and his another son, viz., Jayaprakash Vijaya Chinnaiya Boopalan @ Chinnaiya Boopalan, has a minor son, namely, Dhruv [petitioner in WP.No.17357/2017] and is presently residing at Vellore and his two sons have been issued with the Community Certificates indicating that they belong to Hindu Malayali Scheduled Tribe Community.

5 The grandfather of the petitioners herein / deponent of the affidavits in these writ petitions, has submitted applications for getting Community Certificates for his three minor grandchildren and the said applications was rejected by the 2nd respondent herein, viz., The Revenue Divisional Officer, Kallakurichi, vide proceedings dated 16.06.2017 and challenging the legality of the same, the present writ petitions are filed.

6 The learned counsel for the petitioners has invited the attention of this Court to G.O.Ms.Nos.61 Adi Dravidar and Tribal Welfare [ADW-10] Department dated 04.04.2005 and 106, Adi Dravidar and Tribal Welfare [CV-I] Department, dated 15.10.2012 and would submit that as per G.O.Ms.NO.61, in case of a person born after the

date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring scheduled Caste / Scheduled Tribes status in the place of permanent abode, of their parents, at the time of notification of the Presidential Order, under which, they belong to such a Caste / Tribe and misinterpreting the said Order, the 2nd respondent has concluded that since the parents of the petitioners have shifted their place of abode, they are not entitled for getting the Community Certificates. It is the further submission by inviting the attention of this Court to G.O.Ms.No.106 dated 15.10.2012 that the District Level Vigilance Committee and State Level Scrutiny Committee had been constituted wherein there was a modification as to the verification of the genuineness of the Community Certificate issued to persons belonging to Schedule Caste/Schedule Tribe and the Vigilance Committee Cells have also been formed in Chennai, Salem, Tiruchirappalli, Madurai regions to verify the status and the said Government Order has not been taken into cognizance at all by the 2nd respondent, while rejecting the request for issuance of the Community Certificates to the petitioners. It is also contended by the learned counsel for the petitioners that the primordial ground for rejection appears that Mrs.Nancy Magdalene, is the wife of his second son, viz., Jayaprakash Vijaya Chinnaya Boopalan @ Chinnaiya Boopalan and

admittedly, the Community Certificate issued to the daughter of his second son, viz., Preethika, out of the said wedlock, bearing Community Certificate No.281565, was based on the proceedings of the 2nd respondent in No.A7/05554/2011 and therefore, there cannot be any impediment on the part of the 2nd respondent to issue Community Certificates and prays for interference.

7 *Per contra*, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the deponent/grandfather of the petitioners is having an effective alternate remedy in the form of appeal before the District Level Scrutiny Committee which is headed by the Collector of Villupuram District and since the points urged by him involve adjudication of disputed question of fact, the writ petitions are not maintainable and prays for dismissal of the same.

8 This Court has considered the rival submissions and also perused the materials placed before it.

9 A perusal of the impugned orders would disclose that following reasons have been assigned [1]shifting of the residence to

Chennai [parents of the petitioners in WP.Nos.17355 & 17356/2017] and Vellore [parents of the petitioner in WP.No.17357/2017] ; and [2] one of the daughter-in-laws is professing Christian faith.

10 A perusal of paragraph No.3 of G.O.Ms.No.61, Adi Dravidar and Tribal Welfare [ADW-10] Department dated 04.04.2005 would indicate that the place of permanent abode have been clarified and it is the categorical stand of the grandfather of the writ petitioners in the writ petitions [deponent of the affidavits in the writ petitions] that his permanent residence is at Palayapalapattu Village, Sankarapuram Taluk, Villupuram District and the 2nd respondent has expressed the view that once the place of permanent abode is shifted, the concerned persons are not entitled for Community Certificates. However, this Court is of the view that the said reason is unsustainable for the reason that freedom of movement is enshrined and guaranteed in the Constitution of India and one cannot expect a person to reside in his permanent abode for the purpose of eking out his livelihood and if that view is taken, it also belies logic and common sense and it would also introduce a new clarification / criteria, which is not contemplated under the Government Order. It is an undisputed fact that the deponent of the affidavits – grandfather of the minor petitioners has been issued

with a Community Certificate and vide proceedings of the Tamil Nadu State Level Scrutiny Committee in No.29080/CV-II/2008 dated 01.03.2010, the same was found to be genuine.

11 Insofar as the other reason cited for rejection of the applications, appears that one of the daughter-in-laws of the deponent of the affidavits profess Christian faith and once again, it cannot be a ground to reject the applications for the reason that there is no bar in the said Government Order and it is also the submission of the learned counsel for the petitioners, on instructions, that both the sons of the deponent of the affidavits, viz., Raghunatha Vijai Chinnaiya Vasanthan @ Chinnaiya Vasanthan and Jayaprakash Vijaya Chinnaiya Boopalan @ Chinnaiya Boopalan, are professing Hindu faith.

12 In the light of the reasons assigned above, the impugned orders passed by the 2nd respondent warrants interference.

13 In the result, the writ petitions are partly allowed and the impugned orders passed by the 2nd respondent dated 16.06.2017 are set aside and the matter is remanded back to the 2nd respondent, who after taking into consideration the observations made in these writ

petitions and after affording an opportunity of personal hearing to the grandfather of the petitioners, viz., Thiru P.C.Ramasamy, shall consider and dispose of the applications submitted by him for issuance of the Community Certificates to his grandchildren, viz., the writ petitioners herein, as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the deponent of the affidavits, viz., Thiru P.C.Ramasamy – grandfather of the petitioners herein.

[M.S.N., J.,]

[N.S.S., J]

10.07.2017

Index : No
Internet : Yes

AP
To

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2.The Revenue Divisional Officer
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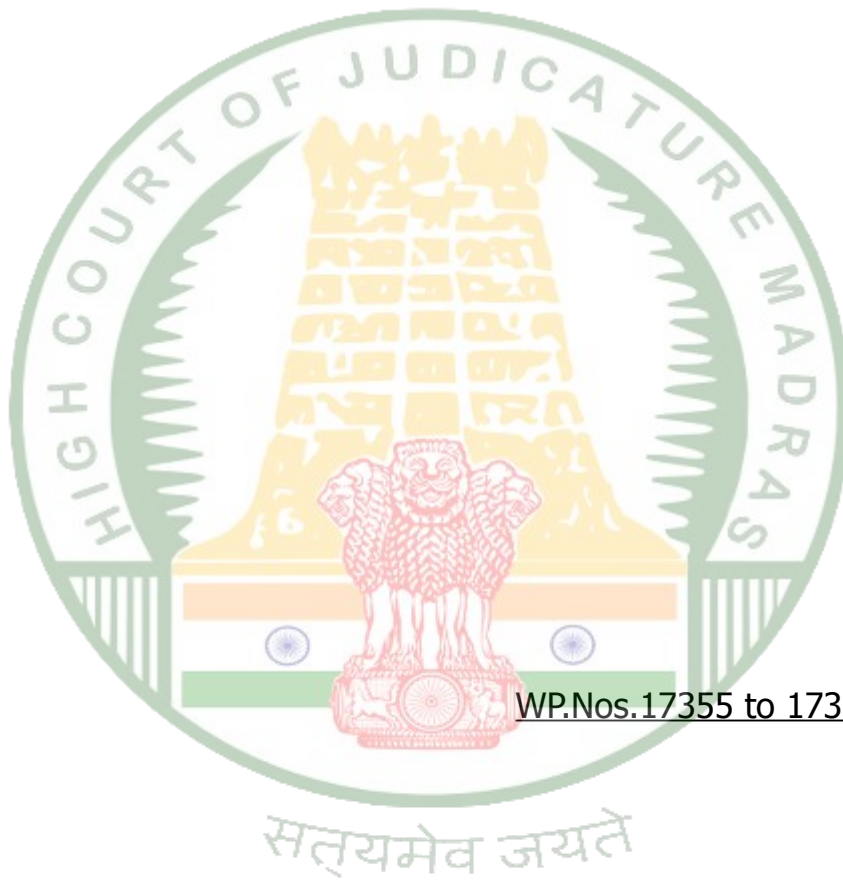
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