

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.27642 of 2017

N.Tamilarasan

.. Petitioner

Vs

The Revenue Divisional Officer
Mettur Taluk
Salem District.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the respondent relating to the order of rejection passed in proceedings in Mu.Mu.No.3357/2015(T), dated 02.12.2015 on the file of the respondent, to quash the same and to direct the respondent to issue community certificate to the petitioner's son, namely Minor T.K.Saashwat, that he belongs to "Kondareddis (ST) Community" based upon community certificate already issued to the petitioner and his family members.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.S.N.Parthasarathy
Government Advocate

ORDER

(Order of this Court was made by M.V.MURALIDARAN, J.)

This writ petition has been filed seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings, being Mu.Mu.No.3357/2015(T), dated 02.12.2015 on the file of the respondent, to quash the same and to direct the respondent to issue community certificate to the petitioner's son, namely, Minor T.K.Saashwat, to the effect that he belongs to "Kondareddis (ST) community", based upon the community certificate already issued to the petitioner and his family members.

2. In the affidavit filed in support of the writ petition, it is averred that the petitioner belongs to 'Kondareddis Community', which is classified as Scheduled Tribe Community and to that effect he obtained a community certificate from the Tahsildar, Mettur, on 24.04.1984. In

school certificate also the petitioner's community is entered as Kondareddis (ST) Community. The said community certificate remains unchallenged till date and is in vogue.

3. It is stated that, on 22.08.2013, the petitioner preferred an application to the respondent requesting him to issue community certificate to his son, namely, Minor T.Saaswat, to the effect that he belongs to Kondareddis (ST) Community. Along with the said application, the petitioner has submitted the following documents:

- a) Community certificate of the petitioner issued by Tahsildar, Mettur.
- b) Community certificate of the petitioner's father issued by the Tahsildar, Mettur.
- c) School Transfer certificate of the petitioner.
- d) Sale deed.
- e) Birth certificate of petitioner's son.
- f) Marriage certificate of the petitioner.

4. However, since the said application did not evoke any response, the petitioner filed W.P.No.28307 of 2015 before this Hon'ble Court seeking a direction on the respondent to issue community certificate to his son based on the community certificate issued to him. In the said writ petition, this Hon'ble Court, by order dated 09.09.2015, held as under:

"5. By this petition, the petitioner is seeking a direction to the respondent to consider his application and issue community certificate accordingly. We have been repeatedly observing that a community comprises not only the members of the family, but also the members of the same group or tribe. In the case on hand, when the petitioner has been issued with community certificate to the effect that he belongs to Kondareddis (ST) community, the petitioner's son is also entitled to get such community status and we are at a loss to understand as to why the petitioner's application has been kept pending without any orders being passed.

6. Needless to state that if any doubt crops up in the mind of the competent authority qua the genuineness of the community certificate issued to the petitioner while considering his application seeking community certificate for his son, the only course open to the competent authority is to refer the same to the State Level Scrutiny Committee and not to take a contrary stand by dis-crediting the community certificate issued to the petitioner, without appropriate order being passed by the State Level Scrutiny Committee. In other words, if the competent authority has any doubt about the genuineness of the community certificate issued to the petitioner, he has no competence to ignore the same, unless the same is set aside or modified by the higher authority, i.e., the State Level Scrutiny Committee and he can only refer the matter to the State Level Scrutiny Committee.

7. For the aforesaid reasons, we direct the respondent to consider the petitioner's application dated 22.08.2013 on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order."

5. Pursuant to the above said order passed by the Hon'ble Division Bench of this Court, the respondent vide the impugned proceedings dated 02.12.2015, rejected the claim of the petitioner holding that the petitioner does not belong to Kondareddis (ST) Community. Hence, the present writ petition for the relief stated supra.

6. The main plank of the argument advanced by the learned counsel for the petitioner is that when the community certificates issued to the petitioner and his father by the competent authority subsist, the respondent, at this juncture, cannot hold that the petitioner does not belong to Kondareddis community. He also contended that when the parents and grandparents are holding valid community certificates, certainly, the children are also entitled to such communal status.

7. The learned counsel appearing for the petitioner would contend that the Government had delegated the power to Independent Deputy Tahsildar vide G.O.Ms.No.483 Public (Services-A) dated 14.02.1957 and that Government Order was cancelled vide G.O.Ms.No.517 (P1-M), dated 14.05.1985, thereby delegating the power to the Head Quarters Deputy Tahsildar and Independent Deputy Tahsildar, to issue the community certificate in respect of Scheduled Castes and Scheduled Tribes and Backward Classes and the said Government Orders were in vogue till the Hon'ble Supreme Court rendered its decision in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein a cut-off date has been fixed for issuance of a community certificate by the Revenue Divisional Officer, namely 11.11.1989, and it was held that the community certificates issued by the authorities prior to that date are relevant for consideration.

8. The learned Government Advocate appearing for the respondent would submit that the Revenue Divisional Officer, who is the competent authority to issue a community certificate, after conducting a discreet enquiry, based on the materials collected, passed the impugned order and, therefore, the impugned order does not warrant interference.

9. We heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.S.N.Parthasarathy, learned Government Advocate appearing for the respondent and perused the documents available on record.

10. A perusal of the documents filed in support of the writ petition reveals that the petitioner's father was issued a community certificate on 23.07.1975 and the petitioner was

issued a community certificate on 24.04.1984 to the effect that they both belong to Kondareddis Scheduled Tribe Community. Both the certificates were issued by the Tahsildar concerned and the same have till date not been set aside in a manner known to law.

11. Qua the competency of the Tahsildar to issue the said community certificates, it is apposite to refer to the decision of the Hon'ble Supreme Court in R.Kandasamy v. The Chief Engineer, Madras Port Trust, (1997) 7 SCC 505, wherein it is emphatically held as under:

"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

12. In the light of the decision, referred supra, the respondent is bound to take into consideration the community certificates issued to the petitioner and his father by the Tahsildar, who is a competent authority, at the relevant time. In any event, such community certificates were issued to the petitioner and his father prior to 11.11.1989.

13. In State of Bihar v. Sumit Anand, (2005) 12 SCC 248, the Hon'ble Supreme Court upheld the order of the Hon'ble High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Hon'ble Supreme Court observed as under:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

14. In yet another decision reported in A.M.Sivakumar v. The Revenue Divisional Officer, Dharmapuri, 2014 (2) MLJ 231, the Hon'ble Division Bench of this court has held as under:

"6. At the outset, it is to be noticed that the community certificates issued to the petitioner and his wife stating that they belong to 'Kurumans' (Scheduled Tribe) Community are valid and have not been cancelled in the manner known to law. If such valid community certificates are produced before the authority, the same should be taken into consideration for all purposes, even for granting community certificates to the children."

15. That apart, another Hon'ble Division Bench of this Court in C.Ravanav. The Revenue Divisional Officer, Vellore, 2012 SCC Online Mad 5054, held as under:

"3. Going by the fact that nothing is spelt out in the impugned order as regards the certificate already issued to the petitioner as belonging to Kattunayakan community - Scheduled Tribe, unless and until the said certificate is withdrawn, the question of rejection of the prayer of the petitioner for issuance of similar certificate to his children does not arise. In the circumstances, setting aside the order of the respondent dated 23.01.2003, this court directs the respondent to grant community certificate to the petitioner's children R.Vasuki, R.Sangeetha and R.Kalaiselvi that they belong to Kattunayakan Community, based on the community certificate dated 18.02.1993 issued to petitioner by the respondent herein."

16. The Hon'ble Supreme Court as well as this Hon'ble Court, time and again, held that when community certificates issued in favour of the parents of the applicants by a competent authority subsist, the authorities are bound to consider the same, unless the same are set aside by a higher authority, while issuing community certificate to their children, as children of a particular community derive their social status from their parents.

17. In the case on hand, it is not the case of the respondent that the community certificate issued to the petitioner has been set aside by the competent authority. Therefore, in the light of the law enunciated in the decisions referred supra, more particularly, the decision in Sumit Anand case, in our considered opinion, the son of the petitioner is also entitled to such community certificate.

18. Under identical circumstance, the Hon'ble Division Bench of this Court in the case of V. Palani v. Revenue Divisional Officer, (2015) 4 LW 642, held as under:

"7. This court, while considering the issue of discrediting the certificate issued by the competent officer to the parents of the children in a writ petition, being W.P. No. 22426 of 2015 [K. Gokul Chandran v. The District Collector, Chennai], by order dated 24th July, 2015 (reported in this issue at 2015-4-L.W. 641) had categorically stated as under:

'6. Needless to state that if any doubt crops up in the mind of the competent authority qua the genuineness of the community certificate issued to the petitioner while considering his application for grant of the same certificate for his sons, the only course open to the competent authority is to refer the same to the State Level Scrutiny Committee, but, not to take a contrary stand by dis-crediting the same. The said community certificate is subject to further

verification by the State Level Scrutiny Committee. In other words, if the competent authority has any doubt about the genuineness of the community certificate issued to the petitioner, he has no competence to ignore the same, unless the same is set aside or modified by the higher authority, i.e., the State Level Scrutiny Committee and he can only refer the matter to the State Level Scrutiny Committee.'

The respondent is invariably discarding the certificate issued by the competent officer without referring the same to the State Level Scrutiny Committee, as observed herein-above, followed in a catena of decisions rendered by this Bench.

8. There is one more infirmity in this matter. The Hon'ble Supreme Court in *Kumari Madhuri Patil v. Additional Commissioner, Tribal Development* ((1994) 6 SCC 241) has evidently observed that the enquiry has to be conducted in a transparent and open manner. In the event the enquiry is adverse, the petitioner is entitled to show cause notice with a copy of the enquiry report. The petitioner is entitled to an opportunity to adduce evidence and raise objections, if any in the enquiry conducted by the competent officer.

9. In the case on hand, indisputably the enquiry was conducted in discreet manner and the respondent has taken a decision on the basis of the discreet enquiry without giving opportunity to the petitioner, as mandated in *Kumari Madhuri Patil* (supra) and referred to with approval subsequently in *Director of Tribal Welfare, Government of A.P. v. LavetiGiri* ((1995) 4 SCC 32), *Baswant v. State of Maharashtra* (JT 2000 (10) SC 280), *Sudhakar Vithal Kumbhare v. State of Maharashtra* ((2004) 9 SCC 481), and *G.M., Indian Bank v. R. Rani* ((2007) 12 SCC 796)."

19. Therefore, the only course open to the respondent in case he doubts the veracity of the community certificate issued to the petitioner is to refer the same to the State Level Scrutiny Committee. It is not the case of the respondent that he has referred the issue to the State Level Scrutiny Committee. The respondent, on his own, is not empowered to discredit the community certificate issued to the petitioner by the competent authority without referring the same to the State Level Scrutiny Committee, that too on the basis of a discreet enquiry, without affording an opportunity of hearing to the petitioner. For all the reasons aforesaid, the impugned proceedings cannot be sustained.

20. In the result, we allow the writ petition and set aside the impugned order in proceedings in Mu.Mu.No.3357/2015 (1), dated 02.12.2015 passed by the respondent, with a

direction to the respondent to issue community certificate to the petitioner's son, namely Minor T.K. Saashwat, to the effect that he belongs to Kondareddis (ST) Community. Such exercise shall be undertaken by the respondent within a period of four weeks from the receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vs

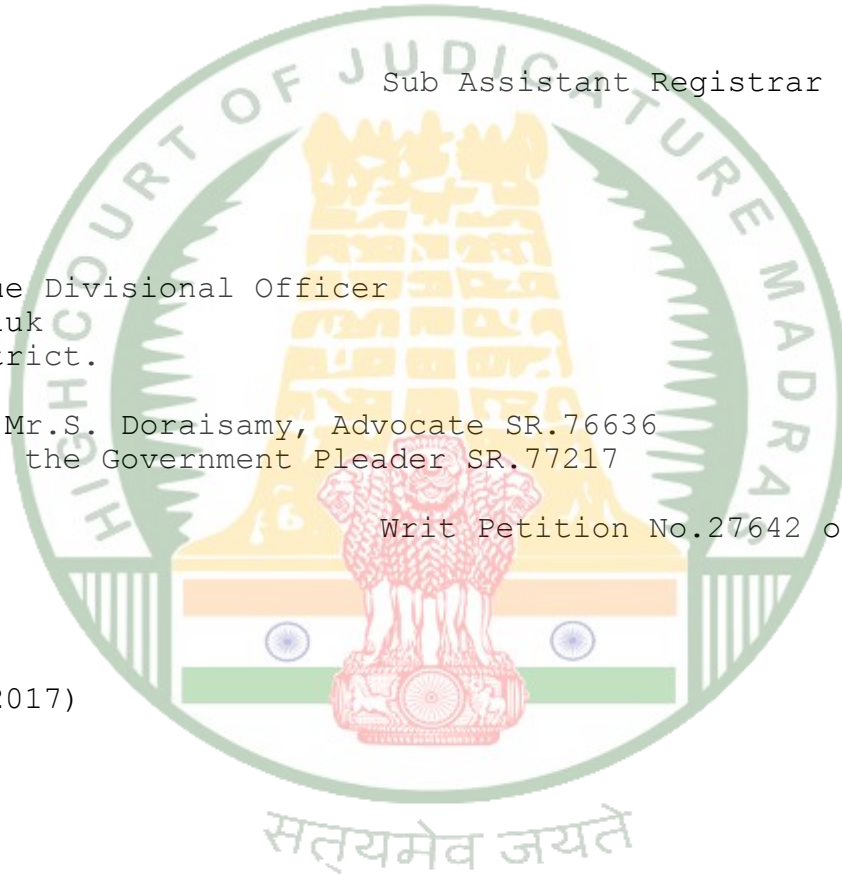
To

The Revenue Divisional Officer
Mettur Taluk
Salem District.

+ 1 cc to Mr.S. Doraisamy, Advocate SR.76636
+ 1 cc to the Government Pleader SR.77217

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CS-V
EU (13/12/2017)



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