

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM

AND

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.27824 of 2017

M.Narasu

.. Petitioner

Vs

The Revenue Divisional Officer,
Dharmapuri, Dharmapuri District.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorari/Mandamus to call for the records relating to the order of rejection passed in proceedings No.Pa.Mu.8691/2016/A4, dated 01.09.2017 on the file of the respondent, to quash the same and to direct the respondent to issue community certificates to the children of the petitioner, viz., (i) M.Sathyavani; and (ii) M.Sathyaraj, that they belong to Kurumans (ST) Community based upon the community certificate already issued to the petitioner's husband (Late) Madhesh and close relatives.

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.)

Calling into question the proceedings of the respondent dated 01.09.2017, rejecting the application of the petitioner seeking issuance of community certificates to her children, to wit, M.Sathyavani and M.Sathyaraj, the present writ petition is filed to quash the said proceedings and to direct the respondent to issue community certificate to the children of the petitioner based on the community certificate issued to her (late) husband and close relatives.

2. Succinctly put, the facts are as under: The petitioner claims that she belongs to "Kurumans" Community, which is a notified Scheduled Tribe Community, though she does not have a community certificate to that effect. She states that her husband (Late) Madhesh belongs to "Kurumans" Community and he had also obtained a community certificate to that effect from the Tahsildar, Omalur, way back on 06.06.1983. He was working in Southern Railway and his social status is also recorded in the Service Register. It is stated that her husband passed away on 01.07.2011.

3. It is averred that the petitioner preferred an application on 09.09.2015 seeking issuance of community certificates to her children duly enclosing the following documents:

- i. Community certificate issued to her husband;
- ii. Service Register of her husband;
- iii. Death Certificate;
- iv. Cultural Report issued by the Director, Adi Dravidar and Tribal Welfare Department;
- v. Family Card;
- vi. Community Certificates of her close relatives, viz., Perumal and Goutham.

4. It is alleged that since the said representation did not evoke any response, she was constrained to file W.P.No.13025 of 2016, wherein this Court, by order dated 07.09.2016, directed the respondent to dispose of the petitioner's application after following the guidelines issued by a Division Bench of this Court in G.Venkitasamy and another v. The Chairman, State Level Scrutiny Committee, 2016-1-LW 289.

5. It is averred that thereafter the respondent without following the guidelines stipulated in the decision stated supra, conducted a discreet enquiry and passed the impugned proceedings dated 01.09.2017 rejecting the application filed by the petitioner on the ground that she is a native of Veppilai Thatranur Village in Omalur Taluk, Salem District and hence, she has to approach the Revenue Divisional Officer, Mettur, and that all her relatives belong to "Kurumbar" Community. Exasperated by the said proceedings, the present writ petition for the relief stated supra.

6. The learned counsel appearing on behalf of the petitioner submits that the bare bones of principles of natural justice have not been followed while passing the impugned order. He added that the documents relied upon by the respondent were not furnished to the petitioner and that she was not afforded an opportunity to cross-examine the witnesses examined by the authorities. It is his plea that the impugned proceedings have been passed in gross violation of the guidelines laid down by this Court in G. Venkitasamy case, supra.

7. He further pleaded that the respondent did not consider the anthropological traits, customs and practice, which is mandatory, and, therefore, the findings of the respondent are liable to be set aside, as the procedure adopted by the respondent runs counter to the procedure contemplated in the decision reported in Kumari Madhuri Patil v. Additional Commissioner, Tribal Development ((1994) 6 SCC 241).

8. It is his further submission that when the petitioner's husband was issued with a certificate to the effect that he belonged to Kurumans Community and his Service Register with the Southern Railways also endorses the said fact, the respondent cannot deny issuance of community certificates to the petitioner's children.

9. He also pleaded that this Court time and again held that there is no community such as Kurumbar and the Secretary to Government also issued a circular dated 18.03.2014 to that effect, but despite the same, the respondent in the impugned proceedings stated that all the relatives of the petitioner belong to "Kurumbar" Community and, therefore, the impugned proceedings is not sustainable in the eye of law.

10. Lastly, it is pleaded that when the petitioner and her family are residing in the present address for years, it is not for the respondent to direct the petitioner to approach the authorities concerned in the native district.

11. On the contrary, the learned Government Advocate appearing on behalf of the respondent submitted that the respondent passed the impugned order after following the procedure contemplated in law and conducting thorough enquiry and, therefore, the same does not warrant interference.

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

13. A perusal of the documents filed in support of the writ petition reveals that the petitioner's husband was issued with a community certificate on 06.06.1983 to that effect that he belongs to "Kurumans", a Scheduled Tribe Community. The above certificate was issued by the Tahsildar, Omalur, and the same has till date not been set aside in a manner known to law. The said fact was also registered in the service register of the petitioner's husband, who was employed with the Southern Railways.

14. Qua the competency of the Tahsildar to issue the said community certificate, 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."

15. In the light of the decision, referred supra, the respondent is bound to take into consideration the community certificate issued to the petitioner's husband by the Tahsildar, who is a competent authority, at the relevant time. In any event, such community certificate was issued to the petitioner's husband prior to 11.11.1989.

16. In State of Bihar v. SumitAnand, (2005) 12 SCC 248, the Supreme Court upheld the order of the High Court directing the revenue authorities to issue community certificates to the children based on the certificates already issued to their father,

grandfather, mother, and maternal uncle. In effect, the Hon'ble Supreme Court held 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."

17. The ratio laid down in the decisions, referred supra, squarely applies to the issue involved in this case. In the case on hand, it is not the case of the respondent that the community certificate issued to the petitioner's husband has been set aside by the competent authority.

18. It is the specific plea of the petitioner that she was not given an opportunity to cross-examine any of the witnesses, whose evidence was relied upon by the respondent, nor the documents relied on by him were furnished to the petitioner. It is also pleaded that the documentary evidence submitted by her was not given due credence by the respondent and were lightly disregarded. It is also the plea of the petitioner that the report of Anthropologist was also not obtained and independently assessed as contemplated in the decision of the Supreme Court in Kumari Madhuri Patil's case.

19. The primordial plea of the learned counsel for the petitioner is that the impugned proceedings have been passed in gross violation of the principles of natural justice.

20. The affected should be appraised is a cardinal constitutional creed flowing from Article 14 of the Constitution of India and unless the affected is appraised there is no compliance of principles of natural justice and fair play in action. A decision-making authority is duty bound to disclose any and every adverse material collected by it before using them against a person and an adverse decision is taken, and if it is not done the order made by such authority will be vitiated only on that count.

21. The Hon'ble Supreme Court in Kumari Madhuri Patil case, referred supra, held as under:

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and

create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue-Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

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 proforma, 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.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as Chair-person who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently

obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/Miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or

Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

22. The issue as to whether the 15 guidelines given in the case of Madhuri Patil (supra) were valid and whether it amounts to legislation was referred by the two Judges Bench of the Hon'ble Apex Court to a larger Bench. The reference was answered by the Three Judge Bench of the Hon'ble Apex Court in the case of Dayaram v. Sudhir Batham, (2012) 1 SCC 333. In effect, the Hon'ble Supreme Court held that the directions issued in Madhuri Patil's case were intrinsic to the fulfilment of the fundamental rights of the backward classes of citizens and were issued to preclude denial of such fundamental rights. It noted that the directions given in the case of Madhuri Patil were working satisfactorily for decades. Therefore, the guidelines laid down in Madhuri Patil case, supra, hold the field and the action of the authorities should hew to the same.

23. In the case of Ayaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., (2013) 4 SCC 465, wherein the issuance/verification of caste certificate was under consideration, the Hon'ble Supreme Court, after referring to a plethora of decisions, held that not only should the opportunity of cross examination be made available, but it should be one of effective cross examination, so as to meet the requirement of principles of natural justice. In the absence of such opportunity, it cannot be held that the matter has been decided in accordance with law, as cross examination is an integral part and parcel of the principles of natural justice.

24. It is well settled that principles of natural justice have to be respected by quasi-judicial or administrative authorities while taking action if they adversely affect the interest of a person or that the action involves criminal or civil consequences. Obviously, the rules of natural justice include cross examination of the witnesses relied by the administrative authority/quasi-judicial authority and denial of the same is a serious violation of principles of natural justice. Opportunity to lead evidence in defence is also another salient feature of the principles of natural justice.

25. In the instant case, it is not disputed by the respondent that the petitioner was not furnished with all the documents referred to by the respondent before passing an order against her. She was neither granted an opportunity to cross-examine the witnesses. We are, therefore, of the firm view that the order impugned in this writ petition has been passed in gross violation of the elementary principles of natural justice.

26. Qua the plea that the petitioner was directed to approach the competent authority in the native district, it would be appropriate to refer to the decision of this Court in C.Shanmugasundaram v. The Sub Collector, Thiruvallur District [Order dated 10.10.2013 passed in W.P.No.9284 of 2013], wherein a Division Bench of co-ordinate strength, while dealing with a case in which the application seeking community certificate was rejected directing the petitioner therein to approach the authorities in a different District, held as under:

"3. The contention of the petitioner is that from the year 1959, the petitioner is residing in Poonamallee Taluk of Thiruvallur District. The Central Government also through a letter dated 24.3.1994 issued a clarification to the authority concerned to issue community certificate, if a person is residing in the same district for over five years.

4. In the light of the fact that as the petitioner is residing within the jurisdiction of the Sub Collector, Tiruvallur for over five years, the impugned order cannot be sustained and the matter is remitted to the respondent to decide the matter on merits and if necessary, get a report from the Sub Collector, Kancheepuram and pass orders, after hearing the petitioner, within a period of eight weeks from the date of receipt of copy of this order."

27. In the light of the said decision, the respondent cannot in all cases direct the applicants to go to their native districts. Nowhere, in the counter affidavit it is stated that the petitioner is not residing in the present address for the last five years and on that ground her application is rejected. This ground which weighed with the respondent authority is also baseless.

28. In P.Govindarasu and another v. The Revenue Divisional Officer, Harur, 2016 (3) CTC 119, a Division Bench of this Court, while referring to G. Venkitasamy case, supra, considered the issue qua "Kurumbar" and "Kurumans" communities and had elaborately considered the issue at hand and passed directions as under:

"13. Even though in number of occasions, this court has held that the competent authority cannot rely upon the community "Kurumbar" for rejecting the applications seeking Kurumans scheduled tribe community certificate, the authorities are repeatedly violating the same by rejecting the applications on the ground that the

applicants belong to Kurumbar (MBC) Community. Hence, on that ground also, the impugned order passed by the respondent is liable to be set aside.

14. So far as conducting enquiry for grant of Scheduled Tribe community certificate is concerned, a Division Bench of this court in which one of us (Satish K. Agnihotri, J.) is a member, in *G. Venkitasamy & Another v. The Chairman, State Level Scrutiny Committee* (2016-1-LW 289), has issued guidelines as follows:--

'29. From the aforestated analysis, it is manifest that the authorities are required to investigate, identify and conduct the enquiry in the following manner:

i. The authority competent to issue the community certificate, on receipt of the application, shall investigate the application in an open and transparent fashion, affording opportunity of hearing.

ii. The candidate shall have full liberty to explain the documents placed by him or collected by the investigating agency and he shall have opportunity to cross examine the witnesses, if required. The entire exercise shall be completed at the earliest, preferably, within a period of three months.

iii. On receipt of the community certificate issued by the competent authority, the candidate or any other party interested therein may refer the matter to the State Level Scrutiny Committee for verification.

iv. On receipt of the application for verification, the State Level Scrutiny Committee shall refer the matter to the Vigilance Cell for enquiry.

v. The Vigilance Cell, as constituted, shall investigate into the social status claim of the applicant, visiting the local place of residence and original place from which the candidate hails and usually resides. The Vigilance Officer, assisted by the Inspector of Police, shall verify all the documents and collect relevant facts in an open and transparent manner from all the relevant places such as school, locality, etc. and persons such as parents and close relatives and also examine the school officials, parents/guardians and other close relatives of the concerned caste. The Vigilance Cell shall also record the anthropological and ethnological traits and rituals, customs, mode of marriage and other ceremonies of the community

claimed by the candidate. Thereafter, on receipt of explanation from the candidate, on a proper examination of the same, a reasoned report shall be submitted to the State Level Scrutiny Committee.

vi. The State Level Scrutiny Committee, on receipt of the Vigilance Cell report, if it is found adverse, shall issue a show cause notice to the candidate with a copy of the report and all the documents submitted by the Vigilance Cell to the concerned candidate, calling upon him to file his reply/explanation/representation and also express his intention to examine witnesses, if necessary. In the event, the report supports the claim of the candidate, the State Level Scrutiny Committee shall not proceed further, but, to pass the order.

vii. The State Level Scrutiny Committee, on completion of the enquiry, shall send a copy of the proceedings/order to the candidate within a period of two weeks.

viii. Such verification shall be completed within a period of two months, after receipt of the Vigilance Cell report, preferably, by day-to-day proceedings [See paragraph 13(9) of KumariMadhuriPatil (supra)].'

15. The competent authorities, without following the directions and the guidelines issued by this court, rejecting the applications on erroneous consideration that the applicants belong to Kurumbar (MBC) Community which is not notified under the Presidential Notification. Hence, in addition to the above guidelines, we would like to issue further directions as follows:--

i) The competent authority while issuing the community certificate, should consider the Schedule Tribe community certificate issued in favour of the parents and close relatives of the applicants, subject to verification of the relationship and until the above certificates are cancelled by the higher authority namely State Level Scrutiny Committee, the competent authority should accept the same and issue Schedule Tribe Community Certificate to the applicants.

ii) The competent authority should not reject the application referring the name of Kurumbar (MBC) while deciding the claim for issuance of Kurumans (ST) community certificate as authorities are not entitled to refer the name of Kurumbar (MBC) for the purpose of deciding the issue of granting Kurumans(ST) Community Certificate.

16. In spite of several orders passed by this court, the competent authorities are repeatedly rejecting the applications without considering the community certificates issued to the parents and close relatives of the applicants and also referring to Kurumbar (MBC) for rejecting the claim. Hence, we direct the Government to give suitable instructions to all the competent authorities to follow the directions issued by this court while deciding the claim of Kurumans (ST) community certificates.

17. For the reasons stated above, the impugned orders passed by the respondent are set aside and the matter is remitted back to the respondent for considering the applications in the light of the orders passed by this court, after affording an opportunity to the petitioners and the respondent is directed to pass orders within a period of six weeks from the date of receipt of a copy of this order. With the above direction, the writ petitions are disposed of. No costs.

16. It has to be necessarily pointed out that in the above judgement itself, it has been made very clear that the authorities should take into consideration the fact with regard to previous grant of community certificate to the relatives and parents of the Applicants and after verifying these facts should grant certificates in appropriate cases. As it has been pointed out in several judgements that grant of community certificate has a direct impact on educational and employment prospects of individuals since the reservation policy mandates that a person seeking claim to a particular community must have a genuine certificate issued by the appropriate authority. In certain cases where the certificates that are to be issued in genuine cases are issued belatedly, then virtually, an individual would be robbed and deprived of his legitimate right and privilege. The authorities who are responsible for issuing the community certificates are no doubt expected to be cautious and circumspect. However, in the name of being cautious, they ought not to reject genuine cases in which certificates are to be granted." (emphasis supplied)

29. We are of the considered view that while the authorities are expected to be cautious and ensure that benefits are not conferred on the ineligible persons, they are equally bound to ensure that genuine claims are not rejected on gross violation of the procedure and on technical issues.

30. For the foregoing reasons, we dispose of the writ petition with the following directions:

i. The writ petition is allowed and the order of rejection in proceedings No.Pa.Mu.8691/2016/A4, dated 01.09.2017 passed by the respondent is set aside and the matter is remanded to the respondent for fresh consideration on merits and if necessary get a report from the Sub-Collector, Mettur within a period of two weeks.

ii. It is made clear that in case the respondent seeks to rely on such statements, necessarily opportunity should be afforded to the petitioner to cross examine those witnesses and such cross-examination should be an effective one. The respondent must ensure the presence of the witnesses, so as to enable the petitioner to cross examine them on the very same day. In any case, the petitioner is not entitled to the assistance of lawyers for cross examination of witnesses.

iii. If the respondent is of the view that the issue can be decided even without reference to the deposition given by the witnesses, there is no need for summoning them. In such event, the respondent shall give an opportunity to the petitioner to produce documents in support of her claim and thereafter, decide the matter on merits and as per law.

iv. The above said exercise shall be completed within a period of two months from the date of receipt of the report from the Sub-Collector, Mettur.

v. There will no order as to costs.

vs

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

To

The Revenue Divisional Officer,
Dharmapuri, Dharmapuri District.

+1 cc to the Government pLADER SR.NO. 91440

+1 CC TO MR.S.DORAISAMY Advocate SR.NO.90938

Writ Petition No.27824 of 2017

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