

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.07.2017

Coram

THE HONOURABLE **Mr. JUSTICE M.VENUGOPAL**
AND
THE HONOURABLE **Mr. JUSTICE P.D.AUDIKESAVALU**

W.P.No.4054 of 2016 and
WMP No.3391 of 2016

S.Balasubramaniam

.. Petitioner

Vs.

The Sub Collector,
Mettur Dam,
Salem.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus in calling for the records of the respondent in its Proceedings No.Mu.Mu.No.3284/2015(D) dated 02.12.2015 and quash the same and consequently direct the respondent to issue Community Certificates to the Petitioner's daughter, B.Abbiruba and son B.Vijayaprem to the effect that they belong to Konda reddy Community (Scheduled Tribe).

For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.K.Venkataramani
Additional Advocate General
for Mr.M. Elumalai
Government Advocate

ORDER

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

Heard both sides.

2. The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records of the Respondent / Sub-Collector, Mettur Dam, Salem in Proceedings No. Mu.Mu. 3284/2015(D) dated 02.12.2015 and to quash the same. Further, the Petitioner had sought for passing of an Order by this Court in directing the Respondent to issue Community Certificate to his daughter, viz., B.Abbiruba and Son, B.Vijayaprem to the effect that they belong to 'Konda Reddi Community' (Scheduled Tribe).

3. At the out set, it is to be pointed out that the Petitioner was issued with a Community Certificate by Tahsildar, Metturdam, Salem on 12.09.1978. Further, the Petitioner had reportedly made an Application for issuance of Community Certificate for his Son and Daughter, because of the reason that no action was taken on the Application submitted by the Petitioner seeking issuance of Community Certificate for his Wards, he

filed a Writ Petition in W.P.No.30049 of 2014 before this Court and this Court on 19.11.2014 had passed Orders directing the Concerned Authority to consider the Application of the Petitioner and to pass Orders within a period of twelve weeks.

4. It comes to be known that the Respondent, Sub Collector, Metturdam, Salem had passed the Impugned Order on 02.12.2015 rejecting the Petitioner's request for issuance of Community Certificate to his children, namely, B.Abbiruba and B.Vijayaprem. Therefore, as an affected person, against the order of negating his request for issuance of Community Certificate dated 02.12.2015 by the Respondent, the Petitioner has filed the instant Writ Petition before this Court.

5. At this juncture, it is pertinent for this Court to make a significant mention that in G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015, the Government of Tamilnadu based on the orders passed by the Madurai Division Bench of this Court in **W.P.(MD) No. 1355 of 2015 dated 05.02.2015 between D.Thirupathi V. The District Collector, Tirunelveli District, Tirunelveli and another**, had constituted an Appellate Authority for an 'Appeal' remedy in regard to the issuance of Community Certificate, which runs as under:

Sl.	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
1	Backward Classes / Most Backward Classes/ Denotified Communities	Zonal Deputy Tahsildar	Tahsildar	District Collector
2	Scheduled Castes	Tahsildar	Revenue Divisional Officer	District Collector
3	Scheduled Tribes	Revenue Divisional Officer	District Collector	District Collector & Chairman District Level Vigilance Committee

6. It also comes to light that the Government of Tamilnadu had passed G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 (As regards redressal of grievances of Scheduled Tribes) whereby and whereunder after careful consideration and examining the subject matter in issue had issued an amendment to G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 to the Paragraph No.4 in the Tabular Column for Sl.No.3 and the entries relating thereto by substituting the same as under:

Sl.	Community	Issuing Authority	Appellate Authority	Redressal of Grievances
"3"	Scheduled Tribes	Revenue Divisional Officer.	District Collector	State Level Scrutiny Committee"

7. It is to be noted that the object of Article 226 of the Constitution of India is to provide a quick and an inexpensive remedy to the aggrieved parties. Therefore, it would be incorrect to incorporate all the proceedings of a suit into a proceeding under Article 226 of the Constitution of India as per decision of the **Hon'ble Supreme Court in Babubhai V. Nandal AIR 1974 SC 2105.**

8. It is to be borne in mind that as 'Writ Proceeding' is summary in nature, 'Disputed questions' of fact cannot be decided in Writ Jurisdiction as per decision of the **Hon'ble Supreme Court in Sumedha Nagpal V. State of Delhi (2000) 9 SCC 745.** Undoubtedly, the power conferred upon the Hon'ble Supreme Court and the High Court under Articles 32 and 226 of the Constitution of India is 'plenary power' and such power is not at all an incomplete power, nor fettered by any legal restraint. Although the power of Judicial Review is at the hands of High Court under Article 226 of the Constitution, notwithstanding the fact that the Constitution of India does not impose any limitation upon the aforesaid power, the Courts themselves have evolved certain self imposed limitations or restraints in regard to the exercise of this extraordinary and unlimited discretionary power, as a matter of prudence and policy. In short, in Law, the whole field of Article

226 of the Constitution is purely a discretionary one.

9. Coming to the aspect of an 'Executive Power' of the State, it is to be pointed out that the same is coextensive with that of the State Legislature. The power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise is not covered by the existing Rules, as per decision **Union of India V. Central Electrical & Mechanical Engineering Service (CE & MES) Group A (Direct Recruits) Association reported in CPWD 2008 1 SCC at Page 354.** It cannot be forgotten that the executive instructions which are given by the State exercising its power under Article 162 of the Constitution of India cannot circumvent a statutory provision. In fact, Article 162 of the Constitution does not enjoin the State Government to pass executive Orders which are contrary to Law, which was already made on the subject, by the State, in as much as it would amount to rewriting Art. 162 of the Constitution of India.

10. That apart, in order that the Executive instructions have the force of statutory Rules, it is to be exhibited that they were issued either under the authority showered under the State Government by some statute or under some provision of the Constitution, as per decision of **Hon'ble Supreme Court G.J.Fernandez V. State of Mysore reported in AIR 1967**

SC Page 1753.

11. In short, Article 162 of the Constitution requires that where the State has power to make Laws, it can issue executive instruction as per decision **Kamala Godera V. State of Rajasthan reported in AIR 2000 Rajasthan 130**. Although the State Legislature has the power to make a Law relating to a subject, the executive action by the appropriate Government is not rendered invalid just because there is no Legislation to support such action, as per decision of **Hon'ble Supreme Court Naraindas V. State of Madhya Pradesh in AIR 1974 SC Page 1232**.

12. At this juncture, this Court aptly recalls and recollects the decision of Hon'ble Supreme Court in **Madhukar Sadbha Shivarkar V. State of Maharashtra and Others (2015) 6 Supreme Court Cases 557 at Special Page Nos.559 and 560** wherein it is held as follows:

"In the backdrop of the Judgment passed in the criminal cases which have attained finality before the Supreme Court, the State Government, after examining the representations given by the landowners in these cases with reference to the relevant land records of the landholders of the villages, has rightly exercised its statutory power by appointing the Sub-Divisional Officer as an enquiry officer at the first instance and later on Deputy Commissioner of Pune was appointed to enquire into the matter which is in the large public

interest.

(Para 26)

The order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by paying fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The allegation of fraud in relation to getting the landholdings of the villages by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law through such orders have attained finality, if it is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. Fraud unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. The land owners are also aggrieved parties to

agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and acceptable to justify the impugned judgment and order of the High Court. (Para 27)

The legal submissions made on behalf of the appellants that the State Government has no power either under Section 45(2) or under Section 14(4) of the 1961 to appoint an enquiry officer to enquire into the landholdings of the villages referred to therein are untenable contentions of the appellants which have been rightly rebutted by urging an alternative legal plea that the power exercised by the State Government to pass the orders impugned in the writ petitions is traceable to its executive power under Article 162 of the Constitution of India. This is the most tenable submission, having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by the Supreme Court in these proceedings at this stage. (Paras 28 and 32)

Also in the aforesaid decision at Paragraph No.32 at Page No.572 among other things, it is observed as follows:

“.....In our considered view, the orders impugned in the writ petitions which are affirmed by the High Court, are perfectly legal and valid and therefore, the same do not warrant

interference by this Court in exercise of power of this Court under Article 136 of the Constitution, but on the other hand, the aforesaid orders of the State Government can also be traceable to execute power of the State Government under Article 162 of the Constitution of India having regard to the magnitude of the alleged fraud in relation to the vast extent of the landholding obtained by the declarants by giving false declarations with a view to come out from the clutches of the land ceiling provisions of the Act, which is the prima facie view taken by the State Government and the same cannot be found fault with by this Court in these proceedings at this stage....”

13. When a Government Order or a Statute provides for an adequate, effective, viable and efficacious alternative remedy and if such an alternative remedy is not cumbersome, then, in that event, it is open to the Petitioner to avail such remedy / machinery constituted under the said Government Order or under the Act, so that, the purport and intent of the Government in providing a certain forum is not whittled down in any manner.

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14. Indeed, the remedy of preferring an appeal enjoined in the amendment G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 was brought by the Government of Tamilnadu based on the

observations of the Hon'ble Division Bench of this Court in W.P.(MD) No.1355 of 2015 dated 05.02.2015 to the effect that for all the caste certificate cases which naturally require a factual adjudication, at least one appeal remedy, for 'Scheduled Caste', 'Scheduled Tribes' and 'Backward class' should be provided, which may be in the form of scrutiny by the District Level Vigilance Committee etc.,

15. In short, the action of the Government of Tamilnadu in introducing an 'Appeal' remedy before the District Collector as per G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 (by way of amendment to G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015) does not suffer from any vice or material irregularities and patent illegalities in the eye of Law. Moreover, two Orders of the State Government are in the 'Interest of Public at Large', in the considered opinion of this Court.

16. Be that as it may, in view of the fact that the present Writ Petition viz., W.P.No.4054 of 2016 is filed by the Petitioner assailing the Impugned Order of the Respondent / Sub Collector, Metturdam dated 02.12.2015 rejecting his request for issuance of Community Certificate to his wards and also this Court taking note of the tenor and spirit of the

G.O.(Ms).No.235 Revenue [RA3(2)] Department dated 26.06.2015 and also looking into the contents of G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016, is of the considered view that the amended G.O.(Ms).No.147 Revenue [RA-3(2)] Department dated 17.03.2016 issued by the Secretary to Government of Tamilnadu provides for an 'Appeal' remedy to the District Collector (as an Appellate Authority) and thereafter, to the State Level Scrutiny Committee (For Redressal of Grievances) and therefore, in all Fairness, Equity and Fair play this Court, directs the Petitioner to prefer an Appeal before the District Collector, Salem as against the impugned order of the Respondent dated 02.12.2015 within a period of two weeks from the date of receipt of a copy of this Order. Liberty is granted to the Petitioner to raise all factual and legal pleas by enclosing necessary documents to support his case before the Appellate Authority / District Collector, Salem.

16. In such event of the Petitioner preferring an Appeal, (of course, well within the time adumbrated by this Court) it cannot be gainsaid that the Appellate Authority, viz., District Collector, Salem is to provide an adequate opportunity of hearing to the Petitioner by adhering to the 'Principles of Natural Justice' in true letter and spirit.

17. That apart, in case, the Petitioner seeks time for filing of additional documents or to lead oral / documentary evidence, then, in that event, the Appellate Authority, viz., District Collector, Salem shall provide enough opportunity to the Petitioner by keeping in mind the 'Principles of Natural Justice'. The District Collector, Salem / Appellate Authority, is directed to pass necessary orders on the 'Appeal', as expeditiously as possible, in an Unbiased, Free, Just, Fair, impartial and dispassionate manner of course, in the manner known to Law and in accordance with Law, in any event, not later than six weeks thereafter.

18. Soon after disposing of the Appeal within the time specified by this Court, the District Collector, Salem (Appellate Authority) is also directed to send a compliance report to the Registrar Judicial of this Court in regard to the orders so passed.

19. Before parting with this Case, this Court makes a relevant mention that it is high time for the Government of Tamilnadu to give an anxious consideration in respect of enacting a complete and comprehensive Law in regard to issuance and verification of Community Certificates of Scheduled Caste and Scheduled Tribe and other Backward Classes quite in tune with the guidelines / direction issued in the **Hon'ble**

Supreme Court decision Kumari Madhuri Patil & Another V. Additional Commissioner Tribal Development, Thane & Others reported in AIR 1995 SC 94 and the modifications made in the later Judgments of the Hon'ble Supreme Court of India on the subject, which governs the field. To put it succinctly, the neighbouring states like Kerala, Andhrapradesh and Maharashtra had already enacted necessary legislations for issuance and verifications of the Community Certificates of Scheduled Caste and Scheduled Tribe and other Backward Classes and the same are in live force. This Court fervently opines that if the Government of Tamilnadu enacts a codified Law pertaining to the procedure for issuance and verification of Community Certificate of Scheduled Caste and Scheduled Tribe and Other Backward Classes in the State, then, there is ample scope for wiping out / erasing out 'Bogus / Fictitious Community Certificates' obtained by the concerned persons, to secure the benefits in an unlawful manner.

20. With the aforesaid observations the present Writ Petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

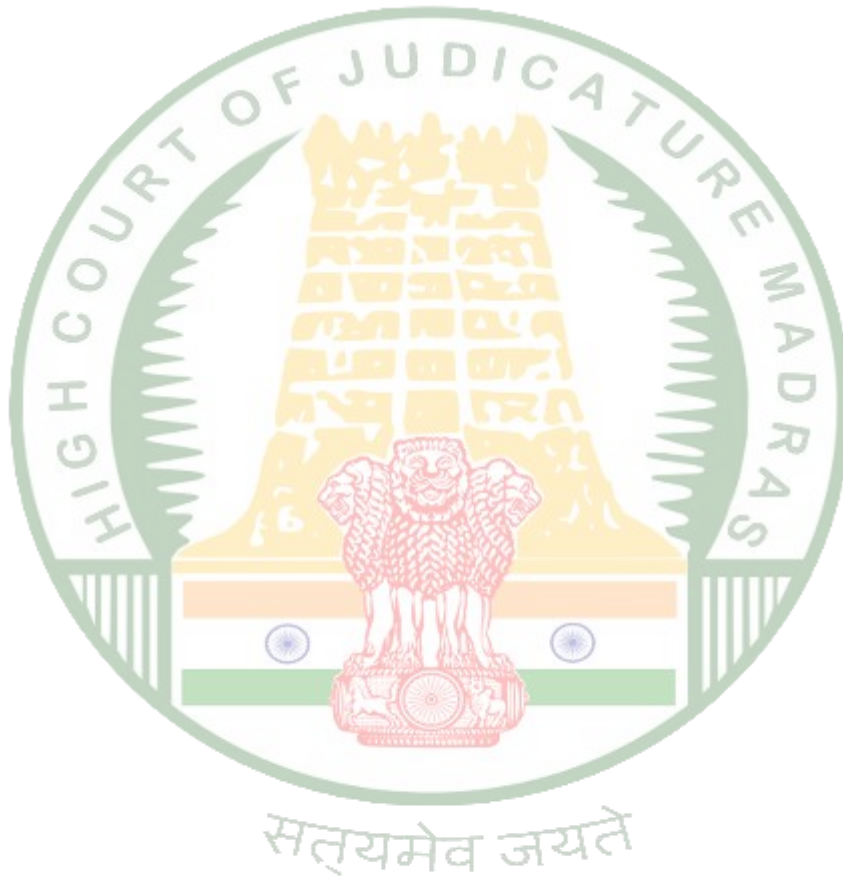
(M.V., J.) (P.D.A., J.)

24.07.2017

Index :Yes / No ;Internet :Yes / No
Speaking order
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To

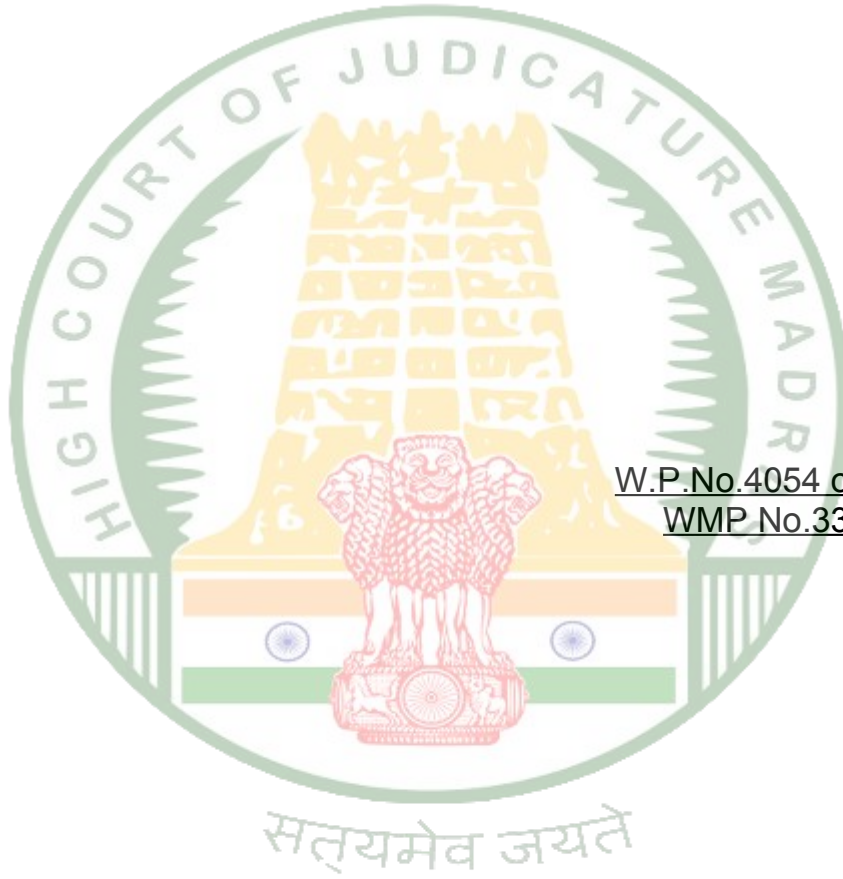
1. The Sub Collector, Mettur Dam, Salem.
2. The District Collector, Salem (Appellate Authority)
3. The Registrar Judicial
(For Favour of information and
necessary follow up action), High Court, Madras



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M.VENUGOPAL, J.
and
P.D.AUDIKESAVALU, J.

ssd



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