

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.28226 of 2018

R.Neha

.. Petitioner

Vs.

The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings in Pa.Mu.10642/2015/A4, dated 12.06.2018 on the file of the respondent, quash the same and direct the respondent to issue Community Certificate to the petitioner and his children, viz., M.Aakash and M.Aarthi that they belong to Kurichchan (ST) Community based upon the Community Certificate already issued to the petitioner's maternal uncle M.Sivakumar and his family members.

For petitioner : Mr.S.Doraisamy

For respondent : Mr.K.Rajendra Prasad, Addl.G.P.

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings in Pa.Mu.10642/2015/A4, dated 12.06.2018 on the file of the respondent, quash the same and direct the respondent to issue Community Certificate to the petitioner and her children, viz., M.Aakash and M.Aarthi that they belong to Kurichchan (ST) Community based upon the Community Certificate already issued to the petitioner's maternal uncle M.Sivakumar and his family members.

2. The case of the petitioner is that she belongs to Kurichchan Community, which is classified as a Scheduled Tribe Community. Her parents did not obtain any Community Certificate since they were illiterates and the Community Certificate was

not required for them at that time. The petitioner has studied upto VIII Std. In all her school records, her community was entered as Kurichchan (ST) Community. The petitioner's maternal uncle M.Sivakumar filed a Writ Petition in W.P.No.23650 of 2011 challenging the rejection order passed by the respondent and this Court set aside the rejection order of the respondent and remanded the matter back to the respondent after getting a report from the Anthropologist. Thereafter, Anthropologist appointed by the Director of Tribal Welfare, conducted the spot enquiry and submitted a report to the respondent stating that the petitioner's maternal uncle and his family members belong to Kurichchan (ST) Community. Further, on 08.08.2014, the respondent issued Community Certificate to the petitioner's maternal uncle's family based upon the report of the Anthropologist.

3. It is further stated by the petitioner that she has two children, namely M.Aakash and M.Aarthi. Since the Community Certificate is required for her children, she preferred an application to the respondent on 11.06.2015 requesting to issue Community Certificate to the petitioner and her children stating that they belong to Kurichchan (ST) Community. Along with the said application, the petitioner enclosed the following documents:

- (i) The petitioner's School Transfer Certificate.
- (ii) Sale deed.
- (iii) Anthropologist Report of the petitioner's maternal uncle M.Sivakumar.
- (iv) Community Certificate of the petitioner's maternal uncle M.Sivakumar.
- (v) Community Certificate of the petitioner's maternal uncle's wife P.Maheswari.
- (vi) Community Certificate of the petitioner's maternal uncle's children, viz., S.Gokulalakshmi and S.Jayapradhap.
- (vii) Anthropological Report submitted by Dr.Jakka Parthasarathy, Tribal Research Centre.

Since no order was passed, the petitioner filed W.P.No.25289 of 2015 and this Court, by order dated 17.08.2015, directed the respondent to consider and pass orders on the application of the petitioner within a period of four weeks from the date of receipt of a copy of the order. It is to be noted that the Community Certificate already issued to M.Sivakumar was confirmed by the Anthropologist. After three years, the respondent passed the impugned order dated 12.06.2018 rejecting the petitioner's claim stating that they do not belong to Kurichchan Community, against which, the present Writ Petition has been filed by the petitioner for the relief stated supra.

4. The only grievance of the petitioner is that her maternal uncle was issued with Community Certificate and hence, she may be issued with the Community Certificate on that basis. Though

the said fact was brought forth to the knowledge of the respondent, the respondent has not considered the same. Thus, she prayed to quash the impugned order and direct the respondent to issue Community Certificate to the petitioner and her children. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment dated 22.04.2016 of a Division Bench of this Court rendered in P.Govindarasu Vs. The Revenue Divisional Officer, Harur, Dharmapuri District (W.P.Nos.17231, 17232, 17495 & 17496 of 2015), wherein, after referring to various judgments governing the issue in question, it was observed as follows:

"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."

5. Relying upon the above judgment, learned counsel for the petitioner prayed to quash the impugned order which declared that the petitioner and her children belong to Hindu Kunchidagar Backward Community, which is untenable.

6. Per contra, learned Additional Government Pleader appearing for the respondent submitted that the impugned order has been passed by considering the various documents produced on the side of the petitioner and therefore, there is no need to set aside the impugned order. If the petitioner is still aggrieved, it is always open to her to file an appeal before the District Collector by challenging the order impugned herein.

7. As rightly contended by the learned counsel for the petitioner, we find that the factum of blood relationship

between the petitioner and her maternal uncle, has not been discussed/considered/dealt with in the impugned order by the respondent while rejecting the claim and declining the request of the petitioner that she belongs to Kurichchan Community, which is untenable. In such circumstances, and in the light of the observations made by the Division Bench in the said decision, we are of the considered view that it would be appropriate to remit the matter back to the respondent for fresh consideration and disposal in accordance with law.

8. Accordingly, the impugned order is set aside. The matter is remitted back to the respondent, who shall consider the application of the petitioner for issuance of Community Certificate to her and her children afresh. The respondent shall examine the relationship between the petitioner and the said Sivakumar, who is the maternal uncle of the petitioner, by affording an opportunity of hearing to the petitioner and on being satisfied with the blood relationship between the petitioner and the said Sivakumar (maternal uncle of the petitioner), the respondent shall pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

9. It is made clear that the above order has been passed without expressing any opinion on the merits of the claim made by the petitioner and even if the Community Certificates are issued to the petitioner and her children, the same would be subject to verification at a later point of time by the State Level Scrutiny Committee.

10. With the above observations, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

cs

To

The Revenue Divisional Officer,
Dharmapuri, Dharmapuri District.

+2cc to Mr.Doraisamy, Advocate, S.R.No. 75854, 74916

W.P.No.28226 of 2018

MG (CO)
GN (07/12/2018)