

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.29036 of 2018

C.Loganathan

.. Petitioner

Vs.

1. The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat,
Chennai-600 009, rep. by its Chairman.
2. The Collector,
Dharmapuri,
Dharmapuri District.
3. The Revenue Divisional Officer,
Dharmapuri,
Dharmapuri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second respondent to pass an order directing the third respondent to issue Community Certificate to the petitioner's children viz., (i) L.Gowsalya and (ii) L.Logeshwaran that they belong to Kurumans (ST) Community based upon the Community Certificate already issued to the close relatives of the petitioner, namely M.Ravi, G.Rajappan, N.Chinnasamy and the verification report of the first respondent-Committee in respect of N.Chinnasamy.

For petitioner : Mr.V.Elangovan

For respondents : 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 Mandamus to direct the second

respondent to pass an order directing the third respondent to issue Community Certificate to the petitioner's children viz., (i) L.Gowsalya and (ii) L.Logeshwaran that they belong to Kurumans (ST) Community based upon the Community Certificate already issued to the close relatives of the petitioner, namely M.Ravi, G.Rajappan, N.Chinnasamy and the verification report of the first respondent-Committee in respect of N.Chinnasamy.

2. It is the case of the petitioner that he belongs to Kurumans Community, which is a Scheduled Tribe Community. He has studied upto School level. The petitioner and his wife did not obtain any Community Certificate, since it was not required for them at that time. The avocation of the petitioner is Agriculture. In all the school records of the petitioner, his community is entered as Kurumans (ST). The petitioner has one daughter and one son, viz., (i) L.Gowsalya and (ii) L.Logeshwaran. Since the Community Certificate is required for his children, the petitioner preferred an application to the third respondent on 27.02.2014 requesting to issue Community Certificate to his children that they belong to Kurumans (ST) Community. Thereafter, on 13.05.2015, the third respondent issued a notice to the petitioner to appear for enquiry on 16.05.2015 with required documents. Accordingly, the petitioner appeared before the third respondent on 16.05.2015 and submitted the following documents:

(i) The petitioner's School record in which his community is entered as Kurumans (ST) Community.

(ii) The petitioner's daughter L.Gowsalya's School Certificate in which her community is entered as Kurumans (ST) Community.

(iii) The petitioner's son L.Logeshwaran's School Certificate in which his community is entered as Kurumans (ST) Community.

(iv) Community Certificate of M.Ravi, who is the petitioner's father's brother's grandson.

(v) Community Certificate of G.Rajappan, who is the petitioner's father's brother's son.

3. However, no order is passed by the third respondent on the said application. It is the further case of the petitioner that when once the petitioner's close relatives are having valid Community Certificate, the petitioner's children are entitled to get the similar Certificate that they belong to Kurumans (ST) Community. Hence, the petitioner filed a Writ Petition in W.P.No.20185 of 2015, and this Court, by order dated 08.07.2015, issued notice to the third respondent therein and directed the respondent(s) to indicate by way of an affidavit as to why he has not initiated steps on the petitioner's application within the specified time, as laid down by the Supreme Court in Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal

Development and others (1994 (6) SCC) and why enquiry was initiated after a period of more than a year and also the present status of the case. Two weeks' time was granted as requested, to the respondent to file counter affidavit and the matter was directed to be listed on 22.07.2015. While so, the third respondent, on 10.07.2015, passed an order rejecting the petitioner's application, against which, the petitioner filed W.P.No.22348 of 2015. When the said W.P. came up for hearing on 24.07.2015, this Court issued notice to R.Manuel Raj, the then Revenue Divisional Officer (RDO) to show cause as to why action may not be initiated against him for such a casual work done by him in the impugned order dated 10.07.2015 and directed the matter to be listed on 11.08.2015. On 11.08.2015, this Court directed the then RDO R.Manuel Raj to be present before the Court on 02.09.2015 to submit his explanation. Accordingly, he appeared before this Court on 02.09.2015 and filed counter affidavit.

4. While so, on 28.08.2015, another RDO K.Ramamoorthy rejected the application of the petitioner holding that the petitioner belongs to Kurumba Community and the Kurumans Community Certificate cannot be issued to his children, against which, the petitioner filed W.P.No.28713 of 2015. Pending the said W.P., it was represented by the learned Special Government Pleader therein that the impugned order dated 28.08.2015 was recalled and liberty may be granted to take a fresh decision on the entire issue. Accordingly, the said W.P. was disposed of directing the third respondent therein to take a decision in accordance with law, within a period of four weeks. In the meantime, the third respondent, by proceedings dated 02.04.2016, referred the petitioner's relative's Community Certificate, namely Rajappan, to the State Level Scrutiny Committee for verification and only after getting the report from the State Level Committee, the order will be passed. Challenging the same, the petitioner preferred an appeal to the second respondent on 01.07.2016 and along with the appeal, the petitioner enclosed State Level Committee's report of the petitioner's cousin brother N.Chinnasamy and genealogical family tree. The second respondent, without any enquiry and without giving an opportunity of hearing, passed an order in the appeal on 01.06.2017, stating that the petitioner and his relatives belong to Kurumabr Community and thereby the appeal was rejected. Hence, the petitioner preferred another Writ Petition in W.P.No.28437 of 2017, in which, this Court, on 07.11.2017, advised the petitioner to file a Second Appeal before the State Level Scrutiny Committee and thereby, the said W.P. was withdrawn. Accordingly, the petitioner preferred Second Appeal to the State Level Committee on 20.06.2018 and on 29.06.2018, the Committee re-directed the Second Appeal to the second respondent for proper action. Since the matter is still pending,

the petitioner has filed the present Writ Petition for the relief stated supra.

5. We feel that the Second Appeal which was re-directed to the second respondent-District Collector, is still pending before the second respondent. The only grievance of the petitioner is that his relatives' Community Certificates were not considered by the authorities. Further, the learned counsel for the petitioner has placed reliance upon the judgment dated 22.04.2016 of the 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."

6. Relying upon the aforesaid judgment, it is contended by the learned counsel for the petitioner that when the community certificate issued to the blood relatives of the petitioner had not been cancelled and rather, the State Level Scrutiny Committee itself has confirmed that one of the blood relatives of the petitioner, namely, N.Chinasamy's Certificate was verified by the State Level Committee and found to be genuine. The said fact was also placed before the respondents, but the matter is still pending with the second respondent. Earlier, the

request of the petitioner was rejected, declaring that the petitioner and his family members only belong to Hindu Kurumbar community, which is untenable. The learned counsel would further submit that the respondents have not dealt with the relationship between the petitioner and the said N.Chinnasamy. Therefore, for all the above reasons, the learned counsel for the petitioner prayed for issuing the direction as prayed for in the Writ Petition.

7. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the issue has been considered by the respondents based on various documents produced on the side of the petitioner and therefore, there is no need to issue any direction as prayed for by the petitioner. According to the learned Additional Government Pleader, if the petitioner is still aggrieved, it is always open to the petitioner to pursue the appeal already filed before the State Level Scrutiny Committee.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. On a perusal of the earlier orders passed by the authorities, as rightly contended by the learned counsel for the petitioner, we find that the relationship between the petitioner and the said Chinnasamy, who, according to the petitioner is his blood relative, has not been considered. Moreover, it is evident from the proceedings of the Tamil Nadu State Level Scrutiny Committee dated 31.10.2013 that the Community Certificate issued to the said Chinnasamy stating that he belongs to Kurumans community, has been confirmed by the Committee, after due enquiry and verification of relevant documents. In such circumstances and in the light of the observations made by the Division Bench of this Court in the aforesaid judgment, we are of the considered view that it would be appropriate to remit the matter back to the second respondent for fresh consideration and disposal, as the appeal is pending before the second respondent after re-direction by the first respondent-Committee.

10. Accordingly, the matter is remitted back to the second respondent-District Collector, who shall consider the application of the petitioner for issuance of Community Certificate to himself and his children afresh. The second respondent shall examine the relationship between the petitioner and the said Chinnasamy, by affording an opportunity of hearing to the petitioner and on being satisfied with the blood relationship between the petitioner and the said Chinnasamy, the second respondent-District Collector shall pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

11. 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, the same would be subject to verification, at a later point of time, by the State Level Scrutiny Committee.

12. The writ petition is disposed of with the above observations. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
The Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavingar Maligai,
Secretariat, Chennai-600 009,
2. The Collector, Dharmapuri,
Dharmapuri District.
3. The Revenue Divisional Officer,
Dharmapuri, Dharmapuri District.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.75855

W.P.No.29036 of 2018

VD(CO)
CS/11/12/2018

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