

In the HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 21.06.2019

Orders Pronounced on : 08.07.2019

ORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1655 of 2019
and
W.M.P.No.1853 of 2019

G.Chandran

Vs.

.. Petitioner

The Revenue Divisional Officer,
Tiruvannamalai,
Tiruvannamalai 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 cancellation of the Community Certificate of the petitioner passed in Proceedings in Se.No.A2/11166/2016, dated 21.09.2018 on the file of the respondent, quash the same and direct the respondent to issue Community Certificate to the petitioner's children, viz., (i) C.Priyanka, (ii) C.Selvaganapathy and (iii) C.Jayapradha, based upon the Community Certificate already issued to the petitioner and his father.

For petitioner : Mr.S.Doraisamy

For respondents : Mr.V.Shanmuga Sundar, Spl.G.P.

ORDER

R.SUBBIAH, J

The petitioner has come forward with the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of cancellation of the Community Certificate of the petitioner passed in Proceedings in Se.No.A2/11166/2016, dated 21.09.2018 on the file of the respondent, quash the same and direct the respondent to issue Community Certificate to the petitioner's children, viz., (i) C.Priyanka, (ii)C.Selvaganapathy and (iii)

C.Jayapradha, based upon the Community Certificate already issued to the petitioner and his father.

2. It is the case of the petitioner that he belongs to "Malai Kuravan" Community, which is classified as Scheduled Tribe Community. He obtained Community Certificate on 03.02.1986. He preferred an application to the respondent requesting to issue Community Certificate to his children, namely C.Priyanka, C.Selvaganapathy and C.Jayapradha. The respondent did not pass order from 2016 on the application preferred by the petitioner and hence, on 07.05.2018, another representation was made. Since the respondent refused to issue the Community Certificate, the petitioner filed a Writ Petition in W.P.No.18771 of 2018. After hearing the parties, this Court disposed of the said Writ Petition on 24.07.2018 and the relevant portion of the said order reads as follows:

"6. It cannot be denied that when the petitioner as well as his father do possess Malaikuravan Scheduled Tribe Community Certificate dated 03.02.1986 (vide Certificate Nos.69/1986 and 90/1986 respectively) then, it may not be difficult for the concerned Authorities to take into account of the said community certificate and to dispose of the Petitioner's daughter's representation dated 07.05.2018. Also that, the petitioner's daughter as early as on 05.11.2016 and 13.03.2018 had addressed a representation to the Hon'ble Chief Minister of Tamilnadu. In fact, in the representation dated 05.11.2016 of the Petitioner's daughter addressed to the Hon'ble Chief Minister, she had referred to her petition dated 20.08.2016 given before the 2nd Respondent/District Collector, Thiruvannamalai District. Obviously, there appears to be an inaction on the part of the concerned Revenue Authorities, which is not appreciated by this Court.

7. Considering the fact that the petitioner's daughter's various representations seeking issuance of Community Certificate are pending without any progression in the subject matter in issue and lastly, the Petitioner's Daughter had submitted a representation on 13.03.2018 to the Hon'ble Chief Minister Cell and the representation given before the 2nd Respondent/District Collector, Thiruvannamalai dated 07.05.2018 and this Court keeping in mind yet another fact that the said representations have not yet been disposed of by the Concerned Authorities, at this stage, to prevent an aberration of justice and to promote substantial cause of justice, simpliciter directs the 3rd Respondent/Revenue Divisional Officer, Thiruvannamalai District to act upon the earlier representations and the

last representation dated 07.05.2018 and to dispose of the same by passing a reasoned speaking order within a period of four weeks from the date of receipt of copy of this order, of course, after providing sufficient opportunity to the Petitioner and his daughter to hear their views, in the subject matter in issue. After the authority comes to the firm conclusion that the Petitioner's daughter belongs to Scheduled Tribe Community, then, the 3rd Respondent is directed to issue Scheduled Tribe Community Certificate to and in favour of Petitioner's daughter without participating or prolonging the matter any further because of the reason that the Petitioner's daughter had applied before the Tamilnadu Veterinary and Animal Sciences University to pursue her Veterinary Course degree. Liberty is granted to the Petitioner and his daughter to produce necessary copies of relevant documents before the 3rd Respondent/Revenue Divisional Officer, Thiruvannamalai District at the time of enquiry and the said documents can be looked into by the 3rd Respondent at the time of passing the orders and issuance of certificate.

With the above said observations and directions, the Writ Petition is disposed of. No costs."

3. Thereafter, the respondent issued notice, dated 07.09.2018 to the petitioner for enquiry to be held on 12.09.2018 with all the relevant documents. Accordingly, the petitioner appeared for the enquiry. But on completion of the enquiry, by the impugned order, the respondent rejected the petitioner's application. Further, the respondent went to the extent of cancelling the Community Certificate issued to the petitioner and his father. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

4. When the matter is taken up for consideration, the learned counsel for the petitioner adverted to the facts and submitted that the respondent-RDO has no authority to cancel the Scheduled Tribe Community Certificate already issued to the petitioner/his father and if he has any doubt/cloud over the Community Certificate already issued to the petitioner/his father, he can only refer the Community Certificate(s) to the State Level Scrutiny Committee, and therefore, the impugned cancellation/rejection order passed by the respondent is patently illegal and the same is liable to be set aside. It is further contended that the respondent should have issued notice on the application seeking issuance of Community Certificate, to the petitioner's children, before the impugned order of rejection/cancellation is passed in respect of the Community Certificate already issued to the petitioner/his father. The learned counsel for the petitioner also contended that the respondent being a subordinate officer, has no authority to

conduct the enquiry for cancelling the Community Certificate of Scheduled Tribe, which was already issued to the petitioner/his father. Further, as per the Government Orders in G.O.(2D). No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 and G.O.(Ms).No.106, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 15.10.2012, the power of verification of the Community Certificate is vested only with the State Level Scrutiny Committee consisting of officers like Secretary to Government or Additional Secretary to Government and not the officer in the rank of Revenue Divisional Officer (RDO). Hence, based on the above contentions, the learned counsel for the petitioner prayed for quashing the impugned order and allow the Writ Petition.

5. The learned Special Government pleader appearing for the respondent, by filing counter affidavit, inter-alia stated that as directed by this Court in the said W.P.No.18771 of 2018, a detailed enquiry had been conducted after providing sufficient opportunity to the petitioner and his daughter to hear their views. The enquiry revealed that the School Records, Village Revenue Records and Birth and Death Records of the petitioner's village relating to the years prior to 1981 show that the petitioner's families' community is not mentioned as Malai Kuravan Community in any of the School/Revenue Records. Further, the community of the petitioner's father is noted as "Koravar" and the suffix to their names are 'Chetty', which belongs to Koravar/Korachetty, which is included in the list of de-notified community. Therefore, the Community Certificates already issued by the Tahsildar, Chengam to the petitioner and his father, have been cancelled by impugned proceedings, dated 21.09.2018 issued by the respondent, in which, it has also been informed to the petitioner that their blood relations belongs to Koravar Community and therefore, the request/application for issuance of Malai Koravar Community Certificate to the petitioner's daughter Jayapratha, had been rejected.

6. It is the further stand of the learned Special Government Pleader appearing for the respondent that the contention of the petitioner that himself and his father were having valid Community Certificate(s), is not correct and these Certificates were issued during the year 1986 before issuance of permanent Community Certificate, which was introduced from the year 1989, that too by the Tahsildar. Therefore, even the genuineness of the above Community Certificate(s) referred to by the petitioner, could not be verified at this distant point of time, and as such, the said Certificates could not be considered as valid Certificates. However, on detailed enquiry, it was found that the petitioner and his father do not belong to the Malai Korava Community. The Community Certificate issued to them by the Tahsildar, Chengam, was cancelled by the respondent, being the immediate superior officer to the Tahsildar in accordance

with law. In G.O.Ms.No.2137, Adi Dravidar and Tribal Welfare Department, dated 11.11.1989, the Government directed that issuance of such Community Certificate(s) certifying that the applicant(s) belong to Scheduled Tribe, be done only by the Revenue Divisional Officer, having jurisdiction over the matter.

7. The learned Special Government Pleader further submitted that the contention of the petitioner that the respondent being a subordinate officer, has no authority to conduct an enquiry to cancel the Community Certificate of Scheduled Tribe Community, is not sustainable, since the respondent had duly followed the principles laid down by the Government in G.O.(2D).No.108, Adi Dravidar and Tribal Welfare (CV-I) Department, dated 12.09.2007 and also the guidelines framed by the Supreme Court in the case of Kumari Madhuri Patil and another Vs. Additional Commissioner, reported in 1994 (6) SCC 241. The guidelines stipulated in the said G.O. clearly show that the respondent is vested with the power of verification of the Community Certificate with the Local Revenue Authority, through whom such Certificate was issued. Further, in the case of Scheduled Tribe Certificate, it is the Revenue Divisional Officer who is vested with the power to deal with the issuance of Community Certificate since 1989. As directed in the said G.Os., the reference to scrutinise the genuineness of the Community Certificate issued indicating the Scheduled Tribes and to pass final orders on the Community Certificate issued to the petitioner and his father, had already been submitted to the State Level Scrutiny Committee, as directed in the abovesaid G.O. The direction of this Court in the said W.P.No.18771 of 2018, by order dated 24.07.2018, had been duly followed. Though the matter had already been referred to the State Level Scrutiny Committee, the impugned cancellation proceedings were initiated only because the Community Certificate(s) already issued to the petitioner/his father, are not permanent ones. The enquiry had been conducted by the respondent only after due notice and as per the relevant Rules relating to the conduct of the enquiry, but the petitioner had not produced any document to establish that he belongs to Malai Koravar Community except the Community Certificate issued by the Tahsildar, Chengam, during 1986.

8. It is further contended by the learned Special Government Pleader appearing for the respondent that the petitioner did not produce any substantial proof other than the Community Certificate already issued to him by the Tahsildar, Chengam on 03.02.1986. The petitioner did not explain as to why the Community Certificate had not been obtained so far, so as to seek admission to Collegiate education of his daughter, when it is necessary that even the Community Certificate is required for admission to the Elementary School. The petitioner has approached this Court without availing of the remedies available with the District/State Level Scrutiny Committee. Hence, for

these reasons, the learned Special Government Pleader appearing for the respondent prayed for dismissal of the Writ Petition.

9. Keeping the above submissions in mind, we have carefully perused the entire materials available on record.

10. As contended by the learned counsel for the petitioner, the respondent/RDO has no authority to cancel the Community Certificate already issued to the petitioner/his father. If at all the respondent has any doubt with regard to the community status of the petitioner/his father, the respondent ought to have referred their Community Certificates to the State Level Scrutiny Committee to verify the genuineness of the same. But, in the instant case, though the document has been referred to the State Level Scrutiny Committee, when the enquiry is pending, the respondent cannot suo-motu cancel the Scheduled Tribe Community Certificate already issued to the petitioner/his father, which he is not empowered to do.

11. Hence, the portion of the impugned order relating to cancellation of the Community Certificate(s) already issued to the petitioner/his father, alone, is quashed and so far as the rejection of the application for issuance of Community Certificate to the petitioner's children, is concerned, this Court is not inclined to give any positive direction to the respondent-authority. If at all the petitioner is aggrieved with regard to the impugned order of rejection of the application of the petitioner's children for issuance of Community Certificate, the petitioner is at liberty to file appeal before the District Collector concerned, if he is so advised, with a period of four weeks from the date of receipt of a copy of this order.

12. Further, the respondent is directed to refer the Community Certificate(s) already issued to the petitioner/his father to the State Level Scrutiny Committee within a period of four weeks from the date of receipt of a copy of this order, and on such reference, the State Level Scrutiny Committee is directed to verify and pass appropriate orders at the earliest, not later than the end of August 2019, by following the principles laid down by the Supreme Court in the abovesaid Madhuri Patil's case.

13. With the above observations and directions, writ petition is disposed of. No Costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

CS

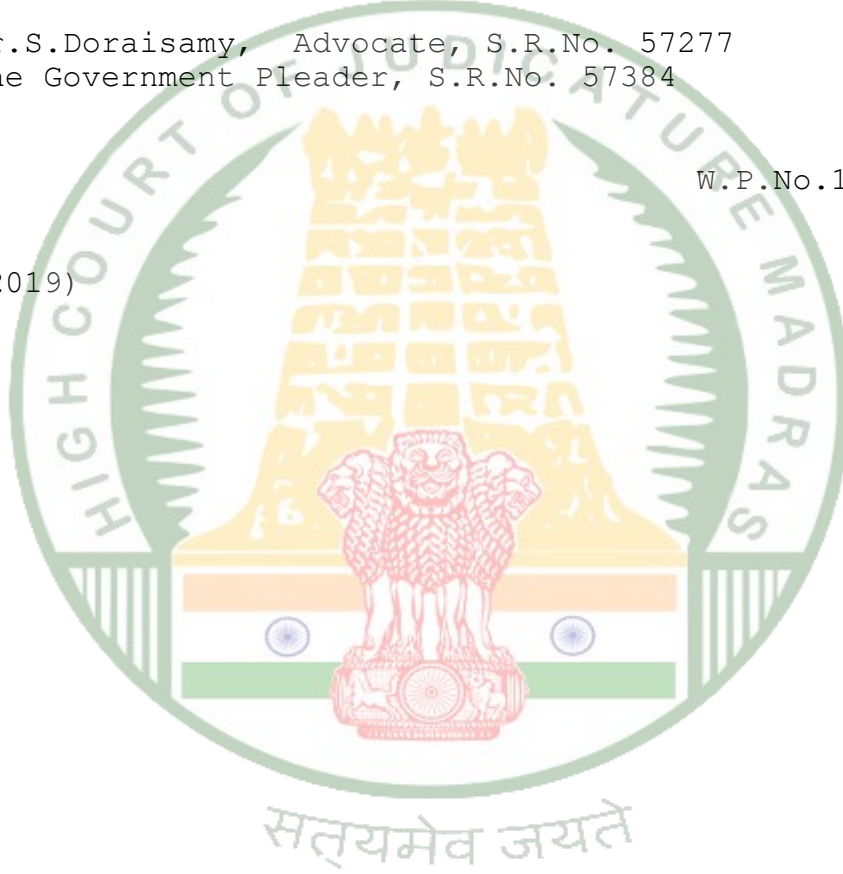
To

1. The Revenue Divisional Officer,
Tiruvannamalai,
Tiruvannamalai District.
2. The Chairman,
Tamil Nadu State Level Scrutiny Committee,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai-600 009.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No. 57277
+1cc to the Government Pleader, S.R.No. 57384

W.P.No.1655 of 2019

RGN(CO)
GN(30/08/2019)



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