

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 02.07.2019
Orders Pronounced on : 17.07.2019

Coram:

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

W.P.No.5539 of 2019

M.Jancy .. Petitioner

Vs.

1. The Revenue Divisional Officer,
Thiruvallur,
Thiruvallur District.

2. The Revenue Divisional Officer,
Chengalpattu,
Kancheepuram District.

.. Respondents

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 proceedings in Na.Ka.2851/2018 E, dated 24.12.2018 on the file of the second respondent, quash the same and direct the respondents to issue Community Certificate to the petitioner's son Minor P.Mukil Prathyun that he belongs to "Muthuvan (ST) Community" based upon the Community Certificate already possessed by the petitioner and her family members, viz., father and sister.

For petitioner : Mr.S.Doraisamy

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

ORDER

R.SUBBIAH, J

The petitioner has filed the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Na.Ka.2851/2018 E, dated 24.12.2018 on the file of the second respondent, quash the same and direct the respondents to issue Community Certificate to the petitioner's son Minor P.Mukil Prathyun that he belongs to

"Muthuvan (ST) Community" based upon the Community Certificate already possessed by the petitioner and her family members, viz., father and sister.

2. It is the case of the petitioner that she belongs to Muthuvan Community which is classified as Scheduled Tribe community. Her father M.Muthu obtained the Community Certificate from the Tahsildar, Sriperumbudur on 04.11.1985 stating that he belongs to Muthuvan (ST) Community. The petitioner and her sister M.Mathivathani obtained Community Certificate from the second respondent on 26.06.2009. The petitioner and her family are permanent residents of Avadi residing there for more than 40 years. Only for three years, as an interim arrangement, they were residing at Vandalur Otteri, Kancheepuram District from 2006 to 2009. Now, the petitioner's residence falls within Thiruvallur Division. Hence, the petitioner preferred an application on 18.07.2017 to the first respondent requesting to issue Community Certificate to the petitioner's son Minor P.Mukil Prathyun. For the past three years, the petitioner had been living separately with her son, because, her husband deserted her. The first respondent, on receipt of her application, conducted a detailed enquiry and concluded that the petitioner's family belong to Muthuvan (ST) Community. However, the first respondent, by proceedings dated 11.05.2018 informed the petitioner that she has to obtain Community Certificate only from the second respondent and as per G.O.Ms.No.61, Adi Dravidar and Tribal Welfare Department, dated 04.04.2005, she can approach the second respondent to get Community Certificate. As per the instructions of the first respondent, the petitioner preferred an application to the second respondent to issue Community Certificate to her son. However, the second respondent, on 03.09.2018, rejected her claim stating that she is not residing in Chengalpattu Division.

3. Challenging the above orders dated 11.05.2018 and 03.09.2018, the petitioner preferred a Writ Petition before this Court in W.P.No.25388 of 2018 to direct the first respondent to issue Community Certificate to her son Minor P.Mukil Prathyun that he belongs to Muthuvan (ST) Community on the basis of the Community Certificate possessed by the petitioner, her father and her sister, which were issued by the Tahsildar, Sirperumbudur to her father, by the Revenue Divisional Officer, Chengalpattu, to the petitioner and her sister. After hearing the parties, this Court, on 25.10.2018 held that the proper authority to issue the Community Certificate to the petitioner's son is the second respondent-RDO, Chengalpattu, Kanchipuram District. The second respondent, instead of obeying the said order of this Court and issue the Community Certificate to the petitioner's son, conducted a discreet enquiry and issued

the impugned proceedings dated 24.12.2018 stating that their actual native is Valparai, Pollachi Taluk, Coimbatore District and after migration, they lived at Avadi for more than 50 years and hence, the petitioner may go to Valparai and obtain a Community Certificate. Challenging the said order dated 24.12.2018, the present Writ Petition is filed for the relief stated supra.

4. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner made submissions adverting to the averments made in the affidavit and submitted that earlier, the petitioner filed an application before the second respondent for issuance of the Community Certificate to her son. Since the second respondent rejected the claim of the petitioner on 03.09.2018, stating that the petitioner is not a resident of Chengalpattu Division, challenging the same, the petitioner filed W.P.No.25388 of 2018, and this Court had set aside the impugned orders therein and remitted the matter back to the second respondent-RDO, Chengalpattu, by directing him to conduct enquiry by affording an opportunity of hearing to the petitioner and other necessary parties, if any and if the request of the petitioner is otherwise in order and in accordance with law, the second respondent-Chengalpattu RDO shall issue Community Certificate to the petitioner's son, within a period of eight weeks from the date of receipt of a copy of the order. The said Community Certificate shall be issued by the second respondent-RDO, Chengalpattu, if there is no legal impediment in issuing the same. It was made clear by this Court in the said order that this Court had not adjudicated on merits of the case and it is only for the second respondent-RDO, Chengalpattu to act purely on merits while issuing Community Certificate in accordance with law.

5. It is the contention of the learned counsel for the petitioner that instead of obeying the above order of this Court, the second respondent-RDO, Chengalpattu is insisting on the petitioner to go to Valparai and obtain the Community Certificate, which is her native place. It is the further contention of the learned counsel for the petitioner that the petitioner is residing for more than 50 years in Chengalpattu Division and therefore, she cannot be asked to go to Valparai. In fact, earlier, Community Certificate was issued in favour of the petitioner by the RDO, Chengalpattu on 26.05.2009 and the copy of the same was also enclosed in the typed set of papers filed along with the Writ Petition. When earlier the RDO, Chengalpattu has issued the Community Certificate in petitioner's favour, now, the second respondent-RDO, Chengalpattu cannot ask the petitioner to go to Valparai and obtain the Certificate for her son, which is stated to be her native

place, from which place, they have migrated 50 years ago.

6. Countering the above submissions, the learned Special Government Pleader appearing for the respondents relied on G.O.(Ms).No.61, Adi Dravidar and Tribal Welfare Department, dated 04.04.2005, to show that the petitioner has to apply for Community Certificate only before the authority in the petitioner's native place and not at the migrated place.

7. Heard both sides and perused the materials available on record.

8. The present Writ Petition has been filed aggrieved by the order dated 24.12.2018 passed by the second respondent, rejecting the application submitted by the petitioner for issuance of Community Certificate to her son, stating that the petitioner is native of Valparai, Pollachi Taluk, Coimbatore District, and therefore, she has to approach the concerned RDO of her native place at Valparai. In this regard, the learned Special Government Pleader appearing for the respondents relied upon G.O.(Ms).No.61, Adi Dravidar and Tribal Welfare Department, dated 04.04.2005. On a perusal of the said G.O., we find that the same was issued in the year 2005 and thereafter, the second respondent-RDO, Chengalpattu has issued Community Certificate to the petitioner on 26.05.2009. When the second respondent-RDO, Chengalpattu has chosen to issue Community Certificate to the petitioner on 26.05.2009, now he cannot direct the petitioner to approach the jurisdictional RDO relating to Valparai, Pollachi Taluk of Coimbatore District. However, we find from the judgment of the Supreme Court reported in 1994 (6) SCC 241 (Kumari Madhuri Patil Vs. Addl. Commissioner) that the concerned Vigilance Officer has to make a visit before issuing the Community Certificate by the Revenue Authority. In such circumstances, it would be appropriate on the part of the jurisdictional RDO to pass orders based on the inspection through Vigilance Officer concerned to the place where the applicant (petitioner) resided permanently.

9. In the said decision of the Supreme Court, it is clearly stated that in case of migration also, 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. In the above judgment, the Supreme Court has not stated that such enquiry should be conducted only by the officer from the place of origin. However, in the case on hand, the learned Special Government Pleader appearing for the respondents contended that as per the said G.O.(Ms).No.61, the petitioner has to approach the concerned RDO of the petitioner's native and origin. But we are of the opinion that since the Community Certificate was issued to the

petitioner by the second respondent-RDO, Chengalpet, the said G.O. cannot be an impediment for the second respondent to conduct enquiry with regard to the issuance of Community Certificate to the petitioner's son. Therefore, considering the entire gamut of the case as well as the said G.O., this Court is constrained to pass the following order.

10. The impugned order passed by the second respondent is set aside and the second respondent-RDO, Chengalpet is directed to get a report from the jurisdictional Vigilance Officer relating to Valparai of Pollachi Taluk of Coimbatore District, who shall conduct enquiry in the locality of the place where the petitioner permanently resided for quite a long time and now migrated from Valparai to Chennai. On receipt of the said report from the jurisdictional Vigilance Officer, the second respondent-RDO, Chengalpet is directed to conduct further enquiry, if necessary and pass appropriate orders with regard to the issuance of the Community Certificate to the petitioner's son named above. The entire exercise shall be completed by the second respondent-RDO, Chengalpet within a period of eight weeks from the date of receipt of the report from the jurisdictional Vigilance Officer, as directed above.

11. The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Revenue Divisional Officer,
Thiruvallur,
Thiruvallur District.

2. The Revenue Divisional Officer,
Chengalpattu,
Kancheepuram District.

+1 cc to Government Pleader Sr.No. 61309

W.P.No.5539 of 2019

A.SK(28/08/2019)