

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15-04-2019

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE TMT. JUSTICE KRISHNAN RAMASAMY

Review Application No. 82 of 2019
and
Contempt Petition No. 578 of 2019

Review Application No. 82 of 2019

1. The Tahsildar
Purasawalkam-Perumbur Taluk
Chennai - 600 011
2. The District Collector
Office at Collectorate
Chennai

(2nd respondent was suo motu impleaded
as party to the Review Application by order
dated 12.04.2019 passed in Review
Application No. 82 of 2019)

.. Review Applicants

Versus

Vijetha Dhinakaran

.. Respondent

Contempt Petition No. 578 of 2019

Vijetha Dhinakaran

.. Petitioner

Versus

The Tahsildar
Purasawalkam-Perumbur Taluk
Chennai - 600 011

.. Respondent

Review Application filed under Order 47 Rule 1 read with
Section 141 of Code of Civil Procedure to review the order dated 12.03.2019
passed in WP No. 6255 of 2019.

Review Application:-

For Review Applicant : Mrs. Narmadha Sampath
Additional Advocate General
assisted by Mr. M. Elumalai
Government Advocate

For Respondent : Mr. Haja Mohideen Gisthi

Contempt Petition:-

For Petitioner : Mr. Haja Mohideen Gisthi

For Respondent : Mrs. Narmadha Sampath
Additional Advocate General
assisted by Mr. M. Elumalai
Government Advocate

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

The Review Application as well as the Contempt Petition arise out of the order dated 12.03.2019 passed by us in WP No. 6255 of 2019. The facts leading to the filing of the Review Application as well as the Contempt Petition are identical and therefore, they are taken up for hearing together and are disposed of by this common order.

2. For the sake of convenience, the parties to the Review Application as well as the Contempt Petition are referred to as per their litigative status in the Contempt Petition as Petitioner and respondent.

3. Before dealing with the averments made in the Review Application as well as the Contempt Petition, certain basic facts which led to the filing of the same are required to be dealt with and they are delineated below.

4. According to the petitioner, she was born to her parents Late. Edward Kumar and Mrs. Saraswathi on 23.12.1982 at Union Territory of Andaman and Nicobar Island. While her father is a native of Tamil Nadu, her mother hails from Andaman and Nicobar Islands. It is also stated that the petitioner completed her schooling in Andaman and also pursued her B.Com Degree in the year 2003 and Masters Degree in M.Com during the year 2005 at Andaman. After completion of higher studies, she was given in marriage to her own relative and got settled in Chennai during the year 2006. Due to the wedlock a female child by name Dishaa was born and she is now studying VI standard. Thus, according to the petitioner, she is living in Chennai from the year 2006 after her marriage. It is stated that in the Union Territory of Andaman and Nicobar Island, where the petitioner was born, there was no practice of issuing community certificate and therefore she had no occasion to obtain such a certificate. However, after her marriage, she came to Chennai and during the year 2008, she applied for issuing a community certificate to her. Accordingly, on 24.03.2008, a community certificate was issued to her certifying that she belonged to "Hindu Adi Dravida". According to the petitioner, she was desirous of writing civil service exams and therefore, submitted an application in response to a notification issued by the Union Public Service Commission. In the column meant for declaring her communal status, she referred to the certificate issued to her on 24.03.2008. The petitioner also successfully cleared the preliminary level and main level and she was invited to attend a personal test/interview on 01.03.2019. When the petitioner was preparing herself to attend the interview, she received an e-mail dated 06.02.2009 from Union Public Service Commission stating that her father's name is not incorporated in the community certificate issued to her and therefore, she was directed to produce a

fresh community certificate by duly incorporating the name of her father, before the Personality Test. At this stage, the petitioner noticed that her father's name has not been incorporated in the community certificate issued to her, rather, the name of her husband alone is mentioned therein. Therefore, on 11.02.2019, the petitioner applied on-line for issuing a fresh community certificate by incorporating the name of her father instead of her husband. In response to her application, the respondent also conducted a personal verification on 20.02.2019 and collected the identification proof and also recorded her statement as also the statement of her neighbours. The respondent also collected the Aadhar Card of the petitioner during such personal verification. However, when the petitioner went to the office of the respondent on 21.02.2019, the respondent refused to issue a fresh community certificate without assigning any reason. It is in those circumstances, the petitioner has filed the above Writ Petition for a Mandamus directing the respondent to correct and rectify the error and re-issue the community certificate dated 24.03.2008 bearing No. 5414041 issued to her by incorporating the name of her father Edward Kumar instead of her husband name Dinakaran.

5. When the writ petition was taken up for hearing, the learned Government Advocate opposed the relief sought for in the writ petition by contending that there is no community classified in Andaman and Nicobar Islands as Schedule Caste under the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. The learned Government Advocate also would contend that as per the State wise number of castes notified as Scheduled Castes as on 23.09.2008 none of the community is classified as

Scheduled Caste in Andaman and Nicobar Islands under the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Therefore, according to the learned Government Advocate, the petitioner seems to have obtained community certificate as belonging to Hindu " Adi Dravidar" based only on the community certificate issued to her husband. Further, the discreet enquiry conducted by the respondent disclosed that the husband of the petitioner professes Christianity as his religion. Therefore, the petitioner cannot claim herself as belonging to Hindu Adi Dravida Community. Further, the father of the writ petitioner is a Christian who professed Christianity as his religion. Hence, the claim of the petitioner to re-issue the community certificate by incorporating the name of her father cannot be considered and prayed for dismissal of the writ petition.

6. After hearing the counsel for both sides, while passing the order dated 12.03.2019, we have taken note of the fact that the petitioner only seeks to re-issue the community certificate already issued to her by incorporating the name of her father purportedly to submit it to the Union Public Service Commission pursuant to her selection in the examination written by her. Therefore, having regard to the urgency expressed by the petitioner, a direction was issued to the respondent to issue a fresh community certificate to the petitioner by duly incorporating the name of her father Edward Kumar therein, within a period of one week from the date of receipt of a copy of this order.

7. The petitioner, complaining that the order dated 12.03.2019 passed in

WP No. 6255 of 2019 has not been complied with by the respondent, has filed the

above Contempt Petition. As against the very same order, the respondent in the writ petition has filed the Review Application seeking to review the order dated 12.03.2019.

8. The learned Additional Advocate General appearing for the respondent would vehemently contend that the petitioner was born and brought up at Andaman and Nicobar Islands. She was a resident of Andaman and Nicobar Islands till 2002 and in all her school records, the name of her father is furnished. Even in her marriage certificate, the name of her mother is indicated as Sumith Saraswathy. In effect, the petitioner is not in possession of any evidence to prove that either she or her parents belong to Hindu "Adi Dravidar" community which is classified as Scheduled Caste in the State of Tamil Nadu. Further, not a single community is classified as Schedule Caste in Andaman and Nicobar Islands either under the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1999 as amended by the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976. Therefore, the claim of the petitioner that she belongs to Hindu "Adi Dravidar" community cannot be countenanced. Further, the father of the petitioner is a Christian by birth. The petitioner's father or the mother cannot be said to belong to Hindu "Adi Dravidar" community. Further, the petitioner married one Dhinakaran and the marriage was registered on 29.05.2006 at the office of Marriage Registrar, Puraswalkam vide Serial No. 166 of 2006. Even in the marriage Certificate, neither the community of the petitioner's husband or the community to which the petitioner or her family belongs to has been indicated. Therefore, according to the learned Additional Advocate General, the community certificate issued to the petitioner cannot be a genuine one and it was obtained by

misrepresentation. The petitioner is not in possession of any certificate of probative value to prove that she belonged to Hindu "Adi Dravidar" community. A person can claim herself to be a member of Hindu "Adi Dravidar" community by birth and not by virtue of her marriage with her husband. Further, a discreet enquiry was conducted at the Perambur and Villivakkam address furnished by the petitioner and the enquiry disclosed that the husband of the petitioner and his family also professing Christianity as their religion. Moreover, where a person migrates from one State to another, he or she can claim to belong to a Schedule Caste or Schedule Tribe only in relation to the State to which he or she originally belonged to and not in respect of the State to which he or she migrated. Therefore, according to the learned Additional Advocate General, when none of the communities at Andaman and Nicobar Island is classified as Schedule Caste, the petitioner, who was born and brought up at Andaman and Nicobar Island cannot claim herself that she belong to Hindu "Adi Dravidar" community. These aspects have not been considered by this Court while passing the order dated 12.03.2019 passed in WP No. 6255 of 2019 and therefore, the learned Additional Advocate General appearing for the respondent prayed for reviewing the order.

9. Per contra, the learned counsel appearing Petitioner in the contempt petition would vehemently contend that the petitioner is one among the very few persons selected by the Union Public Service Commission from the State of Tamil Nadu and she also attended the personal interview on 01.03.2019. However, but for the community certificate to be issued by the respondent by incorporating the name of the father of the petitioner, she could not get the appointment order till date. The learned counsel would further contend that pursuant to the order dated

12.03.2019, the petitioner had sent a representation dated 15.03.2019 enclosing the copy of the order passed by this Court on 12.03.2019. In reply, the respondent sent a reply dated 16.03.2019 seeking certain clarifications and the same were also furnished by the petitioner through a detailed reply. However, there was no response from the respondent. The petitioner therefore sent another representation dated 18.03.2019 to the District Collector, Chennai with a request to direct the respondent to comply with the directions issued by this Court. In spite of the same, the respondent did not issue a fresh community certificate, as directed by this Court. The non-compliance of the order dated 12.03.2019 by the respondent is wilful and deliberate and therefore, the petitioner has filed the contempt petition.

10. We have heard the counsel on both sides and perused the materials placed on record. Though very many contentions have been urged on behalf of both sides, we are of the view that by the order dated 12.03.2019, we have not directed the respondent to issue community certificate in favour of the petitioner by declaring her community as Hindu "Adi Dravidar". The fact remains that already a certificate has been obtained by the petitioner declaring that she belong to Hindu "Adi Dravidar" community and such certificate was issued to her as early as on 24.03.2008. We have only directed the respondent to incorporate the name of the father in the community certificate issued to her on 24.03.2008 instead of the name of her husband. Therefore, already a community certificate has been issued to the petitioner but it is alleged by the respondent that such community certificate has been obtained by the petitioner by misrepresentation. Such a plea cannot be gone into by this Court at the instance of the Review Applicant. In fact, when the writ petition was filed by the petitioner, we have adjourned the hearing in the writ

petition thrice to facilitate the respondent to file a counter, but counter affidavit has not been filed by the respondent bringing to the notice of this Court that the community certificate has been allegedly obtained by the petitioner by misrepresentation. Even otherwise, whether the community certificate obtained by the petitioner is genuine or ingenuine, it cannot be gone into by this Court. It is made clear that we have only directed the respondent to re-issue the community certificate to the petitioner by incorporating the name of the petitioner's father instead of her husband. We do not find any error apparent in such direction issued by us and therefore, it cannot be contended by the Review Applicant that there is an error apparent on the face of the record warranting review of the order dated 12.03.2019. At the same time, we wish to observe that this order will not preclude the respondent from subjecting the community certificate issued to the petitioner for verification in a manner known to law. We also wish to record that the learned counsel for the petitioner also reiterated that the petitioner is ready and willing to extend her cooperation for any enquiry that may be conducted by the respondent with respect to the genuineness or otherwise of the community certificate issued to her. Therefore, having regard to the above fact, we do not find any reason to review our order dated 12.03.2019 and the Review Application deserves only to be dismissed. The respondents are directed to re-issue Community Certificate to the petitioner by incorporating the name of her father, instead of her husband forthwith. Thereafter, the respondents shall cause an enquiry with respect to the genuineness of such certificate issued to the petitioner and complete the enquiry within a period of two weeks. After conclusion of such an enquiry, the respondents shall intimate the outcome of such enquiry to Union Public Service Commission.

11. In the light of the above facts, we also do not find any disobedience, much less wilful disobedience on the part of the respondent in complying with the order dated 12.03.2019 passed by us and therefore, the Contempt Petition is also liable to be dismissed.

12. When the Review Application as well as the Contempt Petition were taken up for hearing, this Court *suo motu* impleaded the District Collector, Chennai as second respondent in the Review Application, as he is the competent authority to re-issue the Community Certificate to the petitioner. As we are dismissing the Review Application filed by the Review Applicant, we direct the District Collector, Chennai to re-issue the Community Certificate to the petitioner forthwith by incorporating the name of her father instead of her husband.

13. In the result, the Review Application as well as the Contempt Petition are dismissed. No costs.

सत्यमेव जयते

(R.P.S.J.) (K.R.J.,)

15-04-2019

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Index : Yes / No

Note : Issue order copy on 22.04.2019

To

1. The Tahsildar
Purasawalkam-Perumbur Taluk
Chennai - 600 011

2. The District Collector
Office at Collectorate
Chennai

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R. SUBBIAH, J
and
KRISHNAN RAMASAMY, J

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