

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 19.08.2019
Orders Pronounced on: 05.09.2019

CORAM:

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

W.P.No.12354 of 2019
and
W.M.P.No.12653 of 2019

C.Suseela .. Petitioner

Vs.

The Sub Collector/Revenue Divisional Officer,
Mettur Dam,
Salem 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 of the respondent in its Na.Ka.No.1340/2017/D, dated 31.08.2017 and quash the same and consequently direct the respondent to issue Community Certificates to the petitioner's minor sons R.Siranjith and R.Lokesh to the effect that they belong to the Hindu Konda Reddis Community (ST) in the light of the Community Certificate issued in favour of the petitioner, viz., dated 06.11.1989.

For petitioner : Mr.V.Vijay Shankar

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 of the respondent in its Na.Ka.No.1340/2017/D, dated 31.08.2017 and quash the same and consequently direct the respondent to issue Community Certificates to the petitioner's minor sons R.Siranjith and R.Lokesh to the effect that they belong to the Hindu Konda Reddis Community (ST) in the light of the Community Certificate issued in favour of the petitioner, viz., dated 06.11.1989.

2. It is the averment of the petitioner in the affidavit filed in support of the Writ Petition that her family belongs to

Konda Reddis Community, which is classified as Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950 and she was issued with a Community Certificate dated 06.11.1989 by the Tahsildar, Mettur Dam. The Community Certificate of the petitioner is valid and subsisting and not yet cancelled so far. The Community Certificates were issued in favour of the petitioner's close relatives indicating the said Community, which are valid till date. The petitioner applied to the respondent-Sub.Collector/Revenue Divisional Officer (RDO) on 18.10.2016 for issuance of Community Certificate to her minor sons, viz., R.Siranjith and R.Lokesh. While she was under fond hope that the respondent would consider the said application dated 18.10.2016 by issuing Community Certificate to her minor children, but by the impugned order dated 31.08.2017, the respondent-Sub-Collector/RDO rejected the request for issuance of Community Certificate to her children. It is the grievance of the petitioner that the impugned order is a stereo-typed common order, summarily rejecting the issuance of Community Certificate in respect of several individuals who applied along with the petitioner by assigning somewhat similar reasonings. It appears that the respondent-RDO had made discreet enquiries behind the back of the petitioner and placed reliance based on the materials collected during the said enquiry. Hence, the petitioner made a representation to the respondent on 25.01.2018 requesting the respondent to supply the documents and reports referred to in the impugned rejection order, but the same had not been furnished. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

3. The petitioner has filed additional affidavit reiterating the averment made in the original affidavit filed in support of the Writ Petition, inter-alia stating that though there are no anterior records to evidence the Community Certificate of her husband, but her husband had purchased a property through a registered sale deed, dated 03.02.1997 in which the petitioner's husband's Community is entered as Konda Reddi Community. The petitioner's children R.Siranjith and R.Lokesh had been described as belonging to Konda Reddis (ST) Community in their educational records. Thus, according to the petitioner, there is direct and clinching evidence to substantiate that the petitioner's family belongs to Konda Reddis (ST) Community.

4. When the Writ Petition is taken up for hearing, the learned counsel for the petitioner submitted that in similar nature of cases where the applicant's father's Community Certificate was not cancelled, this Court directed the respondent-authority therein to issue provisional Community Certificate to the applicant therein by making an endorsement on the Certificate that the provisional Community Certificate is being issued on the direction of this Court, subject to

confirmation by the State Level Scrutiny Committee and thereafter the Community Certificate was directed to be sent to the said Committee for verification, and on such confirmation by the said Committee, i.e in the event of passing favourable order passed by the Committee, the concerned authority was directed to issue permanent Community Certificate to the applicant therein, and one such similar case is W.P.No.7979 of 2019, etc., batch, in which such order was passed by this Court on 02.08.2019.

5. The respondent has filed counter affidavit stating that it is not correct to say that the petitioner's family belongs to Konda Reddis Community, which comes under the Scheduled Tribe Community. Though the petitioner produced supporting documents including her brother's Community Certificate, it is usual and mandatory procedure to mention the Office Register Number, Community Certificate Serial Number and the year of issue, but these details have not been mentioned in such Community Certificate. Hence, according to the respondent, the genuineness of the Certificate is doubtful and the respondent could not issue the Hindu Konda Reddis Community Certificate to the petitioner's sons named above. Based on the field/local enquiry conducted and also based on the available records, it was concluded by the respondent that all of the petitioner's close relatives are Hindu Reddy. It is further stated in the counter that the respondent had taken the School admission record extracts from 1941 to 1980 of all the schools in and around Mettur Taluk and in the School Admission Register of the Schools, not even one entry indicates as Konda Reddy Community upto 1965. Even on an analysis from the Birth Register of Mettur Sub-Registrar Office, it was clear that there is no Birth mentioned as Konda Reddy in and around Kolathur Village from 1941 to 1977 and in the above period, only Reddy and Reddiar were registered in the Birth Register as Community. Further, even on an analysis of the Registered sale deed upto 1964 in and around Kolathur Village, especially in the land records, the Community is mentioned as Reddy Payir/Reddiar Payir and the occupation is shown as "Reddy Occupation", which confirms that the Community of the people who are living in and around Kolathur are Hindu Reddiar.

6. It is the further stand of the respondent in the counter that the respondent analysed Salem District Census Handbook 1961, Volume I regarding the Scheduled Tribe Community in Salem District, which shows that the Scheduled Tribes of Adiyan, Irular, Kadar, Kattu Nayakan, Koraga, Malayali, Sholaga and "unclassified" alone are living in Salem District, which clearly indicates that no one belongs to Konda Reddy Community in Salem District. Even on an analysis of Salem District Census Handbook 1961, Volume II and Salem District Census Handbook 1971 regarding the Scheduled Tribes Community in Salem District

Village wise, it is clear that no one belongs to Scheduled Tribes in Kolathur, Dinnappatti and Chinnasoragai Villages. As the native place of the petitioner is Kolathur Village, her claim for issuance of Konda Reddy Community Certificate from non-tribal Village is irrational. Furthermore, the respondent also analysed the Madras District Gazetteers, Salem Volume-I, Part-I, from which it is evident that it describes in detail various Communities of Salem District, and the Konda Reddy Community is not mentioned in the above Gazetteer.

7. It is also stated in the counter that the respondent also analysed the report of the Advisory Committee on Revision of the List of Scheduled Castes and Scheduled Tribes and the above Committee was appointed by the Resolution of the Government of India in the Department of Social Security, dated 01.06.1965. The above Committee clearly says that the population returned in the State of Madras for Konda Reddy tribes was 8 in the 1961 census enumeration and of these, 3 were working as Labourers in Madras City, while the rest were spread over two other Districts. Moreover, the above Committee recommended to exclude Konda Reddy from Scheduled Tribes list and it was also noted as 'insignificant population, do not possess tribal characteristics' therein. The petitioner has no locus-standi to get Konda Reddy Community Certificate and the documents produced/relied on by the petitioner, they appear to be invalid and unacceptable to the claim of the petitioner. The petitioner's father and other relatives do not belong to Konda Reddy, and hence, the petitioner may not be issued with the Community Certificate. The impugned order is passed based on the Government guidelines and also based on the directions of Courts. Further, as against the impugned order, there is a provision of appeal as per G.O.(Ms).No.235, Revenue (RA3(2)) Department, dated 26.06.2015 and G.O.147, Revenue (RA.3(2)) Department, dated 17.03.2016. Hence, for the above reasons, the respondent prayed to dismiss the Writ Petition.

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

9. Be that as it may. In cases where the father's Community Certificates were not cancelled, this Court, in many cases, had directed the authority concerned to issue provisional Community Certificate with endorsement on the same that the same is being issued based on the direction of this Court and thereafter, after confirmation by the State Level Scrutiny Committee, the permanent Community Certificate will be issued to the applicant. Insofar as the present case is concerned, the petitioner's mother is having Community Certificate and hence, the learned counsel for the petitioner prayed that even in cases where mother's Community Certificate had not been cancelled, a direction may be issued by the Court for issuance of Community

Certificate to the children. In this regard, the learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2012 (3) SCC 400 (Rameshbhai Dabhai Naika Vs. State of Gujarat), wherein the Apex Court held as follows:

"54. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.

55. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated as a member of the community to which her mother belonged not only by that community but by the people outside the community as well.

56. In the case in hand the tribal certificate has been taken away from the appellant without adverting to any evidence and on the sole ground that he was the son of a Kshatriya father. The orders passed by the High Court and the Scrutiny Committee, therefore, cannot be sustained. The orders passed by the High Court and the Scrutiny Committee are, accordingly, set aside and the case is remitted to the Scrutiny Committee to

take a fresh decision on the basis of the evidence that might be led by the two sides. It is made absolutely clear that this Court is not expressing any opinion on the merits of the case of the appellant or the private contesting respondent."

10. On a careful reading of the above judgment of the Supreme Court, it is seen that in cases where the mother's Community Certificate is available and not yet cancelled, there should be evidence available before the authority concerned to show that the child was brought up by the mother who belongs to ST community.

11. In such circumstances, this Court is not conducting any roving enquiry in this Writ Petition, and therefore, we are not inclined to accept the submission made by the learned counsel for the petitioner that based on the mother's Community Certificate, having not been cancelled, the child could be issued with Community Certificate.

12. Moreover, there is an alternative statutory remedy of appeal as against the impugned order. Hence, it is open for the petitioner to file appeal as against the impugned order, before the appropriate authority and in such event of filing of appeal, the concerned authority shall conduct enquiry only as to whether the children of the petitioner had been brought up by the petitioner-mother, and if really the children of the petitioner were brought up by the petitioner-mother, then provisional Community Certificates shall be issued to the children of the petitioner, and on such provisional Community Certificate, an endorsement shall be made therein to the effect that the same is subject to verification by the State Level Scrutiny Committee. After issuing such provisional Community Certificate, the authority concerned shall refer the same to the State Level Scrutiny Committee for testing its veracity and genuineness. If the said Committee finds that the said provisional Community issued to the petitioner's children, is genuine, then a permanent Community Certificate shall be issued to the children of the petitioner by the concerned authority.

13. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

cs

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

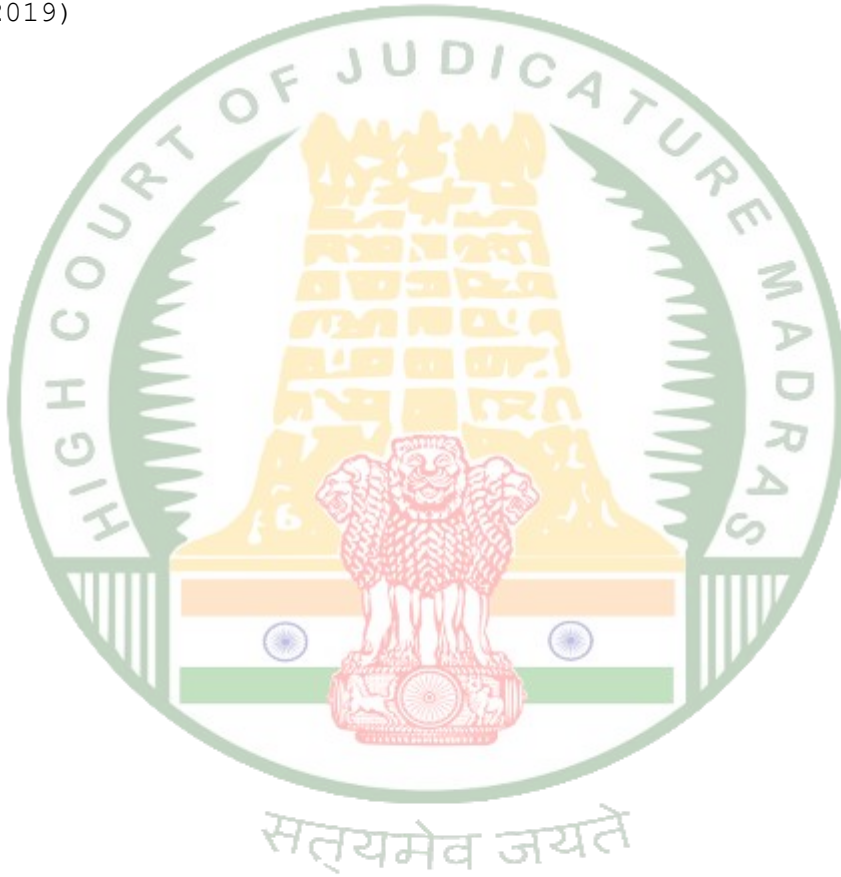
The Sub Collector/Revenue Divisional Officer,
Mettur Dam,
Salem District.

+1cc to Mr.V.Vijay Shankar, Advocate, SR.No.76760

+1cc to the Govt.Pleader, Vide Sr.No.77730

W.P.No.12354 of 2019

Kak(16/10/2019)



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