

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.23681 of 2018
and
W.M.P.No.27626 of 2018

V.Gomathi

...Petitioner

Vs.

1. The State of Tamil Nadu
rep. by Secretary to govt.,
Home (Courts -1) dept
Fort, St.George, Chennai - 9.
2. The Tamil Nadu Public Service Commission
Rep by its Secretary,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai.
3. The District Welfare Officer of Scheduled Caste
And Scheduled Tribes,
office of the district Welfare Officer of Scheduled Caste
And Scheduled Tribes,
Collectorate, 5th Floor,
Erode District.
4. The District Collector,
Collectorate, Erode District.
5. The District Vigilance Committee,
Erode District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 5th respondent made in Na.Ka.No.26548/2015/Tha6 dated 07.08.2018 and quash the same and consequently, direct the respondents to declare the petitioner Community as Hindu Chakkiliyan and issue a Community certificate.

For Petitioner : Mrs.Selvi George

For Respondents 1,3 to 5 : Mr. J.Pothiraj,
Special Government Pleader

For Respondent - 2 : Mr. C.N.G.Niraimathi
Standing Counsel

O R D E R

Order of the Court was delivered by Krishnan Ramasamy, J.,

The challenge in this Writ Petition is to an order passed by the fifth respondent, dated 07.08.2018 and to quash the same with a consequential direction to the respondents to declare the petitioner as Scheduled Caste Hindu-Chakkiliyan Community and issue a Community certificate to that effect.

2. The facts of the case, which led to the filing of this Writ Petition are as follows :-

i) The petitioner has completed her Law Graduate at Government Law College, Coimbatore, during the year 2001 and she was enrolled as an Advocate on 13.06.2001 at the Bar Council of Tamil Nadu and Puducherry. After the enrollment, she has been practicing as an Advocate at Erode and other various Courts.

ii) When the Tamil Nadu Public Service Commission (henceforth, referred to as 'TNPSC'), second respondent invited applications for Direct Recruitment to the post of Civil Judge (Junior Division) for the year 2013-14, the petitioner applied for the said post. In the said application, she has mentioned that, she belongs to Hindu Chakkiliyan Community, which was notified as a Schedule Caste Community. The petitioner further stated that after scrutiny of her application, she was allowed to write examination for the aforesaid post. In the written examination, she has scored 188 marks and in the oral examination, she has secured 38.25 marks. Totally, she has secured 226.25 marks. TNPSC informed that she was selected provisionally and conditionally for an appointment by direct recruitment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service for the year 2013-14, and such selection is subject to the receipt and acceptance of the report regarding the genuineness of the community certificate, from the District Vigilance Committee/fifth respondent. Therefore, she was directed by TNPSC to appear before the District Vigilance Committee as and when summoned and she was asked to await for further communication from the appointing authority, the first respondent herein.

iii) The petitioner was not called for an enquiry by the third respondent till 06.06.2016, and therefore, she gave a request (Monday petition). Thereafter, the third respondent, vide memorandum dated 27.06.2016, directed the petitioner to appear for an enquiry before the District Collector, Erode, fourth respondent on 04.07.2016 around 4'o clock. Accordingly, the petitioner participated in the enquiry and produced all necessary documents to substantiate her claim that she belongs to Hindu- Chakkiliyan Community. During the course of personal appearance, the petitioner specifically stated that her father, Mr.Velkumar belongs to Hindu- Chakkiliyan Community and she also produced the photocopies of the community certificate issued to her blood relatives and the blood relatives also appeared in person and gave statements to the effect they all belong to Hindu-Chakkiliyan Community. The District Collector also directed the third respondent to do Field Inspection, and thereafter, the petitioner received a summon from the District Collector, Erode, dated 23.11.2017, in which, she was asked to appear before the District Vigilance Committee on 01.12.2017 at 3.30pm. In the meantime, on 30.11.2017, the petitioner also received a telephone call from the third respondent asking her to appear before them for enquiry and the petitioner also appeared, as directed.

iv) The third respondent, vide communication dated 03.01.2018, directed the petitioner to produce documents pertaining to her mother and relatives, and so far as the documents produced by the petitioner in relation to her husband' is concerned, it is stated that, it only relates to the divorce obtained from him and the petitioner has not produced the community certificate of her husband's and she was asked to produce all such documents on or before 12.01.2018.

v) The petitioner further contended that, her mother Mrs.Pushpam was born at Erode District and the grandmother of the petitioner Dhanalakshmi belongs to Adidravida Community and her grandfather Duraisamy was born at Trichy and he also belongs to Schedule caste Community. The petitioner's parents marriage was an arranged marriage and they got married on 08.07.1976 at Sangameshwarar Temple, Bhavani, Erode District. The petitioner's mother studied up to 6th standard and discontinued 7th standard due to poverty. Since the family of the petitioner's mother faced so many problems, because of their community (Scheduled caste), in order to get social status, the community status of the petitioner's mother was mentioned as Hindu Devar, a Backward Class Community in the School Certificate.

vi) The petitioner got married to Mr.Dharmendran, on 10.03.2008 at Thindal Murugan Kovil, Erode as per Hindu rites and customs. Her husband belongs to Scheduled caste Community.

However, the marital relationship between them was not fruitful and they got separated. The petitioner has furnished all the details as sought for by the third respondent, viz., documents related to her mother, parents of the petitioner's mother, and ex-husband of the petitioner on 11.01.2018. The Thasildar, Erode, vide her letter addressed to the Revenue Divisional Officer, Erode, dated 04.12.2015 categorically stated that the Community Certificate (Scheduled caste) produced by the petitioner was issued by her office vide Sl.No.1871 of 2013 dated 20.12.2013.

vii) It is the further case of the petitioner that she was provisionally selected by TNPSC for the post of Civil Judge (Junior Division) and all the candidates, who were selected along with the petitioner have been already appointed and so far as the petitioner is concerned, though she was selected for the said post, she was not given appointment under the guise of verification of her community certificate. She has fully cooperated for the enquiry and produced all documents to substantiate her claim. For the reasons best known to the respondents, they failed to issue the community certificate, and therefore, the petitioner is deprived of an opportunity to get appointed as Civil Judge (Junior Division, 2013-2014).

viii) Since there was enormous delay in deciding the issue, the petitioner approached this Court by way of filing a Writ petition before the Hon'ble Division Bench, in W.P.No.18176 of 2018 and sought for a mandamus, directing the 3rd and 4th respondents to submit a report about the genuineness of her Community Certificate to the second respondent and for consequential relief. The said petition was disposed by the Hon'ble Division Bench, vide order, dated 20.07.2018, directing the 3rd and 4th respondents to submit a report about the genuineness of the petitioner's Community Certificate to the TNPSC within a specified time.

ix) Pursuant to the above order, the petitioner had approached 3rd and 4th respondents and submitted the copy of the order of this Court, upon which, the petitioner was directed to appear for an enquiry along with her parents and relatives. During such enquiry, statements were obtained from the petitioner, her parents and brothers and relatives. Thereafter, without making any further enquiry and without making a spot visit to the native place, where, the petitioner and her relatives are living and without ascertaining the Culture they follow, the fifth respondent passed an order, cancelling the Scheduled Caste (Hindu-Chakkiliyan) Community Certificate issued by the Thasildar, Erode and declared that the petitioner belongs to Hindu-Konguvellalar community, a Hindu Backward Class Community. Aggrieved by such cancellation, the present Writ Petition has been filed for the relief as stated supra.

3. The fourth respondent District Welfare Officer of Scheduled Caste and Scheduled Tribes filed a counter affidavit on their behalf and on behalf of the third respondent, District Collector, wherein, it is stated as follows:-

i) The second respondent, vide communication dated 7.09.2015, stated that the petitioner has made an application for the post of Civil Judge (Junior Division), and in her application, she has stated that she belongs to Scheduled Caste (Hindu-Chakkiliyan) Community, and also produced a Community Certificate to that effect issued by the Tahsildar, Erode, whereas, in the Transfer Certificate issued by the Principal, Government Law College, Coimbatore and another Community Certificate issued by the Zonal Deputy Tahsildar, Tiruppur, her community has been mentioned as Hindu-Konguvellalar, a Backward Class Community. Therefore, the second respondent/TNPSC directed the third respondent to verify as to which Community, the petitioner, her forefathers/ancestors actually belongs and to send a final report along with copy of the records of enquiry to the second respondent.

ii) In pursuant to the report called for by the second respondent/TNPSC, the fourth respondent/District Collector sought for a detailed report from the Revenue Divisional Officer, Erode and Revenue Divisional Officer, Tiruppur. As per the direction, the Revenue Divisional Officer, Tiruppur, conducted an enquiry and submitted a report, dated 23.12.2015, stating that the petitioner belongs to Hindu-Chakkilian Scheduled Community, but for the purpose of social status, the petitioner's father has obtained the Hindu-Konguvellalar (Backward) Community Certificate to her. The Revenue Divisional Officer, Erode, vide his report dated 26.05.2016 stated that Tmt.Gomathi (petitioner) belonged to Hindu-Chakkiliyan, Scheduled Class Community, and the certificate bearing no.771327 vide sl.no.1871/2013 dated 20.12.2013 issued by the Tahsildar, Erode is genuine.

iii) Based on the reports of the RDO Tiruppur and RDO, Erode and the petitioner was summoned to appear before the respondent office along with the persons, who were blood relatives and also with the supportive documents to prove her claim. On the date of enquiry, i) petitioner, ii) her mother Tmt.V.Pushpam, W/o Velmurugan, iii) Thiru Perumal, son of Guruvan, a relative of the petitioner, iv) Tmt.Madheswari, wife of K.M.Duraisamy, a maternal relative of the petitioner, v) Tmt.Susella, wife of Appusamy, another maternal relative of the petitioner, and vi) Public residing at Kalingarayanapalayam village have appeared and statements were obtained from them. During such enquiry, the petitioner and all her blood relatives clearly stated that they belong to the Hindu-Chakkiliyan Scheduled Community and her family members also stated that they belong to Scheduled Caste Community.

iv) It is further emanated from such enquiry that the parents of the petitioner had thought to follow the Backward Class community and got the Hindu-Konguvellalar community certificate included in the list of Backward Caste community to the petitioner. Therefore, the petitioner, from the childhood was holding the Backward Class community certificate, and therefore, committed offence for having received the Scheduled Class Community Certificate after the stage of adolescence with an intention to get certain concessions from the Government. Hence, it is clear that the petitioner wrongly used the protection conferred under the Articles of the Constitution of India and cheated the Government.

v) Further, it is stated that the petitioner has falsely claimed that she belongs to Hindu-Chakkiliyan Community, and thereby, suppressed the fact that her mother belonged to "Devar Community" which comes under the Backward Class Community. So far the petitioner's father is concerned, it is stated that the father of the petitioner allegedly thought that since the name of "Velan" pertains to Scheduled Caste Community, he got corrected his name as "Velkumar" in the Service Book as per the Gazette Publication and thus, intended to hide his actual community, Hindu - Chakkiliyan. Therefore, it is stated that the entire family members have hidden the fact, as to which, Community, they originally belonged to and these controversies are not acceptable before the law.

vi) Since the petitioner had followed the Backward Class Community Certificate, as Hindu-Konguvellalar upto her College studies, and now, she suppressed the fact, it was concluded that the Scheduled Caste Community Certificate obtained by her is null and void. Despite the fact that the District Collector, Erode, sent a report stating that the Scheduled Caste Community Certificate obtained by the petitioner as Hindu-Chakkiliyan Community, is not a valid certificate, the second respondent/TNPSC sought for a report from the District Vigilance Committee', which should be signed by a Committee, constituting three members, and it should be in the form of proceedings and requested to send the genuineness report regarding community claim of the petitioner in the prescribed format. However, pending such proceedings, the petitioner filed W.P.No.18176 of 2018, seeking for a direction on the respondents 3 and 4 to submit a report about the genuineness of the petitioner's community Certificate to the second respondent and to direct the first respondent/Appointing Authority to appoint the petitioner as a Civil Judge (Junior Division 2013-014) and the said Writ Petition was disposed of, by order, dated 20.07.2018, directing the respondents 3 and 4 to submit a report about the genuineness of the petitioner's Community Certificate to the TNPSC within the specified time.

vii) It is further stated that as per the order of the Hon'ble Division Bench on 20.07.2018, and on the request of the second respondent/TNPSC and also on the appeal petition dated 26.07.2018 of the petitioner, the petitioner was summoned to appear on 07.08.2018 before the District Vigilance Committee, Erode District, Erode. So on the date of enquiry. the petitioner, her father Thiru.Velkumar, her mother Tmt.Pushpam and her brother Thiru. Prabhu appeared and their statements were obtained. It is stated that the petitioner, her father, mother and brother have stated on the same line that they belong to Hindu-Chakkiliyan and they obtainedd Hindu-Konguvellar Community Certificate, a Backward Class Community only for the purpose of Social status, however, still they are following the customary habits of scheduled Caste community continuously. However, the fifth respondent District Vigilance Committee has passed a speaking order vide the proceedings Na.Ka.No.26548/2015 T6 dated 07.08.2018 (impugned herein), stating that upon enquiry, it is found that the mother of the petitioner belongs to "Hindu Devar" community, which is a Backward class Community and Thiru. Velkumar, father of the petitioner belongs to Hindu-Chakkiliyan community, which is included in the list of Scheduled Caste and they have got inter-Caste marriage. The District Vigilance Committee concluded the enquiry and declared that the petitioner belongs to the Backward class community and cancelled the Hindu-Chakkiliyan (Scheduled Caste) Community Certificate issued by the Tahsildar, Erode, on the following grounds:-

(a) In the Government order No.477 Social Welfare Department dated 27.06.1975, the Government ordered that children born of Inter-Caste marriage shall be considered to be belonging to either the community of the father or the mother according to the declaration of parents. Towards this order, the parents of the petitioner have got the Backward class community desired to follow the customary habits of the Backward class.

(b) Moreover, an errate has been published in the G.O.(2D) No.17 Adi Dravidar and Tribal Welfare (ADW-II) Department dated 16.08.1994 as "In modification of orders issued in G.O.Ms.No.477 Social Welfare Department dated 27.06.1975, the Government direct that Scheduled Caste / Scheduled Tribe Certificates to the off-springs of Inter-Cste married couple, where, one of the spouses is a member of scheduled Caste/Scheduled Tribe community will be issued after verification of the acceptance given by the members of Scheduled Caste / Scheduled Tribe Community

living in that area". As per this order there were no grounds to restore the community certificate as already received under the declaration of the parents with regard to the Inter-Caste married couple. According to these Government Orders, the locus-standi of the petitioner is not acceptable to restore the SC community certificate claim after suppressing the fact of the Backward class community certificate already received.

(c) In the W.P.No.23673/99 the Honorable High Court of Andhra Pradesh has issued the order dated 01.12.1999 with regard to obtain the community certificate by the Inter-caste married couple that "13.Before parting with the case, it is not out of place to take judicial notice of the distressing and disturbing trends becoming more and more rampant wherein citizens who were born, brought up in forward caste families with all social, economic and cultural advantages are staking claims for garnering the benefits conferred by the State under Articles 15(4) and 16(4) of the Constitution. There are cases of persons claiming such a benefit on the basis of false and fabricated community certificates and there are cases where the children after reaching the stage of adolescence claiming reservation by engineering adoptions into down-trodden families and there are cases where the off-springs of inter-caste marriage couplers though brought up in the family of the parent belonging to forward caste, still claiming reservation at crucial stage of education, for admission to professional courses. If the persons are not allowed to enjoy the benefits of reservation either in education or in public employment and the same are snatched away by persons not legally entitled to the same amounts to paying fraud on the constitution. A person takes a convenient advantageous position in the society to which he/she is not entitled to by a process of novel impersonation that he, in fact, belongs to reserved class. More often than not, the authorities who are competent to issue community certificates unwillingly or intentionally become part of the fraud. The

Courts, especially the constitutional Courts, alone can abate such a situation. As otherwise, the philosophy of Articles 15(4) and 16(4) of the constitution aimed at Indian Constitution's preambular goal of social justice would be an illusion. Therefore, this Court is under a duty to prevent such ill-advised adventures like the petitioner in the present case" In this judgment it was categorically said that the children of the inter-caste married couple, who has got the backward class certificate for the social status would not be acceptable to claim the scheduled caste community certificate after attaining the stage of adolescence of the their children.

(d) Though the father of the petitioner belongs to the Schedule Caste and the mother of the petitioner belongs to the "Dever" community listed in the backward class, they have got the Inter-caste marriage but the parents have not got the related community certificate either from the father's community or Mother's community and they have got the third community by violating the Government orders that too the father of the petitioner has been working as Village Administrative Officer and who well known about the importance of the community certificates.

(e) The petitioner has got the Kongu-vellalar community certificate for her studies in the School and the Colleges and without cancellation of the Backward Class Certificate received from the Taluk Office, Tiruppur and got another community certificate belongs to the Schedules Caste from the Taluk Office, Erode. But the petitioner has stated that she has not known about the procedures for the cancellation of the previous certificate when applying for another certificate. The statement of the petitioner is not acceptable about non-knowing the cancellation of the previous certificate.

(f) The petitioner has got the scheduled Caste community certificate purely for gaining the Government concession which was against the Rules and Regulations framed by

the Government.

(g) The brother of the petitioner has stated that he has got the Backward class community certificate and followed the culture of the Backward class community which is not acceptable one since there was no chance for different followers in different in the same family.

(h) From the statements of the family members of the petitioner, it was very clear that the parents of the petitioner has aimed to follow the Backward class culture in the society and got the Backward class community certificate.

(i) As per the rules and regulations framed by the Government that if any individual has got the community certificate ones, it should not be changed to the another community and according to the rules and regulations of the Government it is confirmed that the community of the petitioner Tmt.V.Gomathi is Hindu Backward Class.

(j) It was ordered the community certificate issued by the Tahsildar, Erode to the petitioner Tmt.V.Gomathi belongs to the Hindu-Chakkiliyan Community is hereby cancelled."

viii) Therefore, the respondents 3 and 4 insisted for dismissing the Writ Petition as being devoid of merits.

4. The learned counsel appearing for the petitioner submitted that the petitioner originally belonged to Scheduled Caste Community, and she, in her own capacity has also obtained a Hindu-Chakkiliyan Scheduled Caste community certificate bearing No.7713127-Sl.No.1871/2013 from the Tahsildar, Erode on 20.12.2013. The petitioner's father, mother, brother, all her maternal blood-relatives and her husband belong to Hindu-Chakkiliyan Community, a Scheduled Caste Community. The learned counsel further submitted that though the respondents in the enquiry conducted with regard to the genuineness of the petitioner's community certificate found that the mother of the petitioner belongs to "Hindu Devar" community, a Backward class Community, originally, the petitioner's mother belonged to Scheduled Caste Community, and since the family of the petitioner's mother faced humiliations and some social problems at the hands of the upper class people, in order to get social

status, the family of the petitioner's mother mentioned the community of the petitioner's mother as Hindu-Devar in the school certificate, and this fact has also been stated by the petitioner's mother in the enquiry conducted by the District Adi Dravidar and Scheduled Tribes Welfare Officer, Erode District on 04.07.2016. The learned counsel further submitted that, the grandmother of the petitioner, Dhanalakshmi and her grandfather Duraisamy also belonged to Schedule caste Community.

4.1) The learned counsel further submitted that, similarly, the petitioner's father Thiru. Velkumar, also belonged to Hindu-Chakkiliyan community, which is recognized as a Scheduled Caste Community and only for the purpose of social status, (as did by the parents of the petitioner's mother) the petitioner's father also obtained a Hindu Konguvellalar community certificate, which comes under the category of Backward Class Community. The learned counsel further submitted that the petitioner is not aware of the fact that her parents actually belonged to Scheduled Caste Community and she completed all her School studies and College studies based on the Backward Class Community Certificate, as Hindu-Konguvellalar, which was obtained by her father, and after attaining majority, when she came to know that her family originally belonged to Scheduled Caste Community, she applied for the Community Certificate denoting her caste, as that of what her father actually belonged to, i.e. as Hindu-Chakkiliyan Community.

4.2) The learned counsel further submitted that the petitioner has got married to a person, by Mr.Dharmendran, who also belonged to Scheduled Caste Community and the marriage was performed by following the rites and customs practiced by the Hindu-Chakkiliyan Community. The Tutelary God, which the petitioner has been taught to believe and worship by her parents is the same God, which, the Scheduled Caste (Hindu-Chakkiliyan) Community people used to worship. Thus, right from the childhood, the petitioner has been brought up by her parents to follow the God and the ceremony, which are applicable to the Hindu-Chakkiliyan Community, and only for the purpose of social status, that too, for the sake of providing good education to the petitioner, so that, she would be treated on par with others students and would not face any discrimination/humiliation, her father has mentioned the caste of the petitioner as Hindu-Konguvellalar, a Backward Class Community in the School and other Educational Records and also obtained a Backward Class (Hindu-Konguvellalar) Community Certificate and other than that, neither the petitioner nor her family members have enjoyed any other benefits, and there is no mal practice played by them. Though the respondents 1, 3 to 5 were fully aware of all these facts, only with an intention to deprive the petitioner from relishing the benefits of getting appointed as a Civil Judge,

under the reservation of Scheduled Caste, to which, the petitioner is entitled to, as per the rights conferred under the Constitution, have declared that the petitioner does not belong to Scheduled Caste Community and passed the impugned order, cancelling the petitioner Scheduled Caste (Hindu Chakkiliyan) Community Certificate issued by the Thasildar, Erode, which is totally illegal and liable to be set aside. Therefore, the learned counsel prays for appropriate orders.

5. The learned Special Government Pleader appearing for the respondents 1, 3 to 5 while reiterating the averments set out in the counter affidavit filed by the respondents 3 and 4 would submit that the second respondent/TNPSC invited applications for Direct Recruitment to the post of Civil Judge (Junior Division) for the year 2013-14. The petitioner has made an application for the said post and in her application, she has stated that she belongs to Scheduled Caste (Hindu-Chakkiliyan) Community, and also produced a Community Certificate to that effect issued by the Tahsildar, Erode. However, the second respondent/TNPSC noted that, in the Transfer Certificate issued by the Principal, Government Law College, Coimbatore and another Community Certificate issued by the Zonal Deputy Tahsildar, Tiruppur, her community has been mentioned as Hindu-Konguvellalar, a Backward Class. Therefore, the second respondent/TNPSC directed the third respondent to find out as to which, Community, the petitioner actually belongs to and to send a final report along with copy of the records of enquiry to the second respondent. Pursuant to the same, the fourth respondent/District Collector sought for report from both the Revenue Divisional Officers, Erode and Tirupur respectively, about the genuineness of the petitioner's community certificate. In pursuance thereto, both the RDOs at Tiruppur and Erode conducted enquiry and submitted individual reports stating that the petitioner belongs to Hindu-Chakkilian Scheduled Community, however, for the purpose of social status, the petitioner's father obtained Hindu-Konguvellar, a Backward Class Community to her. Further, in the enquiry, it was found that the parents of the petitioner and her brother also belonged to Scheduled Caste Community, but, due to social circumstances, they had thought to follow the Backward Class community. Therefore, it is clear that the entire family members of the petitioner have hidden the fact, as to which Community, they originally belonged to and played fraud.

5.1) Further, the learned Special Government Pleader submitted that the petitioner for the purpose of getting good education, followed the Backward Class community certificate and soon after completing her studies, lured by the concession/subventions given by the Government for the purpose of encouraging the Scheduled Caste people to come up well in the Society, she obtained a Scheduled Caste Community

Certificate. Therefore, it is clear that the petitioner wrongly used the protection conferred under the Articles of the Constitution of India and deceived not only the School Authorities, Educational Institutions, but also the Government, which act, is reprehensible one. Therefore, the Scheduled Caste Community Certificate obtained by the petitioner from the Tahsildar, Erode, is a not valid certificate and has been rightly cancelled by the fifth respondent.

5.2) The learned Special Government Pleader further submitted that, though it is the contentions of the petitioner that it is her father, who is responsible for the change of the petitioner's communal status, and she is no way responsible, and at the adolescent age when she came to know of her actual communal status, she took steps and obtained the Scheduled Caste Community Certificate, the same are all utter false and not acceptable, and the reason for the petitioner to make such somersault is only for the sake of getting concessions/subventions from the Government, especially, to get appointment under the reservation quota, meant for Scheduled Caste Candidate. Therefore, the learned Special Government Pleader submitted that the fifth respondent is justified in cancelling the Scheduled Caste Community Certificate obtained by the petitioner, and prays for dismissal of the Writ Petition.

6. We have heard the learned counsel for the parties concerned and perused the documents available on record, including the detailed counter affidavit filed by the third respondent and fourth respondents.

7. It is an undisputed fact that the Zonal Deputy Tahsildar, Tiruppur has issued a community certificate mentioning the petitioner's caste as Backward Class (Hind-Konguvellalar) Community. The Tahsildar, Erode has also issued a community certificate, to the effect that the petitioner belonged to Hindu-Chakkiliyan Scheduled Caste Community. Since the second respondent/TNPSC raised a doubt with regard to the genuineness of the petitioner's community certificate, the fourth respondent/District Collector called for reports from the RDO, Tiruppur and RDO, Erode.

i) The RDO, Tiruppur, filed a report dated 23.12.2015, stating that the petitioner originally belonged to Hindu-Chakkiliyan Community, however, for the purpose of social status, her father had obtained the petitioner's community certificate, as if, she belonged to the Hindu-Konguvellalur Backward Class Community.

ii) Similarly, RDO, Erode also filed a report, dated 26.05.2016, stating that the petitioner belonged to Hindu-Chakkiliyan Community and the certificate issued by the

Tahsildar, Erode bearing No.771327 vide SL.No.1871 of 2013 is genuine.

iii) Further, even in the enquiry conducted by the District Adi Dravida Welfare Officer, on 04.07.2016, wherein, the petitioner, her father, mother and brother given statements, which were all on the same line that they belong to Hindu-Chakkiliyan, a Scheduled Caste Community and they are following the customary habits of scheduled Caste community continually, and the Tutelary God, worshiped and venerated by the petitioner, her parents and paternal grand parents is the same God worshiped by the Hindu Chakkiliyan Community people, and the native place, where, the petitioner is born and brought up is of the same place, where, the Hindu Chakkiliyan caste originated. But, only for the sake of social status, they thought to follow the Backward Class (Hindu-Konguvellalar) Community.

iv) Thus, when there is clear-cut finding rendered by both the RDOs in their individual reports dated 23.12.2015 and 26.05.2016, and finding of the District Adi Dravidar Welfare Officer in the enquiry conducted on 04.07.2016, stating that the petitioner and her parents originally belonged to the Scheduled Caste (Hindu-Chakkiliyan) Community, the fifth respondent ought to have declared that the petitioner belongs to Scheduled Caste Community. In fact, the fifth respondent, District Vigilance Committee, which was comprised of three officials, viz., i) District Collector, Erode, ii) Dr.S.Udhayakumar, a Senior Lecturer, Cultural Anthropologist, Tribual Research Centre, M.Palada, Udhagamandalam and iii) Thiru.M.Sekar, the District Welfare Officer of Adi Dravidar and Scheduled Tribes, Erode, conducted an enquiry, and what has been emanated from the said enquiry is also the same fact, as found out by the RDO, Tiruppur, RDO, Erode and District Adi Dravida Welfare Officer.

v) Further, the fifth respondent themselves have categorically observed in the impugned order that the marriage of the petitioner's parents is an inter-caste marriage and that the children born to the inter caste marriage people shall follow either the father's community or mother's community. Thus, they ought to have passed an order, declaring the petitioner to be belonging to a Scheduled Caste (Hindu-Chakkiliyan) Community, since the petitioner has followed the father's community, viz., Hindu-Chakkiliyan Community. Rather, they passed the order, declaring the petitioner to be a Hindu-Konguvellalar Backward Class Community person, which is not akin either to her father's Community or mother's Community. Thus, the impugned order passed by the fifth respondent shows not only non application of mind but also arbitrariness. It is not known as to what made the fifth respondent to pass such order, cancelling the petitioner's Scheduled Caste Certificate, when evidences are available to prove that she and her parents, her

grandparents originally belonged to Scheduled Caste Community. But, we smell that keeping in mind that the petitioner is going to be benefited by availing the Scheduled Caste Community Certificate the fifth respondent has passed such an order which is quite contrary to the reports filed by the RDOs, Tiruppur and Erode, and District Adi Dravidar Welfare Officer of Scheduled Caste and Scheduled Tribes.

vi) Further, we would like to point out that it is the petitioner's father, who was responsible for such change in the Community Certificate, and for the fault attributable to the petitioner's father, the petitioner cannot be denied her legitimate claim. When the petitioner, on attaining majority, came to know that she actually belonged to Scheduled Caste Community, she rectified the said error, by obtaining a Community Certificate related to a caste, to which, her father originally belong to, which shows her bona fide attitude. Thus, the petitioner, in her own capacity obtained the Scheduled Caste Community Certificate and we do not find any mal practice played by the petitioner, as alleged by the respondents.

vii) Though it is the contention of the learned Special Government Pleader for respondents 1, 3 to 5 that the petitioner, for the purpose of getting good education, followed the Backward Class community certificate till completion of her studies and after completing her studies, in order to get employment opportunity and also with a view to make use of the concession/subventions given by the Government for the persons, belonging to Scheduled Caste Community, she obtained a Scheduled Caste Community Certificate to suit her own requirement and the petitioner has misused the protection conferred under the Articles of the Constitution of India is not sustainable, for the reason that, it was only due to caste bias prevailing in the Society and to prevent the petitioner from facing any humility or discrimination at the hands of the upper class people in the Society, the father of the petitioner has mentioned the caste of the petitioner as Hindu-Konguvellalar, a Backward Class Community in the School and other Educational Records and also obtained Community Certificate to that effect. Other than that, neither the petitioner nor her family members have enjoyed any other benefits by claiming themselves to be a Backward Class people.

viii) Further, we would like to point out, when the petitioner herself has come forward and obtained a Community Certificate, declaring her to be a Hindu-Chakillliyan Community, Scheduled Caste Community, it is not known as to what prevented the respondents from declaring the petitioner to be Scheduled Caste person is not known.

ix) Further, we also record our rebuke over the Committee for having kept the issue pending for long time. The petitioner was provisionally selected for an appointment to the post of Junior Civil Judge in the Tamil Nadu State Judicial Service in the year 2013-14 and doubt/query raised by the second respondent/TNPSC with regard to the genuineness of the Communal Status of the petitioner, was in the year 2015, and the impugned order passed by the fifth respondent/District Vigilance Committee is in the year, 2018 (07.08.2018). The purpose, for which, the State Level Scrutiny Committee was constituted is only to find out the authenticity of the Community Certificate issued by the State and to file a report in that regard, based on which, the Government would find out whether the benefit granted by them has been put to use in a rightful manner or any mal practice has been done. Therefore, the State Level Scrutiny Committee is expected to finish of the matters not more than six months time, instead of keeping the same pending for a long time. Since there happened to be delay in deciding the issue, the petitioner has been deprived of an opportunity becoming a Civil Judge (Junior Division) so far.

x). In this context of the case, we deem it appropriate to refer to the constitutional philosophy enunciated under Article 15 of the Constitution of India, which would run thus:-

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public....".

xi) The above said principle remains only as a philosophy of the Constitution and neither the people in the Society nor the State are inclined to follow such principle. Had at least the State has followed the said principles enshrined in the Articles constituted thereunder, they would not have remained as a stumbling block to the petitioner from achieving the level of becoming a Civil Judge and the petitioner would have, by this time, got appointed as Civil Judge and would have perhaps proceeded to render justice. Because of the delay on the part

of the respondents 1, 3 to 5 in deciding the issue of verification of the petitioner's communal status, the petitioner's future is at stake, as she would be in a pell-mell as to whether, she would get appointed to the post of Civil Judge or she has to hunt for some other job.

xii) We wish to point out here that, it is the bounden duty of the State to safeguards the interests of the people, who does not belong to creamy layer. After all, what the petitioner seeks is nothing but an opportunity to get appointment to the post of Civil Judge, under the reservation quota for Scheduled Caste Candidates, for which, she got qualified. First of all, it has to be appreciated that the person, who belonged to Scheduled Caste Community has reached upto the level of becoming a Civil Judge, rather, than remained as a bottleneck from letting the petitioner to relish the benefit granted by the Government to the Scheduled Caste persons.

xiii) This is a classic example, where, a person, who, in reality, belonged to Scheduled Caste Community, due to caste bias prevailing in the area, where, the particular community predominantly have majority, was forced to hide her real caste and this was due to the people, and even after revelation of her original caste (SC) again, she has been put to sufferings and this would clearly show that the benefits and protections available under the Constitution of India have not reached fully to the scheduled caste people, and the petitioner's case is an example for that. If the respondents had found that the petitioner is in possession of two Community Certificates, the first step, which they should have taken is to find out as to which Community, the petitioner originally belonged to by conducting enquiry. In the present case, though such enquiry was conducted and the petitioner also by producing all necessary documents and by cooperating in the enquiry, has proved without an iota of doubt that she belong to Scheduled Caste Community, the fifth respondent also having found that the petitioner belongs to Hindhu-Chakkiliyan Community, ought to have cancelled the Backward Class Community Certificate obtained by the petitioner's father and retained the Scheduled Caste Community Certificate obtained by the petitioner, instead, they did vice-verse, which is contrary to their conscience.

xiv) Further, in the case on hand, it is seen that the privilege and protection provided under the Constitution to the underprivileged people has not reached in full since independence 1947, inequality prevails amongst the people. Bearing in mind some incidents, where, the persons belonging to other Community had tried to hoodwink the Government so as to get the benefits granted by the Government,, taking the same into consideration, the respondents should not put spoke to the people, who really belong to the Scheduled Caste Community. Of

course, it is the duty of the State to ensure that no such incident affecting the constitutional right of the people take place.

8. We would also wish to make it clear that, just because, we are setting aside the order passed by the fifth respondent, it does not mean to say that, what was done by the petitioner's father is right, but taking into consideration the caste bias prevailing in the area, where, petitioner's father is living, the situation and circumstances with which the petitioner's father has been placed, and also for the purpose of social status and to avoid his daughter from facing any discrimination and humiliation, we find that same would have perhaps forced him to mention the caste of his daughter, (petitioner) as Hindu-Konguvellalar, Backward Class Community, in order to avoid any sort of untouchability and inequality due to her caste. Other than that, we do not find that in order to gain any benefit, the petitioner's father has made such change in the Community Certificate.

9. In the light of the above findings and observations, this Writ Petition is allowed, the impugned order passed by the fifth respondent, District Vigilance Committee, dated 07.03.2018, cancelling the Scheduled Caste Hindu-Chakkiliyan Community certificate issued by the Tahsildar, Erode No.7713127, vide Sl.No.1871/2013, dated 20.12.2013, is set aside and we uphold that the said Scheduled Caste Hindu-Chakkiliyan Community as genuine. Consequently, the Community Certificate issued by the Zonal Deputy Tahsildar, Tirupur, mentioning the petitioner as Hindu-Konguvellar (Backward) community certificate bearing No.1948271.Sl.No.2467/1991-94 is declared to be null and void. The respondents 3 and 4 are directed to issue a Community certificate to the petitioner, mentioning her caste to be a Hindu- Chakkiliyan, Scheduled Caste Community and also submit a report in the prescribed formate as required by the respondents 1 and 2 within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

sd/ av

To

1. The Secretary to Government,
The State of Tamil Nadu
Home (Courts -1) dept
Fort, St.George, Chennai - 9.

2. The Secretary,
The Tamil Nadu Public Service Commission
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai.
3. The District Welfare Officer of Scheduled Caste
And Scheduled Tribes,
office of the District Welfare Officer of Scheduled Caste
And Scheduled Tribes,
Collectorate, 5th Floor,
Erode District.
4. The District Collector,
Collectorate, Erode District.
5. The District Vigilance Committee,
Erode District.

+1cc to the Government Pleader, S.R.No.24680

Writ Petition No.23681 of 2018

KJ(CO)

RRS (09/04/2019)



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