

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

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

W.P.No.34686 of 2018
and
W.M.P.No.40234 of 2018 and 670 of 2019

P.Kovarthanan

.. Petitioner

Vs.

1. The District Collector (Revenue),
Department of Revenue and Disaster Management,
Puducherry.
2. The Tahsildar,
Taluk Office,
Bahour, Puducherry.
3. The Village Administrative Officer,
O/o The Village Administrative Office,
Bahour, Puducherry.
4. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER),
Puducherry.

(Fourth respondent impleaded, vide
Court order dated 08.01.2019 in
W.M.P.No.668 of 2019 in W.P.No.34686 of 2018)

.. 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 of the report given by the second respondent with No.Nil, dated 22.02.2018 and to quash the same and consequently to direct the respondents to issue Community Certificate to the petitioner.

For petitioner : Mr.V.Ajayakumar
For respondents : Mr.A.Gandhi Raj, Govt. Pleader
(Puducherry) for
Respondents 1 to 3

ORDER

(The Order of the Court was made by 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 report given by the second respondent with No.Nil, dated 22.02.2018 and to quash the same and consequently to direct the respondents to issue Community Certificate to the petitioner.

2. It is the case of the petitioner that he belongs to Schedule Caste category of Puducherry and so he is entitled to get the benefits of reservation in the matter of education, appointment, etc. All these years, the petitioner has been issued with Community Certificate and he had been enjoying the benefits of reservation on the basis of the Community Certificate, whereas the second respondent has refused to grant Community Certificate and is not taking any decision on the application filed by the petitioner in that regard. The petitioner studied MBBS Course in the PIMS Medical College, Puducherry and had been trying to get admission to the Post Graduate course in Medicine, for which the petitioner needed Community Certificate, which is to be produced before the authorities for getting admission. Hence, the petitioner approached the second respondent and submitted application for the said purpose. Since no action is taken by the second respondent, the petitioner made a representation before the higher authorities including the first respondent.

3. It is the further case of the petitioner that his grandfather belonged to the nearby village of Tamil Nadu and was working in the Anglo French Textile Mill in Puducherry from 1960 onwards and after getting appointment, he married the petitioner's grandmother. The petitioner's father was born in the above wedlock on 23.04.1962. The petitioner's grandmother and her parents are natives of Puducherry and after marriage, the petitioner's grandparents settled down in Puducherry, since the petitioner's grandfather was working in the said Mill. The petitioner's father completed his education in Puducherry and got appointment as Lower Division Clerk in 1982 in the Government of Puducherry and presently he is working as Superintendent, which shows that the petitioner's father is a native of Puducherry, because the cut-off date which is adopted by the Government of Puducherry is 01.03.1964, whereas he was born prior to that date and after arrival of the petitioner's grandfather to Puducherry in 1960 for taking up employment in Anglo French Textile Mill, he had not gone back to Tamil Nadu, which shows that from 1960 onwards, Pondicherry became his permanent place of residence.

4. It is further stated by the petitioner that his father was issued with Community Certificate, which was utilised by him till date and the petitioner and his sister were also issued with Community Certificate on the basis of which, the petitioner had been availing all benefits. The petitioner's sister completed her B.Tech Degree and she is doing her M.Tech Degree in Pondicherry University. Some of the officers in the second respondent's office are trying to settle the personal grudges with the petitioner's father, since his father also is an employee of the Puducherry Administration, as a result of which, the petitioner was denied the benefit of Community Certificate at the time of getting admission to the Post-Graduate level. The petitioner submitted application to the authorities which the second respondent has not considered and so, his father has submitted a representation to the District Collector on 12.10.2018 and also to the Deputy Collector on 16.07.2018 along with entire records, which were also not considered by the authorities. It is further stated that the Village Administrative Officer has given a report on 22.02.2018 stating that the Community Certificate cannot be issued to the petitioner, since the original status cannot be ascertained even though the petitioner was residing in the address which is given in the application, for more than five years, which is not factually correct and is not a ground for denying the Community Certificate.

5. It is claimed by the petitioner that the fact which is to be considered by the Revenue Authorities for grant of Community Certificate is as to whether the applicant or his parents are permanent residents on the date of proclamation of the Presidential Order or not. As per the said criteria, the petitioner's father was issued with Community Certificate and the petitioner and his sister were also issued with Community Certificate and why such a type of conclusion had been arrived at by the Village Administrative Officer and the Tahsildhar, is not known. They have not considered the relevant factors on the basis of the law issued by the Government of India and adopted by the Government of Puducherry and hence, the order rejecting Community Certificate to the petitioner, dated 22.02.2018 is arbitrary and illegal. The respondents are bound to consider the residence of the applicant or his parents at the time of the proclamation of the Presidential Order. The petitioner completed MBBS Course in PIMS, Puducherry for nearly 5-1/2 years and after completion of the said Course, the petitioner applied for Community Certificate to be produced before the JIPMER, Puducherry and since the said Certificate was denied to the petitioner, the petitioner was forced to forego the admission also. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

6. The respondents 1 to 3 have filed counter affidavit stating that as per their records, the petitioner and his family belong to Scheduled Caste category and was issued with Scheduled Caste origin Certificate by their office and is enjoying the benefits that the Scheduled Caste ought to enjoy. It is incorrect to state that the second respondent has not issued the Community Certificate to the petitioner. The petitioner has given a petition on 22.02.2018 and the same was processed and the renewal of the permanent integrated Certificate was issued on the very same day by the second respondent. For the reasons best known to the petitioner, on the basis of the report made by the Village Administrative Officer for the official use, the petitioner was under the wrong impression that the Caste Certificate was issued to him. The caste in the permanent integrated Certificate is valid for life time and the renewal is done for the income and residence of the petitioner. The petitioner has not requested any Certificate in favour of his claim to the second respondent, instead, he has submitted a petition to the Deputy Collector (Revenue) South, stating that he was denied the Caste Certificate by the second respondent's office, vide letter No.4909/DCRS/B7/Cert-Appeal, dated 16.07.2018. The petition was forwarded to the second respondent's office for necessary enquiry which was conducted. Based on the report furnished by the Village Administrative Officer of Seliamedu Revenue Village, it was found that the petitioner was not a native of Kuddiyiruppupalayam. Based on the Birth Certificate of the petitioner's father, a letter was sent to the Tahsildar, Taluk Office, Villianur to ascertain the same. The report from the Village Administrative Officer of Ossuddu Revenue Village was not in favour of the petitioner and the same was communicated to the Deputy Collector (Revenue)-South, Villianur.

7. It is further stated in the counter that based on the report submitted by the second respondent's office, the Deputy Collector (Revenue)-South, Villianur has issued an order, vide No.4909/DCRS/B7/Cert-Appeal/2018, in which, the Deputy Collector (Revenue)-South has directed the second respondent to re-enquire specifically with the documents produced during enquiry in support of the petitioner's claim and dispose of the case on merits. Based on the order issued by the Deputy Collector (Revenue), South, a notice was given to the petitioner on 25.01.2019 and on 01.02.2019, the petitioner and his father came to the second respondent's office and had given the documents and reply for their enquiry. A petition for issuance of Caste Certificate had been received by the second respondent's office on 02.02.2019 and the same is under progress. As far as the contention of the petitioner regarding the residential status of the grandparents and parents of the petitioner and their family settlement during the crucial date at Villianur Commune, the

same has to be confirmed only by the Tahsildar of Villianur Taluk. During the process of enquiry, it was found that the petitioner's father Pounniacody and his brother Sundararassu and his family members along with his sister Parvadam, are enjoying the privileges of Scheduled Caste origin status. More than 11 Scheduled Caste origin Certificates were issued for the paternal relations of the petitioner and they are enjoying the privileges of the scheduled caste with origin status at present.

8. The petitioner's claim that his petition dated 22.08.2018 was rejected, is denied by the respondents 1 to 3 in the counter and the same had been processed and necessary Certificate was also issued. It is explained to the petitioner and he was directed to submit a petition for issuance of Certificate for him. A petition was received only on 02.02.2019 and the same is under process. A detailed enquiry relating to the issue as to whether the petitioner is an origin Scheduled Caste of Puducherry, is under process, for which the petitioner has to co-operate with the office of the second respondent. Only upon necessary enquiry and verification on the field as required under law, the respondents 1 to 3 will be able to pass orders on the application of the said petition dated 02.02.2019. The respondents 1 to 3 may require one month time to complete the enquiry and for verification of all the facts to ascertain the truth as to whether the paternal grandparent of the petitioner was a resident of Villianur Commune as alleged by the petitioner, based on the cut-off date 05.03.1964.

9. Heard the submissions of both sides and perused the materials available on record.

10. The learned Government Pleader (Puducherry) appearing for the respondents 1 to 3 produced G.O.Ms.No.152, Department of Revenue and Disaster Management, Pondicherry, dated 24.11.2005 and submitted that since the enquiry with regard to the issuance of Community Certificate is pending with the first respondent/District Collector, the petitioner can approach the concerned authority for issuance of Provisional Community Certificate, if he is in need of the same urgently. In this regard, we have also gone through the said G.O. produced by the learned Government Pleader (Puducherry), in which, in paragraph 12(f), it is stated as follows:

"12(f): In case of any delay in finalizing the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an office or post, is getting expired, the candidate may be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of caste/community

certificate already issued or an affidavit duly sworn by the parent/guardian/applicant before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the District Committee."

11. In view of the abovesaid G.O., and the submissions made by the learned counsel appearing for the parties, this Court directs the respondents 1 to 3 to issue provisional Community Certificate to the petitioner as per G.O.Ms.No.152 within one week from the date of receipt of a copy of this order in the prescribed format as sought for by CENTAC/JIPMER for admission of the petitioner to P.G. medical course.

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

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector (Revenue),
Department of Revenue and Disaster Management,
Puducherry.
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O/o The Village Administrative Office,
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4. The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research (JIPMER),
Puducherry.

+1 CC to Mr.M.T.Arunan, Advocate sr 31432.
+1 CC to Mr.V.Ajayakumar, Advocate sr 31555.
+1 CC to Govt. Pleader sr 30899.

W.P.No.34686 of 2018

AD(CO)
SP(11/04/2019)