



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.04.2019

Pronounced on: 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.18403 of 2017

and

W.M.P.(MD)Nos.14840 of 2017 and 3263 of 2018

Sivajayaprakash

: Petitioner

Vs.

1.The Government of Tamil Nadu
represented by its
Revenue Commissioner and Secretary,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Secretary,
Adi-Dravidar and Tribal Welfare,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai - 600 009.

3.The District Collector,
District Collectorate,
Coimbatore District,
Coimbatore - 641 018.

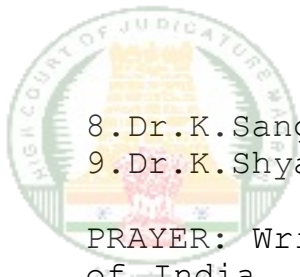
4.The District Collector,
District Collectorate,
Tuticorin District,
Tuticorin.

5.The Tahsildar,
South Taluk Office,
Coimbatore - 641 018.

6.The Village Administrative Officer,
Kuniamuthur Village,
Coimbatore South,
Coimbatore - 641 018.

<https://hcservices.ecourts.gov.in/hcservices/>

7.Dr.K.Krishnasamy



8.Dr.K.Sangeetha
9.Dr.K.Shyam

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus to call for the relevant records of the fifth respondent to cancel the permanent Community Certificate No.1063899, dated 09.01.1998 issued to the seventh respondent violating the G.O.Ms.No.781, dated 02.05.1988 as per the petition of the petitioner dated 15.08.2017.

For Petitioner : Mr.S.Radha Krishnan

For Respondents : Mr.A.K.Baskarapandian
1 to 6 Special Government Pleader

For Respondent 7 : Mr.N.L.Rajah
Senior Counsel
for Mr.R.Selvakumar &
Mr.C.Vakeeswaran

For Respondents 8 & 9 : Mr.T.Indrachithu

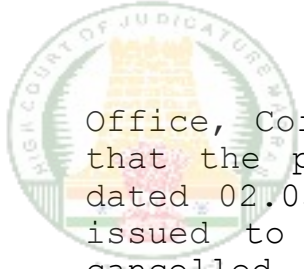
ORDER

S.S.SUNDAR, J.

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to cancel the permanent Community Certificate No.1063899, dated 09.01.1998 issued to the seventh respondent violating G.O.Ms.No.781, dated 02.05.1988 and to pass further orders.

2.The Writ Petition is filed as a Public Interest Litigation. The petitioner is the Secretary of Mallar Bharatham Sangam registered under the Societies Registration Act (Registration No.85/2013). The petitioner states that he came to understand that the seventh respondent, who is the leader of Puthiya Tamilagam Party, has obtained a false community certificate as if he belongs to Hindu Devendra Kulathan community coming under scheduled caste from South Taluk of Coimbatore fraudulently. It is the case of the petitioner that the seventh respondent fraudulently obtained the permanent community certificate influencing his political powers on 09.01.1998.

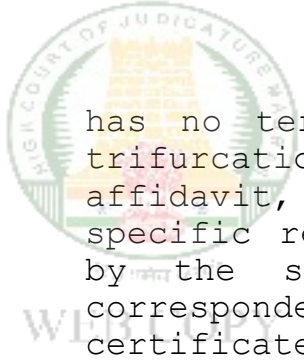
3.The petitioner has stated in his affidavit that as per Secondary School Leaving Certificate and elementary school admission register, the seventh respondent belongs to the native Taluk of Udumalpet and as per G.O.Ms.No.781, the Government of Tamil Nadu, Revenue Department, permanent community certificate has to be issued by the Tahsildar, Udumalpet Taluk to the seventh respondent. however, it is stated that the community certificate issued to the seventh respondent was obtained from the Tahsildar, South Taluk



Office, Coimbatore. The petitioner further states in his affidavit that the procedure required to be followed as per G.O.Ms.No.781, dated 02.05.1988 had not been followed and hence, the certificate issued to the seventh respondent on 09.01.1998 is liable to be cancelled. The petitioner further states that he had valid information from the husband of the seventh respondent's sister that the father of seventh respondent is one Mr.Rangarajan, belonged to Madari community and that one Karuppa Kudumban who is shown as the father of the seventh respondent is not the biological father of the seventh respondent. Sum and substance, the contention of the petitioner is that the seventh respondent belongs to Madari (Arunthathiyar) community and that the community certificate showing his community status as Devendra Kulathan is illegal. With regard to the *locus standi* of the petitioner, the petitioner states that the seventh respondent has cheated the community as if he belongs to Devendra Kulathan and contested for Member of Legislative Assembly from Ottapidaram constituency. It is further contended by the petitioner that the seventh respondent has cleverly cheated the Devendra Kulathan community people with bogus community certificate and the community people have lost their opportunity of contesting from Ottapidaram constituency as a Member of Legislative Assembly. The petitioner himself submitted a representation dated 15.08.2017 to the third respondent. Stating that no action has been taken by the third respondent, the petitioner has come forward with this Writ Petition.

4.The seventh respondent filed a counter affidavit denying all the averments made in the affidavit filed in support of this Writ Petition. In the counter affidavit, there is a specific reference to a Writ Petition filed by the learned counsel appearing for the petitioner earlier in W.P.(MD)No.14915 of 2014 for identical prayer and the order of Division Bench of this Court dismissing the Writ Petition filed by him. As a matter of fact, according to the seventh respondent, the present Writ Petition is a third round of litigation at the behest of the learned Counsel appearing for the petitioner and therefore, it was submitted that the Writ Petition is liable to be dismissed *in limini*.

5.In the course of hearing, the learned Counsel appearing for the petitioner relied upon the counter affidavit filed by the fifth respondent dated 09.11.2017. In the said counter, it is stated that one Mr.Rangarajan belonged to Madari community is the biological father of the seventh respondent. It is further stated that the said information was derived on enquiry by the fifth respondent recently. In the said counter affidavit, the fifth respondent has further stated that the native of seventh respondent is Udumalpet, Tiruppur District and that the Tahsildar, Coimbatore South Taluk has no jurisdiction to issue the community certificate. Quite contrary to the counter affidavit filed on 09.11.2017, the same Officer by name Palani filed a counter affidavit on 05.01.2018 stating that the combined Coimbatore District was bifurcated on 22.09.2018 as Coimbatore and Tiruppur and that as on today, the fifth respondent



has no territorial jurisdiction to enquire into the issue after trifurcation of Coimbatore South Taluk. In the second counter affidavit, the fifth respondent has admitted the fact that the specific register for issuance of community certificate maintained by the sixth respondent in the regular course of official correspondence between 15.10.1997 and 06.07.1998 discloses that the certificate issued to the seventh respondent is found place in page 52 and 53 of the register (Certificate No.1063899).

6.Heard Mr.S.Radha Krishnan, learned Counsel appearing for the petitioner, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 to 6, Mr.N.L.Raja, learned Senior Counsel appearing for the seventh respondent and Mr.T.Indrachithu, learned Counsel appearing for the respondents 8 and 9 elaborately.

7.The learned Senior Counsel appearing for the seventh respondent relied upon the order of a learned Single Judge of this Court in Crl.O.P.(MD)No.15956 of 2013 wherein the petitioner's counsel herein appeared for the petitioner in the said case. The said Criminal Original Petition was filed for a direction to the police officials to register the case on the complaint given by the petitioner in Criminal Original Petition on 09.05.2013. It is to be noted that the said complaint is against the seventh respondent for forgery of same community certificate. Stating that the matters relating to community certificate can be decided only by the District Revenue Officer and the State Level Scrutinising Committee, the Criminal Original Petition was disposed of. Subsequently, the Counsel on behalf of the third respondent in the Criminal Original Petition appears to have mentioned before the learned Single Judge for a clarification and the matter was listed for other directions. It was brought to the notice of this Court that the objections raised by the petitioner in the Criminal Original Petition before the Returning Officer were considered by the Returning Officer and the issue regarding the seventh respondent's community status had already been decided by the Returning Officer. It is in the said context, this Court has clarified the order in the following lines:

"6.Considering the facts and circumstances of the case, this Court without going into the merits of the matter is of the view that the observation made on 06.03.2014, has to be clarified to the extent that the above observation, is made only in general and it is not mandatory, for any of the competent authority and there is no mandatory direction issued to any of the competent authority to proceed in pursuant to that order."

8.The learned Counsel appearing for the petitioner has himself filed a Writ Petition in W.P.(MD)No.14915 of 2014 for issuing a Writ of Mandamus to direct the second and third respondents to cancel the permanent community certificate No.1063899 dated 09.01.1998 issued to the seventh respondent. Though identical grounds were raised by the petitioner therein, who is none else than

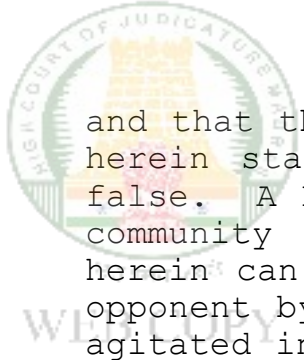


the learned Counsel who is appearing for the petitioner herein, this Court after recording the grounds raised by the petitioner therein has passed the following orders:

"4.The petitioner has submitted that the community certificate issued in favour of Dr.K.Krishnasamy stating that he belongs to 'Hindu Devendrakulathan Community', is without proper verification from the Village Administrative Officer of the Village concerned. He has further submitted that the procedures contemplated, under G.O.Ms.No.781, Revenue Department, dated 02.05.1988, had not been followed. He has further submitted that there is a discrepancy in the community certificate issued in favour of Dr.K.Krishnasamy, dated 09.01.1998, in respect of the name of his father. Therefore, the community certificate obtained by Dr.K.Krishnasamy is a false community certificate. No records had been maintained by the Taluk Office concerned, with regard to the community certificate issued to Dr.K.Krishnasamy. The appellate authority has also stated that there are no records available, pertaining to the community certificate issued in favour of Dr.K.Krishnasamy. The representations submitted by the petitioner to the various authorities, including the District Collector concerned, and the Secretary, Adi Dravidar and Tribal Welfare Department, have not been acted upon, by the said authorities. In such circumstances, the petitioner has been constrained to prefer the present Writ Petition, before this Court, under Article 226 of the Constitution of India.

5.In view of the submissions made by the petitioner, who had appeared as a party-in-person and on a perusal of the records available, we are of the considered view that the petitioner has not shown sufficient cause or reason to grant the relief, as prayed for by him in the present Writ Petition. There is nothing on record to show that the community certificate issued in favour of Dr.K.Krishnasamy is a false certificate. Further, the petitioner has not been in a position to show that he could be considered as an aggrieved party, in order to challenge the community certificate issued in favour of Dr.K.Krishnasamy. Even though the petitioner has made certain vague allegations, no records have been placed before this Court to substantiate the same. Further, Dr.K.Krishnasamy has not been arrayed as a party in the present Writ Petition."

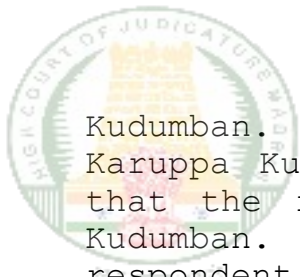
9.Yet another Writ Petition was filed by one G.Rajkumar in W.P.(MD)No.28122 of 2015 seeking a relief for issuing a Writ of Mandamus directing the official respondents to enquire into the irregularities in grant of the community certificate to the seventh respondent herein. Interestingly, in the said Writ Petition, the petitioner therein contended that the seventh respondent herein belongs to Konda Reddy community which comes under Backward Class



and that the community certificate issued to the seventh respondent herein stating that he belongs to Devendra Kulathan community is false. A Division Bench of this Court posed a question whether the community certificate issued in favour of the seventh respondent herein can be questioned by a third party who is just a political opponent by filing a Writ Petition. Holding that the issue may be agitated in the election petition on the ground that the acceptance of nomination of the seventh respondent on the basis of a false certificate was not proper, the Division Bench dismissed the Writ Petition with the following observation:

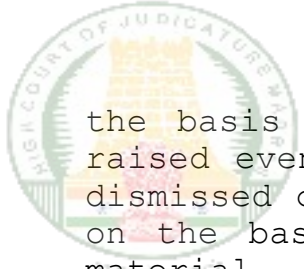
"7. In such view of the matter, this seems to be a case of personal political vendetta and the petitioner seeks indulgence to settle the score. There is no evidence on record to show that any attempt was made by the petitioner to question the election on the aforesaid ground in an appropriate election petition under the provisions of law. In effect, the petitioner is seeking to set aside the election of the fifth respondent on the ground that the community certificate issued in his favour was false or improper. In the conspectus of the aforesaid factual matrix, no roving enquiry is permissible."

10. The earlier Writ Petition was filed by the petitioner's counsel on similar grounds. Hence, the maintainability of the Writ Petition is raised not only with reference to the scope of enquiry under Article 226 of the Constitution of India but also by relying upon the principle of *res judicata*. Though the earlier order which has reached finality in a Writ Petition will operate as *res judicata*, the applicability of *res judicata* which bars any subsequent litigation is not applicable in every Public Interest Litigation. However, the *bona fides* of the petitioner can be tested by referring to the earlier judgment of this Court in W.P.(MD) No.14915 of 2014. The learned Counsel now appearing for the petitioner is the petitioner in the earlier Writ Petition. The same grounds which are now available have been raised therein and this Court found that the petitioner has not produced any material to show that the community certificate was obtained by the seventh respondent was vitiated for any reason. The present Writ Petition has been filed raising similar grounds but with additional informations alleged to have been obtained by the petitioner. The petitioner has not produced any material or statement from any one to disprove the community certificate issued to the seventh respondent. The petitioner has not explained the source of informations nor relied upon any authenticated document. The learned Counsel for the petitioner refers to the discrepancies in the father's name in the community certificate and the school records. The admission register copy maintained by the school in which the seventh respondent did his schooling is produced before this Court in the paper book. As per this document, the name of the father of the seventh respondent is shown as Karuppa Kudumban. Similarly, the register of admissions and withdrawals would also indicate that the father name of seventh respondent is Karuppa



Kudumban. The Secondary School Leaving Certificate signed by one Karuppa Kudumban as father of the seventh respondent also reveals that the father of the seventh respondent has signed as Karuppa Kudumban. In the community certificate issued to the seventh respondent, it is seen that the name of father of the seventh respondent is shown as Karuppasamy and his community status is given as Devendra Kulathan. The learned Counsel appearing for the petitioner focussed his argument on the discrepancy in the names. The learned Counsel further pointed out that the fifth respondent in his original counter affidavit dated 09.11.2017 has admitted that the biological father of seventh respondent is one Rangarajan who belonged to Madari community. It is to be noted that the information given by the fifth respondent in the said counter affidavit was not on the basis of any document or material but based on an enquiry by the fifth respondent. He would also say that he came to understand that the father and mother of the seventh respondent belongs to Madari community (Arunthathiyar). The fifth respondent himself admits that he has no jurisdiction to enquiry into the community status of seventh respondent who hails from Udumalpet Taluk of Tiruppur District. Unless the source of information is revealed there is scope for further enquiry. This Court cannot act on the basis of an information which was not based on any lawful enquiry in exercise of power given to the fifth respondent. Strangely, the counter affidavit subsequently filed by the fifth respondent dated 05.01.2018 goes contrary to the statement he had made in the earlier counter affidavit. Hence, no credibility can be given to the counter affidavit of fifth respondent. An issue relating to a community certificate cannot be raised by a stranger and the petitioner's *locus standi* to raise this issue in this Public Interest Litigation has to be tested. The only plausible explanation comes from the petitioner is that the seventh respondent has contested and elected as Member of Legislative Assembly from Ottapidaram legislative constituency and served as an MLA for two times. It is further stated that the seventh respondent has cheated the Devendra Kulathan community people as the community people have lost their opportunity of contesting from Ottapidaram constituency as a Member of Legislative Assembly. In the present case, the petitioner's contention is that the seventh respondent belongs to Madari community (Arunthathiyar) which is also a community known as Scheduled Caste. Hence, this Court is also of the view that the petitioner has no *locus standi* to question the community status of the seventh respondent which has already been decided in the earlier round. There is a presumption in favour of all official acts as per Section 114 of Evidence Act. Hence, absolutely no merits in this Writ Petition questioning the community certificate of seventh respondent.

11. From the entire affidavit, it can be seen that the petitioner has no personal knowledge about the community status of the seventh respondent. It is only based on surmises and some information without disclosing the source, allegations were made. This Court cannot entertain a Public Interest Litigation merely on



the basis of what the petitioner believes. Similar grounds were raised even in the earlier Writ Petition and the Writ Petition was dismissed on merits. The present Writ Petition has been filed only on the basis of some additional information not supported by any material. This Court is of the view that the Writ Petition is nothing but a re-litigation without *bona fides* and the earlier order will operate as a bar. Hence, this Court find no merit in the Writ Petition. As a result, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Revenue Commissioner and Secretary,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2. The Secretary,
Adi-Dravidar and Tribal Welfare,
Government of Tamil Nadu,
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5. The Tahsildar,
South Taluk Office,
Coimbatore - 641 018.

6. The Village Administrative Officer,
Kuniyamuthur Village,
Coimbatore South, Coimbatore - 641 018.

+2cc to Mr.S.RADHAKRISHNAN, Advocate, SR.No.61995

+2cc to Mr.R.Selvakumar, Advocate, SR.No.62017

+1cc to Mr.T.INDRACHITHU, Advocate, SR.No.62350

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24.04.2019