

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.1827 of 2020

K.J.Tamilarasan

...Petitioner

Vs.

1.The Deputy Collector
(Revenue) South,
Villianur,
Puducherry - 605 110.

2.The Tahsildar-cum-District Magistrate,
Revenue Department,
Villianur,
Puducherry - 605 110.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the concerned records relating to the order No.4979/ SCRS/ B7/Cert-Appeal/2019/ 620 dated 04.10.2019 passed by the 1st respondent and quash the same and consequently directing the respondents to issue Community Certificate to the petitioner to the effect that he belongs to Hindu Adi-Dravidar Schedule Caste Community with origin status along with residence-cum-Nativity Certificate.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.A.V.Ramalingam

Additional Government Pleader
(Pondicherry)

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O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner claims that he belongs to Adi-Dravidar Scheduled Caste community; his fore-fathers lived in the Union Territory of Pondicherry, now Puducherry, and he also continues to permanently reside in the Union Territory of Puducherry along with his parents. The petitioner would further submit that his

predecessor, viz., his grandfather Anandan has, as early as in the year 1931, purchased a property in Puducherry and it is one of the proofs to show that his predecessors had their origination from the Union Territory of Puducherry.

2.The petitioner would further submit that he did his schooling in Sri Navadurga English Higher Secondary School, Thiruvandarkoil, Puducherry, and after completing the Higher Secondary Course, during March 2018, he appeared for 2019 NEET Examination and passed the examination securing 286 marks. The petitioner has also produced the Scheduled Caste Adi- Dravidar Community Certificate issued by the Revenue Department of the Union Territory of Puducherry before the Director of CENTAC as proof of community to indicate his community status and it was also accepted and acted upon.

3.It is also contended by the petitioner that his father, namely T.Karthikeyan, had moved the 2nd respondent for issuance of community-cum-residence certificate for the petitioner as early as on 10.08.2017 and after causing a delay of one year, the said application was rejected vide order dated 07.08.2018 by citing the reason that, on discreet enquiry, it came to the knowledge of the concerned officials that neither the father of the petitioner, namely T.Karthikeyan, nor the grandfather of the petitioner lived in Puducherry region on or before the promulgation of the presidential order and since the migration took place after the crucial date, i.e. 05.03.1964, the request for issuance of community certificate cannot be acceded.

4.The petitioner made a challenge to the said order by filing a writ petition in W.P.No.20071 of 2019 and it was dismissed on 07.08.2019 by granting liberty to the petitioner to avail the appeal remedy and accordingly, he appeared before the 1st respondent on 03.09.2019 and produced all the certificates as well as materials. However, the 1st respondent, vide impugned order dated 04.10.2019, has rejected the said request. Making a challenge to the same, the petitioner came forward to file this writ petition.

5.Mr.M.Gnanasekar, learned counsel appearing for the petitioner, has drawn the attention of this Court to an unreported judgment of this Court dated 21.10.2019 in the matter of P.Udhayanilavan v. The Secretary, Department of Revenue and Disaster Management, Government of Puducherry, Puducherry and 2 others in W.P.No.15630 of 2019 and would submit that, on similar facts and circumstances, the claim of the petitioner therein has been upheld and a positive direction was given directing the Deputy Tahsildar, Puducherry to issue "Hindu Adi Dravidar" community certificate to the petitioner therein and the learned counsel also further invited the attention of this Court to the judgment rendered by the Hon'ble Supreme Court dated 07.05.2019

in Civil Appeal No.4665 of 2019 [Director, Transport Department, Union Territory Administration of Dadra and Nagar Haveli Silvassa and others v. Abhinav Dipakbhai Patel] and would submit that the Hon'ble Supreme Court, after surveying a catena of decisions, has passed a positive order and has upheld the order granting community certificate in favour of the respondent therein and therefore, prays for interference.

6.Per contra, Mr.A.V.Ramalingam, learned Additional Government Pleader (Pondicherry), appearing for the respondents, has drawn the attention of this Court to the counter affidavit of the 1st respondent dated 21.09.2020 and would submit that a fair and reasonable opportunity was afforded to the petitioner and whatever materials/documents produced by the petitioner have been analysed and verification of the same has also been done in the neighbouring State of Tamil Nadu and the 1st respondent, having found that the materials placed did not support the case/cause of the petitioner, has rightly rejected the said application. The learned Additional Government Pleader has also drawn the attention of this Court to Page No.4 of the impugned order, wherein, point by point analysis of the materials had been given by the 1st respondent. It is further submitted that by the learned Additional Government Pleader appearing for the respondents that, in the light of the factual findings given by the 1st respondent based on correct and proper appreciation of the materials placed, the scope of judicial review in respect of the said order by this Court under Article 226 of the Constitution of India is very limited and prays for dismissal of this writ petition.

7.This Court has considered the rival submissions and also the materials available on record.

8.A perusal of the impugned order passed by the 1st respondent, which is the subject matter of challenge in this writ petition, would disclose that a fair and reasonable opportunity has been afforded to the petitioner in the form of production of the documents before the 1st respondent. The 1st respondent, on an in-depth analysis, had gone into the contents of the documents and in Page Nos.3 to 6 of the impugned order, has dealt with the documents individually and has arrived at a finding as to the unsustainability of the said documents. It is pertinent to point out at this juncture that the preliminary claim of the petitioner has been made based on his father, namely T.Karthikeyan, and the said aspect has also been gone into and accordingly, a finding has been given in Page No.7 of the impugned order and it is relevant to extract the same :

"Further in order to ascertain the birth status of the appellant father the Sub-Registrar office was approached on 03.10.2019 and an application was given to provide the birth certificate of Thiru.Karthikeyan who was born on 06.01.1977. The Sub-Registrar, Kandamangalam, has given the birth certificate of Thiru.Karthikeyan who was born on 06.01.1977 with father and mother names mentioned as Tanickachalam and Patturoja. A partition deed vide doc.No.251/1984 dt. 24.03.1984 was registered in the Kandamangalam Sub-Registry made among the brothers viz., 1.Ezhumalai 2.Thanikachalam 3.Ramachandran and 4.Rathinavel all sons of Subramanian. The copy of the same was given by the Sub Registrar and the connected EC was also received."

9.A perusal and consideration of the order dated 21.10.2019 in P.Udhayanilavan (supra) would disclose that, as per the stand of the 2nd respondent therein namely, the Deputy Tahsildar, Bahore, Puducherry, the brother of the petitioner was issued with Permanent Integrated Certificate, which clearly indicated that the family of the petitioner had migrated from Tamil Nadu as was also the case of the petitioner's sister who was issued with Migration Scheduled Caste certificate bearing No.2434/TOB/A3/2018 dated 14.05.2018. In the light of the factual aspects, a positive direction came to be issued in the final order in the case of P.Udhayanilavan (supra).

10.Now, coming to the judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.4665 of 2019 (cited supra), the Hon'ble Supreme Court has taken into consideration Marri Chandra Shekhar Rao v. Dean, Seth G.S.Medical College and others [(1990) 3 SCC 130] and S.Pushpa and others v. Sivachanmugavelu and others [(2005) 3 SCC 1] and has upheld that the Union Territory has the right to claim benefit of reservation if the person is having the certificate of origin and on the facts of the case that the residence of the respondent therein was not seriously disputed, dismissed the appeal filed by the Director of Transport Department.

11.In the considered opinion of this Court, the above decision cannot have any application to the case of the petitioner in the light of the factual aspects established, that the father of the petitioner namely T.Karthikeyan was born on 06.01.1977 and the Sub-Registrar, Kandamangalam, has given the Birth Certificate to him, wherein, the name of the father and mother are mentioned as Tanickachalam and Patturoja and that apart, a registered partition deed dated 24.03.1984 was also registered with the office of the Sub-Registrar, Kandamangalam, made among the brothers viz., Ezhumalai, Thanikachalam, Ramachandran and Rathinavel. The petitioner has made his claim

through his father and having found that the statement that the date of birth of his father was not registered to be false, the said finding came to be given by the 1st respondent in Page No.7 of the impugned order. In the considered opinion of this Court, the 1st respondent has in depth analysed all the materials/documents produced by the petitioner and also after providing him fair and reasonable opportunity has reached the conclusion that the father of the petitioner namely T.Karthikeyan had migrated and settled at the Union Territory of Puducherry and found the claim of the petitioner to be unsustainable in the light of the Constitution (Pondicherry) Scheduled Caste Order, 1964. As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, the scope of interference by this Court on exercise of its jurisdiction under Article 226 of the Constitution of India in respect of the order passed by the 1st respondent, who has also dealt with the factual and legal aspects, is very limited.

This Court finds no merits in this writ petition. Accordingly, this writ petition is dismissed. However, considering the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Collector
(Revenue) South,
Villianur,
Puducherry - 605 110.

2.The Tahsildar-cum-District Magistrate,
Revenue Department,
Villianur,
Puducherry - 605 110.

+1cc to the Government Pleader, S.R.No.32786

+1cc to M/s.M.Gnanasekar Advocate, S.R.No.32778

W.P.No.1827 of 2020

RP (CO)
KKV/20/11/2020