

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27.04.2022

ORDERS PRONOUNCED ON : 22.06.2022

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE S.SOUNTHAR

W.P.NO.2865 OF 2022
AND
W.M.P.NO.2993 OF 2022

Minor Anbarasan,
aged about 15 years,
Rep. By his mother
M/s.Rajasree(Natural Guardian)

... Petitioner

vs.

1. The District Collector,
Pondicherry District.
2. The Tahsildar,
Taluk Office,
Oulgaret,
Puducherry,
Pondicherry District.
3. Village Administrative Officer,
Oulgaret,
Pondicherry-8.

... Respodents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India to issue a writ in the nature of WRIT OF CERTIORARIFIED MANDAMUS to call for the records in certificate No.P21CC36067, dated 03.02.2021, on the file of the 2nd respondent as quash the same as illegal, arbitrary, incompetent, without jurisdiction and further direct the respondents to issue community certificate to the petitioner, Minor.Anbarasan under MBC(vanniyar) caste instead of migrated MBC (vanniyar) caste within a stipulated time period fixed by this Court.

For Petitioner : M/s.M.Devirudra
for M/s.M.Muruganatham
For Respondents : Mr.V.Balamurugane
Government Pleader (Puducherry)
Assisted by Mr.E.Anbarasan

O R D E R

[Order of the Court was made by S.SOUNTHAR, J.]

The writ petitioner minor Anbarasan represented by his mother Rajashree filed this writ petition challenging the community certificate issued by the second respondent dated 03.02.2021 treating him as migrant OBC (Other Backward Class) vanniyar caste and also sought for further direction to respondents to issue a fresh community certificate treating the petitioner as MBC vanniyar caste instead of migrant OBC vanniyar.

2. It is a case of the petitioner that he was born on 01.05.2006 at Pondicherry to his parents namely Pugazhendi and Rajashree. According to the petitioner, his mother is a native of Union Territory of Puducherry and she was born on 26.06.1983 at Puducherry. Even as per the admitted case of the petitioner his father, late Pugazhendi was a native of Tamilnadu. According to the claim of the petitioner his father migrated to Puducherry in the year 1999 itself and subsequently he got married to mother of the petitioner and out of their wedlock, the petitioner was born on 01.05.2006 at Puducherry. The petitioner further pleaded that his father had met with an accident on 01.01.2009 and sustained grievous injury and became paralysed, subsequently died on 02.07.2018. When the petitioner applied for community certificate, the second respondent issued community certificate, treating him as a migrant OBC belonging to vanniyar Caste. According to the petitioner, his mother, mother's parents were all born at Puducherry and hence he is also entitled to be treated as resident of Puducherry and as a consequence entitled to caste certificate treating him as a OBC vanniyar Caste of Puducherry Origin.

3. The second respondent herein filed a counter denying the various averments found in the affidavit filed in support of the writ petitioner. It is the case of the second respondent that the impugned community certificate treating him as a migrant OBC vanniyar caste was issued only after due field enquiry and a report made by Village Administrative Officer, hence it requires no interference by this Court. It was stated in the counter affidavit filed by the second respondent, as per the report of the Village Administrative Officer, the father of the petitioner

late Pugazhendi was a native of Tamilnadu and he got married to the mother of the petitioner on 22.04.2005. He lived in Puducherry only for the sake of his employment and the petitioner has not produced any authenticated evidence like Saving Bank Account, Driving license, PAN card etc., of his father issued by the Puducherry Government to substantiate his claim that his father resided in Puducherry prior to 19.02.2001, the date of OBC notification issued by the Government of Puducherry. It was also found in the counter affidavit of the second respondent that even as per the admitted case of the petitioner, the name of the petitioner's father was included in the family card of the petitioner's mother only in the year 2005. The Second respondent also claimed as per the order issued by the Government of Puducherry, the crucial date for determining the origin status of the persons applying for community certificate is 19.02.2001 i.e. (date of notification of OBC list by the Government). The petitioner herein has not produced any acceptable material to show that his father was a resident of Puducherry on 19.02.2001 and hence the claim of the petitioner for issuance of caste certificate treating him as a OBC of Puducherry origin is not maintainable. It was also further stated in the counter filed by the second respondent that the origin / migrant status of the applicant shall be decided only based on the residential status of the applicant's father on the crucial date and not on the residential status of the mother as per the memorandum No.9565/C2/Rev/2000, dated 10.11.2000 issued by the revenue department of Puducherry.

4. Heard the arguments of the learned counsel for the petitioner and that of Mr.Balamurugane, Government Pleader (incharge) of Puducherry Government for respondents.

5. Learned counsel for the petitioner submitted that the mother of the petitioner and his parents were all born natives of Puducherry. Though the father of the petitioner was a native of the Tamilnadu, he migrated to Puducherry in the year 1999 itself, well before the crucial notification date of 19.02.2001 and he has been living in Puducherry from 1999 onwards and the petitioner was born on 01.05.2006 at Puducherry. As per G.O.M.S.No.15/SWS/2019-20, Puducherry dated 07.08.2019 in case of persons born after the date of the issuance of relevant notification, the place of residence for the purpose of the acquiring Backward Class status is the permanent abode of their parent at the time of the issuance of the notification. Since in the present case the mother of the petitioner is admittedly a native of Puducherry by birth and the father of the petitioner though native of Tamilnadu migrated to Puducherry in the year 1999 itself, well before the crucial date of notification, the petitioner has to be treated as a OBC vanniya of Puducherry

Origin. Consequently the impugned community certificate issued by 2nd respondent treating him as a migrant OBC vanniyar has to be quashed and a direction shall be issued to the respondents to issue a fresh community certificate treating him as a OBC vanniyar of Puducherry Origin. In fact, the petitioner in his prayer sought for a direction to the respondent to issue a fresh certificate treating him as a MBC vanniyar of Puducherry Origin. However, the petitioner has not produced any notification providing reservation for Most Backward Classes in Puducherry. In fact, the community certificate issued to the petitioner only refers to the status of Other Backward Classes and there is no reference about Most Backward Classes, hence the second limb of the prayer in the writ petition seeking a direction to the respondents to issue MBC vanniyar Caste Certificate treating the petitioner as MBC vanniyar of Puducherry origin instead of Migrant MBC vanniyar is misconceived on the face of it. If at all the petitioner can only seek a direction for issuance of OBC vanniyar of Puducherry Origin instead of migrant OBC vanniyar Certificate.

6. Learned Government Pleader in-charge of Puducherry appearing for the respondents submitted that absolutely there is no material available on record to show that the father of the petitioner migrated to Puducherry prior to crucial cut off date, namely, 19.02.2001. The second respondent came to a conclusion that his father was migrant OBC from Tamilnadu and he did not reside at Puducherry on the crucial date, based on the enquiry report submitted by the Village Administrative Officer, wherein it was stated that the father of the petitioner was a native of Tamilnadu, who came to Puducherry only for the purpose of employment. He also further submitted that the documents produced by the petitioner are not sufficient to come to a definite conclusion that his father was a resident of Puducherry on the crucial date, namely, 19.02.2001, consequently as per the memorandum No.9565/C2/Rev/2000, dated 10.11.2000 of the revenue department of Puducherry, the Origin /Migrant status of the applicant has to be decided only based on the residential status of the father on the crucial date of notification and not on the residential status of the mother. In the present case the father of the petitioner was a resident of Tamilnadu on the crucial date, namely, 19.02.2001 and hence the petitioner was issued with a caste certificate treating him as migrant OBC vanniyar Caste. There is no illegality or irregularity in the issuance of migrant caste certificate to the petitioner and hence he sought for dismissal of the writ petition. He also relied on case law PUNIT RAI Vs. DINESH CHAUDHARY reported in 2003 (8) SCC 204; AIR 2003 SC 4355 for the Proposition that the Caste of the father is determinative factor in the absence of any other law.

7. As per the admitted case of both the parties, the mother of the petitioner is a native of Puducherry and the father of the petitioner is a native of the Tamilnadu. The petitioner claims his father migrated to Puducherry in the year 1999 itself and hence he should have been treated as resident of Puducherry on the date of notification by the Government namely 19.02.2001. In order to substantiate that his father migrated to Puducherry in the year 1999, the petitioner relied on following documents.

1. lease agreement dated 26.09.1999 between father of the petitioner namely Pugazhendi (lessee) and one Jagadeeshwari(lessor)
2. Certificate issued by employer of the petitioner's father dated 16.10.2008.
3. Family Card of the petitioner's family dated 04.08.2008.

8. As far as the lease agreement is concerned, the same was unregistered one executed in a stamp paper of Rs.10. The Stamp paper appeared to have been purchased in the name of one Ravi on 10.03.1999, as per the endorsement made thereon by the Stamp vendor. It is neither in the name of the lessee, namely, late Pugazhendi, the father of the petitioner, nor in the name of lessor, namely, Jagadeeshwari. The lease deed said to have been executed on 26.09.1999, the stamp paper appeared to have been purchased on 16.03.1999 itself. In the witness column of the lease deed, the signature of only one witness is found. The column meant for the attestation for the second witness remains blank, therefore the very genesis of the lease agreement relied by the petitioner is highly doubtful. As far as the family card relied on by the petitioner is concerned, it bears the date of 04.08.2008. In the counter filed by the respondent it was stated that name of the petitioner's father was included in the family card of the petitioner's mother only in the year 2005, well subsequent to the date of the notification. Hence the family card which was issued subsequent to the date of notification may not be of any use to the petitioner. As far as the certificate issued by the employer of the petitioner's father is concerned, though it states that the petitioner had been working in their concern from September 1999 to October 2008, in the counter filed by the respondent it was mentioned that the veracity of the certificate issued by the employer could not be ascertained at this stage, since the concerned firm is found to be wound up and the same cannot be taken on record for considering the permanent residences. Hence the certificate allegedly issued by the employer of the petitioner may not advance the case of the petitioner. Therefore, the petitioner has not produced any reliable material before the Court that his father was resident of Puducherry on the date of the notification issued by the Government of Puducherry recognising list of Backward Classes i.e. 19.02.2001.

9. From the discussions made above it is clear that the petitioner failed to prove that his father was a resident of Puducherry on 19.02.2001. It is relevant to point out that his father was issued with a community certificate on 25.02.2011, nearly 9 years after the issuance of the notification by the government, wherein he was treated as a Migrant OBC, not as a OBC of Puducherry origin. Further it is also relevant to mention that the petitioner failed to produce his own birth certificate, though he produced the birth certificate of his brother, mother, maternal grand mother etc., Further admittedly the petitioner was born only on 01.05.2006 as per the averments found in the affidavit, well after the date of notification, therefore his residential status has to be decided only based on the residential status of his father on 19.02.2001 as per the government order in G.O.M.S.15/SWS/2019-20, Puducherry dated 07.08.2019. One issue which remains to be answered is what is the residential status of child when the father and mother had got different residential status on the date of crucial notification. In the present case, as per the admitted case of both the parties the mother of the petitioner had residential status of Puducherry and as discussed earlier the father of the petitioner had the residential status of Tamilnadu on the date of notification. The materials relied on by the petitioner to claim that his father migrated to Puducherry well before the date of notification has not been substantiated and the same was already rejected. The respondent relied on memorandum No.9565/C2/Rev/2000 dated 10.11.2000 issued by the Revenue department of Government of Puducherry, wherein it was clearly stated that the residential status of the applicant shall be decided only based on the residential status of the applicant's father on the date of the notification and not on the residential status of petitioner's mother. In the present case as discussed earlier, the father of the petitioner was resident of the Tamilnadu on the date of notification, namely, 19.02.2001, hence the second respondent cannot be found faulted for issuing the community certificate treating the petitioner as migrant OBC vanniyaar caste based on the residential status of his father on the date of crucial date of notification namely 19.02.2001.

10. The decision of the Apex Court in PUNIT RAI Vs. DINESH CHAUDHARY [Cited Supra] lends support to the arguments of respondents. The Apex Court in Para 41 of Judgement observes as follows:

“Determination of caste of a person is governed by the customary laws. A person under the customary Hindu Law would be inheriting his caste from his father. In this case, it is not denied or disputed

that the respondent's father belonged to a Kurmi caste. He was, therefore, not a member of Scheduled Caste. The caste of the father, therefore, will be the determinative factor in absence of any law..."

Hence in the light of the above decisions, it is clear as per customary Hindu law a person would be inheriting his caste from his father. The petitioner has not produced any law or notification having force of law to say the petitioner is entitled to inherit the caste of his mother. Admittedly in the caste certificate issued to father of the petitioner his father was treated as "migrant OBC Vanniyar". The instruction issued by government in memorandum 9565/C2/Rev/2000 dated 10.11.2000 for the purpose of deciding migrant/origin status of the Scheduled caste candidates supports the arguments of respondent that applicant's residential status shall be decided based on residential status of father.

11. In view of the above, the petitioner has not made out any case for interfering with the impugned order issuing caste certificate by treating petitioner as Migrant OBC Vanniyar and hence the writ petition is dismissed as devoid of merits. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Pondicherry District.
2. The Tahsildar,
Taluk Office,
Oulgaret, Puducherry,
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3. The Village Administrative Officer,
Oulgaret, Pondicherry-8.

W.P.No.2865 of 2022
and
W.M.P.No.2993 of 2022

SV(CO)
RLP(22/07/2022)