

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

W.P.No.25200 of 2023
and
W.M.P.No.24616 of 2023

S.Thamizharasan
S/o Sengeni

... Petitioner

vs

1. Union of India represented by
The District Magistrate cum District Collector,
Office of the District Collector,
Government of Puducherry,
First Floor, New Collectorate Building,
Vazudavoor Road, Pettaiyanchathiram,
Puducherry - 605 009.
 2. The Deputy Collector (Revenue) North,
Office of the deputy Collector (Revenue) North,
Government of Puducherry,
Collectorate Building, Vazudavoor Road,
Pettaiyanchathiram, Puducherry - 605 009.
 3. The Tahsildar,
Department of Revenue and Disaster Management,
Government of Puducherry, Taluk Office,
Oulgaret, Puducherry.
- ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to impugned i) Order vide No.7950/DC(R)N/A2.CV/2022/763 dated 22.03.2023 passed by the 2nd respondent namely the Deputy Collector (Revenue) North, Government of Puducherry, which confirming the ii) Order vide No.5930/TOO/A/Caste/2022 dated 10.10.2022 passed by the 3rd respondent namely the Tahsildar, Taluk Office, Oulgaret and Quash and set aside the same and consequently direct the respondents to issue fresh Community Certificate to the petitioner indicating as petitioner belongs to Hindu Valluvan Caste/Community which recognised as "Schedule Caste" in Union Territory of Puducherry as per the Constitution (Pondicherry) Schedule Castes Order, 1964 based on the previous community certificates issued by the respondents to the petitioner and his family members on various dates/occasions i.e., 31-07-2022, 18-02-2003, 25-06-2021 & 13.07.2021 and other documents enclosed along with Application Form and also to issue fresh Nativity and Residence Certificate to the petitioner forthwith without any further delay.

For Petitioner : Mr.E.Anbarasan

For Respondents : Mr.J.Kumaran
Govt.Pleader (Pondy)

ORDER

(The Order of the Court was made by J.Nisha Banu,J.)

This Writ Petition has been filed challenging the Order dated 22.03.2023 passed by the 2nd respondent, confirming the Order dated 10.10.2022 passed by the 3rd respondent and consequently, direct the respondents to issue fresh Community Certificate to the petitioner indicating that he belongs to Hindu Valluvan Caste/Community which is recognized as "Schedule Caste" in Union Territory of Puducherry as per the Constitution (Pondicherry) Schedule Castes Order, 1964 based on the previous community certificates issued by the respondents to the petitioner and his family members on various dates/occasions i.e., 31-07-2022, 18-02-2003, 25-06-2021 & 13-07-2021 and other documents enclosed along with Application Form and also to issue fresh Nativity and Residence Certificate to the petitioner forthwith without any further delay.

2. (i) The case of the petitioner is that he was born on 20.11.2004 and his birth was registered before the competent authority viz., Oulgaret

Municipality on 30.11.2004. His parents are Sengeni (father) and Santhi (Mother). His father T.Sengeni S/o Thangarasu is the permanent resident of Sanarapet, Puducherry, who belongs to Hindu religion and Valluvan Caste/Community which is recognised as 'Scheduled Caste' in Union Territory of Puducherry as per the Constitution (Scheduled castes) orders (Second Amendment) Act, 2002 as his grandfather (father's father) Mr.Thangarasu S/o Couttane was also the resident of Puducherry and belongs to Hindu Valluvan Caste/community which is recognised as 'Scheduled caste' in Puducherry.

ii) Further, the petitioner's grandfather (father's father) Mr.Thangarasu S/o Couttane was allotted 0-00-90 (HAC) of land in Cadastre No.948, Sanarapet Revenue village, Oulgaret, Puducherry under Harijan (SC) quota by the then French Government Municipal service Oulgaret commune on 22.06.1955 vide circular No.2249, A.P/3 of April 1965 of High Commissioner of Pondicherry State. The petitioner, his father, grandfather, great grandfather all belong to Hindu religion and Valluvan caste and living in Puducherry for generation together. Apart from that, on 03.03.1988, the SC Welfare Department, Government of Puducherry has also issued Identity card vide Serial No.56 to the petitioner's grandfather(father's father)

Mr.Thangarasu S/o Couttane, composing family details of his grandfather, indicating that they are all belongs to Hindu-Valluvan caste/Community, which is Scheduled Caste/Community in Puducherry. The petitioner had been awarded scholarship throughout his educational career every year treating him as Hindu-Valluvan Scheduled caste (SC) community. His school records viz., Transfer Certificate, Conduct Certificate would reveal that he is Hindu-Valluvan caste which is recognized as SC community. The petitioner's father was issued with community certificate stating that he belongs to Hindu-Valluvan Schedule caste by the Deputy Tahsildar, Taluk Office Puducherry. Similarly, the petitioner's father's sister Patcheamma, was also issued with Schedule caste community certificate stating that she belongs to Hindu-Valluvan community by the said Deputy Tahsildar on 31.07.2022 in pursuance to the order passed by this Court in W.P.No.22202 of 2002. Further, recently the petitioner was issued with SC community certificate indicating that he belongs to Hindu-Valluvan Community recognised as SC community in Union Territory on 25.06.2021 vide Certificate No.P21CC448844. Similarly, the petitioner's sister, Arthy was also issued with SC community certificate on 13.07.2021. Since, for getting admission in Collegiate Education, the petitioner had to submit fresh

community certificate not later than one year along with application form, he submitted application on 06.07.2022 for issuance of fresh community certificate indicating that he belongs to Hindu-Valluvan Caste which is recognised as Schedule Caste community based on the previous community certificates issued to the petitioner and his family members. But without issuing community certificate, the respondents made the petitioner to run from pillar to post for more than a month.

(iii) Subsequently, in the month of August, 2022, the respondents asked the petitioner to submit a fresh application. Therefore, the petitioner submitted another application on 10.08.2022 in Application PBPRD000583544 for issuance of fresh community certificate along with necessary documents. Even thereafter, the respondent did not issue community certificate. Therefore, he filed a writ petition in W.P.No.22793 of 2022 and this Court passed an order on 30.08.2022 directing the respondent to hold an enquiry and issue community certificate. All of a sudden, on 10.10.2022, the 3rd respondent issued the impugned order rejecting the application of the petitioner for issuance of community certificate. Aggrieved against the same, the petitioner preferred an appeal before the 2nd respondent. But without properly appreciating the documents submitted

by the petitioner, the 2nd respondent passed the impugned order dated 22.03.2023, dismissing the appeal filed by him confirming the order passed by the 3rd respondent dated 10.10.2022. Hence, the present writ petition is filed challenging the two impugned orders passed by the 2nd and 3rd respondents.

3. Learned counsel for the petitioner would submit that the respondent had rejected the application submitted by the petitioner based on oral enquiry report of the VAO, Revenue Inspector and Deputy Tahsildar but neither the enquiry report of those officials nor the statement made by the persons with whom they enquired about the community of petitioner was furnished to the petitioner which is total violation of principles of natural justice. He would further submit that the petitioner's grandfather (father's father) Mr.Thangarasu S/o Couttane was allotted 0-00-90 (HAC) of land in Cadastre No.948, Sanarapet Revenue village, Oulgaret, Puducherry under Harijan (SC) quota by the then French Government Municipal service Oulgaret commune on 22.06.1955 vide circular No.2249, A.P/3 of April 1965 of High Commissioner of Pondicherry State. The petitioner, his father, grandfather, great grandfather all belong to Hindu by religion and belongs to

Valluvan caste and living in Puducherry for generation together. The impugned order was passed solely based on one solitary document namely French Birth Certificate of one Kesavan who happened to be a brother of the petitioner's father wherein it was mentioned that he is "climber of palm trees' by profession which is illegal and arbitrary. Nowhere in the said document, it is mentioned as 'climber of palm trees'. It is only mentioned as "He is Tree/Wood Cutter" by profession. There is vast difference between 'climber of palm trees' and 'Tree/Wood Cutter'. The impugned order was passed purely on misconception and misinterpretation of profession. However, the family members of the said Kesavan were issued with SC community certificate and they are enjoying the benefits available to SC community. The petitioner's father, Sengeni S/o Thangarasu and the petitioner's father's sister Patcheamma, D/o Thangarasu were also issued with Scheduled Caste community certificate by the Deputy Tahsildar, Taluk Office Pondicherry on 18.02.2003 and 24.06.2002 respectively. The impugned order was passed on flimsy reason by completely overlooking the documents produced by the petitioner.

4. Per contra, the learned Government Pleader (Pondy) appearing for the respondents relying on paragraph No.5 of the counter affidavit and

would state that the Village Administrative Officer of Thattanchavady Revenue Village, upon conduct of a thorough field enquiry has reported that the petitioner's father actually belongs to Hindu-Gramani, which is “Other Backward Class” but the petitioner's paternal grandfather, his uncle's/aunts have managed to obtain “Scheduled Caste Certificate” with sub-caste as Hindu-Valluvan by suppressing the fact that they actually belong to Hindu-Gramani. The village where the petitioner actually residing is used to be called as “Sanars/Nadars' and the main occupation of this community is tree climbing to collect Toddy and to harvest coconuts. The majority of the people belonging to Sanar/Gramini residing in the said locality have mischievously registered as their caste as 'Scheduled Caste (Valluvan)” in the records available at that time viz., school records etc. only to enjoy the benefits that was extended to Scheduled caste people. He would also refer to paragraph No.9 of the counter affidavit and would state that the French birth certificates that were issued in previous times used to mention the occupation of the child's father and mother and in the instant case also, the petitioner's great grandfather Manickam's has been mentioned as 'Tree Climber' which is the occupation/profession of Gramini/Sanar/Nadar community, which is recognized as 'Other Backward Class' and as such, the

petitioner cannot be issued with Valluvan Certificate as falsely claimed by him.

5. Heard the learned counsel for the petitioner, the Learned Government Pleader (Pondicherry) appearing for the respondents and perused the materials available on record.

6. It is seen from the documents that the petitioner's grandfather, Mr.Thangarasu S/o Couttane was allotted 0-00-90 (HAC) of land in Cadastre No.948, Sanarapet Revenue Village, Oulgaret, Puducherry under Harijan (SC) Quota by the then French Government Municipal Service Oulgaret Commune on 22.06.1955 vide Circular No.2249, A.P./3 of April,1965 of High Commissioner of Pondicherry. Further, the Scheduled Caste Welfare Department, Government Puducherry had issued Identity Card to the petitioner's grandfather Mr.Thangrasu S/o Couttane. The petitioner's father was issued with Scheduled Caste community certificate by the Deputy Tahsildar, Taluk Office Puducherry on 18.02.2003 and the petitioner's paternal aunt Patchaeamma, S/o Thangarasu was also issued with Scheduled Caste community certificate by the Tahsildar, Taluk office Puducherry. Moreover, the impugned order was passed solely based on the solitary document namely, French Birth Certificate of one Kesavan, the

brother of the petitioner's father but the family members of the said Kesavan were issued with SC community certificate and they are enjoying the benefits available to Scheduled Caste community. The contention of the learned counsel appearing for the respondent that the French birth certificates that were issued in previous times used to mention the occupation of the child's father and mother and in the instant case, the petitioner's great grandfather Manickam's has been mentioned as 'Tree Climber' which is the occupation/profession of Gramini/Sanar/Nadar community, which is recognized as 'Other Backward Class' and as such, the petitioner cannot be issued with Valluvan Certificate, cannot be countenanced. The petitioner's father and the petitioner's paternal aunt were issued with Schedule Caste certificate on 18.02.2003 and 24.06.2002 respectively by the Deputy Tahsildar and Tahsildar of Taluk Office Pondicherry, respectively and recently, the petitioner and his sister, Arthy were also issued with SC community certificate i.e., on 25.06.2021 and 13.07.2021 respectively. The community certificates issued to them are not cancelled and they are still in force. Therefore, we are of the opinion that the authorities cannot reject the claim of the petitioner for issuance of fresh SC community certificate to the petitioner. Useful reference can be made to the

judgment of the Hon'ble Supreme Court reported in **2005(12) SCC 248** (**State of Bihar & others v. Sumit Anand**) wherein the Hon'ble Supreme Court at paragraph No.6 held as follows:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

7. Learned counsel for the respondents produced an undated instruction issued by the Tahsildar, Taluk Office, Oulgaret and submitted that action is being taken for the cancellation of the father's certificate before the District Committee. As the communication only states that steps are being taken and not that the steps are already taken, we are not inclined to countenance the submission made by the learned counsel for the respondents. The fact remains that as of now, the community certificate issued to the father and the paternal aunt of the petitioner is valid and it is not cancelled.

8. In view of the above, the Writ Petition is allowed. The impugned order passed by the 2nd respondent dated 22.03.2023 confirming the order passed by the 3rd respondent dated 10.10.2022, are hereby set aside. The respondents are directed to issue fresh community certificate to the petitioner that he belongs to Hindu Valluvan Caste which is recognised as "Schedule Caste" community in Union Territory of Puducherry and also issue fresh Nativity and Residence Certificates to the petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (N.M.,J.)
19.09.2023

Index: Yes/No

Speaking/Non-speaking order

vsi

Note: Issue order copy before 06.10.2023

To

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First Floor, New Collectorate Building,
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