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W.P.No.1719 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM

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

W.P.No.1719 of 2022

Master Sujit
A minor Rep by his
natural guardian /
mother Mrs Malar Viji

... Petitioner

Vs

1. The Tahsildar
Department of Revenue and Disaster Management
Taluk office, Villanur, Puducherry 605 110

2. Adi Dravider Welfare and Scheduled Tribes
Welfare Department Government of Puducherry Kamarajar salai
Thattanchavady Puducherry 605 009

3. Government of Puducherry
Rep by its secretary Educational Department Puducherry 605 001

4. Union of India
Rep by its Chief Secretary government of Puducherry chief Secretariat
Puducherry 605 001

5. Prakash

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the proceedings of the 1st respondent in No.4307/TOV/Cert/A6/2021 dated 30.09.2021 quash the same and consequentially direct the 1st respondent to issue Scheduled Caste community certificate to the petitioner without insisting on the 5th respondent's community certificate.

For Petitioner : Mr.P.B.Ramanujam

For Respondents : Mr.C.T.Ramesh
Additional Government Pleader (Pondy)
for RR1 to 4

ORDER

(Order of the Court was made by J.NISHA BANU,J)

This writ petition has been filed to call for the entire records and to quash the proceedings of the 1st respondent in No.4307/TOV/Cert/A6/2021 dated 30.09.2021, for not granting scheduled caste certificate to the petitioner and consequently, direct the 1st respondent to issue the same.

2. The petitioner herein is the minor, who is represented by his mother. Petitioner's mother – Malar Viji belongs to Hindu Adidravida Community. His father is from Tamilnadu and he also belongs to the very same Hindu



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Adidravida Community. Due to the strained relationship between the petitioner's father and mother, they are living separately and matrimonial dispute is pending before the Family Court, Puducherry. Therefore, the petitioner was entirely brought up by his mother, who is the permanent resident of Puducherry.

3. It is pertinent to point out that, as per the presidential notification issued for Tamilnadu as well as Puducherry, the said community comes within the scope of Scheduled Caste community.

4. The very issue that has been raised before us, was considered by the learned Single Judge of this Court in the case of ***P.Jeya. vs. Union of India(UOI)*** reported in **AIR2005Mad116**, in which, the learned Judge held in Para 32 and 36 as follows:

" 32. Assessing all the above factors and to put them in a nutshell, relating to the question of issuance of the Scheduled Caste Certificate in favour of the children of the parents of the origin of Pondicherry State on the date of the



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Certificate just for the simple reason that it is the origin of the father that would only be taken as a criteria and not the mother as per the impugned memorandum and in such event, such criteria fixed by the Government interpreting the G.O. and superseding the earlier memorandum issued dated 3.8.1995 which insisted that if either of the parents has the origin at Pondicherry, it is sufficient for their children to get a Scheduled Caste Certificate is within the parameters of the law and the constitutional rights guaranteed under the relevant Articles 14 and 15 of the Constitution of India, and therefore, it is necessary to have a little discussion on these Articles.

36. In result,

(i) for all the above discussions held, the above writ petition stands allowed;

(ii) the impugned memorandum issued by the first respondent in No.9 565/C2/Rev/2000 dated 10.11.2000,



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since being discriminatory within the meaning and import of Articles 14 and 15 of the Constitution of India, is declared unconstitutional;

(iii) The earlier memorandum dated 3.8.1995 requiring the issuance of scheduled caste certificate, the origin of either, father or mother of the child seeking such certificate, since being a reasonable order within the ambit of the relevant Articles of Constitution, the same is declared valid;

iv) the respondents are directed to immediately process the representation of the petitioner seeking the scheduled caste

certificate in favour of her son P.Sivakumar as a scheduled caste of Union Territory of Pondicherry issuing the certificate, giving effect to the memorandum dated 3.8.1995 within 30 days from the date of receipt of a copy of this order, provided the other usual requirements are satisfied....."



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5. Therefore, conclusion of the learned Judge was that, as per the memorandum issued by the Government of Pondicherry on 03.08.1995, the certificate could be based either on the origin of the father or the origin of the mother and this was found to be reasonable in terms of Constitution of India.

6. Not being satisfied with the said view, an appeal was preferred before a Division Bench of this Court in W.A.No.1326 of 2005. The writ appeal was dismissed on 30.03.2010, upholding the view of the learned Single Judge cited above that the child can be considered for the purpose of issuing community certificate either by the origin of the father or by the origin of the mother. As we have pointed out on the facts of this case, both the father and the mother belong to Scheduled caste community and the mother being a Scheduled caste from Puducherry and father being a Scheduled caste from Tamilnadu.

7. The averments in the affidavit would go to show that the child was brought up entirely in Puducherry and therefore, the origin of the mother alone matters. After the dismissal of the writ appeal, the matter was taken to the Supreme Court in Civil Appeal No. 9082 of 2014. The said Civil Appeal was

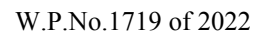


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dismissed on 19.04.2023, leaving open the question of law. The directions given by the learned Single Judge as well as by the Division Bench stood confirmed.

8. Learned counsel appearing for the State of Puducherry would submit that the Division Bench and the learned Single Judge did not consider the scope of **Action Committee on issue of Caste Certificate to Scheduled Castes and Schedule Tribes in the *State of Maharashtra and another and vs. Union of India and another*** reported in (1994) 5 Supreme Court Cases 244.

9. We have carefully gone through the view of the learned Division Bench and we find that the Division Bench had in fact, referred to the said Judgment. It is pertinent to point out that the said judgment related to migrant Scheduled caste from one State to another. The Supreme Court had to consider the issue whether the person who is Scheduled Caste in one particular State continues to carry the status within neighbouring State or the other State. The Supreme Court held, as per the presidential notification, the caste which the



the State in which he seeks the benefit of reservation.

father, that has to be considered.

all force to the facts of the case.

12. Accordingly, this writ petition stands allowed.



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The respondents 1 to 4 are directed to issue a caste certificate to the petitioner

— Master Sujit, within a period of four(4) weeks from the date of receipt of a copy of this order. No costs.

(J.N.B.,J.) (N.M.,J.)
19.10.2023

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No
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To

1. The Tahsildar
Department of Revenue and Disaster Management
Taluk office, Villanur, Puducherry 605 110

2. Adi Dravider Welfare and Scheduled Tribes
Welfare Department Government of Puducherry
Kamarajar salai Thattanchavady Puducherry 605 009

3. The Ssecretary
Government of Puducherry
Educational Department, Puducherry 605 001

4. The Chief Secretary
Union of India
Government of Puducherry
Chief Secretariat, Puducherry 605 001



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