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W.P.No. 34933 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No. 34933 of 2023
and W.M.P.No. 34909 of 2023

Siva Johnson Kennady.I

..Petitioner

Vs.

1. Union of India
Rep. By its Secretary to Government
(Revenue),
Government of Puducherry,
Chief Secretariat, Puducherry.

2.The Tahsildar,
Department of Revenue
and Disaster Management,
Taluk Office, Oulgaret,
Puducherry.
..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to issue community certificate to the petitioner based on his mother's origin.

For Petitioner : Mr.Stalin Abhimanyu
For Respondents : Dr.B.Ramasamy

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of O.M.No.9565/C2/Rev/2000 dated 10.11.2000 issued by Revenue Department, Government of Puducherry. Further, the Government refused to issue community certificate on the basis of the residential status of the Mother vide memorandum dated 10.11.2000 and the same was challenged before this Court in W.P.No.30841 of 2002 and the issue regarding community certificate on the basis of residential status of mother has reached its finality as per the orders of the Hon'ble Apex Court in Civil Appeal No.9082 of 2014.

4. He further submitted that when the petitioner had approached the 2nd respondent for issuance of community certificates, he directed the petitioner to approach the Court and get specific orders, since the earlier judgment pronounced by the Court was only with regard to the individual.

5. Learned counsel appearing for the petitioner drew the attention of this Court to the Judgment 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



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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 notification of the Presidential Order, migrants from other States on the date of the said notification means whether both the parents, on the date of the said notification should have been born and continue to reside in Pondicherry, as it is advocated on the part of the respondents here or in the case of any one of the parents whose origin is from outside the Pondicherry limits, whether the claim of Scheduled Caste Certificate should be rejected in to and whether such rejection is reasonable within the meaning of Articles 14 and 15 of the Constitution of India, or whether either father or mother of the same Adi Dravida community hails from outside the territorial limits of Pondicherry and by virtue of marriage with the other spouse comes and lives at Pondicherry and gives birth to children and in such event by virtue of the



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other spouse being an origin of Union Territory of Pondicherry whether the children born to them in spite of having been born to parents of Adi Dravida community should forego their right to get a Scheduled Caste 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



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petition stands allowed;

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



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3.8.1995 within 30 days from the date of receipt of a copy of this order, provided the other usual requirements are satisfied....."

6. From the above judgment, the 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.

7. 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. Since the petitioner's mother is the origin of Puducherry, he is entitled to get community certificate. Despite of various representations, no community certificate was issued by the respondents till date, based on the



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petitioner's mother's origin.

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8. According to the learned counsel for the petitioner, the inaction on the part of the respondents in not providing community certificate to the petitioner based on his mother's origin is not only illegal but also reflects complete non-application of mind and hence, it is violative of Article 14 of the Constitution. It was further submitted that the inaction of the respondents in not providing community certificate to the petitioner based on his mother's origin grossly violates the dictum laid down by the Hon'ble Apex Court and this Hon'ble Bench.

9. In support of his submissions, he also relied upon the judgment of Hon'ble Apex Court in the case of **State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others** reported in **2015 (1) SCC 347**, in which Paragraph no.22 reads as follows:

22. The legal principle which emerge from the reading of the aforesaid judgments, cited both by the appellants as



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well as the respondents, can be summed up as under.

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22.1. *The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

22.2. *However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the*



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same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see



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K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

10. 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 case of *State of Maharashtra and another and vs. Union of India and another*** reported in (1994) 5 Supreme Court Cases 244.

11. Heard the learned counsel appearing for the petitioner and



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the learned Additional Government Pleader(Pondy) appearing for the respondents and perused the materials available on record.

12. It is seen from the records that the petitioner's mother Carnaguy was born on 26.12.1954 at Puducherry and she has valid birth certificate issued by Ariyankuppam Commune Panchayat, Puducherry. She is scheduled caste by origin. Though the petitioner's father also belongs to Hindu Adi-Dravida Community, he does not have documents to prove his origin of Puducherry. The petitioner was brought up entirely in Puducherry and therefore, the origin of the mother alone matters.

13. The office memorandum dated 10.11.2000 which was originally relied upon by the respondents to deny the Scheduled caste benefits to the writ petitioner has been declared unconstitutional by the Hon'ble Supreme Court in Civil Appeal No.9082 of 2014. The law that is in force today, is the office memorandum dated 03.08.1995 which has been held valid. This position having been approved by the Supreme Court, we have to apply



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the same to the facts and circumstances of the present case. The facts put forth above would go to show that the petitioner was brought up entirely in the State of Puducherry under the care and custody of her mother, who is of Puducherry origin and belongs to Scheduled caste community.

14. The order passed in the case of ***S.Sumathy Vs 1. Union of India Represented by Secretary Revenue, Government of Puducherry and another*** made in W.P.No.9586 of 2014 dated 04.09.2023, is squarely applicable to the case on hand. There is no dispute regarding the fact that the mother of the writ petitioner hails from Hindu Adi Dravida 'origin'. It is admitted fact that the petitioner's mother was a native of Puducherry and belongs to Hindu Adi Dravida “Origin” community and has a valid birth certificate issued by Ariyankuppam Commune, Panchayat Puducherry.

15. Accordingly, this writ petition is allowed. The respondents are directed to issue community certificate to the petitioner that he belongs to Hindu Adi-Dravida (Origin) Schedule Caste community, within a period of four(4) weeks from the date of receipt of a copy of this



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order.

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16. It is made clear that whenever an application is made for issuance of community certificate based on the mother's origin along with supporting documents, the Revenue Authorities shall satisfy himself on the veracity of the documents and if satisfied shall issue the certificate without driving the individual to seek for separate judicial order. No costs. Consequently connected miscellaneous petition is closed.

(J.N.B.,J.) (N.M.,J.)
21.12.2023

Index : Yes / No
Speaking Order : Yes/No
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To
The Secretary to Government
Union of India
(Revenue),
Government of Puducherry,
Chief Secretariat, Puducherry.

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2.The Tahsildar,
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