
(2014) 07 MAD CK 0231

In the Madras High Court

Case No : Writ Petition Nos. 10257, 10258, 11113, 11114 and 11115 of 2014

M. Nagesh

APPELLANT

Vs

The Sub Collector

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Citation : (2014) 07 MAD CK 0231

Hon'ble Judges : M. Venugopal, J; M. Jaichandren, J

Bench : Division Bench

Judgement

M. Jaichandren, J.—Since the issues involved in all the writ petitions are similar in nature, they have been taken up together and a common order is being passed.

2. Heard the learned counsels appearing on behalf of the petitioners, as well as the respondents.

3. The brief facts, as stated in the writ petitions, in W.P.Nos.10257 of 2014 & 10258 of 2014, are as follows:

3.1. The petitioners in W.P.No. 10257 & 10258 of 2014, belong to "kurichchan" community, which is a Scheduled Tribe community. The petitioners had studied upto the plus two course at the school level. They are working as salesmen in the Co-operative Societies. In all the school records of the petitioners, the name of their community had been entered as "kurichchan". The petitioners had obtained community certificates from the Headquarters Deputy Tahsildar, Denkanikotta, on 19.7.1982. The wives of the petitioners are also belonging to "kurichchan" community. The primary occupation of the petitioners was hunting. However, they are carrying on agricultural activities, including grazing of cattles for their livelihood, at present.

3.2. The petitioners' children are studying in school. The school authorities had directed the petitioners to produce the community certificates of their children.

Therefore, the petitioners had preferred applications to the first respondent, on 4.10.2010, requesting him to issue community certificates in favour of their children. The petitioners had submitted the necessary applications, along with their school records and the copies of the community certificates issued to their relatives. However, no order had been passed by the first respondent. Thereafter, on 23.12.2010, the petitioners had sent sworn affidavits to the first respondent and they had been received by the first respondent, on 27.12.2010. Since no order had been passed by the first respondent, the petitioners had filed two writ petitions, in W.P.No. 15936 of 2011 and W.P.No. 15935 of 2011, respectively, praying for directions, directing the first respondent to pass orders on the applications filed by the petitioners, for the issuance of community certificates to their children. This Court had passed orders, on 5.7.2011, directing the first respondent to pass orders, within a period of three months. The first respondent had passed orders, on 10.7.2012, rejecting the applications submitted by the petitioners on the ground that the petitioners had not produced any documents in support of their claim, to prove that they belong to "kurichchan" community. Therefore, the petitioners had filed writ petitions before this Court, in W.P.No. 24436 of 2012 and W.P.No. 24124 of 2012, respectively. This Court had passed orders, dated 22.10.2013, setting aside the orders passed by the first respondent and remitting the matters back to the first respondent with certain directions. The first respondent had been directed to pass orders, afresh, after giving an opportunity of hearing to the petitioners within a period of 3 months from the date of receipt of the copies of the said orders. Thereafter, the first respondent had passed orders, on 5.2.2014, rejecting the applications submitted by the petitioners stating that it was found on conducting discreet enquiries that some of the relatives of the petitioners had obtained community certificates stating that they belong to "Kunjidigar" (Backward Class) community. Further, the community certificates issued in favour of the petitioners had been issued by the Head quarters Deputy Tahsildar, who has no authority to issue such community certificates.

4. The brief facts, as stated in the writ petitions, in W.P.Nos.11113, 11114 and 11115 of 2014, are as follows:

4.1. The petitioners belong to Hindu "kurichchan" Scheduled Tribe community. The petitioners' father N.Marappa and their mother Nagamma had also belonged to the said community. The petitioners were residing in the Hill areas situated between the states of Karnataka and Tamil Nadu. They had been hunting animals, like the other persons belonging to the said community. Their forefathers had moved down from the plains, about 60 years back and they had been carrying on agricultural activities for their livelihood.

4.2. The petitioners had further stated that their father late N.Marappa had been issued with the certificate, dated 17.3.1981, by the Tahsildar, Hosur, stating that he belongs to "kurichchan" Scheduled Tribe community. Based on the said community certificate, the father of the petitioners had been appointed as a

postman and he had retired from service, on attaining the age of superannuation. The certificate issued to the father of the petitioners has not been cancelled, till date. In such circumstances, the petitioners had submitted applications, dated 6.8.2007, for the issuance of community certificates to the children of the petitioners stating that they belong to "kurichchan" Scheduled Tribe community. The applications, which had been submitted by the petitioners, to the District Collector, Krishnagiri, had been forwarded to the first respondent herein. However, the petitioners had also furnished a number of documents to the first respondent, along with the applications, in support of their claims. However, the first respondent, without considering the relevant documents furnished by the petitioners, had passed the impugned orders, dated 7.2.2014, rejecting the claims of the petitioners. In such circumstances, the petitioners had preferred the present writ petitions before this Court.

5. The learned counsel appearing for the petitioners had submitted that the orders passed by the first respondent rejecting the requests of the petitioners, for the issuance of community certificates to their children, stating that they belong to "kurichchan" community are arbitrary, illegal and contrary to the guidelines issued by the Supreme Court of India. The Headquarters Deputy Tahsildar had issued the community certificates, in favour of the petitioners, as he was the appropriate and competent authority to issue such certificates, at that time. The said authority had issued the community certificates, in favour of the petitioners, based on the various documents submitted by them, which were sufficient to substantiate their claims. However, the first respondent had issued the impugned orders without considering the documents submitted to him by the petitioners, including the community certificates issued in favour of the petitioners. The first respondent had also refused to rely on the community certificates issued to the other relatives.

6. The learned counsel appearing for the petitioners had further submitted that, as per G.O.Ms.No. 517 (PL-M) Department, dated 14.5.1985, the Headquarters deputy Tahsildar had been empowered to issue the community certificates, in respect of scheduled tribes, upto 14.5.1985. Thereafter, as per the Government Order, in G.O.Ms.No. 2137, dated 11.11.1989, the power to issue community certificates had been delegated to the Revenue Divisional Officer. However, the first respondent had rejected the request of the petitioners on a wrong understanding of the position of law as it stood at the relevant point of time. Further, the various reasons given by the first respondent, for the rejection of the requests of the petitioners, are frivolous in nature and therefore, they cannot be sustained in the eye of law.

7. The learned counsel appearing for the petitioners had further submitted that it is well settled by the various decisions of the Courts of law that if the parents of the children, for whom the community certificates are required, are shown to possess community certificates stating that they belong to a particular community, then, the authority concerned should issue similar certificates to the

children, without raising any question with regard to the validity of the certificates issued in favour of the parents. Thereafter, if the authority concerned finds it fit to do so, he may refer the matter for further scrutiny, to the appropriate authority, with regard to the genuineness of the certificates possessed by their parents. However, it would not be open to the authority concerned to reject the requests made by the parents for the issuance of the community certificates to their children, without following such procedures.

8. The learned counsel appearing for the petitioners had further submitted that the authority concerned can send the matter for further scrutiny, only if serious doubts are raised, with regard to the genuineness of the certificates issued in favour of their parents. If no reasonable doubt arises, for the verification of the certificates, which had already been issued, further scrutiny of such certificates shall not be made. He had further submitted that the authority concerned ought to follow the procedures contemplated by the Supreme Court, in KUMARI MADHURI PATIL AND ANOTHER Vs. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS (AIR 1995 SC 94(1)).

9. The learned counsel appearing for the petitioners had also submitted that the first respondent had not followed the procedures contemplated under the various Government Orders, including G.O.Ms.No. 106, Adi Dravidar and Tribal Welfare (CV.I) Department, dated 15.10.2012, while rejecting the requests made by the petitioners. Therefore, the impugned orders passed by the first respondent are liable to be set aside and a direction may be issued to the first respondent to issue community certificates to the children of the petitioners stating that they belong to Kurichchan scheduled tribe community, forthwith.

10. The learned counsel appearing on behalf of the petitioners had relied on the following decisions in STATE OF BIHAR Vs. SUMIT ANAND (2005) 12 SCC 248), C.V.KALAIVANAN Vs. THE SUB COLLECTOR, METTUR DAM (2010 (3) CTC 673), A.MADHUSAMY Vs. THE REVENUE DIVISIONAL OFFICER, DHARMAPURI, dated 15.4.2013, made in W.P. No. 1837 of 2013, D.DEIVAKUMAR Vs. THE REVENUE DIVISIONAL OFFICER, DHARMAPURI, dated 29.4.2010, made in W.P. No. 22666 of 2009, ALLI GOUNDER Vs. THE REVENUE DIVISIONAL OFFICER, DHARMAPURI, dated 2.8.2012, made in W.P. No. 17154 of 2012, C.RAMESH Vs. THE REVENUE DIVISIONAL OFFICER, HARUR, DHARMAPURI DISTRICT, dated 20.4.2011, made in W.P.Nos.5836 to 5843 of 2011, A.M.SIVAKUMAR Vs. THE REVENUE DIVISIONAL OFFICER, DHARMAPURI, dated 5.11.2013, made in W.P. No. 1807 of 2013, while stating that, once the parents and some of the close relatives of the applicant, who is seeking issuance of a community certificate stating that he belongs to a particular community, had been given such a community certificate, the application in question cannot be rejected, by the authorities concerned, without having proper reasons to do so.

11. The learned counsel appearing on behalf of the petitioners had also relied on the following decisions, in SAMMPATH Vs. THE REVENUE DIVISIONAL OFFICER, HARUR, DHARMAPURI DISTRICT, dated 11.2.2011, made in W.P. No. 3235 of

2011, T.NAGAMANICKAM Vs. THE SUB-COLLECTOR, DHARMAPURI, dated 27.11.2012 in W.P.No. 25825 of 2011, M.SIVAKUMAR Vs. THE SUB COLLECTOR, DHARMAPURI, DHARMAPURI DISTRICT, dated 13.12.2012 made in W.P. No. 23650 of 2011, and V.PAVITHRA (MINOR) Vs. THE REVENUE DIVISIONAL OFFICER, HARUR, DHARMAPURI DISTRICT, dated 21.4.2009, made in W.P. No. 7195 of 2009, in support of his contention that, when the anthropological reports state that particular communities are available in certain specified localities, such reports should be taken into serious consideration to pass orders in favour of the persons, who are also from such localities.

12. The learned counsel appearing on behalf of the petitioners had also relied on the following decisions, in R. Kandasamy Vs. Chief Engineer, Madras Port Trust, , S.P. Sakthi Devi Vs. The Collector of Salem, Salem, The Sub-Collector, Sankari, Salem Dt., The Tahsildar, Sankari Salem Dt. and The Operations Manager, Indian Airlines, Madras, , T.V.DHARMALINGAM Vs. THE HEAD OF DEPARTMENT (SPL.EXAMS) & OTHERS (2010 WRIT L.R.1123), C.RAVANAN Vs. THE REVENUE DIVISIONAL OFFICER, VELLORE, VELLORE DISTRICT, dated 12.12.2012, made in W.P. No. 14519 of 2012 and G.VIJAYAN Vs. THE REVENUE DIVISIONAL OFFICER, TIRUTTANI, TIRUVALLUR DISTRICT, dated 10.10.2013 made in W.P. No. 25540 of 2013, in support of his contention that the community certificate issued by a competent authority should be considered to be valid and it should be relied upon for all purposes, until it is cancelled by the competent authority.

13. The learned counsel appearing on behalf of the petitioners had also relied on the following decisions, in N.DELLI Vs. THE REVENUE DIVISIONAL OFFICER, RANIPET, VELLORE DISTRICT, dated 5.2.2014 made in W.P. No. 608 of 2014, HINDUSTAN AERONAUTICS LIMITED, ROTARY WING RESEARCH AND DESIGN CENTRE, HELICOPTER COMPLEX, BANGALORE, REPRESENTED BY ITS DEPUTY GENERAL MANAGER (HR), M.V.S.N.MURTHY Vs. GOVERNMENT OF TAMIL NADU, ADI-DRAVIDAR AND TRIBAL WELFARE DEPARTMENT, SECRETARIAT, CHENNAI AND ANOTHER, dated 3.1.2014 made in W.P. No. 33229 of 2013 and T.NAGAMANICKAM Vs. THE SUB COLLECTOR, DHARMAPURI, dated 25.2.2014 made in W.P. No. 3635 of 2014, in support his contention that if a community certificate had already been verified by the State Level Scrutiny Committee and the District Level Vigilance Committee, it should be taken to be valid for all purposes.

14. The learned counsel appearing on behalf of the petitioners had also relied on the following decisions, in The New India Assurance Co. Ltd. Vs. R. Venkataraman, R. Kalyanasundaram, Assistant Liason Officer for SC/ST, Regional Office, P.B. Wahne, Liason Officer for SC/ST, Head Office, The New India Assurance Co. Ltd. and V.M. Chandrasekaran, Assistant Administrative Officer, The New India Assurance Co. Ltd., and KAVITHA Vs. THE REVENUE DIVISIONAL OFFICER, DHARMAPURI, dated 29.3.2012 made in W.P. Nos. 21535 and 25415 of 2011, in support of his contention that the revenue authorities have no right to verify the community certificate of the scheduled caste candidates.

15. The learned counsel appearing on behalf of the petitioners had also submitted that the Supreme Court, in KUMARI MADHURI PATIL AND ANOTHER Vs. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS (AIR 1995 SC 94(1)), had issued certain guidelines relating to the issuance of community certificates and for their verification by conducting a local enquiry, by the Vigilance Cell, and based on the Anthropological report. It had also contemplated setting up of a State Level Scrutiny Committee for examining the claims made by the persons seeking a community certificate.

16. The learned counsel appearing on behalf of the petitioners had further stated that this Court had passed an order, dated 31.10.2011, made in W.P. No. 19813 of 2011, (C.VENKATESAN Vs. TAMIL NADU STATE LEVEL SCRUTINY COMMITTEE, ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT, CHENNAI, REP. BY ITS CHAIRMAN), wherein, the Division Bench of this Court had held that the report of the anthropologist is an important factor, which could assist the State Level Scrutiny Committee to find out the claims of persons seeking community certificates. The anthropologist would submit a detailed report after making an enquiry, with regard to the claims and other aspects of the applicant.

17. The learned counsel appearing on behalf of the petitioners had relied on an order passed by this Court, dated 3.11.2011, made in W.P. No. 16983 of 2011, (R.NAGARAJAN Vs. STATE LEVEL SCRUTINY COMMITTEE REP. BY ITS CHAIRMAN AND SECRETARY TO GOVERNMENT, ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT, SECRETARIAT, CHENNAI), wherein, it had been held that the anthropologist should conduct an enquiry to find out the details, with regard to the locality, where the persons belonging to the community concerned were living and it could examine the anthropological and ethnological traits, deities worshiped, rituals, customs and ceremonies followed by the community concerned during marriages, deaths and during other such events.

18. Per contra, Mr.S.P.Prabakaran, the learned Additional Government Pleader, appearing on behalf of the respondents, had submitted that the first respondent had passed the impugned orders, rejecting the claims made by the petitioners, due to the various discrepancies found in the documents submitted by them, for the issuance of community certificates in favour of their children, stating that they belong to Kurichchan Scheduled Tribe community.

19. The learned counsel had further submitted that the reasons stated by the first respondent, for rejecting the claims made by the petitioners, are valid and sustainable in the eye of law. The first respondent had followed all the necessary procedures before arriving at his conclusions, while passing the impugned orders.

20. The learned counsel had further submitted that the decisions cited by the petitioners are not applicable to the facts and circumstances of the present cases, as serious doubts had been raised, by the first respondent, with regard to the validity and genuineness of the community certificates issued in favour of the petitioners.

21. The learned counsel appearing on behalf of the respondents had also pointed out that, in such cases, the disputed issues can only be resolved by a proper investigation conducted by the State Level Scrutiny Committee. In fact, the State Level Scrutiny Committee had received the applications filed by the petitioners, during the month of March this year, and the process of enquiry and verification of the claims made by the petitioners had commenced. In such circumstances, the petitioners ought to wait for the findings of the State Level Scrutiny Committee, with regard to the claims made by them. Therefore, this Court may not grant the reliefs, as prayed for by the petitioners, at this stage.

22. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available and on considering the decisions cited supra, we are of the considered view that serious doubts had been raised, by the first respondent, with regard to the validity and genuineness of the community certificates issued in favour of the petitioners, stating that they belong to Kurichchan Scheduled Tribe community. The first respondent had also noted various discrepancies in the documents furnished by the petitioners, to the first respondent, along with the applications for the issuance of the community certificates in favour of their children.

23. Even though it has been held, by some Courts, that if community certificates had been issued to the parents stating that they belong to a particular community, similar certificates should be issued to their children, before causing a further investigation in the matter, we are of the considered view that such a course of action may not be appropriate in the present cases, as serious doubts had arisen, with regard to the validity and genuineness of the community certificates issued in favour of the petitioners.

24. It is also noted that the applications of the petitioners, for the issuance of community certificates to their children, had been received by the the State Level Scrutiny Committee, which had been impleaded as the second respondent during the course of proceedings in the present writ petitions. In such circumstances, the reliefs prayed for by the petitioners, in the present writ petitions, cannot be granted, at this stage. However, we find it appropriate to direct the second respondent Scrutiny Committee to consider the claims made by the petitioners, as per the procedures established by law, and to pass appropriate orders thereon, without being influenced by the findings of the first respondent, by conducting the necessary enquiries and by giving an opportunity of hearing to the petitioners, to put forth their cases during the course of the enquiry proceedings, within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the writ petitions are disposed of, with the above directions. No costs.