

(2015) 02 MAD CK 0406

In the Madras High Court

Case No : Writ Petition Nos. 24717 and 24718 of 2013

M. Narayana and Others

APPELLANT

Vs

The Sub Collector, Hosur and Others

RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0406

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Advocate : R. Rajeswaran, Special Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Both these writ petitions are filed praying for issuance of a writ of certiorari mandamus to call for the records relating the order of rejection passed in proceedings in Na. Ka. No. 2310/2013 (A4) and 2311/2013 (A4) dated 19.07.2013 on the file of the respondents, quash the same and direct the respondents to issue community certificate to the 2nd and 3rd petitioners in W.P. No. 24717 of 2013 and to the petitioner's sons in W.P. No. 24718 of 2013 that they belong to Kurichchan (ST) Community based upon the community certificate already issued to their close relatives. Since the issue involved in both the writ petitions are one and the same, they are taken up together for disposal.

2. Heard Mr. S. Doraisamy learned counsel appearing for the petitioners and Mr. R. Rajeswaran learned Special Government Pleader appearing for the respondents.

3. Challenge has been made to the order of the Revenue Sub Collector, Hosur, Krishnagiri District, wherein for the claim of the petitioners for issuance of Kurichchan (ST) Community certificate, the Sub Collector has taken a decision to reject the same on the ground that the documents relied on by the petitioners as to the relatives as well as the other documents are issued by the Deputy

Tahsildar and therefore, there is no conclusive proof to determine and issue community certificate to the petitioners.

4. The petitioner in W.P. No. 24717 of 2013 was working as a teacher in the Panchayat Union School and retired from service as Head Master on 31.05.2004. In all his school records as well as in his service register, his community is entered as Kurichchan. The second petitioner and the third petitioner are the daughter and son of the 1st petitioner respectively. The first petitioner applied for issuance of community certificate to the 2nd and 3rd petitioner on 11.10.2010. Along with the application, he has enclosed the following documents, namely,

1. School transfer certificate of the 1st petitioner
2. Service Register extract of the 1st petitioner
3. 2nd petitioner's school transfer certificate
4. 2nd petitioner's school admission register extract
5. 3rd petitioner's school admission register extract
6. 3rd petitioner's school transfer certificate
7. Admission register extract of the 1st petitioner
8. Petitioner's family tree
9. 1st Petitioner's own brother's community certificate dated 29.09.1972
10. 1st petitioner's cousin's community certificate dt. 17.08.1970.

Since no orders were passed on the application submitted by the petitioners, they approached this Court in W.P. No. 17598 of 2013 in which notice was issued on 19.07.2013. However, the respondents passed an order on 19.07.2013 rejecting the petitioner's application by holding that they do not belong to Kurichchan community but belong to Kunjidigar community. Challenging the said order petitioners are before this Court.

5. The case of the petitioner in W.P. No. 24718 of 2013 is that she is a native of Medumuthukotta Village and she got married to one Prakash and is residing in Chinnatti Village in Denkanikotta Taluk, Krishnagiri District. According to her she belong to Kurichchan (ST) Community and her husband also belongs to the very same community. Petitioner and her husband did not obtain community certificates for them as it was not required at that time. But in their school records, their community is entered as Kurichchan. They have two sons viz. P. Bharath (17 years) and P. Saiyaswanth (14 years) and in their school records also their community is entered as Kurichchan. Since the school authorities insister for production of community certificate, petitioner's husband submitted an application to the respondents on 06.12.2010 requesting for issuance of community certificate to their children. Along with the application, he has enclosed the following documents, namely,

1. School transfer certificate of the petitioner
2. School transfer certificate of the petitioner's husband
3. Petitioner's school admission register extract
4. Petitioner's father's school transfer certificate
5. Petitioner's father's school admission register extract
6. Petitioner's father's service register extract
7. Petitioner's paternal uncle's community certificate dt. 29.09.1972 issued by Tahsildar, Denkanikotta.
8. Petitioner's father's cousin's community certificate dt. 17.08.1970 issued by Tahsildar, Denkanikotta.

Since no order was passed on the application submitted earlier, petitioner preferred another application on 17.06.2013 enclosing two more documents namely, petitioner's husband's uncle's community certificate and petitioner's husband's brother's school records. That was also not considered and hence, petitioner was constrained to approach this Court in W.P. No. 17107 of 2013 which came to be disposed of on 03.07.2013 with a direction to the respondent to pass orders on petitioner's application within a period of four weeks. However, the respondents passed an order on 19.07.2013 rejecting the petitioner's application by holding that they do not belong to Kurichchan community but belong to Kunjidigar community. Challenging the said order petitioner is before this Court.

6. The learned counsel appearing for the petitioners, by placing reliance on G.O.Ms. No. 517 (P1-M) dated 14.05.1985 would contend that the Government has delegated the power to Independent Deputy Tahsildar vide G.O.Ms. No. 483 Public (Services-A) dated 14.02.1957 and that Government Order has been cancelled in the G.O.Ms. No. 517, thereby delegating the power to the Head Quarters Deputy Tahsildar and Independent Deputy Tahsildar with powers to issue the community certificate in respect of S.C. and S.T. and backward classes and the said Government Orders were in force till the decision was taken by the Supreme Court in the case of R. Kandasamy Vs. Chief Engineer, Madras Port Trust, (1997) 3 CTC 36 : (1997) 7 JT 660 : (1997) 5 SCALE 656 : (1997) 7 SCC 505 : (1997) SCC(L&S) 1825 : (1997) 3 SCR 516 Supp : (1998) 1 SLJ 108 : (1997) 2 UJ 667 wherein a cut off date has been fixed for issuance of a community certificate by the Revenue Divisional Officer namely 11.11.1989 and the certificates issued by the authorities prior to that are relevant for consideration and therefore, the impugned orders passed by the respondent is vitiated in law.

7. In support of his submission the learned counsel has relied on the decision reported in 2010 (3) C.T.C. 673 in the case of C.V. Kalaivanan vs. The Sub Collector, Mettur Dam, Salem District.

8. Resisting the said submission, the learned Special Government Pleader would contend that in the absence of any material proof to substantiate the claim of the petitioners for issuance of Kurichchan (ST) Community certificate, the decision taken by the learned Sub Collector is in accordance with law and there is no warranting circumstance to interfere with the same.

9. We have heard the learned counsel appearing for the parties and perused the material documents made available on record.

10. A perusal of the impugned orders would reveal that the Sub Collector, Hosur, in proceedings No. 2310 (A) and 2311 (A) dated 19.07.2013 referring to the applications submitted by the respective petitioners and also a direction issued by this Court in W.P. No. 17598 of 2013 and the report of the Tahsildar in Na. Ka. No. 2013 (76) dated 15.07.2013. After analysing the various documents produced by the 1st petitioner in W.P. No. 24717 of 2013 namely his own service register, school certificate, his cousin's community certificate and other relevant certificates, as mentioned and discussed by the Sub Collector, and also after affording an opportunity to the petitioner, the authorities have come to the decision that all the documents relied on by the petitioner were all issued by a Deputy Tahsildar and those documents are not relevant material for consideration as the Deputy Tahsildar is not authorised to issue such a certificate and in the absence of any material and a conclusive proof, the respondents have decided to reject the request of the petitioner's.

11. To examine the position as to whether the documents relied on by the petitioner are material for consideration or not, we have a Government Order in G.O. Ms. No. 483 Public (Services-A) department dated 14.02.1957. That Government Order is to the effect that the candidates who claim as belonging to S.C. and S.T. or Backward Classes should obtain the community certificate for appointment from an Officer of the Revenue Department not lower than Tahsildar or an independent Deputy Tahsildar. The Government of India, Ministry of Home Affairs in its letter No. 13/2/74 Est. (SCT) dated 05.08.1975 have pointed out that one of the persons competent to issue community certificates in respect of SC and ST are Revenue Officers not below the rank of a Tahsildar and they have sought for a clarification orders were issued. In G.O. Ms. No. 2906 Revenue dated 4.11.1981 Headquarters Deputy Tahsildars and independent Deputy Tahsildar were delegated with powers to issue community certificate in respect of SC/ST and Backward classes. Based on the suggestions of the Government of India, orders issued in G.O. Ms. No. 2906 Revenue dt. 4.11.1981 and G.O. Ms. No. 1888 Revenue dated 10.11.1983 were modified to the effect that in respect of Schedule Caste and Schedule Tribes, Revenue Officers below the rank of Tahsildar alone are not authorised to issue the community certificates. In view of the same, the Government took a decision to cancel the G.O. Ms. No. 483 and issued a further Government Order authorising the Head Quarters Deputy Tahsildar and Independent Deputy Tahsildar to issue community certificates. Such a position continued till a decision was taken in the case of R. Kandasamy

Vs. Chief Engineer, Madras Port Trust, (1997) 3 CTC 36 : (1997) 7 JT 660 : (1997) 5 SCALE 656 : (1997) 7 SCC 505 : (1997) SCC(L&S) 1825 : (1997) 3 SCR 516 Supp : (1998) 1 SLJ 108 : (1997) 2 UJ 667 wherein 11.11.1989 is fixed as cut off date. If that could be the position the certificate issued by the Tahsildar is a material to be taken into account when considering respective petitioner/'s claim. Therefore, the decision arrived at by the respondents herein is contrary to the afore said Government Orders and accordingly, the same is vitiated in law.

12. In the above said circumstances, we are of the considered opinion that the impugned orders suffer from legal infirmity and accordingly, we set aside the same. We remit both the matters to the respondents for fresh consideration. In the light of the above Government Orders, the concerned authorities shall look into the same and pass orders afresh in accordance with law, after giving an opportunity of hearing to the parties concerned. Both the writ petitions stand disposed of accordingly. Connected miscellaneous petitions are closed. There shall be no orders as to the costs.