(2013) 11 MAD CK 0059

In the Madras High Court

Case No : Writ Petition No. 20204 of 2013 and M.P. No. 1 of 2013

P. Prasanth represented by his father and natural guardian B. Perumal — APPELLANT

Vs

The Secretary, Selection Committee and The Revenue Divisional Officer, Dharmapuri — RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0059

Hon'ble Judges : R. Sudhakar, J;Pushpa Sathyanarayana, J

Bench : Division Bench

Advocate : M. Ravi, for the Appellant; A.L. Somayaji, Advocate General assisted by Mr. S.P. Prabhakaran, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. This Writ Petition is filed praying to issue a writ of Certiorarified Mandamus, calling for the records from the second respondent relating to the

impugned proceedings dated 10.07.2013 in Nee.Mu. No. 3738/2013/A4 and quash the same and further direct the 2nd respondent to issue

Kurumans Community Certificate to the petitioner, based on the official proceedings in Na.Ka.A5/123/2008 and pass such other orders it may be

deemed fit. Heard Mr. M. Ravi, learned counsel appearing for the petitioner and Mr. A.L. Somayaji, learned Advocate General assisted by Mr.

S.P. Prabhakaran, learned Additional Government Pleader, appearing for the respondents.

2. Petitioner''s father claims to be belonged to Kurumans Community which falls under Scheduled Tribes Community. Petitioner''s father has made

an application for issuance of Scheduled Tribe Community certificate for his son minor P. Prasanth and daughter P. Prabavathi on 21.6.2012 to

the second respondent. In response to his application, a letter was addressed to the petitioner on 11.7.2012 stating that for enquiry the matter has

been sent to the Tahsildar. It is the case of the petitioner''s father that in the meanwhile, Revenue Inspector has forwarded his recommendation to

the Tahsildar that the request of the petitioner''s father is genuine and it can be granted. It is also the claim of the petitioner''s father that some of his

relatives hold with the certificate of Kurumans (ST Certificate). The Tahsildar has also given his report to the Revenue Divisional Officer in

Proceedings Na.Ka.11652/2013/A2 dated 9.7.2013 on which reliance was placed by the Revenue Divisional Officer to decline the claim of the

petitioner. In the impugned proceedings, the Revenue Divisional Officer relies upon the report of the Tahsildar in extenso. The final conclusion of

the Revenue Divisional Officer is that on the basis of the report of the Tahsildar, Dharmapuri, the school records produced by the father of the

petitioner, the culture, customs, traditions and trait were verified with regard to the petitioner and it is found that in the village Mittathinna Alli, there

are no kurumans. Petitioner''s father for the purpose of getting educational benefits is claiming that he belongs to kurumans community. The

Revenue Divisional Officer, has therefore, held that the petitioner does not belong to kurumans community (ST) and rejected the application of the

petitioner''s father. This is assailed by the petitioner''s father stating that the statement made by the Village Administrative Officer, which is in favour

of the petitioner has not been considered. Whereas the report of the Tahsildar has been relied upon in extenso for the purpose of declining the

request of the petitioner''s father.

3. A counter-affidavit has been filed by the second respondent reiterating the stand taken in the impugned proceedings.

4. We find that the power to grant the ST Community Certificate has been given to the Revenue Divisional Officer by virtue of G.O.Ms. No. 2137

Adi Dravidar and Tribal Welfare Department dated 11.11.1989 and it reads as follows:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Scheduled Tribes Issue of Community certificate to persons belonging to

Scheduled Tribes Authorising Revenue Divisional Officers instead of

Tahsildars Orders issued.

ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT

G.O.Ms. No. 2137

Dated: 11.11.89

Read Again:-

1. G.O.Ms. No. 1201, Social Welfare Department, dated 31.5.85.

2. G.O.Ms. No. 877, Adi Dravidar and Tribal Welfare Department dt. 6.6.89.

Read the following:

1. From the Collector, Madurai, D.O. No. 2576/89 dt. 27.7.89.

2. From the Special Commissioner and Commissioner of Revenue Administration, Madras, Lr.Q2/72319/89, dated 19.8.89.

3. From the Govt. of India, Ministry of Welfare, New Delhi, Lr. No. 12017/5/89 SCD(R/Cell), dated 28.9.89.

ORDER

In the Government Orders read above, Government issued orders authorising the Revenue Divisional Officers, instead of Tahsildars, to issue

community certificates to the applicants belonging to Kondareddis, Malai-Vedan, Malaikuravan and Malai Pandaram communities included in the

list of Scheduled Tribes, for the purpose of seeking employment under both the Central and the State Governments.

2. The Collector, Madurai has suggested that the Revenue Divisional Officers may be vested with the power to issue community certificates in

respect of all communities included in the list of Scheduled Tribes, in order to avoid misuse of concessions by obtaining false certificates. The

Special Commissioner and Commissioner of Revenue Administration has also supported the above suggestion.

3. The Government of India were addressed for their concurrence on the above proposal. They have no objection to implement the above

proposal.

4. The Government direct that the community certificates in respect of all communities included in the list of Scheduled Tribes, for the purpose of

appointments in Public Services under Central and State Governments, Public

Sector Undertakings, Quasi Government, institutions, etc., shall

hereafter, be issued only by the Revenue Divisional Officers.

5. The Collectors are requested to issue suitable Instructions in this regard, to all concerned.

6. The receipt of this Government Order may be acknowledged. (BY ORDER OF THE GOVERNOR)

Sd/- xxx

Secretary to Government

To

The Special Commissioner &

Commissioner of Revenue Administration,

Madras-6

All Collectors,

xxxx

xxxx

/true copy/

Sd/-xxx

Section Officer

5. In furtherance to the above Government Order, the Principal Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai

has issued Circular in Letter No. 8639/CV.1/2010-1 dated 3.05.2010 to all the Revenue Divisional Officers/Sub Collectors of all Districts. For

clarity we extract the Circular as such:-

I am extremely happy to write to you at this juncture to invite your attention to a vital area of issuance of Community Certificate to the Schedule

Tribes in this State.

2. In Tamilnadu, the population of the Scheduled Tribe is 6.51 lakhs as per the Census of 2001, i.e., 1.04% of the State''s total population

comprising 38 sub-groups.

3. As per the existing guidelines, the Revenue Divisional Officers/Sub-Collectors are vested with the powers of issuance of Scheduled Tribe

Community Certificates to the tribal people after conducting due enquiry, Tahsildars are now ''NOT'' empowered to do so. Therefore, it is one of

the important assignments bestowed upon you as the Revenue Divisional Officers/Sub-Collector of the division in the district to help Scheduled

Tribe people to seek Community Certificate so as to enable them to seek advantages of various schemes initiated by the Government for their

socio-economic and educational development.

4. I shall be happy, if you could find out the exact pendency of applications seeking Scheduled Tribe Community Certificates in your office and

then to enquire those applications by conducting spot enquiry and to verify documentary evidences before arriving at your decision whether he/she

belonged to Scheduled Tribe-Community (?) Please do no keep these references pending for long without holding due enquiry & passing of

orders.

5. During such enquiries, following documents/certificates may be verified along with your spot enquiry in the village/town/city etc., though the

following list is not exhaustive:

a. The Elementary/Primary School Admission Register/Record Sheet of the candidate, (if educated)

b. Secondary School Leaving Certificate of the candidate or his parents, (if educated)

c. School Transfer Certificates of the candidates & parents (if educated)

d. Entry into the School Admissions & Withdrawal Register when the candidate admitted in first standard,

e. First page of Service Register of a father or mother of the candidate, if employed or retired.

f. Community Certificate issued to the parents of the candidates by Revenue Authority.

g. Sale deed, if any, executed prior to the year 1950 wherein community is expressly mentioned about parents/grand parents, etc.,

6. I am sure by doing spot enquiry with the revenue authorities and the verification of above documents relating to the applicants will help you to

come to the factual conclusion to decide on the community status of the applicants.

6. A reading of the above Government Order and the Circular makes it clear that the Revenue Divisional Officer is the only authority vest with the

power to issue ST Community Certificate after holding due enquiry. It also clearly states that the Tahsildars are now not empowered to do so. It

emphasises the importance of the task assigns to the Revenue Divisional Officers/ Sub Collectors for this purpose. It therefore, follows that under

no circumstances, the Tahsildar or the Village Administrative Officer can make an enquiry with regard to a claim for issuance of Scheduled Tribe

Community Certificates.

7. On the basis of the above Government Order and the Circular issued by the Government, Adi Dravidar and Tribal Welfare Department,

Chennai we have no hesitance to hold that the impugned order passed by the Revenue Divisional Officer lacks application of mind and total

abdication of his functions as envisaged in the Government Order and the direction issued by the Government in its Circular. The entire impugned

order proceeded on the basis of the report of the Tahsildar which power the Tahsildar does not have. The Revenue Divisional Officer/Sub

Collector has failed to exercise his jurisdiction in the manner prescribed in the law. Therefore, the impugned order is set aside and remitted back to

the Revenue Divisional Officer to proceed for holding fresh enquiry on all aspects of the case on merits and decide the claim as expeditiously as

possible preferably within a period of six weeks from the date of receipt of a copy of this order.

8. We further directs all the Revenue Divisional Officers/Sub Collectors of all Districts to implicitly abide by the Government Order No. 2137 Adi

Dravidar and Tribal Welfare Department dated 11.11.1989 and the direction issued by the Principal Secretary to Government, Adi Dravidar and

Tribal Welfare Department, Chennai and make an enquiry into the claim of Scheduled Tribes by themselves and not through the Tahsildar or the

VAO or Revenue Inspector as the case may be. The Government is also directed to re-issue the circular which has not been implemented as is

evident from the present case. The Director of Adi Dravidar and Tribal Welfare Department, Chennai who is present here will ensure the strict

compliance of the Circular. It is also clarified that the State Level Scrutiny Committee or any other authority shall desist from considering the

reports from the Tahsildar or Revenue Officer or VAO in a case of claim for issuance of Community Certificate under ST Category. This Writ

Petition is allowed by way of remand as above. No costs. Consequently, connected miscellaneous petition is closed.

