

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.12.2001

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THE HONOURABLE MR. JUSTICE P. SHANMUGAM

Writ Petition No.945 of 1998

M. Kalimuthu .. Petitioner

vs.

The Collector  
Coimbatore District  
Coimbatore. .. Respondent

For Petitioner : Mr. M. Veluswami

For Respondents : Mr. K. Kumaresh Babu,  
Government Advocate.

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: O R D E R

Petitioner seeks to quash the order of the District Collector dated 31.12.1997 cancelling the community certificate obtained by him.

2. Petitioner had obtained a community certificate from the Tahsildar dated 23.8.1973 showing that he belongs to 'Puthirai Vannan' community, which is one of the communities coming under the category of Scheduled Castes. On the basis of certain complaints that the petitioner had obtained the community certificate on misrepresentation, petitioner was called upon to appear for an enquiry and was served with a show cause notice dated 10.1.1995 and he appeared before the District Collector on 7.2.1995 and deposed before him. The District Collector also conducted a personal enquiry on 22.12.1997. After considering the report and after considering the materials placed in the enquiry held by him, he found that the petitioner has not produced any document whatsoever to establish that he belongs to Puthirai Vannan community and consequently found that the petitioner had obtained the certificates dated

24.8.1973, 26.3.1980 and 5.8.1980 by misrepresentation for getting the concessions given by the Government to Scheduled Caste persons and therefore, cancelled all those certificates. The writ petition is against this order.

3. According to the learned counsel for the petitioner, the said order was passed by relying on a secret enquiry and without furnishing a copy of the report to the petitioner and therefore, the order of the District Collector is liable to be quashed. He further submits that the community certificate having been issued in the year 1973 and in the 1980's, it is not open to the District Collector to verify the same at this distant point of time, hold an enquiry and obtain a report behind the back of the petitioner and decide that the community certificate is to be cancelled. He further submits that the District Collector has no authority or jurisdiction to verify the community certificate after the constitution of the District Level Committee and therefore, the impugned order is liable to be set aside.

4. Learned Government Advocate, relying on the counter affidavit filed by the respondent, submitted that the enquiry was conducted only for obtaining a preliminary report as to the genuineness of the community certificate and thereafter, the petitioner was issued with a show cause notice and was given an opportunity to appear for a proper enquiry on the community status of the petitioner and only after affording full opportunity and after the petitioner having failed to produce any records to substantiate his contention that he belongs to Puthirai Vannan community, the District Collector has passed the impugned order. The contention that the report was obtained behind the back of the petitioner cannot be sustained because it is only on the basis of a report that a preliminary enquiry was conducted and only on being satisfied with the same, the District Collector gave the petitioner an opportunity. In the preliminary enquiry, if there was nothing against the petitioner, then no final enquiry would have been conducted. Therefore, it cannot be stated that an enquiry was conducted behind the back of the petitioner. The said enquiry was only for the purpose of satisfying whether an enquiry should be conducted with regard to the genuineness of the community certificate. Since the petitioner's parents were admittedly belonging to Dhobi profession and even in the S.S.L.C., the petitioner was shown as Vannan and in the absence of any other document to substantiate the claim of the petitioner, I am of the view that the order of the District Collector is valid.

5. I have heard the counsel for the petitioner and the learned Government Advocate and considered the matter carefully.

6. It has been laid down by a series of decisions

by the Supreme Court that the burden of proving the community status of the person is on the person who claims such a status.

7. It is seen that the question that a person belongs to a particular caste or community or religion is basically a factual determination. The burden of establishing a social status is always on the person claiming such a status. The Supreme Court, in *DIRECTOR OF TRIBUNAL WELFARE, GOVT. OF ANDHRA PRADESH VS. LAVETI GIRI* (A.I.R. 1995 S.C. 1506), in clear terms, held as follows :

"The High Court wrongly caused the burden of proof on the Department when it squarely rested upon the candidate to prove his caste/tribe according to the procedure prescribed under the rules. It is the duty of the certificate issuing authority to satisfy himself after due verification whether the candidates belong to Scheduled Caste or Scheduled Tribe, satisfies the criteria prescribed by the Government. Though the father managed to gain falsely social status as Tribe and wrongfully and unconstitutionally is in enjoyment of the benefit of employment as a tribe, it is not conclusive. It is not uncommon to corner such benefits because of connivance of officers and it is a known fact that the tribe of such officers has grown over years because the social crimes committed by them is either ignored by the superiors of their class or because they have a protective umbrella from their higher ups."

"In order to establish whether a particular candidate belong to any of the Scheduled Tribe/group diverse ethnic or cultural identities were mentioned. In Annexure I of the G.O. the candidates are required to furnish the particulars prescribed therein. The competent officer was to verify and satisfy himself of the true social status of the candidate before issuing the social status certificate."

"We agree with the learned counsel for the appellant that the High Court adopted a traditional approach of placing burden of proof of social status founded on the entries in Government record etc. and called upon the State to rebut it on the touch-stone of Evidence Act. We are unable to appreciate the view taken by the Division Bench. Burden of proof of social status is always on the person

who propounds it to seek constitutional socio-economic advantages. It is no part of the duty of the State to disprove or otherwise.

The criteria to obtain caste certificate from Nativit Tahsildar/Mandar Revenue Officer/Revenue Divisional Officer is relevant for the reason that Scheduled Tribes generally live in forest areas, mountainous regions and specified pockets and will be known to local officers or easily accessible for verification." (emphasis added)

Each social status claim has to be independently considered. Simply because the father had been issued with certificates, it does not automatically entail his other relatives to get the certificates. As has been noticed by the Backward Class Commission and the Supreme Court, there are large scale fake claims and many go unnoticed without verification. Time has come to evolve a better system even at the initial stage of issue of certificates with the assistance of a team of officials, followed by verification. It is high time that the Government of Tamil Nadu has the matter examined and bring about a legislation with necessary guidelines and rules for identification, examination, verification and the consequence of bogus claims. In the words of their lordships in the case referred to above, "so that the menace of fabricating the false records and to gain unconstitutional advantages by plain/spurious persons could be prevented. Lest they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39."

Normally, the High Court will not interfere with the orders under Article 226 on factual findings as an appellate authority. The Government Order provides for an appeal to the State Level Committee. Hence, the petitioners are to be given liberty to move the appellate authority.

8. Therefore, simply because a certificate is issued by the Tahsildar, it does not mean that he is entitled to rely upon it as a conclusive proof of his community. It is open to the authorities who have issued the certificate, especially the higher authorities of the person who has issued the certificate as Head of the Department of Revenue, to verify the genuineness of the certificate. In this case, it is seen that though the petitioner was granted a community certificate showing him as Puthirai Vannan, which is one of the Scheduled Caste communities, only on the basis of a complaint given by the petitioner's own uncle, an enquiry has been called for. A preliminary report was obtained from the Revenue Divisional

Officer as to the genuineness of the petitioner's community and after being satisfied that a full enquiry has to be conducted on the community status of the petitioner, a show cause notice was issued to the petitioner dated 10.1.1995. On the basis of the show cause notice, the petitioner had appeared before the District Collector and gave a statement. In that statement, he has stated that he is living with his father and mother along with his sister. He further says that since his parents were uneducated and illiterates, in the S.S.L.C. of the petitioner, they have given his community as Vannan which is their family profession ('Kulathozhil'). Thereafter, there was another personal enquiry before the District Collector on 22.12.1997. It is not in dispute that on that date, the petitioner had not produced any document to substantiate his claim that he belongs to Puthirai Vannan, excepting his statement that some of his other relatives have been given community certificates as Puthirai Vannan. No such document is marked in the impugned order.

9. In the absence of any materials or records or evidence to show that the petitioner belongs to Puthirai Vannan community and in the light of the admitted fact that the petitioner was described as Vannan in his S.S.L.C. and his own statement before the District Collector on 7.2.1995 that his parents are doing the family profession of dhobi, it is clear that the petitioner's family belongs only to the washermen community which is known as Vannan. There is a lot of difference between the washermen community, i.e. Vannan and Puthirai Vannan community. Puthirai Vannan is a Scheduled Caste community, which will imply that they suffer a disability equal to that of untouchables. Whereas, the washermen community people, i.e. Vannans do not suffer any such disability. Therefore, when the petitioner's parents were having dhobi business as their family profession, it is unexplained as to how the petitioner had characterised himself as Puthirai Vannan. Petitioner is not in a position to explain the difference between Vannan and Puthirai Vannan community. He is under the impression that Puthirai Vannan is a sub-sect of Vannan community. But, that cannot be the case, because both are entirely different class of communities in themselves.

10. The Report of the Backward Classes Commission, Tamil Nadu of the year 1970, on the status of Vannan (Washermen) is revealing. The claim of the petitioner that he belongs to Scheduled Caste community, in this context, can be looked into in the light of the said report. An extract of their study of Vannan (Washermen) is as follows :  
"Vannan (Washermen) :

(Item No.144 in the list of Backward  
Classes of the Tamil Nadu Public Service  
Commission.)

(Item No.150 [Vannan (Agasa, Madivala, Ekali, Rajakula, Veluthadan, Rajaka] in the list of Backward Classes, Notification issued by the Department of Backward Classes and Item No.56 in the list of Backward Classes of the Department of Backward Classes.)

This is one of the communities from which massive representation was received by the Commission. Almost at every place we visited whether district headquarters or an interior village there was always a deputation from this community. In addition to numerous replies to the questionnaire, some of which were printed oral evidences were also tendered by many. Among written representations mention should be made of the following :-

- (1) The Secretary, Tamil Nadu Salavai Thozhilalar Sangam, Madurai District.
- (2) Desiya Thozhilalar Sangam, Washermen Federation of Arkonam.
- (3) Coimbatore District Salavai Thozhilalar Sangam.
- (4) Salem Washermen's Federation and Conjeevaram Town Washermen's Association.

There is not a single village without one or two families of washermen and every small town will have about 50 to 100 houses, and population in the cities can be reckoned in thousands. There are statewide sangams as well as local sangams, to look after the interest of these people and there is a fortnightly journal, 'Salavai Sangam' brought out to educate and unite the washermen. Excellent oral evidences were tendered by their representatives at Madras, Conjeevaram, Madurai, Vellore and Coimbatore.

During our district tours we also visited certain areas of their chief concentration of which particular mention should be made of Vaigai bank in Madurai town and Mayaru in Mettupalayam town. In Madurai more than 1,000 families live in a cluster of huts on the river side where the sanitary conditions are very poor. During heavy rains, they complained that the whole area would be inundated. Construction of housing colonies for washermen in such places must receive attention without delay.

There are various branches or sub-castes among them and it cannot be said that there is complete intermixing. But, to whatever

sub-caste they belong, their main occupation is washing clothes. The sub-division amongst them is sometimes based on the castes to whom they are supposed to serve or not to serve. The representation received at Madurai gives sub-caste as Irunguga , Pandi Telungar , Muhamadiar .

This of course does not include the washermen who serve habitually the Harijan class.

Another representation gives the sub-division as Maruthanattu Vannan

Jetty Vannan , Pandya Vannan , Panikka Vannan and Puthirai Vannan

Some of the representations put their population as anything between 10 to 12 lakhs. According to the 1921 Census, it was 2,49,502 and projected, the present population can be estimated as 4,61,239. In the rural areas they were always treated as a community serving caste, obliged to serve all the people in the village. Very often wages even now are paid in kind once or twice a year, according to a rate fixed perhaps generations ago. The main grievance of the Dhobis in rural areas is that these traditional wages are low and that they are compelled to perform certain duties which are considered to be very mean. It was represented that even to-day the Dhobies are subjected to social discrimination. They are expected to wash polluted and disease infected clothes and have to perform several ritual duties of a socially degrading nature. Another grievance which was repeatedly emphasised in many places was that poramboke and village sites by the side of rivers and tanks which they used to occupy for washing and drying clothes are being encroached upon by others. This is a matter to be enquired into, and action taken to restore such sites back to them. They like to be emancipated from these disabilities imposed on them by feudal society. On the economic side many of them complain that they have no house to live and there are no facilities to carry on their avocations. In view of the scattered population there is very little capacity in them for uniting against social oppression and for demanding better wages.

Even in Madras City and towns in districts, their living conditions and earning

capacity have not improved appreciably. One great help provided by the Government in recent years for them is the construction of Dhobi Khanas with assured supply of water and built in facilities. But the number of such Dhobi Khanas is totally inadequate and there is scope for opening up a number of them in various places -- in fact in every manjor Panchayat and Township. Educationing, they complain that they are very backward. It is stated that only less than one per cent of them would have studied upto S.S.L.C. and their children pursuing higher education is rare on account of poor economic conditions and social inhibition. Their request everywhere has been that they should be regarded as Scheduled Castes. The Commission made a reference to other States and the replies received show that in Assam, Uttar Pradesh, Bihar, West Bengal, Orissa and Kerala they are treated as Scheduled Castes. In other States they are treated as a Backward Class only. It does not look as if there is a very good case for going to the Central Government now for including this caste in the Schedule. However, they are in the list of Most Backward Classes and deserve to be given concessions and facilities on a par with the Scheduled Castes.

The main requests made on their behalf are summarised below :

- (1) Loan facilities from the Nationalised Banks on liberal terms to enable them to start laundries,
- (2) Dhobi Khanas with facilities for water supply drying grounds, etc. should be provided for their benefit by all Panchayats and Municipalities,
- (3) Assignment of house sites and facilities for building houses both in rural areas and in towns,
- (4) Right to collect the special earth used by washermen in rural areas without obstruction and hindrance by the local authorities, and
- (5) Application of the Removal or Untouchability Offences Act of 1955 to washermen community also to prevent them from social oppressions.

It is gratifying to note that the Government is contemplating to start a diploma course in Laundry Technology and the commission



fully endorses the idea."

11. In order to support the claim of the petitioner that he belongs to Puthirai Vannan, no documentary, oral or any other material evidence had been placed and therefore, it is clear that the petitioner had obtained a community certificate by misrepresenting that he belongs to Puthirai Vannan community. In the light of the Backward Classes Commission's Report, petitioner cannot be treated as belong to Puthirai Vannan community, which is one of the enlisted Scheduled Caste communities as per the Constitution (Scheduled Castes) Order of 1950.

12. The contention of the petitioner that enquiry should be conducted only by the District Level Committee and not by the District Collector also cannot be accepted. The District Level Committee is also one among the authorities constituted for the purpose of verifying the community certificate as per the judgment of the Supreme Court in MADHURI PATIL VS. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT (A.I.R. 1995 S.C. 94). The said committee is intended to go into such a community certificate issued by the authorities. At the same time, the District Collector is not deprived of his authority of control over his subordinates to verify whether a certificate was obtained by misrepresentation. As the Head of the Revenue Department, he is also entitled to look into the veracity of the certificate issued by his subordinate, namely the Tahsildar.

13. In SAKTHI DEVI VERSUS COLLECTOR OF SALEM (1984 W.L.R. 535) it was held that a community certificate issued shall be valid till it is cancelled. The Division Bench has held in that judgment that it is open to the employer or department to ask the issuing authority or District Collector as the case may be to verify whether the certificate as issued could still valid on materials which have since come before the knowledge that appear to the verification enquiry and place the material. In causing verification, the Collector is bound to follow the procedure as laid down. In the same judgment their Lordships, referring to the General Clauses Act, held that a power to make an order includes the power to rescind it. Hence it empowers the authority who has brought into existence a lawful and valid certificate or his higher authority to cancel the caste certificate. It was further held the Government of Tamil Nadu in their letter dated 7.7.1983 had stated that the Collector can cancel the community certificate issued by a subordinate officer when it is found to be false. As what he has to do under the circumstances bodies/institutions etc., will have to look into the Collector regarding the genuineness or otherwise of the certificate. The procedure followed by him having been specifically stated and the consequences which would fall not only on the acknowledgment but also on the issuing

authority if the caste certificate is proved to be false, there is absolutely no scope to accept the contention that empowered authority would act in an irresponsible manner.

14. It is clear that though the petitioner's parents belong to Vannan community, i.e. washermen community, petitioner had obtained a community describing himself as belonging to Puthirai Vannan community for the purpose of getting the benefits of reservation intended for Scheduled Caste persons and on that basis, he has also entered in service. The power to scrutinise the community certificates is different from the power to cancel the community certificate obtained by wrong representation. The head of the department is empowered to cancel the certificate issued on wrong premises or by misuse of the power to issue the community certificate. The Brochure on 'Reservation for Scheduled Castes and Scheduled Tribes in Services' has found that taking advantage of the slight variations in the descriptions of caste names like Kuruman-Kurumbar, Cholagar-Cholaga, Konda Reddy-Reddy, Kattunayakkan-Nayakkar, etc., it is not uncommon that community certificates are obtained so as to claim the reservation and other educational benefits. In the light of the continuous abuse of these benefits, the Supreme Court, in Madhurai Patil's case, referred to above, directed the scrutiny of all the community certificates. The said process is undertaken by the District Level and State Level Committees. De hors this regular verification, in specific cases where it is brought to the notice of the authorities that a particular certificate has been obtained by wrong representation, it is always open to the authorities to cancel the certificate after giving notice and holding enquiry. It is pointed out in Director of Tribunal Welfare Vs. Laveti Giri, referred to above, that it is not uncommon to corner benefits of Scheduled Caste community certificates because of the connivance of officers and it is a known fact that the tribe of such officers has grown over years because the social crimes committed by them are either ignored by the superiors of their class or because they have a protective umbrella from their higher ups. The Supreme Court refused to accept the traditional approach of placing the burden of proof of social status and directed that it is on the person who propounds to seek constitutional, socio-economic advantages. It is no part of the duty of the State to disprove or otherwise. In order to dealing with the menace of fabricating false records and to gain unconstitutional advantages by plain/spurious persons and to defeat the constitutional objectives of rendering socio-economic justice, it is imperative that the hyper technical approach of procedures and formalities have to be dispensed with. The person who gains an advantage on the

basis of community certificate must be ever ready to establish his claim. Neither the petitioner nor his counsel have established the difference between Puthirai Vannan and Vannan communities and that there is a marked difference between these two communities. One is a Scheduled Caste community and the other one is not. The petitioner has miserably failed to establish his status inspite of sufficient opportunity.

15. For all the above reasons, I do not find any ground warranting interference with the order passed by the District Collector. The writ petition therefore fails and it is accordingly dismissed. No costs. Consequently, W.M.P. No.1376 of 1998 is closed.

11.12.2001

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P. SHANMUGAM, J.

W.P. No.945 of 1998

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