

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	24/07/2017
PRONOUNCED ON	31/07/2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.D.AUDIKESAVALU

W.P.No.16144 of 2016

S.Kaliyappan

.. Petitioner

Vs.

The Sub Divisional Magistrate and
Assistant Collector,
Tirupattur,
Vellore District - 635 601.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari and Mandamus, calling for the records in the order bearing RC.No.A1/2273/2015, dated 22.02.2016 passed by the respondent and quash the same, and direct the respondent to issue "Kurumans" Scheduled Tribe Community Certificate to the petitioner immediately.

For Petitioner : Mr.M.Radhakrishnan

For Respondent : Mr.K.Venkataramani,
Additional Advocate General
Assisted by Mr.Elumalai,
Government Advocate

O R D E R

P.D.AUDIKESAVALU, J.

The Writ Petition has been filed challenging the order bearing RC.No.A1/2273/2015, dated 22.02.2016 passed by the respondent, viz., the Sub Divisional Magistrate and Assistant Collector, Tirupattur, rejecting the request of the petitioner for issuance of Schedule Tribe Community Certificate as belonging to "Kuruman Caste" and for consequential relief.

2. The Government of Tamil Nadu vide G.O.(Ms)No.235, Revenue, [RA3 (2) Department, dated 26.06.2015 on the observations made by the Madurai Bench of Madras High Court in the order dated 05.02.2015 in W.P.(MD)No.1355 of 2015 to provide at least one appeal remedy for factual adjudication, had constituted an Appellate Authority, viz., the District Collector, to hear appeal against orders of Revenue Divisional Officer, rejecting the issuance of Schedule Tribe Community Certificate. In pursuance of the observations of the Madurai Bench of Madras High Court in W.P.(MD)No.3708 of 2016, the Government of Tamil Nadu vide G.O.(Ms)No.147, Revenue [RA-3(2)] Department, dated 17.03.2016, had provided for revision before the State Level Scrutiny Committee against the orders of the District Collector in appeals rejecting the issuance of Scheduled Tribe Community Certificate by the Revenue Divisional Officer.

3. When the availability of the aforesaid effective alternative remedy to pursue the grievance projected by the petitioner in this Writ Petition was pointed out, the learned counsel appearing for the petitioner contended that no cognizance of the aforesaid Governmental Orders could be taken as according to him, they were in breach of the directions issue by the Hon'ble Supreme Court of India in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development, Thane and others [AIR 1995 SC 94] which has been held to be having the effect of a statute in Dayaram v. Sudhir Batham [(2012) 1 SCC 333]. In support of that contention, he cited two decisions of the Division Bench of this Court in A.Subramanian Vs. The Revenue Divisional Officer, Sivakasi [Order dated 19.01.2010 in W.P.(MD)No.13733 of 2009] and G.Anandan Vs. The Sub Collector, Tirupattur, Vellore District [Order dated 31.01.2012 in W.P.No.23427 of 2011], wherein relying on Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development, Thane and others [AIR 1997 SC 2581], it was held that there was no question of any appeal to the District Collector against the order of the Revenue Divisional Officer rejecting the Scheduled Tribe Community Certificate and the correctness of such orders has to be considered by the State Level Scrutiny Committee.

4. This Court is unable to countenance the aforesaid contention of the learned counsel for the petitioner for the simple reason that the aforesaid decisions of the Division Bench of this Court were prior to the issuance of the aforesaid Government Orders, creating the forum for appeal and revision. Inasmuch as the petitioner has not questioned those Governmental Orders in the manner known to law, it is not open to him to contend that the existence of those Governmental Orders would have to be ignored. Moreover, the directions in Kumari Madhuri

Patil and another v. Additional Commissioner, Tribal Development, Thane and others [AIR 1995 SC 94] as modified by the subsequent order in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development, Thane and others [AIR 1997 SC 2581], admittedly provides for an appellate remedy against the orders of rejection of Scheduled Tribe Community Certificate. The creation of an intermediate forum to approach the District Collector by way of appeal against the order of the Revenue Divisional Officer before filing revision before the State Level Scrutiny Committee, does not in any manner cause prejudice to the petitioner and on the other hand, it provides an additional opportunity to the petitioner to establish his claim, which is certainly beneficial to him. Having regard to the fact that the State Level Scrutiny Committee is presently confronted with paucity of time to complete the verification of the Scheduled Tribe Community Certificates of about 3000 persons in the State, it would not be practicable to burden the State Level Scrutiny Committee to hear such appeals, which would have to be disposed in a time bound manner. Hence, it is absolutely within the wisdom of the State Government falling within the realm of policy making to provide for the appellate remedy at the intermediate level. The decision of the Hon'ble Supreme Court in Dayaram v. Sudhir Batham [(2012) 1 SCC 333] cannot be read out of context in the manner as sought to be interpreted by the learned counsel appearing for the petitioner. It would be useful to refer the following observations of the Hon'ble Supreme Court of India in the aforesaid case, which makes the legal position clear:-

"14. Therefore we are of the view that directions 1 to 15 issued in exercise of power under Articles 142 and 32 of the Constitution, are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine scheduled caste and scheduled tribe candidates secured the benefits of reservation and the bogus candidates were kept out. By issuing such directions, this court was not taking over the functions of the legislature but merely filling up the vacuum till legislature chose to make an appropriate law." '

In Director of Tribal Welfare v. Laveti Giri [AIR 1997 SC 2046], the Hon'ble Supreme Court of India while examining the validity of the Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes Rules for Issue of Community Certificates, 1997 (Draft Rules), which were placed before the Court for approval pursuant to the directions in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development, Thane and others [AIR 1995 SC 94] and Director of Tribal Welfare v. Laveti Giri, [AIR 1995 SC 1506], had observed

as follows:-

"7. Though Shri Rao seeks to contend that notice may be issued to the Central Government and other State Governments to make rules on a par with the above for finalisation of the rules so as to be uniformly applicable throughout the country, we think that we need not undertake such exercises. It would be for the Central Government to appropriately deal with the matter by giving some leverage to the State Governments to modulate the rules conformable to the above law and the guidelines, as far as possible, to suit the conditions prevailing in the State concerned so that they could be worked out in systematic manner without any difficulty in implementation."

(emphasis supplied)

In this backdrop, the aforesaid Governmental Orders cannot be faulted. That apart, this Court in M.Prasanna and another V. The Revenue Divisional Officer, Coimbatore (Order dated 24.07.2017 in W.P.No.24347 of 2014) has elaborately considered the legal position and has arrived at the conclusion that the aforesaid Government Orders are in the "Interest of Public at Large" and hence, cannot be given a go-bye for effectually adjudicating factual aspects of claims for issuance of Community Certificate.

5. For the aforesaid reasons, this Court does not find any justification to entertain the present Writ Petition directly challenging the orders of rejection of Scheduled Tribe Community Certificate by the Revenue Divisional Officer to the petitioner without exhausting the effective alternative remedy by way of an appeal before the District Collector and thereafter, revision to the State Level Scrutiny Committee.

6. This Court is of the view that it would be in the interest of justice that the petitioner is permitted to prefer an appeal against the order of the Revenue Divisional Officer, rejecting the issuance of Scheduled Tribe Community Certificate, before the District Collector, Vellore, within a period of two weeks from the date of receipt of a copy of this order. If such appeal is preferred, the District Collector, Vellore shall consider the same on merits and in accordance with law, after affording full opportunity to the petitioner to prove his claim, within a period of six weeks thereafter and file a report regarding the compliance made before the Registrar (Judicial) of this Court.

7. Before parting in this case, this Court recapitulates to the Government of Tamil Nadu that the directions issued in Kumari Madhuri Patil and another v. Additional Commissioner,

Tribal Development, Thane and others [AIR 1995 SC 94] by the Hon'ble Supreme Court of India were merely for filling up the vacuum till the legislature chose to make an appropriate law as pointed out in Dayaram v. Sudhir Batham [(2012) 1 SCC 333]. The existence of various executive orders by the Government for issuance and verification of Community Certificates in the State of Tamil Nadu has either been not made readily available in the public domain for the information of the stakeholders or has given raise to frequent litigation questioning their validity or applicability on trivial grounds, apart from flooding of litigation for violation of the Governmental Orders when adverse orders are passed against the persons to whom Community Certificate had been issued. In this backdrop, it would be appropriate that earnest and expeditious consideration is given by the State Government for enacting a comprehensive law for issuance and verification of Community Certificates of Scheduled Castes, Scheduled Tribes and other Backward Classes in conformity with the directions issued in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development, Thane and others [AIR 1995 SC 94] and the modifications made in other subsequent judgments of the Hon'ble Supreme Court of India on the subject, which hold the field. It is needless to point out here that the States of Andhra Pradesh, Kerala and Maharashtra have already made necessary legislations in this regard which are now operational. We are confident that such codification would make the procedure for issuance and verification of Community Certificates in the State simple and hassle free and also hasten the process of elimination of bogus Community Certificates from which malady the State is suffering for nearly four decades.

8. With the above observations, the Writ Petition is dismissed. No costs.

After pronouncing orders, Mr.M.Radhakrishnan, the learned counsel appearing for the petitioner made an oral application invoking Article 134-A of The Constitution of India for a certificate under Clause 133(1) of The Constitution of India on the following questions of law:-

(i) Whether this court while passing orders in W.P.No.16144 of 2016 was not bound by the earlier orders of the Division Bench of this Court in A.Subramanian Vs. The Revenue Divisional Officer, Sivakasi [Order dated 19.01.2010 in W.P.(MD)No.13733 of 2009] and G.Anandan Vs. The Sub Collector, Tirupattur, Vellore District [Order dated 31.01.2012 in W.P.No.23427 of 2011] wherein relying on the decision of the Hon'ble Supreme Court of India in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development,

Thane and others [AIR 1997 SC 2581], it was held that there was no question of any appeal to the District Collector against the order of the Revenue Divisional Officer rejecting the Scheduled Tribe Community Certificate and the correctness of such orders has to be considered by the State Level Scrutiny Committee?

(ii) Whether the provision for intermediate appeal to the District Collector (in terms of G.O.(Ms) No.235, Revenue, [RA3 (2) Department, dated 26.06.2015) before filing a revision to the State Level Scrutiny Committee (In terms of G.O.(Ms)No.147, Revenue [RA-3(2)] Department, dated 17.03.2016) is contrary to the directions in Clause (9) of the judgement in Kumari Madhuri Patil and another v. Additional Commissioner, Tribal Development, Thane and others (AIR 1995 SC 94), which requires that the inquiry should be completed within a period of not exceeding two months?

2. We are of the view that the aforesaid questions have been carefully considered by this court and addressed appropriately in the order passed today. Resultantly, we do not find any substantial question of law of general importance that needs to be decided by the Hon'ble Supreme Court of India and the oral application made in this regard stands rejected.

-s/d-
Assistant Registrar (J)

True Copy

Sub-Assistant Registrar

To

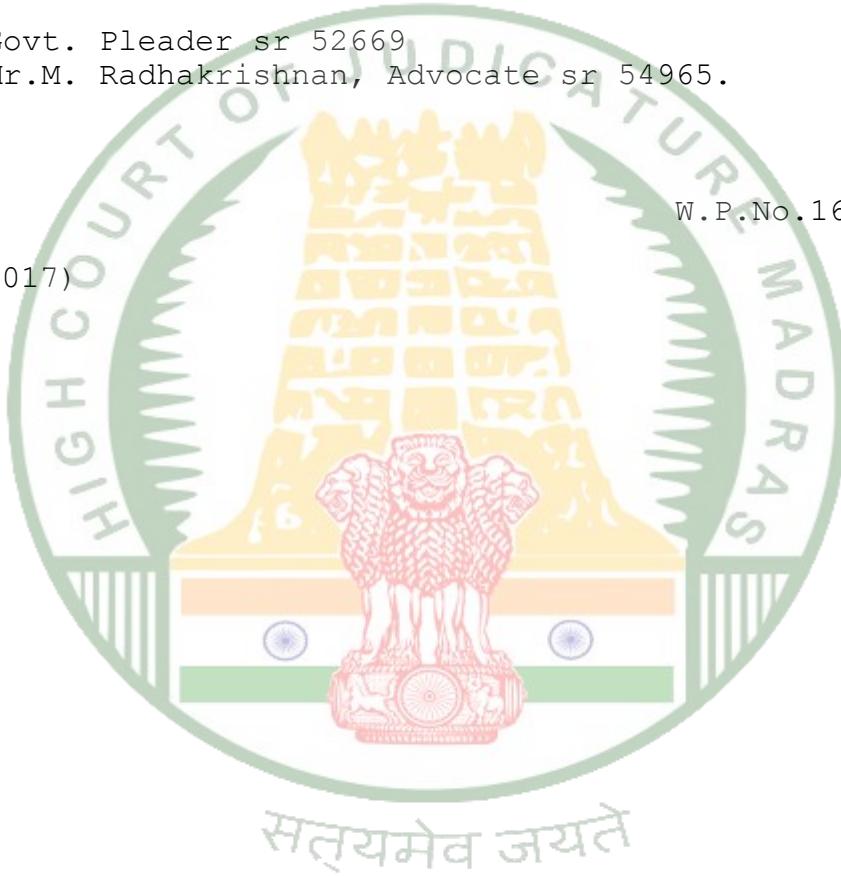
The Sub-Divisional Magistrate and
Assistant Collector,
Tirupattur,
Vellore District - 635 601.

Copy to:

1. The Registrar (Judicial),
Madras High Court,
Chennai.

2. The District Collector
Vellore.
3. The Section officer
Writ Section
High Court, Madras.
4. The Chief Secretary
The Govt. of Tamil Nadu
Fort. St. George
Chennai 9.

+1 CC to Govt. Pleader sr 52669
+1 Cc to Mr.M. Radhakrishnan, Advocate sr 54965.



W.P.No.16144 of 2016

SP(05/09/2017)

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