

(2002) 12 MAD CK 0177

In the Madras High Court

Case No : Writ Petition No. 19128 of 1996 and W.M.P. No. 27801 of 1996

D. Dharmaraj

APPELLANT

Vs

The District Collector, The Revenue Divisional Officer and The
State Bank of India

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2002) 12 MAD CK 0177

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M. Suresh Kumar, for the Appellant; N.G. Kalai Selvi, Special Government Pleader for respondent No. 1 to 2 and K. Sumathy, for the Respondent

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties.

2. In this Writ Petition, the petitioner has challenged the order of the District Collector, Salem, dated 17.10.1996 in reference No. Na.Ka.7215/93/D.10 cancelling the community certificate which had been issued by the Tahsildar, on 25.2.1981.

3. The learned counsel for the petitioner has raised several contentions, including the one relating to the jurisdiction of the Collector to deal with the matter relating to the validity of the community certificate.

4. The learned counsel for the petitioner has submitted that, by judgment dated 2.9.1994, procedure was laid down by the Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , inter alia, relating to the question of issuance of community certificate and cancellation of the same in Paragraph 12(4) to (9) of the said judgment. He has therefore, submitted that after the aforesaid decision was rendered, the question relating to the validity of the community certificate could be gone into only by

the appropriate committee constituted in accordance with the aforesaid decision and not by the Collector.

5. The learned counsel for the third respondent has submitted that the aforesaid decision of the Supreme court has no application to the question of cancellation of the community certificate issued by the Tahsildar, prior to the decision of the Supreme Court. He has submitted that the Supreme Court was only concerned with the question of issuance of certificate and for the said purpose in para 12(1) it had been indicated by the Supreme Court as follows.

"1. The application for grant of social status certificate shall be made to the Revenue Sub Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such Officer rather than at the Officer, Taluk or Mandal level."

6. He has submitted that the question of scrutiny of certificate has envisaged in Para 12(9) is only confined to the certificates issued by the Revenue Divisional Officer or Deputy Collector or Deputy commissioner as the case may be as indicated in Para 12(1) and the aforesaid decision relating to scrutiny of the community certificate is not applicable when such community certificate had been issued by other authorities prior to the aforesaid decision was rendered.

7. The learned counsel for the State has submitted that for the first time, the State Level Committee was constituted on 1.4.1997, and therefore, before 1.4.1997 the Collector has jurisdiction to deal with the matters relating to the issuance and cancellation of the community certificate.

8. The learned counsel for the petitioner has submitted that as a matter of fact in several decisions it has been held that, after the decision of the Supreme Court in KUMARI MADHURI PATIL AND ANOTHER VS. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS, the Collector has no jurisdiction to deal with the matters relating to the issuance and cancellation of the community certificate.

9. The learned counsel appearing for the respondent No.3 contended to the effect that the scrutiny committee as contemplated in the decision of the Supreme Court can go into the question of the validity of the community certificate issued by the Tahsildar prior to the date of the judgment of the Supreme Court is not acceptable. The contention to the effect that the Supreme Court was only issuing the guidelines for the purpose of issuance of Community certificate and subsequent confirmation of such certificate does not appear to be justified. In paragraph No.12(9) the Supreme Court has specifically held that "if after inquiry the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same"

10. The contention to the effect that the power of cancellation is only confined to orders passed by Revenue Divisional Officer and District Collector or Deputy

Commissioner as contemplated in paragraph 12(1) after the date of the judgment of the Supreme Court is far fetched. If such contention would be accepted there would be two different authorities for considering the question of cancellation of such community certificate, one such authority being the Collector who would continue to be the authority for cancellation in respect of certificate issued by the other officers, and the other being the Scrutiny Committee as contemplated in the Supreme Court decision which would be the authority in respect of the certificate issued by the officers as contemplated in paragraph 12(1). There is no logic in making such a submission and to hold that the Collector would be the appropriate authority to decide about the validity of the community certificate issued, prior to the date of the Supreme Court decision, by the Tahsildar or other officers, is likely to create anomalous situation. I am therefore, unable to accept such contention.

11. The learned counsel appearing for the State has raised the contention that prior to 1.4.1997 the Collector had the authority to deal with the question relating to the community certificate as the State Government had not constituted the Committee prior to 1.4.1997 eventhough prima facie such contention is not acceptable, the decision given by the Supreme Court is required to be implemented by all concerned by virtue of Article 141 of the Constitution of India and the decision of the Supreme Court is the law of the land and therefore, it is the duty of the State Government to implement the decision of the Supreme Court and merely because the Government had delayed in constituting the committee, it cannot be said that the cancellation of the community certificate could be effected by the other authorities.

12. In BASWANT VS. STATE OF MAHARASHTRA AND OTHERS JT 2000 (10) SC 280, the community certificate was cancelled by order dated 11.2.1998. Though the Bombay High Court upheld the order of cancellation, the Supreme Court set aside the aforesaid decision of the Bombay High Court by observing as follows :

"In the affidavit in reply filed by the respondents, it has been pointed out that respondent No.1 firstly constituted Caste Certificate Scrutiny Committee consisting of two members only. Hence, the constitution of the Committee was not in accordance with the decision rendered by this Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . Thereafter, the State Government has constituted a new Committee consisting of three members. In this view of the matter, the impugned order passed by respondent No.4, the Caste Certificate Scrutiny Committee is required to be set aside and is accordingly set aside. The appeal is allowed accordingly. No order as to costs."

13. In the unreported decision of this Court in W.P.No.11966 of 1995 the learned Single Judge observed as follows:

It is also the case of the petitioner that the Apex Court in a judgment dated 2.9.1994 reported in AIR 1995 SC 1994 (Kumari Madhuri Patil and another Vs.

Additioanl Commissioner, Tribal Development and others) has issued direction to the respective States to constitute a Committee forthwith to go into the merits of the community certificates issued to the individuals instead of permitting the revenue officials to conduct the enquiry. According to the learned counsel for the petitioner after the said judgment, the first respondent has initiated enquiry proceedings against the petitioner as such the order passed by the 1st respondent is to be quashed.

The learned counsel also placed reliance on number of judgments in support of his contentions, but I feel it may not be necessary to mention all these judgments because the impugned order passed by the 1st respondent is contravening the said judgments besides that the impugned order was passed without application of mind cancelling the community certificate issued to the petitioner's brother. On these grounds, the impugned order passed by the 1st respondent is liable to be quashed and accordingly quashed."

14. In yet another unreported decision of this Court in W.P.No.17568 of 1995, the order of the Collector dated 4.12.1995 cancelling the community certificate dated 8.8.1977 and 27.1.1979 was in question, the learned Single Judge observed as follows.

" Even long prior to that i.e. on 2.9.1994, the Supreme Court of India, in the ruling reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , has held that the cancellation of community certificate has to be considered only by the Scrutiny Committee. That being so, the impugned order which came to be passed long thereafter, cannot be sustained.

The proper course to be adopted by the first respondent is to refer the matter to the Scrutiny Committee. Therefore, the first respondent is hereby directed to refer the matter to the appropriate Scrutiny Committee within a period of two months from today."

15. In K.PRAKALATHAN VS. THE DISTRICT COLLECTOR, TIRUNELVELI KATTABOMMAN DISTRICT AND ANOTHER 2002 W.L.R.380 while considering somewhat similar question I had the occasion to observe as follows.

"A perusal of the earlier order indicates that no direction had been given by the High Court that the matter should be redetermined by the Collector and as such , it cannot be said that there was a specific direction that the Collector was to re-enquire into the matter. In view of the the decision of the Supreme Court cited above, there cannot be any doubt that question relating to validity of the community certificate can be considered by the committee and not by the Collector.

Similar view has been taken by learned single Judge of this Court by order dated 14.8.2001 in writ petition No.16904 of 1995(N. Sethuram Vs. The District Collector, Tirunelveli Kattabomman district and others).

Following the aforesaid decision of the Supreme Court and the order of the learned single Judge, I am of the view that the subsequent order passed by the Collector is without jurisdiction and the matter has to be re-determined by the appropriate authority namely the committee constituted for the purpose."

16. So far as the specific submission of the learned Special Government Pleader to the effect that the Collector had jurisdiction to deal with the matter relating to the validity of the community certificate prior to 1.4.1997 does not appear to have been accepted nor a perusal of the aforesaid decision makes it clear that the above contention of the Special Government Pleader that the Collector had jurisdiction prior to 1.4.1997 does not appear to have been accepted. Moreover, the question has been specifically answered in W.P.No.17635 of 1996, by judgment dated 29.11.2002 where the specific contention raised by the Special Government Pleader has been negatived and it has been held that the Collector's order after the date of decision of the Supreme Court was invalid. It is unnecessary to reiterate the reasonings given in the said decision.

17. For the aforesaid reason I am inclined to allow the Writ Petition and quash the impugned order passed by the District Collector and direct that the matter relating to the validity of the community certificate to be dealt with by the appropriate State Level Committee in accordance with law as expeditiously as possible preferably within six months from the date of communication of this order. There will be no order as to costs. In such view of the matter, the other contentions raised by the learned counsel for the petitioner are not considered and it would be to the parties to raise all contentions before the appropriate State Level Committee. Consequently, the W.M.P. No.27081 of 1996 is closed.