

(2011) 09 MAD CK 0286

In the Madras High Court

Case No : Writ Petition No. 20439 of 2011 and M.P. No. 1 of 2011

E. Bamila

APPELLANT

Vs

The Secretary, Tamil Nadu Public Service Commission, No. 1,
Greens Road, Chennai-6

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167
General Clauses Act, 1897 — Section 10

Citation : (2011) 09 MAD CK 0286

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Mr. R. Yashod Varadan, SC for Mr. R. Sunil Kumar, for the Appellant;
Mr. C.N.G. Niraimathi for TNPSC, for the Respondent

Final Decision : Dismissed

Judgement

1. The writ petition is filed by the Petitioner seeking for a direction to the Respondent Tamil Nadu Public Service Commission (TNPSC) to consider the case of the Petitioner under Backward class community and as per the community certificate submitted by her for direct recruitment for the posts included in the combined engineering services examination vide advertisement No. 247 and also pass orders on the Petitioner's representations dated 18.8.2011 and 26.08.2011.

2. In the writ petition, notice was directed to be issued to the standing counsel for TNPSC Ms. C.N.G. Niraimathi. Accordingly, notice was issued and she had appeared and produced written instructions give by the Under Secretary, TNPSC and also produced an application form submitted by the Petitioner including OMR coding sheet.

3. Heard the arguments of Mr. R. Yashod Varadhan, learned Standing counsel leading Mr. R. Sunil Kumar, Learned Counsel appearing for the Petitioner and Ms. C.N.G. Niraimathi, Learned Counsel appearing for the Respondent TNPSC.

4. It is the case of the Petitioner that she belongs to Backward class community, i.e. Kerala Mudali community which is listed as a backward class by the State Government. She had submitted her application for various posts in the combined engineering services. She had specifically mentioned in the application form that she was Christian by religion and belonged to backward class community. On scrutinizing her application, the Respondent TNPSC was satisfied and the hall ticket was sent to her for writing the written examination on 24.10.2010. She wrote the written test at Chennai. A list of provisionally admitted candidates for the oral test was published. She was selected in the examination and her registration number 00107154 was found place in the list. She was also directed to appear for an oral interview by a notice dated 25.7.2011. On 18.8.2011, she had attended the oral test. She was directed to produce all her original documents at the time of the oral test. When she had appeared and produced all the original documents, instead of the category under backward class community, she was listed along with the other communities, i.e., general category. She had admitted that she had not annexed her community certificate along with the application and it was also reflected in the OMR sheet. She brought it to the notice of the Respondent TNPSC that she belonged to the caste categorized as one of Backward class community. The Respondent had never raised the issue about the non enclosure of certificate. She had produced the community certificate issued by the Tahsildar as she belonged to backward class community. Therefore, she gave a representation, dated 22.8.2011 to accept her backward class candidature on the basis of the community certificate. Since the same was not done and after sending further representation, dated 26.8.2011, she has come forward with the present writ petition.

5. Opposing the prayer of the Petitioner, it was contended by the Respondents that along with application form, instructions to candidates were given, wherein it was indicated that a candidate must produce evidence along with the application form. They must enclose a photostat copy of the certificate. In paragraph 15(f) of the instructions given to the candidates, it was stated as follows:

In the case of an applicant who claims to be a member of SC/SC (A) or ST or MBC/DC or BC (Other than BCM) or BCM, a certificate from the competent authority should be produced.

6. In paragraph 11 of the Commission notification, dated 14.7.2010, it was clearly stipulated that the application received without attested copies of certificates will be summarily rejected. Further, in paragraph 1(vi) of the Commission's instructions to candidates, it was stated as follows:

The filling in of the application form correctly and completely and sending it with all the documents as required in the Commission's "Notification/ Advertisement" / Brouchure and "Instructions etc., to Candidates" form part of the test for selection. Failure in this regard will entail summary rejection of the application.

7. Though the Petitioner claims that she belongs to Christian Backward class community, neither she enclosed the attested copies of community certificate nor in column 26 of the application related to enclosures, she had mentioned about any enclosure of certificate. Since the Petitioner had paid necessary examination fees and also within the age limit for other categories and also considering the other category, she was permitted to write examination. She was also allowed to participate in the interview as a general candidate instead of rejecting her earlier. The Petitioner cannot now at this moment claim that she belonged to backward class community when she never made an appropriate application.

8. Mr. R. Yashod Varadhan, learned Senior Counsel appearing for the Petitioner referred to a judgment of the Supreme Court in Dolly Chhanda Vs. Chairman, JEE and Others, for contending that while there is no want of qualification on the part of the Petitioner, no rigid principle can be applied and every infraction of rule need not necessarily result in rejection. He relied upon the following passage found in paragraph 7 of the said judgment, which reads as follows:

7...There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weight age, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

9. The learned Senior Counsel also relied upon a judgment of a division bench of this Court in Dr. A. Rajapandian Vs. State of Tamil Nadu and The Deputy Secretary, Tamilnadu Public Service Commission, , wherein this Court has held that the procedure intended is to facilitate enforcement of substantive right and not to defeat the substantive right and the procedure is hand-maid of justice and not to defeat justice. But, however this Court on the basis of the factual situation of that case made a distinction from the earlier case passed by the division bench in Dr. M. Vennila v. Tamil Nadu Public Service Commission reported in 2006 (3) CTC 449. In that case, the earlier division bench in paragraph 15 held as follows:

15. As rightly pointed out, the filled in application must be in order and intact in all aspects and before filling up the application form, the applicants are supposed to go through the notification, instructions, etc. to candidates, information brochure and OMR application form properly in order to ensure that the particulars and information which are required to be furnished are duly furnished and to see that the documents are enclosed along with the application form as per requirements.

10. Applying the said principle, this Court had rejected 68 applications as found in paragraph 13 of the judgment, which reads as follows:

13. In the light of the decision of the Division Bench, it is clear that the Commission was justified in rejecting the Applications of the Petitioners for not signing the OMR application and/or the declaration column, etc. This batch of Writ Petitions, numbering 68, is, therefore, liable to be dismissed.

Only for the remainder persons, because there was confusion in understanding the full import of the application, an exception was shown.

11. The learned Senior counsel also referred to another judgment of the division bench in Tamil Nadu Public Service Commission v. M. Chitra and Anr. reported in 2010 (2) MLJ 146. But, in that case, there was a delay in issuing the certificate by the competent authority. In paragraph 20, the division bench had observed as follows:

20. It is true that the first Respondent did not produce the Community Certificate before the provisional list of selected candidates was finalized. On this score, in normal course, applying the principles stated above, this Court would have held that the claim of the first Respondent for consideration under the reserved quota for Scheduled Tribe should be rejected. But, we do not propose to do so, for the simple reason, as we have elaborately narrated above that the first Respondent cannot be blamed for the belated issuance of Community Certificate. As we have already stated, the request of the first Respondent for issuance of Community Certificate was pending before the Revenue Divisional Officer for more than a decade. It is only in these special and peculiar circumstances, we are inclined to sustain the Order of the learned Single Judge.

(Emphasis added)

12. Only special circumstances was pleaded for allowing the candidate, but that is not the case in the present circumstances. The Petitioner in the OMR application form did not even refer to any enclosure that she has enclosed the community certificate. It is also not her case that she had submitted the community certificate as a proof of her claim. Therefore, the Respondent TNPSC has not committed any irregularity in refusing to treat her under the reserved category. Having understood the instructions given to the candidates, the Petitioner has taken her own risk by not producing the certificate. In the present case, it is not as if the application was rejected. On the contrary, she was considered under general category and that only because of that consideration, she cannot get any extra lenience by now asking this Court to direct the TNPSC to accept her community certificate at this stage, thereby issuing a direction contrary to the instructions published by the TNPSC.

13. Very recently, the Supreme Court in Mohd. Ayub Vs. State of U.P. and Others, had considered the submissions of certificate beyond time limit prescribed and that applying the principle under the General Clauses Act, the Supreme Court

held that if the last date happened to be holiday and in that case, the birthday of Dr. Ambedkar was on 14th April, 2003, the Supreme Court applying the General Clauses Act held that if in such case, the certificate submitted on the next day can be considered. The relevant passages found in paragraphs 7 to 10 may be usefully extracted below:

7. It is common ground that the last date of submitting the application along with medical certificate was 14-4-2003, which was a gazetted holiday on account of Ambedkar Jayanti. The application of the applicant was incomplete only because it did not contain the medical certificate. The explanation of the Appellant is that in view of the 14th April being a holiday and the previous days were also holidays, he could not obtain the medical certificate and he obtained it on the very next day i.e. 15th April and submitted it on that day itself. In these circumstances, his application should have been considered on merit in view of the principles laid down in Section 10 of the General Clauses Act.

8. Section 10 of the General Clauses Act has come up for consideration in various cases before this Court and also different High Courts. In *Harinder Singh v. S. Karnail Singh*^{1a} a four-Judge Bench of this Court explained the object of Section 10 very lucidly. The learned Judges have held as under: (AIR 273, 5)

5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.

The decision in *Harinder Singh*¹ was rendered in the context of an election dispute but the general principles explained therein apply to all cases.

9. Even while construing the provisions of Section 167 of the Code of Criminal Procedure, 1973, this Court accepted the same interpretation in respect of Section 10 of the General Clauses Act. [See *Chaganti Satyanarayana v. State of A.P.*² SCC 154 30 of the Report].]

10. The learned Judges in *Chaganti*² accepted the interpretation of Section 10 in *N. Sureya Reddy v. State of Orissa*³ and held that the principle enunciated in Section 10 of the General Clauses Act should be invoked on consideration of justice and expediency. Rather recently in *HUDA v. Dr. Babes war Kanhar*⁴ this Court held that there is a general principle that a party, prevented from doing an act for some reasons beyond his control, can do so at the first subsequent opportunity. The learned Judges further elaborated by saying that the underlying object of Section 10 is to enable a person to do what he should have done in a holiday, on the next working day. The learned Judges held that the said principle is based on the doctrine that law does not compel the performance of an impossibility. In saying so, the learned Judges relied on an old decision of the Calcutta High Court in *Hossein Ally v. Donzelle*⁵. This Court is in respectful

agreement with the aforesaid principles.

14. But, that is not the case in the present circumstance. It is only during long after the written test and only during the oral interview, the Petitioner had produced the certificate. Therefore, the TNPSC was right in refusing to accept the same. When the TNPSC is an recruiting agent for several posts and when they received applications in million (not for the post for which the Petitioner had applied, but for the post such as Village Administrative Officers and Junior Assistants), it will be impossible to grant any exemption and if granted it will derail the process of compilation, scrutiny and rejection of such applications. Hence the Petitioner has not made out any case for entertaining the writ petition. Accordingly, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.