
(2015) 08 MAD CK 0210

In the Madras High Court

Case No : Writ Petition (MD) No. 9443 of 2015

E. Parasupillai

APPELLANT

Vs

The District Collector, Kanyakumari District

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0210

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : N. Sivakumar, for the Appellant; S. Kumar, Additional Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J—This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent dated 15.05.2015 and quash the same and consequently allot a house to him as per the proceedings of the respondent in Roc. No. A5/2297/2012 dated 12.09.2012.

2. The petitioner herein is a differently abled person. He made an application to the Block Development Officer, Thoivalai Taluk, Boothapandi, for allotment of a house under the Free Housing Scheme by the State of Tamil Nadu through the Esanthimangalam Village Panchayat. The said Block Development Officer had rejected the claim of the petitioner on two grounds stating that the petitioner is employed as a daily wager in the Hindu Religious and Charitable Endowment Department and he owns a concrete house. However, since the petitioner did not own house and his job is in the nature of daily wage in the Hindu Religious and Charitable Endowment Department, he challenged the rejection of the respondent by filing a revision petition. Since the said revision was not heard of, the petitioner filed a Writ Petition in W.P.(MD). No. 6198 of 2012 seeking to consider the revision of the petitioner and select him as a beneficiary under the Free House Scheme. The said Writ Petition was taken on file and an order of

interim direction was given to the respondents to reserve one house, pending the Writ Petition. Finally, the said Writ Petition came to be disposed of with a direction to dispose of the said revision within a period of three weeks from the date of receipt of the copy of the order. Accordingly, the respondent considered the revision and rejected the claim of the petitioner on four grounds, which are narrated at paragraph No. 3 of the affidavit, is extracted below:--

"(I) No application was given for the year 2011 and 2012.

(II) approval of grama saba not obtained.

(III) I am not in the BBL List.

(IV) I am employed as a daily wage in the Hindu Religious and Charitable Endowment Department."

3. Aggrieved over the rejection, again, the petitioner moved a Writ Petition in W.P. (MD). No. 14852 of 2014 and this Court, on 25.03.2015, in a detailed order, allowed the said Writ Petition by setting aside the order passed by the respondent in his proceedings dated 14.03.2013 and remitted the matter to the respondent for passing appropriate orders after giving notice to the petitioner. Though the said order is on merit and virtually, this Court had allowed the Writ Petition in W.P.(MD). No. 14852 of 2014, it was a bolt from the blue for the petitioner that once again his claim was rejected on the ground that the service of the petitioner was regularised in the Hindu Religious and Charitable Endowment Department and thus, he is not entitled to get a Free Housing Scheme. Challenging the said rejection of the respondent, dated 15.05.2015, the petitioner has preferred the present Writ Petition.

4. The learned counsel for the petitioner submitted that at the time of making application the petitioner was fully eligible to get a house under the Scheme. Just because the petitioner service was regularised in the Hindu Religious and Charitable Endowment Department, the said reason cannot be attributed against the petitioner so as to negate the claim of the petitioner in one way or the other. Further, he submitted that the regularization of service in a Government is part and parcel of it, which can never be the basis for the rejection of the claim of the petitioner. Further, he submitted that though the petitioner virtually succeeded in W.P.(MD). No. 14852 of 2014, he could not reap the benefits of the said order on account of the present impugned order passed by the respondent.

5. The learned counsel for the respondent through his detailed counter affidavit submitted that the petitioner is not eligible to get a free house under the Chief Minister's Solar Powered Green House Scheme for the simple reason that the petitioner is a regular employee of the Hindu Religious and Charitable Endowment Department.

6. I have heard the submissions made on either side and perused the materials available on record.

7. Before venturing into the matter, it is more relevant to extract the penultimate paragraph of the order dated 25.03.2015 made in W.P.(MD). No. 14852 of 2014, for better appreciation of the facts:--

"5. At the outset, the petitioner is a physically disabled person with 50% disability. As rightly pointed out his family was originally treated as BPL family. No doubt the petitioner's name does not find place but his mother's name find place in the BPL list. In the rejoinder, he has specifically pointed that very many persons have been wrongly allotted viz., 1) Ambika 2) Achirvatham 3) Sreeja 4) Subramani Asari 5) Esther 6) Arumugadesigarr 7) Sankaranarayanan 8) Kanniammal and 9) Sasthankutty Pillai which he has also stated in the original petition. In fact, this is the reason he has been specifically excluded from the list of beneficiaries. Further, as rightly pointed out, he had originally applied to the Panchayat President and it is for the Panchayat President to place it before the Grama Sabha and when he has wantonly and wilfully not placed it before the Grama Sabha merely because his name was not considered by the Grama Sabha, there cannot be a rejection. In the order, the authority concerned has stated another reason that the petitioner has not even applied. It is contrary to the very contention raised by the second respondent that the President has not placed it before the Grama Sabha. Therefore, unless he applied, where is the question of rejection. Further, it is admitted fact he has filed it before the President. Thereafter only the reason which has been stated is he is not eligible as he is working in Devasam Board. But, according to the petitioner, he was working as a daily wager that too he is getting Rs. 100/- per day that has to be considered. In fact, in the counter, the Block Development Officer stated that he had recommended to include his name. But, why it was not included and what was happened thereafter, has not been explained. It is also not explained in the counter, what was the action taken insofar as the various irregularities allegedly committed in allotting the house to various other persons. It is also the contention of the petitioner that because he has pointed out the irregularities, he has been specifically omitted and not granted. Therefore, the order passed by the authority concerned is bereft of materials and the reasoning given is also not sound enough. Even otherwise, as he is a physically handicapped person, under the physically handicapped quota whether his name was considered or not has not been discussed and no order has been passed to that effect. Under these circumstances, the impugned order is liable to be set aside and accordingly the same is set aside. The matter is remitted back to the authority concerned and the authority concerned is directed to look into the various irregularities pointed by the petitioner and thereafter, pass appropriate orders after giving notice to the petitioner"

8. A perusal of the order would show that this Court has specifically observed in the earlier order that the petitioner is a differently abled person and in that respect, the respondent was directed to discuss on it and pass orders. However, the said aspect has not at all been discussed by the respondent in this impugned order also. In fact, in the counter, in paragraph No. 7, the respondent has

emphasised the fact that while preparing the list of beneficiaries, priority should be given to differently abled, widows, destitute and deserted woman, women headed families, transgender, HIV/AIDS/TB affected who are certified by the Deputy Director (health services) concerned and victims of natural calamities such as fire, flood etc. Further, it is averred that priority should also be given to the mentally challenged person. When the respondent himself admitted the fact that priority should be given to the differently abled person, without considering the vital aspect, once again, the impugned order came to be passed by the respondents. Another lacuna pointed out by the respondent for non-consideration of the claim of the petitioner is that his service is regularised at the Hindu Religious and Charitable Endowment Department and therefore, he cannot be brought under the below the poverty line. But the fact remains that at the time of making application, admittedly, the petitioner was unemployed and his mother was brought under the category of Below the Poverty Line (BPL). Hence, the subsequent factor cannot be taken into account. In fact, in an earlier occasion, this Court, considering the facts and circumstances of the case and the plight of the petitioner, directed the respondents in M.P.(MD). Nos. 1 & 2 of 2015 in W.P. (MD). No. 6198 of 2012, dated 01.08.2012 to reserve one house for the petitioner. Accordingly, the respondents also reserved a house through Roc. No. A5/2297/2012, dated 12.09.2012. Therefore, the respondent cannot go on improving the reason one after another by thwarting the claim of the petitioner, that too, for a differently abled person, knocking this Court since 2012 incessantly.

For the foregoing reasons, the order impugned in this Writ Petition stands set aside and this Writ Petition is allowed as prayed for, within a period of four weeks from the date of receipt of a copy of this order. No costs.