

(1998) 11 MAD CK 0167
In the Madras High Court

G. Muthulakshmi

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Citation : (1999) 2 MLJ 147

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Judgement

P.D. Dinakaran, J.—Heard all the parties.

2. In the above writ petition, the petitioner has prayed for issuance of certiorarified mandamus calling for the records of the first respondent dated 20.4.1992 and bearing No. Na.Ka.Adi.8-126294/87 and quash the same and consequently direct the first respondent to issue a community certificate stating the petition belongs" to the Malaikuravan community.

3. In brief, the petitioner who was appointed as a temporary C & W Khalasi in the year 1987 was asked to produce community certificate for the vacancy reserved for scheduled tribes as she claims that she belongs to Malaikuravan community which is notified as one of the scheduled tribes community. In pursuant to her appointment, the third respondent conducted an enquiry to verify the community of the petitioner and accordingly the petitioner was asked to appear before the third respondent on 7.11.1981 and on which date she produced the following evidence to show that she belongs to Malaikuravan community:

(1) Community certificate dated 8.1.1985 issued to her certifying that she belongs to Malaikuravan community.

(2) Community certificate dated 24.8.1981 certifying that her husband Gnanavan belongs to Malaikuravan community.

(3) Community certificate dated 9.4.1986 certifying that her father-in-law also belongs to Malaikuravan community, and

(4) Community certificate dated 13.9.1991 certifying that her brother-in-law belongs to Malaikuravan community.

However, the petitioner was again asked to appear before the third respondent on, 19.11.1990 with a direction to produce the original community certificate dated 8.1.1985 issued by the third respondent and any other document prior to 1950 and also to produce the Birth extract or transfer certificate issued by the educational institution to show that her father and mother belong to Malaikuravan community. However, the respondents refused to rely upon the documents produced by the petitioner on the ground the petitioner could not produce any documentary evidence registered prior to 1950 and therefore, refused to rely upon the document produced by her which are obtained subsequent to 1991 holding that they are nothing but after thoughts. Therefore, it appears that the Revenue Divisional Officer in his report dated 30.1.1982 came to the conclusion that the petitioner does not belong to Malaikuravan community. On the basis of the said report of the Revenue Divisional Officer dated 30.1.1982, the Collector by his proceedings dated 20.4.1992, which is impugned in this writ petition, cancelled the original community certificate issued to the petitioner on 8.1.1985. Hence, the above writ petition.

4. Mrs. Radhikakrishnan, learned Counsel appearing for the petitioner contends that the Government themselves by their proceedings dated 8.3.1983 satisfied that it is difficult to produce documents by Malaikuravan community people as they are nomadic always moving from one place to other. Therefore, the authorities were directed to hold local enquiry before issuing community certificate to the persons who claim that they belong to Malaikuravan community. Learned Counsel for the petitioner contended that no local enquiry was conducted by the second and third respondents before passing the impugned order. She further contended that the impugned proceedings also violates the principles of natural justice as the report of the Revenue Divisional Officer dated 30.1.1982 was not furnished to the petitioner; the Tahsildar refused to reply upon the community certificates issued to her husband, father-in-law and brother-in-law, which were not cancelled by the authorities in the manner known to law; the respondent has failed to appreciate the fact that the parents of the petitioner are no more and in any event the direction of the respondents to produce the documents registered prior to 1950, is unreasonable and contrary to the Government letter dated 8.3.1983 where the Government itself satisfied that in the case of Malaikuravan community people, it is difficult to insist the production of documents as they are nomadic always moving from one place to another, and the finding that the document produced by her, namely, the community certificate issued to her, to her husband, father-in-law and brother-in-law cannot be relied upon as they are nothing but an after thought, is also arbitrary.

5. Learned Counsel appearing for the respondents placing reliance on the averments stated in the counter affidavits contends that since the petitioner

herein has not applied for the perusal of the enquiry report of the Revenue Divisional Officer dated 30.1.1982, there is no requirement to furnish the copy of the said report dated 30.1.1982 of the second respondent herein. That apart, learned Government Advocate further contended that the first respondent in his proceedings dated 20.4.1992 has decided that the writ petitioner does not belong to Malaikuravan community and, therefore, no local enquiry was conducted.

6. I have given my careful consideration to the counsel for both sides.

7. The respondents in their counter-affidavits have admitted that the report of the second respondent was not furnished to the petitioner as she neither applied nor requested for the perusal of the enquiry report of the second respondent dated 30.1.1982. It is also admitted that local enquiry was conducted by the second respondent before submitting his report dated 30.1.1982. In this regard I am obliged to refer the decision of the Division Bench of this Court reported in *D. Selvaraju v. Bharat Heavy Electricals Limited* represented by its Executive Director, Tricky-14 and Anr. 1991 Wt L.R. 68, wherein the Division Bench of this Court has held that community certificate cannot be cancelled by the Collector on the basis of the preliminary enquiry report conducted by the Revenue Divisional Officer, if the preliminary enquiry report is not served on the petitioner. The Division Bench of this Court has held as follows:

No reliance can be placed upon any preliminary enquiry report without serving a copy thereof upon the affected person and without affording opportunity to the affected person to demonstrate that the report which is not based on the truth or otherwise reliable. No rule of universal application can be stated to apply to a situation like this, but this much is certain that on a report of certain individuals, who may be available for testifying one way or the other, unless, veracity of their statements is vested by some methods in the presence of the persons affected, no reliance can be placed.

8. Again in *D. Illamaran v. Government of India*, represented by Chief Engineer, All India Radio and Television, Southern Zone, Madras, 1996 Writ L.R. 482, the Division Bench of this Court has held as follows:

Whenever the question arises, as to whether a person belongs to a particular community recognised as the scheduled tribe or scheduled caste, decision has to be taken by the Collector, of the District, after holding due enquiry and in such case, he may himself hold an enquiry or direct the Revenue Divisional Officer to hold an enquiry and submit a report. In the event the Collector adopts the latter course, he has to make available a copy of the report submitted by the Revenue Divisional Officer to the concerned person and give him an opportunity to file his objections and adduce evidence, if any and then decide the matter after hearing the aggrieved person, in the instant case the petitioner.

The Division Bench further held that:

A copy of the report made by the Revenue Divisional Officer should be furnished to the petitioner and thereafter the petitioner should be given time to file his objections and adduce evidence, if any, and then the Collector shall decide the matter after hearing the petitioner, as to whether the petitioner belongs to Konda Reddy community or not. In the event it is held that the petitioner does not belong to the Konda Reddy community, the Collector shall cancel the community certificate issued to the petitioner by the Tahsildar that he belongs to Konda Reddy community and intimate to respondents.

9. In one another decision reported in *R.K. Sekar v. The District Collector, Chengai-M.G.R. District* 1996 W L.R. 484, a Division Bench of this Court has held as follows:

The question as to whether the petitioner belongs to the said community arose on the reference made by the Central Excise Department to the first respondent as the petitioner has obtained employment in the Central Excise Department on the production of a community certificate issued by the Tahsildar. In such cases, after the Revenue Divisional Officer submits a report after enquiry to the Collector, who is the authority to decide is required to furnish a copy of the report and copies of the documents which would be relied upon by the Collector in deciding the question whether a person belongs to a particular community or not.

10. In one another decision in *V. Kannagi v. Reserve Bank of India and Anr.* Writ Appeal No. 241 of 1996, the Division Bench of this Court has held as follows:

The Collector has to hold an enquiry either by himself or direct the Revenue Divisional Officer to hold an enquiry and submit a report. On the submission of the report by the Revenue Divisional Officer, a copy of the same has to be furnished to the party concerned and he should be given an opportunity to file objections and to adduce further evidence, if any, and decide the matter after hearing the concerned person or party. In the event, after following the procedure, the Collector comes to the conclusion that the community certificate obtained by the person concerned is not either valid or the person concerned does not belong to the community he claimed, he has to intimate the same to the appointing authority, who has to proceed in the matter as per the decision of the Collector on the question of the community of the person.

11. In view of the above decisions cited *supra*, I am satisfied that the respondent has not followed the procedure contemplated in the case of cancelling the community certificate. That apart, the direction of the first respondent to produce the documentary evidence registered prior to 1950 in spite of a letter dated 83.1983 of the Government of Tamil Nadu, that in the case of Malaikuravan community people, it is very difficult to produce the documentary evidence as they are nomadic always moving from one place to another, is arbitrary and unreasonable. Similarly, I am also satisfied that the findings of the first respondent is erroneous and arbitrary in holding that the documents produced by the petitioner, namely, the community certificate issued to her

husband, father-in-law and brother-in-law, cannot be relied upon as they were obtained after 1981 and it amounts to after thoughts, overlooking the fact that the community certificate are still valid and they were not cancelled in a manner known to law. In any event the impugned proceedings is liable to be quashed as they do not satisfy the procedure required to be followed as directed by the Division Bench of this Court in the matter of cancelling the community certificate. Hence, the impugned proceedings of the first respondent stand cancelled.

12. In the result, the writ petition is allowed as prayed for. However, there will be no order as to costs.