

(2008) 12 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 14596 of 2008

K.G. Srikanth Rao

APPELLANT

Vs

The Tahsildar and The Deputy Commissioner and President
District Caste Verification Committee

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2009) ILR (Kar) 911 : (2009) 5 KarLJ 262 : (2009) 2 KCCR 46 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : A. Keshava Bhat and K. Srikrishna, for the Appellant; C. Jagadish, Spl. AGA for R1 and 2, for the Respondent

Judgement

N.K. Patil, J.—Petitioner in this petition has sought for calling the entire records from the file of the first respondent, pertaining to No. MSC/CR/7/2008-09, and on perusal of the same to set aside the impugned order of the Tahsildar, Bangalore South Taluk, Bangalore dated 13th October 2008, vide Annexure-A.

2. The only grievance of petitioner in the instant writ petition that he belongs to a community called "Maleru" which comes under Scheduled Tribe category as per the presidential Notification. After completion of his education, he obtained the Caste Certificate in the year 1982 claiming that, he belongs to "Maleru" community belonging to Scheduled Tribe in the pursuance of the Notification issued by the competent authority. On the basis of the said Caste Certificate, petitioner was appointed as an employee at the BSNL and now he is working as Sub Divisional Engineer. It is the case of petitioner that, he was born in Kiranagere Village of Thirthahalli Taluk and there he completed his Primary Education and after completion of his Pre-University Course at Koppa, petitioner came to Bangalore and completed his education at Bangalore.

3. Be that as it may, it is the case of the first respondent that, the matter has been referred to the Civil Rights Enforcement Cell and the report of the CRE Cell has been placed before the Caste Verification Committee and the said authority

after proper verification, has come to the conclusion that, petitioner does not belong to "Maleru" community, but he belongs to "Maaleru" which does not belong to Schedule Tribe category in the place where he is born and completed his Primary and Secondary education. On the basis of the report of the Caste Verification Committee and the CRE cell, the first respondent being the jurisdictional competent authority has initiated the proceedings and issued the notice to the petitioner on 27th March 2008 and 24* April 2008. In spite of issuing those two notices by Registered post, the petitioner has neither appeared before the authority nor substantiated his case before the first respondent. Therefore, the first respondent has proceeded to pass the impugned order, after conducting enquiry on the basis of the available records, holding that, the Caste Certificate issued to the petitioner earlier was on the basis of wrong declaration made by him and the Caste Certificate issued on 29th October 1982 is cancelled. Being aggrieved by the impugned order passed by the first respondent and seeking appropriate reliefs, as stated supra, petitioner herein felt necessitated to present the instant writ petition.

4. I have heard learned Counsel appearing for petitioner and learned Special Additional Government Advocate appearing for respondents.

5. After careful perusal of the order impugned, it is manifest on the face of the said order that, the first respondent has not conducting fair, just, proper and thorough enquiry as envisaged under the relevant provisions of the Act and Rules. The said authority, has simply narrated the facts of the case and referred in the order that, in spite of issuing notices to petitioner on 27th March 2008 and 24th April 2008 through the Registered Post, petitioner has neither appeared personally nor sent his reply to the notices. Therefore, the said authority has proceeded to pass the order impugned, holding that, petitioner has failed to substantiate his case by producing necessary documents to substantiate his case that, the Caste Certificate obtained by him dated 29th October 1982 is in accordance with law and without suppression of any facts.

6. After careful perusal of the records made available by the learned Special Additional Government Advocate appearing for respondents, it emerges that, the copies of the impugned notices are available in the original records produced before this Court. But, the learned Government Advocate has not produced any original records maintained by the first respondent, regarding initiation of the proceedings and conclusion of the said proceedings. The copies of only two notices which are referred in the order of the first respondent are available in the file pertaining to CRE Cell report and the proceedings before the second respondent proceedings. After critical and microscopic evaluation of the entire original records made available, it further emerges that, the petitioner intentionally and deliberately not furnished his residential address to the authorities for concluding the proceedings. One such vital documentary evidence is available in original records produced before this Court at red ink page. 37. It is a communication sent by the Deputy General Manager (Rural) Bangalore

Telecom District, Bangalore-9 on 16th July 2004 to the District Social Welfare Officer, Bangalore (City) District, intimating the office address and the residential address of the petitioner. As per the said communication, the petitioner's residential address is at No. 2674, 11th Main, II Stage, Rajajinagar, Bangalore 10 and the two notices referred in the order dated 27th March 2008 and 24th April 2008 have been duly sent by Registered Post to the very same address at Rajajinagar, but the petitioner has shown a different residential address in the cause title of this writ petition. Further, it emerges that, the order impugned passed by the first respondent is communicated to the petitioner to his Office Address as per Sl. No. 7 referred in the copies of the order marked and the same is also available in the original records.

7. Further, after thorough evaluation of the entire material available on record, the stand of the respective counsel for the parties including the order impugned passed by first respondent, it reveals that, the first respondent being the competent authority, has seriously slipped into error in passing the impugned order without conducting proper and concrete enquiry. The said authority is duty bound to pass a speaking order consisting of all the basic ingredients. One small lapse committed by the jurisdictional competent authority would make lot of difference and the authority must have taken into consideration that, the life, career and status of an individual is at stake. When one of the predecessors of the first respondent has issued the Caste Certificate as early as on 29th October 1982 bearing No. MNC 7382/82-83 stating that, petitioner belongs to Maleru (Scheduled Tribe community, having regard to the magnitude and importance of the matter and the seriousness of the situation that, on the said basis, the applicant has already educated himself and been employed and settled, the first respondent ought to have decided the matter after thorough enquiry and proper verification of the records and after affording sufficient opportunity to petitioner to substantiate his case and as to on what basis he has sent the impugned order to the official address of the petitioner when there was no impediment for the first respondent to have sent the two notices to the official address of the petitioner, where he is working. The way in which the entire proceedings is initiated and concluded depicts the very sad state of affairs in the Department and does not inspire the confidence of this Court. If the authority wanted to annul or cancel the already existing Caste Certificate issued by the competent authority/his predecessor, then, the authority must have been doubly cautious and done greater exercise in order to reverse the earlier Certificate issued and to substantiate its stand. In the instant case, the authority has not at all conducted proper enquiry and there is no application of mind. After getting the report from the CRE Cell and the Caste Verification Committee, without doing proper exercise and without verification of the relevant records, the first respondent has straight away proceeded to withdraw/cancel the earlier Caste Certificate issued by one of his predecessors as back as in the year 1982.

8. Therefore, taking into consideration all these relevant factors, I am of the considered view that, at any stretch of imagination, the impugned order cannot

be sustained. Hence, it is liable to be set aside at the threshold itself.

9. Having regard to the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is disposed of as follows:

I] The writ petition filed by petitioner is allowed in part;

II] The order impugned dated 13th October 2008 bearing No. MSC/CR/7/2008-09 vide Annexure A on the file of the First respondent is hereby set aside;

III] Matter stands remitted back to first respondent for reconsideration afresh and to take appropriate decision in accordance with law, after affording reasonable opportunity of hearing to petitioner, personally or through his counsel and dispose of the same, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order;

IV] Petitioner herein is hereby directed to be present before the first respondent on Thursday, the 8th January 2009 along with his written submission coupled with all the necessary authenticated documents to substantiate his stand and to establish that he belongs to "Maleru" community under Scheduled Tribe category;

V} The first respondent is hereby directed to receive the written submission that may be filed by petitioner and give any further dates convenient to both parties and proceed further in compliance of the directions issued by this Court, as stated supra.