

(2007) 01 MAD CK 0133

In the Madras High Court

Case No : Writ Petition No. 35621 of 2005 and W.P.M.P. No. 38428 of 2005

N. Mohanam

APPELLANT

Vs

Tamil Nadu State Scrutiny Committee, Adi Dravidar Welfare
Department, District Collector and Oil and Natural Gas
Corporation Ltd.

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Citation : (2007) 01 MAD CK 0133

Hon'ble Judges : M.E.N. Patrudu, J

Bench : Single Bench

Advocate : B. Ravi, Adv, for Hema Sampath, for the Appellant; M. Dhandapani, AGP for R1 and R2 and M. Vijayan, for Kins and Patridge for R3, for the Respondent

Final Decision : Allowed

Judgement

M.E.N. Patrudu, J.—N. Mohanam S/o. Late Narasimhalu is the petitioner. In order to avoid any confusion between the petitioner and another person with the same name Mohanam, the father's name of the petitioner is noted.

2. The grievance of the petitioner is that the respondents came to perverse conclusion without any basis that the petitioner do not belong to Scheduled Tribe and there by he was dismissed from the service.

3. The petitioner is seeking for a direction by way of writ of certiorari and quash the proceedings of the first respondent.

4. The facts necessary for the disposal of the writ petition are:

According to the petitioner, he belongs to Hindu-Konda Kapus community and it is notified as Scheduled Tribe community.

Oil and Natural Gas Corporation Limited, the third respondent herein invited applications for appointment to various posts including Khalasi Grade III. There

were eight vacancies and one vacancy was earmarked for the scheduled Tribe candidates. Accordingly the list was sent by the Employment Exchange sponsoring 10 Scheduled Tribe candidates for one post. The name of petitioner is one among the said 10 candidates. However the petitioner was not selected under the Scheduled Tribe quota. The petitioner was selected on merit in the open competition and his employment is purely on the basis of merit and ability as he was selected under unreserved quota. One Mr.J.Raman, whose name is shown at Sl.No.3 out of 10 in the list is selected under the scheduled Tribe quota.

The petitioner was appointed as Khalasi. His probation was declared on 28.10.1985. Thereafter he was upgraded and promoted upto the level of Operator Grade II.

While so, the third respondent for the reasons best known to them called for the verification of the community certificate of the petitioner. The petitioner attended the enquiry. The Record Sheet as well as Transfer Certificate of the school discloses that the petitioner belongs to scheduled Tribe community. A detailed report was submitted by Revenue Officials.

But the third respondent dissatisfied with the same referred those certificates to the second respondent the District Collector, Chennai for further verification doubting that the petitioner has impersonated and used the Community Certificate of another MOHANAM.

The second respondent vide his proceedings dated 04.06.1998, sent second report holding that the school certificate of the petitioner is genuine and as per the school certificate, he belongs to Scheduled Tribe community. But the second respondent finally noted that the petitioner do not belong to Scheduled Tribe community as school certificate has no probative value.

The petitioner challenged the same in W.P.No.20741 of 1998. This Court directed the petitioner to file an appeal before the first respondent, the State Scrutiny Committee Adi Dravidar Welfare Department. Accordingly the petitioner filed an appeal and the first respondent vide proceedings No.22394/ADW-11/2000 dated 27.06.2005 held that the allegation of the third respondent regarding the genuineness of the school certificate is not established and there is no impersonation and the school certificate is genuine. But strangely the first respondent confirmed the proceedings of the second respondent holding that the school certificate has no probative value to confirm the community certificate and the Community Certificates are bogus.

5. The said order is impugned in this writ petition.

6. Counter

Learned Counsel for the first and second respondents filed counter.

The counter is filed by the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Secretariat. It is stated in the counter that the petitioner

has obtained two community certificates from the Tahsildar, Purasawalkam - Perambur Taluk that he belongs to Konda Kapus Scheduled Tribe community. Based on the Community Certificate, he was promoted to the post of Khalasi Grade-II in the third respondent establishment, even though his basic appointment was Grade-III Khalasi against unreserved quota.

It is the contention of the respondents that originally the petitioner was recruited under unreserved quota in the year 1984, but got promoted in the year 1989 under reserved quota for scheduled Tribes.

It is stated that the second respondent herein caused verification of the genuineness of the Konda Kapus Community Certificate issued to the petitioner. The Tahsildar, Purasai-Perambur initially enquired into the matter and sent a report after verifying the school records, where he studied and after conducting the enquiries in the locality and the report discloses that the petitioner belongs to Konda Kapus.

It is further stated in Para 4 of the counter that on the basis of the report of Tahsildar, Pursai Perambur, the District Collector, Chennai sent a verification report to the third respondent stating that the petitioner belongs to Konda Kapus community. It is further stated that the Deputy Manager of the third respondent establishment raised doubts about the veracity of the community certificate produced by the petitioner and again referred the matter doubting impersonation and in the re-enquiry the Tahsildar sent another report dated 18.05.1998 to the second respondent after conducting discreet enquiry. It is stated that on the basis of re-enquiry report, the second respondent came to the conclusion that the individual do not belong to Konda Kapus and declared that the two community certificates were forged certificates as necessary records are not available and consequently cancelled the community certificates vide proceedings No.P4/63082/97 dated 04.06.1998.

The petitioner filed writ petition and thereafter made an appeal before the first respondent. It is stated that the State Level Scrutiny Committee examined all the relevant documents and disclosed that the Primary School Certificate issued by the Corporation Middle School, Sivarajapuram shows that the petitioner's community was entered as Konda Kapus and it is listed under the scheduled Tribe.

In Para 5 of the counter, it is stated that the petitioner's mother Tmt. Savithri do not belong to Konda Kapus community but belongs to Mudaliar community. Hence verification process is confined only to the community of his father. It is further stated that the petitioner has not produced any documents relating to his father to show that his father belongs to Konda Kapus community. Until and unless the community status of his father is properly arrived and confirmed, the petitioner cannot be treated as Konda Kapus community and since there is no documentary evidence relating to his father, the State Level Scrutiny Committee was unable to accept the contention of the petitioner that he belongs to Konda

Kapus community.

According to the respondents, various documents are produced before the State Level Scrutiny Committee and they are the School Certificate, Community Certificate issued by the Tahsildar, Transfer Certificate, Self Affidavit filed etc. by the petitioner.

It is stated that the Anthropologist who examined the petitioner has also reported that the petitioner is not aware about the tribal characteristics of the Konda Kapus community. Therefore the State Level Scrutiny Committee concluded that the petitioner do not belong to Konda Kapus community.

Thus the main contention of the respondents is that the petitioner did not produce any certificate to prove that his father belongs to Konda Kapus community. But came to a conclusion that the mother of the petitioner belongs to Mudaliar Community and in fact there is no document to come to the said conclusion.

The third respondent also filed a counter.

7. Heard arguments on both sides.

8. The short point for determination is whether the petitioner belongs to Konda Kapus community or not.

9. In a case of this nature, the Court is expected to verify the documents and the reports of revenue officials rather than the oral statements, the allegations and the counter allegations or the rival contentions of the parties.

10. The most important document is the Transfer Certificate of the petitioner. The original Transfer Certificate is produced and it is issued by the Government of Tamilnadu, Department of School Education. The petitioner studied in a Government Higher Secondary School, Kodambakkam, Madras - 600 024. The Head Master of school issued the Transfer Certificate on 26.12.1997. The said certificate discloses the name of the petitioner, his date of birth and his community as Indian, Hindu, Kondakapus. In fact the genuineness of the certificate has been admitted by the respondents even in their counter and also in their report. But this document was not considered by giving a flimsy reasons.

11. The next important document in the case is the first Enquiry report by the Tahsildar and the District Collector, Chennai, wherein it is stated that an independent enquiry and verification was carried out in the matter to know the genuineness or otherwise of the claim the individual whether he belongs to Konda Kapus - Scheduled Tribe and enquiries confirmed that the entries in the record sheet as well as transfer certificate disclose the petitioner as Konda Kapus and accordingly a report confirming the status of petitioner as a scheduled Tribe had been sent. During the first enquiry and re-enquiry, it was found that the school certificates produced by the petitioner are bonafide documents confirming to counterfoils of school records and they are not bogus as alleged by third

respondent. The report in Para 5 of the proceedings also discloses that the allegation that there is mis-use of other N. Mohanam's certificate by the petitioner is also not founded on facts.

12. In this case, there is one another person by name N. Mohanam S/o of Natesa Mudaliar studied in a different school whereas the petitioner N. Mohanam S/o of M. Narasimhalu studied in the school concerned.

13. The Collector has given a comparative table of both as shown below:

N.Mohanam ONGC N.Mohanam UCO Bank

1. Father's Name K.Narasimhalu Natesa Mudaliar 2. Mother's name Savithri Vembuli 3. Community Kondakapus Sengunthar Mudaliar 4. Native Place Rangayapalli village Pallipattu Taluk Arulappadi Village Thiruvannamali Taluk 5. Name N. Mohanam N. Mohanamurthy 6. School 1 to 8th Std. Corporation Middle School, Sivarajapuram, Chennai ? 12. 9 to X Std. Govt. High School, Kodambakkam, Chennai ? 24. 1 to X Std. Govt. High School, Katpadi.

14. Thus there is a confusion for the third respondent whether the petitioner, who is the son of K. Narasimhalu has impersonated and produced any certificate belonging to N. Mohanam S/o Natesa Mudaliar. In fact there is no reason to have any confusion.

15. In this case, the documentary evidence is available through the school certificates and they are in favour of the petitioner. The local enquiries by the Tahsildar also are in favour of the petitioner. They are not taken into confidence.

16. However the report of the Collector discloses that the two Community Certificates issued by the two revenue authorities appears to be not correct, as the respective files in which it is purported to be issued are not available for verification and since those files are not available, the Collector came to a conclusion that the certificates are bogus. It is a wrong conclusion. This observation is bad and is liable to be rejected. If the files in the Government office are not available the truth and the facts revealed through other public documents and Field Enquiry cannot be buried and rejected.

17. I have minutely gone through the report of the Collector, which is the basis for holding that the petitioner do not belong to Schedule Tribe and on the basis of this proceedings, the first respondent issued the orders impugned in this writ petition.

18. The orders of the Collector are not acceptable for three reasons:

The collector held that the mother of the petitioner belongs to Mudaliar community, whereas there is no document to prove the community of the father. In this case even there is no document to prove the community of the mother also. It is on the basis of oral statement. In fact the revenue authorities are the proper officials under the Rules to decide the community of the individual as per their record and enquiries. When there are no documents either to prove the

community of the mother or the father, the Collector comes to a conclusion that the mother belongs to Mudaliar community, whereas there is no proof with regard to the community of the father. Therefore a perverse finding has been given by the Collector.

The other reason is that it is not for the Collector to conclude that the School Records are not of probative value. In fact, the school records are the most vital documents whenever any student has been admitted in the school either at the elementary level or at the high school level. The community of the student will be entered in the school documents, so also the date of birth are entered in the school documents. Basing on the entries of these school certificates, the disputed question with regard to the community or the date of birth of the individual will be decided. When the school certificates are disclosing that the petitioner belongs to Schedule Tribe community, it is absurd for the Collector to conclude that it has no probative value. When the Collector has found that the school certificates are bonafide documents and the petitioner has not misused and not impersonated the correction, ought to have issued the proceedings in favour of the petitioner, but he did not do so. The action of the Collector are highly questionable and he is cautioned to be more careful in future and avoid such mistakes.

Further the observations of the Collector that since the records are not available in the Tahsildar's office, the community certificate issued by the Tahsilar are bogus is not in good spirit. Can we disbelieve the truth, if the files in the Collector office are misplaced or missing. It is for the concerned Collector to answer and rectify the mal administration. It is nothing but bad governance and mal administration and such officials must be properly instructed by the Chief Executive of the State to apply proper judicial and administrative mind and do justice to the citizen more so to the under privileged. I have no hesitation to condemn the approach of Collector and registry is directed to communicate this order to the Chief Secretary of the State for suitable action.

19. The observations of the first respondent that during the enquiry the petitioner was not able to give the tribal characteristics of the Konda Kapus Community during anthropological examination is immaterial. Should they decide the issue on the basis of documents or as per their whims and fancies. The reasoning is totally misconceived and is created to reject the genuine claim of petitioner to get over the documentary evidence.

20. The various observations made in the impugned order are not sustainable. They are not convincing. The documentary evidence placed before the State Level Committee and the said documents viz. School certificate, Community Certificate prima facie clearly established that the petitioner belonged to the Scheduled Tribe community. The earlier report of the revenue authorities confirm the same. But for the reasons best known to the third respondent further enquiry was held. In the re-enquiry also, it was confirmed that the school certificates and the discreet enquiries in the locality established that the petitioner belong to

Scheduled Tribe community. Despite of all this trustworthy evidence perverse orders are issued without any basis and on personal reasoning.

21. Under those circumstances, the Court is of the opinion that it is a fit case to allow the prayer of the petitioner and to set aside the orders issued by the first respondent.

22. In the considered opinion of the Court, an exemplary cost should be awarded in favour of the petitioner against the respondents, but the learned Government Advocate made a sincere request not to award cost because the authorities have passed orders without knowing the consequences and they have no intention or malice to pass any order.

23. Considering the same, the writ petition is allowed and the order issued by the first respondent is set aside. No costs. Consequently connected miscellaneous petition is closed.