

(2006) 09 MAD CK 0049
In the Madras High Court
Case No : Writ Petition No. 14709 of 2004

P. Mohanambal

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Citation : (2006) 09 MAD CK 0049

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Thiagarajan, for R. Sundaram, for the Appellant; V.R. Thangavelu, GA for Respondent 1 to 5 and S. Parthasarathy, for Sarvabhauman Associates for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The writ petition has been filed praying for issuance of writ of Certiorari to call for the records of the first respondent in his

proceedings vide Reference No. Na.Ka. 23383/2003/C.1 dated 12.5.2004 and to quash the same.

2. The petitioner is working as Junior Assistant in the Office of the Commercial Tax Office, Nungambakkam Assessment Circle, Chennai, and in

this writ petition, she challenges the order dated 12.5.2004 passed by the District Revenue Officer, Namakkal, cancelling the Helpless Widow

Certificate issued by the Revenue Divisional Officer, Namakkal, in favour of the petitioner. The petitioner was a resident of No. 42 Pavadai Street,

Namakkal, and she claims to be the wife of one Jaganathan and the said Jaganathan died on 26.11.1997. She obtained a Certificate from the

Revenue Divisional Officer in October 1998 that she was a destitute widow and on the strength of the said Certificate, she got a preferential

appointment in Government service and now she is working as Junior Assistant under the fifth respondent. When the sixth respondent, who also claims to be the wife of deceased Jaganathan, came to know of the same, she filed a suit in O.S. No. 543 of 2003 on the file of the District Munsif, Namakkal, seeking for declaration that the Certificate obtained by the petitioner that she was a destitute widow of the deceased Jaganathan was false and she also sought for mandatory injunction to direct the Secretary, Tamil Nadu Public Service Commission, to remove the petitioner, who is working in the Commercial Taxes Department, from her service and the said suit is pending.

3. On receiving notice from the Court, the petitioner filed Transfer Petition before this Court seeking for transfer of the proceedings pending in the suit and also obtained stay of further hearing in the suit by order dated 29.4.2004. In the meanwhile, upon coming to know about the pendency of the suit and also coming to know about the status of the petitioner, proceedings were initiated by the District Revenue Officer, Namakkal, and by proceedings dated 12.5.2004, he cancelled the issuance of the Destitute Widow Certificate issued by the Revenue Divisional Officer, Namakkal, on the ground that the said certificate was obtained by the petitioner by suppressing the facts. Aggrieved at the said proceedings, the present writ petition has been filed as stated already.

4. The writ petition was admitted on 26.5.2004 and interim stay was also granted. The respondents 1 to 3 and 5 filed petition in W.V.M.P. No. 1960 of 2005 for vacating the stay granted by this Court on 26.5.2004, which was extended by order dated 29.7.2004. When the matter came up for hearing of the Miscellaneous petitions, with the consent of all the parties, the main writ petition itself was taken up for hearing.

5. The first respondent has filed a detailed counter affidavit and it is seen that the petitioner had obtained the Destitute Widow Certificate from the Revenue Divisional Officer, Namakkal, by suppressing the fact that she was already married to one Thangaraju on 13.12.1987. It is also stated that only after conducting re-enquiry, thorough verification and perusal of the records of the Revenue Divisional Officer, Namakkal, the Destitute Widow Certificate issued to her was cancelled by the District Revenue Officer, Namakkal. It is also stated that even though the petitioner claimed

that she lived with the so-called husband deceased Jaganathan at No. 42 Pavadai Street, Namakkal, the Death Certificate produced by both the

petitioner and the sixth respondent would show that the place of death of the said Jaganathan was No. 80 B, Asari Street, R.P. Pudur, Namakkal.

6. The sixth respondent has also filed a counter affidavit rebutting the allegations made by the petitioner. She has stated that she is the only lawful

wife of the deceased Jaganathan and she has a daughter of 7 years old and she lived with her husband till his death. She has also stated that she as

well as her deceased husband belong to Asari Community whereas the petitioner belongs to Mudhaliar Community and, therefore, such a

marriage, as alleged by the petitioner, would not have taken place. It is also stated that the marriage between the petitioner and Thangaraju held at

Kabilarmalai Arulmighu Balasubramaniam Temple on 13.12.1987 is still subsisting.

7. I have heard Mr. A. Thiagarajan, appearing for Mr. R. Sundaram, learned Counsel for the writ petitioner as well as Mr. V.R. Thangavelu,

learned Government Advocate representing for the respondents 1 to 5 and Mr. S. Parthasarathy for M/s Sarvabhauman Associates, learned

Counsel appearing for the sixth respondent and perused the records.

8. Mr. A. Thiagarajan, learned Counsel appearing for Mr. R. Sundaram, submitted that it was true that the petitioner was earlier married to one

Thangaraju. But, however, the said marriage had taken place when the petitioner was minor and in a caste panchayat, an agreement was entered

into between her and the said Thangaraju on 21.8.1988 at Vengarai stating that they did not want to live together thereafter. The legality of the said

document, which is enclosed in the first page of the typed set of papers, is highly doubtful.

9. As per the agreement dated 21.8.1988 entered into between them, it is stated that they did not want to live together. After the advent of the

Hindu Marriage Act, any divorce or dissolution of marriage between the persons belonging to Hindu religion, can be only done in terms of the Act.

Even otherwise, the said document, which talks about the petitioner and Thangaraju agreeing to live separately, itself would prove that their

marriage was not dissolved but, on the contrary, it is still subsisting. That single document will falsify the case of the petitioner. The learned Counsel

contended that no proper enquiry was held before the impugned order is passed.

10. However, Mr. V.R. Thangavelu, learned Government Advocate, representing the respondents 1 to 5, contended that it was a case of false

representation and the facts will speak for itself and there is no necessity to hold an elaborate enquiry. Further, he stated that it is for the writ

petitioner to prove that she is entitled for the said certificate.

11. Mr. S. Parthasarathy, learned Senior Counsel representing M/s Sarvabhauman Associates appearing for the sixth respondent, also supported

the contentions of the learned Government Advocate.

12. In view of the above, the impugned order does not suffer from any infirmity and the writ petitioner cannot seek any protection of law and she

has to suffer for her own misconduct. The learned Counsel for the petitioner stated that if the certificate is cancelled, she may be sent out of service

and prayed for leniency in the matter. If a person fraudulently gains an employment with a bogus certificate, he or she will have to suffer the

consequences.

13. In a matter of this nature, there is no question of extending any equity and the Supreme Court in its decision reported in R. Vishwanatha Pillai

Vs. State of Kerala and Others, , at paragraph 19 observed as follows:

A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be

justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot

be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and

equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case

where an individual acquired a status by practising fraud.

14. In the light of the above, the petitioner cannot be shown any leniency or mercy and there are several persons standing in the queue to get

Government employment having registered their names in the Employment Exchange for years together. It is really unfortunate that the petitioner

should have indulged in fabrication of documents and gained entry in the Government service overtaking other legitimate claimants. Therefore, the

writ petition fails and the same stands dismissed. Interim stay granted on 26.5.2004 in W.P.M.P. No. 17440 of 2004 and extended on 29.7.2004

shall stand vacated. In view of the same, no orders are necessary in W.V.M.P. No. 1960 of 2005 and the same stands closed. As the writ petition

and the Miscellaneous Petitions have been dismissed, the respondents 4 and 5 are directed to take appropriate action against the petitioner

forthwith.