
(2010) 10 MAD CK 0002
In the Madras High Court
Case No : Writ Petition No. 18718 of 2010

R. Pushpalatha

APPELLANT

Vs

The Revenue Divisional Officer

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 MAD CK 0002

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : Vijay Narayan for R. Parthiban, for the Appellant; M. Dhandapani, Spl. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—In these Writ Petitions, Petitioner(s) seek Writ of Mandamus directing the Respondent-Revenue Divisional Officer,

Dharmapuri to consider and dispose of the applications made by the Petitioner(s) for issuance of Community Certificate for the Petitioner(s)

son/daughter respectively.

2. Since, the issue involved and point for consideration in all the Writ Petitions are one and the same, all the Writ Petitions were taken up together

and shall stand disposed of by this Common Order.

3. Case of Petitioner(s) is that they belong to ""Kurichchan Community"" which is a Scheduled Tribe as per G.O.Ms. No. 1564 Social Welfare

Development dated 30.07.1985 and that Respondent has issued certificate to their relatives stating that they belong to ""Kurichchan Community

which is notified as Scheduled Tribe in the Presidential Order. Case of Petitioner(s) is that they applied to the Respondent-Revenue Divisional

Officer, Dharmapuri in January 2010 and since there was no response from the Respondent, Petitioner(s) seek Writ of Mandamus directing the

Respondent to ""consider"" and dispose of the applications made by the Petitioner(s).

4. We have heard Mr. Vijay Narayan, learned Senior Counsel appearing for the Petitioner(s) and Mr. M. Dhandapani, learned Special

Government Pleader appearing for the Respondent.

5. Mr. Vijay Narayan, learned Senior Counsel submitted that inspite of the applications being made in January 2010, there was no response from

the Respondent and therefore Petitioner(s) seek appropriate direction to the Respondent to ""consider"" the applications made by the Petitioner(s)

and pass orders.

6. Mr. M. Dhandapani, learned Special Government Pleader submitted that there is no material to show that Petitioner(s) submitted applications

before the Respondent and whether the said applications were in proper form and while so, no Mandamus could be issued.

7. Writ of Mandamus can be issued only when there is a legal right and the Authority failed to perform the statutory duty. When the applications

are said to have been submitted to the Respondent and the legitimate right/status of the Petitioner(s) are yet to be established before the concerned

authority, the Writ of Mandamus cannot be issued.

8. As rightly submitted by the learned Special Government Pleader, even though, Petitioner(s) are said to have made applications to the

Respondent, it is not known whether the said applications were in proper form and whether they were received by the Respondent or not.

Petitioner(s) also did not send any further representation stating that their applications were not taken up and considered. In the absence of any

material to show filing of applications by the Petitioner(s) and receipt of applications by the Respondent, it cannot be said that Respondent failed to

perform its statutory obligation, warranting issuance of Writ of Mandamus.

9. Learned Senior Counsel for Petitioner(s) submitted that there is no impediment in issuing direction to ""consider"" the applications and pass

appropriate orders. Instances are not wanting, if the Court dispose of the Writ Petitions with a direction to ""consider"". Taking shelter under the

order of the Court, authority granting the relief. Taking shelter under direction of

the Court to ""consider"" the applications, the authority might tend to grant undeserving relief in pursuance of the orders to ""consider"". Holding that there are possibility of direction ""to consider"" being misinterpreted, in A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, , the Supreme Court held as under:

13. Learned Counsel for the respondents made an alternative submission that the relief granted to the respondents may be sustained on the reasoning adopted by the learned Single Judge. He submitted that having regard to the order in WP. No. 30220 of 1997 which had attained finality, the Corporation had no choice but to consider the cases of the respondents for absorption by treating them as casual labour employed by the Corporation. This takes us to the effect of the orders dated 5.11.1991 and 17.3.1998 made in the earlier writ petitions, directing the Corporation to ""consider"" the cases of the respondents.

14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to "consider", it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the high Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to "consider" and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to ""consider"", in a different category of cases. Where an authority vested with the power to decide a

matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs consideration" without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so....

19. There are also several instances where unscrupulous petitioners with the connivance of pliable authorities have misused the direction "to consider" issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider" the authority grants the relief, taking shelter under the order of the Court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider" may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the Court's direction to consider the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it....

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording

any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits....

The aforesaid aspects were highlighted in Employees State Insurance Corporation Vs. All India I.T.D.C. Employees Union and Others, also.

10. Observing that Court should desist from issuing directions to ""consider"" stale claims and that there is need for circumspection in issuing

direction ""to consider"" in AIR 2008 SCW 7233 [C. Jacob v. Director of Geology & Mining and Anr.], the Supreme Court held as under:

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or

barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the

department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department.

Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations cannot furnish a

fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the

matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the

claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some

kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action....

10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for

"consideration". If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts

should desist from directing "consideration" of such claims.

11. Holding that Court should be aware of the consequences of the order directing the authority ""to consider"", in 2010 Writ L.R. 340 [M. Ingaci v.

The Commissioner, Devekottai Municipality, Devekottai, Sivagangai District and Ors.], the Division Bench of this Court held as under:

8. Why we are extracting this judgment in such detail is that we should be aware of the consequences of our order when we direct the authorities

to ""consider"". In the aforesaid situation, if the learned Judge, before directing the authorities to consider, had heard the petitioner herein, then the

order of the Division Bench reprimanding the 5th respondent would have been brought to the notice of the learned Single Judge. Some time, we

also come across cases where our directions is to an authority who cannot really pass an effective order and the effective order can only be passed

by an authority superior to the one to whom we issue directions. Obviously, when the order is not complied with, since it cannot be complied with

because of the hierarchy discipline, the officer has to face the contempt. All these can be avoided if we only bear in mind the guidelines given in the

above case by the Supreme Court before we direct the respondent to ""consider and pass orders"".

12. Petitioner(s) are seeking for a direction to the Respondent ""to consider"" their application and pass orders for issuance of Community

Certificate that they belong to ""Kurichchan Community"" which is a Scheduled Tribe. If any direction is issued by the Court, there is every

possibility of the order being mis-interpreted and the authority might tend to grant undeserving relief. We are constrained to refer to several facets

of the issue only to emphasize the need for circumspection and care in issuing such direction ""to consider"" and pass orders in the matters of

"Community Certificates". When any application is made before the concerned Authority for issuance of Community Certificate, it is for the

Authority to look into the matter. If any direction is issued to ""consider"" and pass orders, either for the fear of disobedience or under

misinterpretation the authority might tend to pass a favourable order. Taking shelter under the orders of the Court, if the authority passes an order

granting Community Certificate which will have serious consequences. Exercising care and circumspection, we consciously refrain from issuing any

such direction, lest, there is possibility of our direction being mis-interpreted.

13. Learned Senior Counsel for Petitioner(s) submitted that inspite of applications being made, there was no response from the Respondent. If

really, applications were made and if the Authorities had not considered, it is for the Petitioner(s) to bring it to the notice of the higher Authorities.

Having regard to the seriousness and consequences of the issue involved, we are not inclined to issue any direction to the Respondent to ""consider and pass orders.

14. In the result, all the Writ Petitions are dismissed. Consequently, connected M.Ps. are also dismissed. No costs.