

(1998) 12 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 4901 of 1991 and W.M.P. No's. 7525 of 1991 and 28547 of 1995

R. Ravichandran

APPELLANT

Vs

Collector of Salem Dist. and Others

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Mad 221 : (1999) 1 MLJ 773 : (1999) WritLR 187

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : V. Vijaya Sankar, for M. Velusami, for the Appellant; R. Gothandaraman, Government Advocate (for No. 1) and Prabha Sridevan, (for Nos. 2 and 3), for the Respondent

Final Decision : Allowed

Judgement

1. Ravichandran, the petitioner herein, in this writ petition has sought for a Writ of Certiorari by calling for the records of the Collector of Salem, the first respondent in his proceedings in Roc. No. 116604/89 (D. 10), dated 10-1-1991 and to quash the order.

2. The facts that are required for the disposal of the writ petition could be summarised by follows:--

The petitioner claims that he belongs to Konda Reddy community which is one of the communities listed as a Scheduled Tribe under the Constitution (Scheduled Tribes) Order, 1950. He applied for the post of Clerk-cum-Cashier in the Banking Services Recruitment Board. He was selected in the written test and the interview. He produced his community certificate dated 14-9-1978 issued by the Tahsildar. On the basis of the said certificate, the Banking Services Recruitment Board sponsored the petitioner to the UCO Bank, the second respondent herein for appointment. However, the second respondent-Bank directed the petitioner to produce the community certificate issued by the Revenue Divisional Officer of his

area. Therefore, the petitioner filed a writ petition in W.P.No. 9518 of 1984 to direct the second respondent-Bank to act upon the community certificate issued by the Tahsildar, Mettur for the purpose of his employment.

The Division Bench of this Court by its judgment dated 20-11-1984 directed that the community certificate already produced by the petitioner should be accepted until the same is cancelled by the District Collector and that the Bank could approach the District Collector for the verification of the said certificate. The Division Bench further directed the second respondent-Bank that the petitioner should be permitted to continue in the employment on a temporary basis until the process of verification is completed. Accordingly, after the petitioner was appointed, the second respondent-Bank referred the matter for verification to the District Collector, Salem. In view of the verification sought for by the second respondent-Bank, the District Collector, the first respondent directed the Revenue Divisional Officer, Maltur Dam to conduct an enquiry and to submit the report. Accordingly, the Revenue Divisional Officer sent a notice to the petitioner on 21-1-1990 calling upon him to appear for the enquiry relating to his community status. On receipt of the said notice, the petitioner produced several documents before the Revenue Divisional Officer to establish that he belongs to Konda Reddy, Scheduled Tribe. After consideration of those materials, the Revenue Divisional Officer sent a report to the District Collector recommending for the cancellation of the community certificate by stating that he did not belong to Konda Reddy. Thereafter, the petitioner received a show cause notice dated 9-11-1990 from the District Collector, the first respondent intimating about the report of the Revenue Divisional Officer and he was directed to appear for a personal hearing before the first respondent to produce any oral or documentary evidence in support of his claim.

On 3-12-1990 the petitioner appeared before the District Collector, the first respondent and produced the documents. On 7-1-1991 the petitioner sent a letter addressing the first respondent requesting him to furnish a copy of the report of the Revenue Divisional Officer in order to controvert the same. However, by the order dated 10-1-1991, the District Collector, the first respondent passed an order cancelling the certificate and intimated the result to the second respondent-Bank with a request to serve a copy on the petitioner. This order dated 10-1-1991 by the Collector, the first respondent is challenged by the petitioner in this writ petition.

3. Mr. Vijaya Sankar the counsel for the petitioner, while assailing the impugned order, would contend that the impugned order of the first respondent is wholly illegal violating the principles of natural justice and the same is liable to be quashed, in view of the fact that it is based on the report of the Revenue Divisional Officer, the copy of which was not furnished to the petitioner and thereby proper opportunity was not given to the petitioner to dislodge the report of the Revenue Divisional Officer and to prove his claim.

4. Though several points have been raised in the writ petition, the counsel for the

petitioner would confine himself with this main ground, namely, failure to furnish the copy of the report of the Revenue Divisional Officer on the basis of which the impugned order was passed cancelling the community certificate, would vitiate the entire proceedings, as it would amount to denial of proper opportunity in the enquiry conducted by the Collector and would be violative of principles of natural justice. Learned Govt. Advocate appearing for R1 and Mrs. Prabha Sridevan, the counsel for R2 and R3 submitted in support and justification of the impugned order.

5. Before going to the point of law urged by the counsel for the petitioner, it is appropriate to recapitulate the background of the instant case.

6. In the year 1983, the petitioner applied for the clerical job to the Banking Services Recruitment Board. In the written test and the interview, he got through. When he produced the community certificate dated 14-9-1978 issued by the Tahsildar, the Recruitment Board sponsored his name recommending for appointment in the job mainly on the basis that the petitioner belongs to Scheduled Tribe, to the second respondent-Bank. In the year 1984 itself, the second respondent objected to the competency of the authority who issued the community certificate. However, the Division Bench of this Court directed for appointment on the basis of the certificate on a temporary basis till the process of verification with reference to the genuineness of the claim of the petitioner over the community status is completed. Then, on the matter being referred by the second respondent, the District Collector by the order dated 5-8-1989 directed the Revenue Divisional Officer to conduct an enquiry and submit the report. Though the enquiry commenced on 21-1-1990 itself, the report of the Revenue Divisional Officer has been submitted only on 30-6-1990 after obtaining the explanation from the petitioner dated 27-2-1990 and on the basis of the statement obtained from various witnesses, to the Collector recommending for cancellation. On 9-11-1990 the Collector issued notice to the petitioner to appear on 3-12-1990 for personal hearing to enable him to produce oral and documentary evidence in support of his claim. On that day, he produced the same documents which were already filed before the Revenue Divisional Officer. It is stated that on 7-1-1991 the petitioner sent a requisition to the District Collector, the first respondent to furnish him the report of the Revenue Divisional Officer, in order to give the contra evidence before the Collector. On 10-1-1991 even without reference about the said letter, the order cancelling the community certificate was passed mainly on the basis of report of R.D.O. stating that the claim of the petitioner was not established.

7. However, it is admitted in the counter that the letter dated 7-1-91 requesting for the copy of the report of the Revenue Divisional Officer was received only subsequent to order dated 10-1-1991. It is further stated in the counter that if the petitioner made such a request at the time of his personal hearing on 3-12-1990, the first respondent would certainly have served the copy of the report and as such, the first respondent cannot be found fault with for the non-

furnishing of the copy of the report.

8. Thus, it is clear that the petitioner is working on a temporary basis from 1984 and the process of verification was completed only on 9-11-1990. Thereafter, this writ petition has been filed by the petitioner and injunction has been granted in the year 1991.

9. Regarding the necessity of giving opportunity to the person who claims that he belongs to Scheduled Tribe, this Court on several occasions directed the District Collector to conduct the enquiry by giving full opportunity to the Revenue Divisional Officer after his discreet enquiry and copy of other documents proposed to be relied upon by the Collector before passing the final order. Invariably, these directions given by this Court for long number of years have been "scrupulously" ignored by the authorities.

10. This is yet another case, where the District Collector, without making available a copy of the report of the Revenue Divisional Officer to the petitioner and without affording an opportunity to him to substantiate his claim by adducing evidence, if any, contra to the conclusion of the Revenue Divisional Officer arrived at in his report, has passed an order on 10-1-1991 cancelling the community certificate earlier issued in favour of the petitioner, though, in fact, the petitioner through his letter dated 7-1-1991 requested for the copy of the Revenue Divisional Officer's report.

11. Let me now quote the various decisions given by the single Judge as well as the Division Bench of this Court directing the Collector regarding the mode of enquiry and the importance of giving opportunity to the person concerned to establish his claim.

12. In *S. Chandrakumar Vs. The State of Tamil Nadu and Others*, , Hon"ble Shivappa, J. would hold as follows :--

"In the impugned order, there is no reference that the copy of the report was served on the petitioner. The impugned order is set aside. The second respondent is directed to provide an opportunity of being heard to the petitioner and also supply him a copy of the report and then to decide the community to which the petitioner belongs in accordance with law."

13. In *P. Rajasekaran Vs. The Bank of Baroda and Others*, , Hon"ble Bakthavatsalam, J. (as he then was) would observe as follows :--

"The report of the Revenue Divisional Officer, Salem has been relied upon in the impugned order. There is no dispute that the petitioner is not aware of the contents of the report of the Revenue Divisional Officer.

.....

In my view, the enquiry officer should have informed the petitioner about the content of the enquiry, and not to have relied upon the enquiry to hold that the community certificate issued to him is a bogus one.

.....

When the petitioner herein is not aware of the local enquiry conducted and when the said report of the Revenue Divisional Officer, Salem is relied upon in the impugned order, I am of the view that the principles of natural justice have been violated. The petitioner should have been put on notice about the local enquiry and he should have been asked to explain the allegations which are found, in the report of the Revenue Divisional Officer."

14. In *Selvaraju, D. v. Bharat Heavy Electricals Ltd.* 1991 Wri LR 68 Hon"ble Mishra, J. (as he then was) would hold as follows :--

"While it cannot be suggested that no preliminary enquiry could be held to find out the truth or otherwise before any notice was issued to the petitioners and such enquiry report can be made on the basis of a proceeding for such appropriate action as the situation may warrant, it is well settled that 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 upon the truth or otherwise, is not reliable.

15. In the judgment in W. A. Nos. 1460 to 1476 of 1995, dated 8-1-1996, a Division Bench of this Court headed by Hon"ble K.A. Swamy, C. J. (as he then was) held as follows :--

"We direct the District Collectors of Salem, Madurai, Tiruchirappalli and Coimbatore to issue the notice to the first respondent in each one of the writ appeals containing the grounds on which, and also the copies of the records and the documents, if any, which would be relied upon by them for the purpose of deciding, the question as to whether the first respondent in each one of the writ appeals belongs to the community to which he claims to belong. On receipt of such notice, and the copies of the records and documents, if any, the first respondent in each one of the writ appeals shall file his objections, if any, within the time specified by the respective District Collectors. The District Collectors shall also record the evidence which the first respondent in each one of the writ appeals would like to produce and take on file the documents if any produced, then hear and decide the question within six months."

16. In *Illamaran, D. v. Government of India* 1996 Wri LR 482 a Division Bench of this Court led by Hon"ble K.A. Swamy, C. J. held as follows :--

"Whenever such 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 or such case (sic), 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 adopt 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."

17. In *Sekar R.K. v. District Collector, Chenngai M.G.R. District* 1996 Wri LR 484 a Division Bench of this Court led by Hon"ble K.A. Swamy, C. J. would observe as follows :--

"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.

.....

The object of furnishing a copy of the report and copies of documents which would be relied upon is to enable the party concerned to file his objections and to meet the findings recorded against him."

18. In Writ Appeal No. 241 of 1996 (*V. Kannagi v. Reserve Bank of India and another*), another Division Bench of this Court would reiterate in the following words :--

"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 adduce further evidence, if any, and decide the matter after hearing the concerned person or party.

19. In *C. Baskaran v. The District Collector, Trichy*, 1997 Wri LR 33 a Division Bench of this Court led by Hon"ble K.A. Swamy, C. J., while reiterating the above principles, would observe as follows :--

"The grievance of the petitioner/appellant is that the Collector had held a discreet enquiry and on the basis of that, has recorded a finding that the" petitioner does not belong to Konda Reddy community. Copies of the statements recorded and the copies of documents collected during the course of the discreet enquiry were not made available to the petitioner. No doubt, the District Collector has heard the petitioner and he has filed its objections. But a reading of the order of the District Collector reveals that his conclusion is based upon the result of the discreet enquiry, copies of which had not been furnished to the petitioner. Thus, there is breach of principles of natural justice."

20. In *N.V. Subramanian Vs. Additional Collector and Another*, Hon"ble Padmanabhan, J. quoted the following observation made by the Division Bench of this Court in W. P. No. 5258/96 dated 9-8-96 :--

"Apart from the fact that the District Revenue Officer could not have decided the issue, he has relied upon the report made by the Sub-Collector, Cheranmadevi,

copy of which was not furnished to the petitioner. Therefore, he had no opportunity to put forth his case as to the correctness of the said report. Accordingly, we hold that the order of the District Revenue Officer cannot be sustained."

21. In *S. Duraisamy Reddy v. Collector of Salem District* 1998 Wri LR 606 Hon^{ble} Dinakaran, J., on the strength of the earlier decisions rendered by the Division Bench of this Court, would make the following observation :--

"Therefore, the local enquiry which was relied upon by the Collector in the impugned order should be based on the material records, which also contemplate an opportunity and an enquiry to the petitioner.

.....

I tried to find out whether such an opportunity was given to the petitioner or any enquiry was conducted in his presence by the Collector before holding that the local enquiry reveals that the individual belongs to Reddiar Community only and that he does not belong to Konda Reddy community. Unfortunately, I fail to see any such opportunity was provided to the petitioner, or an enquiry was conducted in that regard.

22. In *Jayasreenivasan Vs. The District Collector, Trichirappalli District, Trichirappalli and three others*, , Hon^{ble} Shivappa, J. would observe as follows :--

"It is incumbent upon the authority to serve the copy of the report. Respondent No. 2 is directed to serve the copy of the report and thereafter the petitioner to be given an opportunity of being heard and then to decide to which community he belongs, in accordance with law."

23. In *W. P. Nos. 1235/83 and 1236/83* dated 1-8-84, this Court issued certain directions and guidelines to the authority concerned to follow at the time of verification of community certificate. Similarly, in *W. P. Nos. 12567 and 12568* of 1986, the Division Bench of this Court on 30-4-97 quashed the impugned order cancelling the community certificate on the reason that proper opportunity was not given by the competent authority, who conducted the enquiry. The same view has been reiterated by Hon^{ble} T. Jayarama Chouda, J. in *W. P. No. 8358* of 1988 dated 24-6-97 (*M.N. Ganapathy v. The District Collector, Kancheepuram*) and Hon^{ble} K. Sampath, J. in *W. P. No. 13979* of 1988, dated 7-8-97 (*K. Subramani v. The District Collector, Kancheepuram*).

24. In the light of the above principles, it is manifestly clear that the impugned order has been passed by the Collector by mainly relying upon the Revenue Divisional Officer's report and other statements recorded by the said Revenue Divisional Officer in his discreet enquiry without furnishing the copies of the documents to the petitioner which will certainly violate the principles of natural justice.

25. It is admitted in the counter that a letter of request asking for the copy of the Revenue Divisional Officer's report was received by the District Collector. However, it is stated in the counter that since the letter was received late, that is, subsequent to the passing of the impugned order dated 10-1-91, the request made by the petitioner was not complied with. According to the first respondent, if such a request was made even on the date of hearing i.e., on 3-12-90, the first respondent would have certainly supplied the copy of the report.

26. This statement in the counter-affidavit filed by the first respondent does not merit acceptance, in view of the direction issued by this Court, time and again, in various decisions cited supra. It is incumbent on the part of the first respondent to send a copy of the Revenue Divisional Officer's report and other documents proposed to be relied upon by the Collector along with the show cause notice. That alone would enable the petitioner to adduce evidence contra to the conclusion arrived at by the Revenue Divisional Officer and to dislodge the said report, thereby establishing the claim of the petitioner that he belongs to Scheduled Tribe.

27. In that view of the matter, it is clear that . non-furnishing of the relevant documents and the report of the Revenue Divisional Officer would disable the person concerned to prove his claim that he belongs to Scheduled Tribe to the satisfaction of the competent authority.

28. As a matter of fact, the first respondent himself in his impugned order would refer that though the Revenue Divisional Officer in his discreet enquiry found out that the petitioner did not belong to Konda Reddy community and he belonged to Reddiar community which is a forward community, he was not able to get a signed statement from the local villagers, since they were not willing to sign in such statement.

29. When such being the case, the report of the Revenue Divisional Officer must be made available to the petitioner, since the said report, after discreet enquiry by the Revenue Divisional Officer is proposed to be relied upon by the Collector.

30. Therefore, I am of the view that the petitioner shall be given sufficient opportunity to establish his claim by adducing contra evidence to the report of the Revenue Divisional Officer before passing the final order by the Collector.

31. Accordingly, the writ petition is allowed and disposed of in the following terms :--

(i) The impugned order is quashed;

(ii) The matter is remitted back to the first respondent with a direction to decide the matter afresh after affording full opportunity to the petitioner to file his objection, if any;

(iii) Before making such a decision, a copy of the report made by the Revenue Divisional Officer and the other documents proposed to be relied upon by the

Collector to be furnished to the petitioner. Thereafter, the petitioner is given time to file objection and adduce evidence to substantiate his claim;

(iv) Thereafter, the Collector shall decide the matter after hearing the petitioner as to whether the petitioner belongs to Konda Reddy community or not;

(v) In the event of holding that the petitioner does not belong to Konda Reddy community, the Collector shall cancel the community certificate issued to the petitioner by the Tahsildar and intimate the same to the appointing authority, namely, respondents 2 and 3.

(vi) The enquiry must be completed and the result should be intimated within four months from the date of receipt of this order.

32. Before parting with this case, it is appropriate to refer about some of the Apex Court's cases regarding the duties of the parties to establish their claim before the competent authority relating to the community status, and the role of the authorities in arriving at a correct conclusion.

33. In *Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another*, the Apex Court held thus :-- (Para 6 of AIR)

"We agree with the learned counsel for the appellant that the High Court adopted a traditional approach of placing the burden of proof of social status founded on the entries in Government record, etc., and called upon the State to rebut it on the touchstone of Evidence Act. We are unable to appreciate the view taken by the Division Bench. Burden of proof of social status is always on the person who process it to seek constitutional socio-economic advantages. It is no part of the duty of the State to disprove or Otherwise."

34. In the said decision, the Apex Court would express its anguish by mentioning that the admission wrongly gained or the appointment wrongly obtained on the basis of the false social status certificate necessarily has the effect of depriving the genuine Schedule Castes or Scheduled Tribes or O.B.C. candidates envisaged of the benefits conferred on them by the Constitution and for that reason, the genuine candidates are denied admission to professional courses, etc., or appointments to offices or posts under State instrumentalities. It is further observed that after falsely gaining entry, they resort to dilatory tactics and create hurdles in completion of the inquiries by the competent authority.

35. In the said context, the Apex Court gave certain guidelines in para 7 of the said decision as to how the certificates regarding community have to be issued and how the inquiries with regard to the verification of the community status have to be made. Their Lordships, as one of the main guidelines would specify that the parent or guardian or candidate, as the case may be, shall file an affidavit duly sworn and attested by competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts of groups of tribes or tribal communities, the place from which he originally hails and other particulars as may be prescribed by the Directorate

concerned.

36. Following the said decision, Hon^{ble} Subramani, J. in the decision reported in 1995 Wri LR 448 (A. Arulanantha Krishnan v. The Registrar, Tamil Nadu Veterinary and Animal Science University) would observe as follows :--

"The best evidence that they could have adduced before the Authority, is, how their parents were recognised in the Society, the prior records of their parents to prove their caste and sub-caste, including the place of their nativity, etc."

37. Regarding the role to be played by the authorities in arriving at a correct conclusion, the Apex Court would give the following observation made in Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, :--

"The High Court without appreciating the probative value of the documents placed before it has dismissed the writ petition filed by the appellant by simply accepting the conclusions reached by the second respondent Committee. Undoubtedly, in cases of this type, the burden heavily lies on the applicant who seeks such a certificate. That does not mean that the authorities have no role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate. We are of the view that the authorities connected must also play a role in assisting the Committee to arrive at a correct decision. In this case, except the documents produced by the appellant, nothing has been produced by the authorities concerned to arrive at a different conclusion."

38. On the basis of the above two decisions of the Supreme Court, the petitioner who claims that he belongs to Scheduled Tribe has to substantiate the same, since the burden of proof of social status is always on the said person, who seeks socio-economic advantages and it is no part of the duty of the State to disprove or otherwise. In other words, the person concerned cannot simply wash off his hands by saying that the authorities have already issued a community certificate and that would be sufficient for all purposes. At the same time, the authorities concerned also must play a vital role in taking a correct decision.

39. These principles have to be borne in mind by the petitioner as well as the first respondent who is the competent authority to make the verification of process, while deciding the issue, whether the community certificate is to be cancelled or not by following the mandatory procedures mentioned in the citations referred to above.

40. Though these directions have been constantly issued by this Court from 1984 onwards, as indicated above, the authorities concerned either out of ignorance of law or mechanically without any application of mind invariably used to pass an order without giving the adequate opportunity to the person concerned by following the procedures as laid down by this Court and the Apex Court, resulting in the situation, where some of the persons who somehow or the other obtained community certificate in their favour, are allowed to remain in the job which they obtained under the Scheduled Tribe quota, thereby depriving the genuine

Scheduled Caste or Scheduled Tribe or other Backward Community candidates from getting the benefits conferred on them by the Constitution.

41. In the instant case, the verification process started in pursuance of an order passed by the Division Bench of this Court in 1984. Though the verification process was completed, by the impugned order dated 10-1-1991 this Court is constrained to direct for the continuation of the verification process for the aforementioned reasons by remitting back the matter at the fag end of 1998. Thus, the petitioner is allowed to continue in the job from 1984 to 1998, as there is no completion of verification process. If ultimately, it is found that the petitioner does not belong to Scheduled Tribe, it would amount to having denied admission to the genuine candidates, as pointed out by (he Apex Court.

42. Therefore, in order to avoid further delay, the first respondent has to finish the enquiry within four months from the date of receipt of this order and intimate the result to the petitioner and to the third respondent Bank. It is appropriate to direct the Chief Secretary of the State to take xerox copies of this order and to circulate them to the authorities concerned all over the State, so that at least in the future they would conduct enquiry in the proper manner by giving the adequate opportunity to the person concerned before deciding the issue of community status. The Registry is directed to send a copy of this order to the Chief Secretary of Tamil Nadu forthwith for immediate compliance of this order.

43. With these observations, the writ petition is allowed. No costs. Consequently, connected W. M. Ps. stand closed.