
(2015) 01 MAD CK 0186
In the Madras High Court

Case No : Writ Petition No. 30955 of 2014 and M.P. No. 1 of 2014

S. Tharmaraj

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0186

Hon'ble Judges : G. Chockalingam, J.;V. Dhanapalan, J.

Bench : Division Bench

Advocate : Bharathachakravarthy for Sai, Bharath and Ilan, for the Appellant;
N. Mala, Addl. G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Heard Mr.Bharathachakravarthy for M/s.Sai, Bharath and Ilan, learned counsel for the petitioner and Ms.N.Mala, learned Additional Government Pleader (Puducherry) appearing for the respondents.

2. What is challenged in this Writ Petition is a notice of the District Collector of the Government of Puducherry, Department of Revenue and Disaster Management, vide proceedings in Ref.No. 7273/DRDM/C2/ST- CAN/2013, dated 13.02.2014, by which, the petitioner had been directed to show cause as to why the Scheduled Tribe Certificate cited under reference No. 2 therein, should not be cancelled, with a further direction that the reply of the petitioner should reach the office of the District Collector within 15 days from the date of receipt of the said notice.

3. Short facts leading to the filing of the Writ Petition, are as follows:

(a) The petitioner belongs to Konda Reddy Scheduled Tribe Community and is a native of Kottapalayam Village, Thuraiyur Taluk, Trichy. Originally, the Community Certificate to the said effect was issued by the Tahsildar, Thuraiyur on 10.08.1977 and since the petitioner migrated to Puducherry, a Community Certificate was issued on 19.12.1990 by the Taluk Office, Puducherry, based on

the said Certificate of the Tahsildar of Thuraiyur.

(b) The petitioner joined service in the Education Department as School Assistant Grade-2 in 1978 and after putting 32 years of service, he superannuated on 31.11.2010. He was permitted to superannuate only on 20.05.2011 and only provisional pension was sanctioned and the retiral benefits are not paid. Upon enquiry, the petitioner was orally informed that a vigilance enquiry regarding petition received by the respondents relating to the genuineness of the Community Certificate, was entertained and pending the same, he was granted only provisional pension. The petitioner does not know as to what is the complaint or doubt as against his Community Certificate and he was not sure whether he was accommodated under Scheduled Tribe quota or not, at the time of his entry into service. He was making representations and reminders to the respondents to release his retiral benefits and grant him regular pension. However, the impugned show cause notice, dated 13.02.2014 was issued by the second respondent to show cause as to why his Community Certificate should not be cancelled.

(c) The petitioner submitted his explanation on 24.02.2014 stating the above facts, and the said explanation was not accepted and he was further summoned for enquiry by the third respondent on 20.10.2014 and on 13.11.2014, he was directed to furnish a fresh Caste Certificate on or before 30.11.2014 from the authorities in Tamil Nadu.

(d) The second respondent issued the impugned notice stating that he is empowered to cancel the Community Certificate on the basis of G.O.Ms.No. 152, dated 24.11.2005 of the Department of Revenue and Disaster Management, Government of Puducherry. Thereafter, the third respondent issued further notices and conducted enquiries as the Special Officer of the District Level Committee constituted by the first respondent for cancellation of the Community Certificate. By the said G.O., the Government of Union Territory of Puducherry has constituted a Committee appointing the second respondent as Chairman and the Committee is only in respect of the Scheduled Caste, Most Backward Class and Other Backward Class Community Certificates and the said G.O. does not deal with the Scheduled Tribe Certificates. Hence, the impugned notice is totally without jurisdiction, arbitrary, unreasonable and illegal, as the same is in violation of the principles of natural justice. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

4. The respondents have filed counter affidavit, stating as follows:

(a) A letter, dated 19.11.2013 was received from the Superintendent of Police, Vigilance and Anti-Corruption, Government of Puducherry, requesting the District Level Scrutiny Committee to verify the genuineness of the ST Certificate of the petitioner, produced by him during appointment and subsequent promotion, as it was stated to be a fake ST Certificate. The enquiry report of the Chief Vigilance Officer, Puducherry proved among other things that the writ petitioner (Chief

Educational Officer (Retd.)), obtained false Caste Certificate as if he belonged to Konda Reddy (ST) and secured job in the Education Department, Puducherry and from the enquiry, it is further seen that the petitioner defied the instructions in the Circular issued by the then Chief Educational Officer, Karaikal, regarding the utilisation of the amount of Rs.50,000/- donated by the ONGC, Karaikal and the petitioner, with mala-fide intention, temporarily misappropriated an amount of Rs.5,230/- collected towards court attachment received from one Mr.A.Janakiraman, a Teacher, who went on voluntary retirement, which the petitioner ought to have remitted the amount to Court in time.

(b) The Superintendent of Police further pointed out that the High Court of Madras in Crl.O.P.No. 9675 of 2006, quashed the FIR in Cr.No. 2 of 1999 on the ground that only a Committee consisting of three members in the District level and thereafter a Committee consisting of three members in the State level, is competent to go into the correctness or otherwise of the Community Certificate already issued and in the event of the State Level Committee giving a decision to the effect that the Government servant has produced a bogus or fabricated Certificate, it is open for the Department to proceed in accordance with law. Unless and until the fake Certificate is found to be false by the Committee and cancelled, it is valid till such cancellation and therefore, it was not possible to take action against the petitioner.

(c) The State Level Committee, Tamil Nadu, had been approached for verification of the Caste Certificate issued to the petitioner, as per the guidelines issued, vide G.O., dated 12.09.2007, Adi-Dravidar and Tribal Welfare Department, Government of Tamil Nadu. The copies of letters in O.Mu.A.4/8629/2005, dated 21.11.2005 and O.Mu.A.4/9317/2005, dated 28.12.2005 obtained during the course of enquiry from the Tahsildars of Thuraiyur and Namakkal respectively and submitted by the Superintendent of Police, Vigilance and Anti-Corruption, clearly state that Thiru.Tharmaraj, S/o Subbu Reddy belongs to the caste "Hindu Reddiar", which falls under Forward Caste. Based on the reports received from the Tahsildars of Thuraiyur and Namakkal, the Under Secretary to Government (Education), Government of Puducherry, sent a letter to the Deputy Secretary to Government, Adi-Dravidar and Tribal Welfare (ADW-5) Department, Secretariat, Chennai and the Deputy Secretary replied that the petitioner obtained his Scheduled Tribe Community Certificate from the Tahsildar, Taluk Office, Pondicherry, now Union Territory of Puducherry and therefore, the case does not come under the jurisdiction of the State Level Scrutiny Committee of Tamil Nadu, and he suggested that the reports received from the Tahsildars of Thuraiyur Taluk and Namakkal Taluk were sufficient records to dispose of the issue.

(d) The writ petitioner fraudulently misrepresented to the public servant by furnishing a false certificate and gained unjust advantage. Administrative authorities have inherent powers to recall or revoke their own orders, if such order was obtained by playing fraud on such public authority. If something is done by public authority at the behest of a person who played fraud, the same

public authority can nullify that was done as vitiated by fraud. An authority who has power to issue, inter-alia orders, has also power to rescind such order. Therefore, the Certificates bearing No. 22290/TOP/90, dated 19.12.1990 and No. 29065/TOP/D/1992, dated 26.03.1992 obtained by the petitioner by playing fraud, need to be rescinded.

(e) No Tribe has been notified as Scheduled Tribe in the Union Territory of Puducherry. Therefore, G.O.Ms.No. 152, dated 24.11.2005 issued by the Department of Revenue and Disaster Management of the Government of Puducherry, had envisaged only cancellation of Caste Certificates of SC, OBC and MBC by the District Committee headed by the District Collector. Therefore, on receipt of the request of the Superintendent of Police, Vigilance and Anti-Corruption, the matter was placed before the Committee. The Committee decided to give an opportunity of being heard to the petitioner and accordingly, the impugned notice was issued.

(f) The genuineness of the Caste Certificate of the petitioner was examined by the District Committee, which is a legally constituted Committee. The District Committee headed by the District Collector, who is also the Head of the Revenue Department, is competent to cancel the Certificates issued by the Tahsildar, Taluk Officer, Puducherry. The Committee members decided to give the petitioner another opportunity to prove his caste status and therefore, he was directed to produce a fresh Caste Certificate from Thuraiyur Taluk and instead of producing the same, the petitioner has filed this Writ Petition.

(g) The respondents are in no way connected with the payment of the petitioner's retirement benefits and it is not true that the petitioner had written to the respondents for releasing his retirement benefits. The role of the respondent- District Collector is to examine as Chairman of the Committee and to assist in deciding the caste status of the petitioner, based on the papers placed before the Committee, before issuing the orders for cancellation of the Caste Certificate obtained by the petitioner based on a fake certificate obtained by him from the Tahsildar, Taluk Office, Thuraiyur. The reports received from the Tahsildars, Taluk Office, Thuraiyur and Namakkal, are clear proof that the petitioner does not belong to ST-Konda Reddy, but to Hindu Reddiar, which is a Forward Caste and in order to give an opportunity, the petitioner was issued with the notice to prove his caste status and instead, he has used this opportunity to file a case against the proceedings of the District Committee and to stall its proceedings further. The petitioner is liable to be punished under the provisions of the Indian Penal Code. The act of the petitioner in getting an appointment in the Education Department of the Union Territory of Puducherry by obtaining a Scheduled Tribe Certificate from the Tahsildar of Thuraiyur Taluk and enjoying its benefits, has deprived a genuine person of his rightful entitlement of employment. Based on the fraudulent furnishing of false information to a public servant and obtaining ST Certificate from the Tahsildar, Thuraiyur, the petitioner had again fraudulently obtained ST Certificate from the Tahsildar, Taluk Office,

Puducherry. The Writ Petition is liable to be dismissed.

5. On the above background of pleadings, we have heard the learned counsel appearing for the parties and perused the material documents available on record.

6. The main thrust of the arguments of the learned counsel for the petitioner is that, as per the decision of the Government of Pondicherry in G.O.Ms.No. 152, Department of Revenue and Disaster Management, dated 24.11.2005, the second respondent-District Collector is not competent to deal with the cancellation of the Scheduled Tribe Certificate of the petitioner, as the said G.O. deals with the cancellation of the Community Certificates pertaining to SC/OBC/ MBC alone and hence, the impugned notice is issued without authority and jurisdiction and the same is liable to be set aside.

7. Resisting the above submissions, learned Additional Government Pleader (Puducherry) appearing for the respondents contended that there is no Scheduled Tribe community in the Union Territory of Puducherry and therefore, the second respondent-District Collector is empowered to deal with the issue as per the said G.O. She further contended that the impugned notice is only a show cause notice and no writ would lie as against a show cause notice issued by the concerned authority.

8. It is seen that the impugned notice, dated 13.02.2014, is issued by the second respondent-District Collector, directing the petitioner to show cause as to why the Scheduled Tribe Certificates, cited under reference No. 2 therein in ST- Certificate Nos. 29065/TOP/IC/92, dated 26.03.1992 and 19.12.1990, should not be cancelled, with a further direction that the reply of the petitioner should reach the office of the District Collector within 15 days from the date of receipt of the notice.

9. In this regard, it is pertinent to note that the Government of Pondicherry issued a Government Order in G.O.Ms.No. 152, Department of Revenue and Disaster Management, dated 24.11.2005, authorising the District Collector to cancel the Caste/Community Certificates only in respect of Scheduled Castes, Other Backward Classes and Most Backward Classes (i.e. SC, OBC and MBC), in consultation with the members of the District Committee and also by giving a reasonable opportunity to the affected applicant / parent / guardian and any authority lower than the rank of the District Magistrate is not competent to cancel such Certificate. For the purpose of cancellation of the Caste/Community Certificate, the District Committee had been constituted by the said G.O., consisting of the following composition:

10. A reading of the above G.O. in all respects clearly indicates that it has not authorised the District Collector to deal with the cancellation of the Scheduled Tribe (i.e. ST) Community Certificates. It only empowers the District Committee to deal with the cancellation of Caste/Community Certificates of SC, OBC and MBC only and not with the Community Certificates of ST. However, in the

impugned notice, in paragraph 3, it is stated that, "And whereas, the District Magistrate, Puducherry is the authority empowered to cancel the SC/ST/OBC-Certificate in accordance with the procedure laid down in the Government Order G.O.Ms.No. 152 dated 24.11.2005 of the Department of Revenue and Disaster Management, Puducherry". Accordingly, the impugned show cause notice had been issued to the petitioner to show cause as to why the Scheduled Tribe Certificates cited under Reference No. 2 therein, should not be cancelled, by giving 15 days" time to the petitioner to reply.

11. Normally, this Court does not entertain a Writ Petition challenging the show cause notice, unless there is violation of principles of natural justice or violation of any fundamental right or if an action is done contrary to law. If a Government empowers an authority by conferring such powers on him to deal with a matter, by specifically issuing Executive instructions therein on the subject, then the authority is empowered to act strictly in accordance with the powers conferred therein on him in respect of the subject alone and he shall desist from dealing with the subject(s) other than those mentioned therein and shall not traverse beyond his powers and jurisdiction. Thus, if an authority acts in contravention of the powers conferred on him on the subject and goes beyond his jurisdiction, then the action is to be construed as done without any authority and jurisdiction.

12. In this case, the second respondent-District Collector has derived the powers from G.O.Ms.152, Department of Revenue and Disaster Management of the Government of Puducherry, dated 24.11.2005, which is concerned only in dealing with the cancellation of the Caste/Community Certificates in respect of SC/OBC/MBC alone and not in respect of ST. It is not known as to how the impugned notice had been issued by the District Collector, as if he is empowered to deal with the cancellation of Community Certificate in respect of ST also. Therefore, we are inclined to set aside the impugned notice for want of jurisdiction and authority.

13. Accordingly, the impugned notice, dated 13.02.2014 issued by the second respondent-District Collector, Puducherry, is set aside. The Writ Petition is allowed. However, the respondents are at liberty to deal with the subject in issue, if any such power is conferred on the competent authority to act in accordance with law. No costs. The Miscellaneous Petition is closed.