

(1998) 08 MAD CK 0014

In the Madras High Court

Case No : W.A. No. 1135 of 1997 and C.M.P. No's. 13090 of 1997 and 108 and 109 of 1998

Siddi Raajan M.

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 3 LLJ 823

Hon'ble Judges : M.S. Liberhan, C.J;E. Padmanabhan, J

Bench : Division Bench

Advocate : R. Krishnamoorthy, for G.T. Subramaniam and V.V. Ravichandran, for the Appellant; K.B.H. Thulsiraman, Spl. Govt. Pleader for Respondent No. 1 and S. Subramanian, for T.S. Gopalan and Co., for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—This writ appeal has been preferred against the order dismissing W.P No. 2772 of 1986 on March 10, 1997 under

Clause 15 of the Letters Patent Act. For convenience, the parties to the present writ appeal will be referred to as arrayed in the writ petition.

2. The petitioner claims that he belongs to Kondareddy community, a scheduled tribe and even as per his school records, his community has been

recorded so. The Tahsildar, Bhavani after verification issued a community certificate that the petitioner belongs to Kondareddy community. It is,

the further case of the petitioner, that he and his relatives belong to the community of Kondareddy, a scheduled tribe and they have been issued

community certificate to the said effect.

3. According to the petitioner his forefathers were living in Burugur village, Burugur Taluk, which previously formed part of Kollekall Taluk, before

State reorganisation. According to the petitioner, consequent to the downfall of Vijayanagara rulers his ancestors have moved to Burugur Hills and

being illiterate persons, they have no documents in their favour. The petitioner states that the Community Certificate was issued to him on

September 20, 1985 by the local Tahsildar after verification. The petitioner had failed to pass the degree and he registered himself with the

employment exchange. The petitioner states that he had been working in the Sugarcane Breeding Institute as an Assistant between 1972-75. The

petitioner claims that he had joined the second respondent Indian Oil Corporation and working in the L. P G. bottling plant, Salem as Assistant.

The petitioner claims that he had been working diligently for the past 11 years in the said capacity.

4. The petitioner states that the Coimbatore District Adivassi's Uplift Association seems to have written to the second respondent alleging that the

second respondent addressed the District Collector, Coimbatore to verify the correctness of the Community Certificate issued in favour of the

petitioner during 1965 as well as on February 2, 1974.

5. On the said reference, the Revenue Divisional Officer, Gobichettipalayam had informed the Collector that on discreet or secret enquiry

conducted by Revenue Tahsildar of Bhavani, it is ascertained that the petitioner does not belong to Kondareddy community. The said report is

based upon a secret enquiry. The Revenue Divisional Officer has forwarded his report to the District Collector, the first respondent herein, who

had in turn informed the second respondent intimating that the petitioner is not a member of Hindu Kondareddy, a scheduled tribe community.

6. Based upon the said report received from the first respondent, the second respondent framed charge on October 9, 1985, to which the

petitioner had submitted his reply and explanation on October 2, 1985. The petitioner denied the charges and asserted that he is a member of

Kondareddy, scheduled tribe community. The petitioner had attended the enquiry on February 19, 1986, with the defensive assistant a co-

employee and sought for an adjournment for two weeks, as he did not have time to collect the materials. His request for adjournment was

opposed by the Presenting Officer and the enquiry committee rejected his request for adjournment for submission of relevant documents.

According to the petitioner, he had made specific request for grant of one adjournment and there has been no delay on his part. The enquiry

committee refused to grant even a short adjournment and proceeded with the enquiry.

7. According to the petitioner, the enquiry is highly biased, unilateral and one sided, besides the enquiry committee had failed to afford reasonable

or adequate opportunity to the petitioner to state and submit his case and also produce the records in support of his claims.

8. In terms of the Scheduled Caste and Scheduled Tribes Brochure, it is for the District Magistrate to verify the social (status) of the individual after

affording sufficient opportunity and only thereafter action could be taken by the employer. It is the further case of the petitioner that the second

respondent-employer cannot decide the social status. It is the contention of the petitioner that the District Collector alone is competent to decide

the social status, after affording sufficient opportunity and he cannot delegate the said functions to anyone, nor collection of materials behind his

back is permissible in law.

9. The petition further contended that the discreet enquiry or the enquiry that has been conducted by the first respondent and his subordinates

behind the back of the petitioner is vitiated, arbitrary and violative of principles of natural justice and such a procedure of discreet enquiry or secret

enquiry would be violative of principles of natural justice.

10. The petitioner further contends that when earlier three certificates have been issued in favour of the petitioner by the Tahsildar and so long as it

has not been cancelled by following the procedure prescribed, no action could be taken as the certificate issued during the year 1965 and

subsequently are still valid and holds good, as it has not been set aside in a manner known to law.

11. The petitioner claims that very many of his blood relations have secured community certificates from the Revenue Divisional Officer,

Gobichettipalayam and the Tahsildar has certified that they all belong to Kondareddy, a scheduled tribe community. The petitioner further states

that there are number of registered documents to substantiate his claim that he belongs to Kondareddy. The petitioner further points out that the

said certificate issued by the Thasildar, Bhavani is valid for the purpose of

employment in the second respondent Indian Oil Corporation as per the notification of the State and Central Government.

12. It is also pointed out that no documentary proof is required to substantiate the claim of social status. The petitioner had relied on very many Government orders or letters or notification issued with respect to issue of community certificate, verification of social status and the requirement to be followed in appointing members of scheduled tribes/scheduled castes community. The petitioner further states that the school records and SSLC book show that he belongs to Kondareddy, a scheduled tribe community.

13. The petitioners had raised number of contentions, while challenging the proceedings of the first respondent District Collector dated August 7, 1985. The petitioner had prayed for the issue of writ of certiorarified mandamus calling for the records and the proceedings of the first respondent in No. Mu. Mu. 68061/84/The 8 dated August 7, 1985, quash the same and consequently quash the charge sheet No. P & A 1461:205 dated October 9, 1985 on the file of the second respondent in pursuance of the report submitted by the first respondent and to pass other consequential directions.

14. Pending the writ petition, the petitioner requested the second respondent not to proceed further with the disciplinary enquiry proceedings. The petitioner also obtained orders of interim stay of the said proceedings. According to the second respondent, even before grant of orders of stay on September 5, 1996 the order of dismissal was passed on August 21, 1997 and that the dismissal had taken effect. It is the further contention of the second respondent that the order of stay granted in the writ appeal has become infructuous. The second respondent has passed an order of dismissal on August 21, 1997 consequent to the dismissal of the writ petition and it is the case of the second respondent that the charges levelled against the petitioner had been proved.

15. The writ petition came to be dismissed on March 10, 1997 and thereafter an order of dismissal had been passed by the second respondent. The petitioner had tiled writ appeal and he also secured orders of further stay. But before that the order of dismissal has been passed.

16. No counter has been filed by the respondents in the writ petition. However, the second respondent had filed a petition to vacate the stay order

pending the writ appeal, granted in C.M.P. No. 13090/1997. It has been stated by the second respondent that an order of dismissal has been

passed on August 21, 1997 after the dismissal of the writ petition on March 10, 1997. According to the second respondent as the petitioner had

already been dismissed on August 21, 1997, the order of interim stay granted on September 5, 1997 has become infructuous and therefore, the

order of interim stay has to be vacated as it cannot be implemented.

17. The Hon"ble single Judge by order dated March 10, 1997 had dismissed the writ petition. Before the learned Judge it was contended on

behalf of the first respondent that the petitioner had obtained a forged social status certificate and that the petitioner, in fact, belongs to the

backward community of Reddy.

18. With respect to the contention of the petitioner that the enquiry is vitiated for failure to follow the principles of natural justice and afford

opportunity, the learned Judge had taken the view that no opportunity need be given in a discreet enquiry. Para 12 of the order passed by the

Hon"ble single Judge, which is relevant reads thus :

The next point for consideration is whether an enquiry conducted by the District Collector was with the knowledge of the writ petitioner or not.

The law is very clear that there are two types of enquiries. One is under the service Rules and the other is discreet enquiry which is notified as an

enquiry to be conducted with the knowledge and also giving an opportunity to the petitioner whoever may be. But in this case, the contention of the

writ petitioner that no enquiry was conducted with his knowledge cannot stand. The discreet enquiry is totally within the department. In the discreet

enquiry no opportunity need be given to the writ petitioner. Therefore, on this ground also the writ petitioner"s contention fails".

19. The learned Judge has also taken the view that the social status certificate issued by the Tahsildar in favour of the writ petitioner is not valid as

the Tahsildar is not the competent authority to issue the social status certificate.

20. Mr. R. Krishnamurthi, learned senior counsel appearing for the appellant contended that the order passed by the Hon"ble single Judge runs

counter to the earlier pronouncements of this Court as well as Apex Court. The learned counsel also contended that there has been failure of

principle of natural justice and that the social status certificate already issued

cannot be cancelled without affording sufficient opportunity. It was also contended by the learned counsel that the earlier certificate issued in favour of the petitioner holds good and the Tahsildar is the competent authority to issue the certificate, which has to be given effect until it is cancelled.

21. It is not in dispute that the petitioner had secured a community certificate on September 20, 1995 as well as on February 2, 1974. The

petitioner had also produced number of certificates issued in favour of his blood relations certifying that they belong to Hindu Modareddy

Kondareddy (sic) Scheduled Tribe community. The petitioner has also placed number of registered documents to establish that he and his blood

relations belong to Hindu Kondareddy Schedule Tribe community. In terms of the notification issued by the Government of Tamil Nadu, it is

pointed out, that the Tahsildar is the competent authority to issue the social status certificate and it is not as if the Tahsildar is not the competent

authority and the view expressed by the Honourable single Judge is not correct and deserves to be set aside.

22. The first respondent by letter dated August 7, 1985 informed the second respondent that the Revenue Divisional Officer was directed to verify

the social status of the writ petitioner and that the said Revenue Divisional Officer had sent a report stating that the petitioner is not a member of

Kondareddy, a scheduled tribe, but he is a member of "reddy" community. Based upon the said report, charges have been framed by the second

respondent.

23. The learned counsel for the writ petitioner referred to the communication of the first respondent dated August 7, 1985 addressed to the second

respondent as well as copy of the report submitted by the Revenue Divisional Officer, Gobichettipalayam dated May 21, 1985 and it was rightly

contended that the said verification by the Revenue Divisional Officer as well as the letter of the first respondent District Collector stating that the

petitioner is not a member of the Kondareddy, scheduled tribe community had been sent without holding an enquiry, without affording an

opportunity and they have collected materials behind the back of the petitioner and discreetly.

24. The learned senior counsel also pointed out that based upon the report of the Revenue Divisional Officer forwarded by the District Collector,

the second respondent framed charges, which was being resisted by the writ petitioner. The entire charges were framed against the petitioner based upon the report received from the Revenue Divisional Officer through the Collector as well as the Collector's report. The Certificate had not been cancelled by the District Collector after following the procedure. Hence it is contended that no disciplinary action could be taken against the petitioner or continued and the entire proceeding of the second respondent is arbitrary, violative of Article 14 and principles of natural justice and liable to be quashed as it is a consequential action.

25. The learned senior counsel for the writ petitioner also referred to G.O. Ms. No. 1201 Social Welfare Department dated May 31, 1985. The

Government of Tamil Nadu in partial modification of the earlier Government order and following the Division Bench Judgment of this Court in

W.A. No. 783/82 and 344/83 dated July 25, 1984 directed that for the purpose of Central Government appointments and appointments in Public

Sector Undertakings, the Community Certificate shall continue to be issued by the Tahsildar in respect of the persons belonging to Kondareddis

also as in the case of other Scheduled caste/ Scheduled tribes. As such, it is evident that on the date, when the petitioner was appointed, he had

valid social status certificate and it is not as if the Tahsildar is not the competent authority to issue the social status certificate.

26 The learned senior counsel for the petitioner also relied upon the orders of this Court and Civil Court decrees passed in favour of his blood

relations. Where according to the petitioner, this Court affirmed the claims of social status with respect to the petitioners distant relatives. However,

it is not necessary to refer to the same in details at this stage, in the light of the order, we propose to pass in this writ appeal.

27. It is not contended by the learned counsel appearing either for the first respondent or for the second respondent that the social status certificate

issued by the Tahsildar is not valid and on the other hand, it is fairly stated that till the certificate is cancelled by following the procedure prescribed

in the Government Order, the earlier certificate issued by the Tahsildar holds good.

28. The learned senior Counsel for the petitioner also relied upon the decisions of this Court reported in

1. D. Illamaran v. Govt. of India 1996 WLR 482;
2. R. K. Sekar v. District Collector, Chengai MGR District 1996 WLR 484;
3. R. Kandasamy v. Chief Engineer, Madras Port Trust 1997 (8) Sup127;
4. S. Prabavathi v. Revenue Divisional Officer Thirupathur 1993 (2) MLW 143;
5. Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, ;
6. R. Jayaraman v. Union of India, (Order of this Court in W. P. No. 5706 of 1983);
7. Soopi Haji v. R. M. Ramanathan Chettiar, 1993 (2) Mad LW 146.

29. Though very many contentions have been raised by the senior counsel appearing for the petitioner and they are supported by the

pronouncement of the Apex Court as well as the Division Bench of this Court, Mr. G. Subramanian learned Senior Counsel appearing for the

second respondent as well as the Government Pleader appearing for the first respondent, in the light of the overwhelming and binding precedents,

submitted that the impugned proceedings be quashed and liberty be given to the respondents to proceed afresh. On behalf of the first respondent,

the Government pleader also fairly admitted that the entire report has been sent based upon a discreet enquiry, that the materials have been based

upon a discreet enquiry that the materials have been collected behind the back of the petitioner and that the report sent by the District Collector

will definitely run counter to the pronouncements of this Court.

30. Mr. G. Subramaniam, appearing for the second respondent also fairly stated that the disciplinary proceedings have been initiated against the

petitioner, based upon the report of the District Collector and the Revenue Divisional Officer and when once the said reports are quashed the

order of dismissal, which is only consequential also will not survive and the order of dismissal passed by the second respondent has to be set aside

with all consequential benefits, while granting liberty to the respondents to proceed afresh.

31. It will be relevant to refer to the pronouncement of the Division Bench of this Court in S. P. Sakthi Devi v. Collector of Salem 1984 WLR 535

wherein the Division Bench of this Court held that a social status certificate issued is valid till it is cancelled and that the authority who have been

empowered in this behalf alone is competent to cancel such asocial status

certificate. The Division Bench also held that in disciplinary proceedings, the genuineness or correctness of the social status certificates cannot be gone into and it is open to the department or employer or organisation to refer the matter to the authority, who had issued the certificate or the District Collector, as the case may be to verify whether the certificate issued is still valid on materials which have since come to their knowledge and only if the certificate is cancelled by the District Collector, who is the competent Authority, the disciplinary proceedings, if at all could be initiated for having furnished false information. The Division Bench held thus:

1. A Caste/Community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.

2. Their contents are to be treated as correct and every public authority, undertakings, bodies, institutions, etc., which are bound by instructions relating to such certificates, are bound to act upon them, so long as they are not cancelled.

3. In disciplinary proceedings, their genuineness or correctness of their contents can be gone into. It is open to the department or employer or organisation, to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid, on materials which have since come to their knowledge. They can appear in the verification enquiry and place the materials.

4. If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information.

5. Appointing authorities have the right to verify the genuineness of the certificates by approaching the District Magistrate-Collector of the District or such other constituted authority and once the report is received that the certificate is genuine, thereafter the certificate holder cannot be further harassed to prove his caste/community in any other manner.

6. In causing verification, the Collector is bound to follow the procedure laid down in letter dated July 7, 1984 of Government of Tamil Nadu.

7. In view of what is stated in Chapter 19 of BROCHURE FOR SCHEDULED CASTES AND SCHEDULED TRIBES IN SERVICES, 6th

edition (1982), the instructions issued by the Central Government from time to time relating to scheduled castes and scheduled tribes, pertaining to

issue of caste certificates are binding upon public sector undertakings, statutory and semi-Government bodies and voluntary agencies receiving grant-in-aid from the Central Government, as provided therein.

32. With respect to the competency of the authority to issue community certificate and the Government Orders issued in this behalf, the Apex

Court in *R. Kandasamy v. Chief Engineer, Madras Port Trust* 1997 WLR 806 held thus :

From a combined reading of G.O. Ms. No. 2 37 dated November 11, 1989 and letter of the Joint Secretary dated April 3, 1991, it follows that

whereas a Community Certificate after November 11, 1989 is required to be issued by the Revenue Divisional Officer, but the Community

Certificate issued by the Tahsildar prior to November 11, 1989 are valid certificates. In view of this position, it was not proper for the respondent

to have insisted upon a fresh certificate to be produced by the appellant from the Revenue Divisional Officer, as admittedly the Community

Certificate produced by the appellant had been issued by the Tahsildar concerned in 1987, that is, prior to November 11, 1989. The Community

certificate issued to a scheduled tribe candidate by the Tahsildar prior to November 11, 1989 is a good and a valid community Certificate for all

purposes so long as such a certificate is not cancelled. The authorities cannot decline to take that into consideration and insist upon a fresh

community certificate from the Revenue Divisional Officer".

33. The learned Senior Counsel also relied upon number of pronouncements of this Court, where the Division Bench as well as the Hon'ble single

Judges have repeatedly held that the principles of natural justice should be followed before cancelling the social status certificate. This proposition

is not being disputed by the counsel appearing for the respondents. It is just sufficient to refer to the Division Bench Judgment of this Court

reported in *D. Illamaran v. Govt. of India*, (supra) as well as *R. K. Sekar v. District Collector, Chengai M.G.R. District*, (supra).

34. In *D. Illamaran v. Govt. of India*, (supra) K. A. SWAMI, Chief Justice speaking for the Bench held thus :

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 in such case, 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 adopts 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, in the instant case the petitioner. This we have been reiterating in several cases and in spite of that the collectors are committing the same mistakes. In view of the fact that no opportunity whatsoever has been given to the petitioner to prove his case, it is necessary to issue, an, appropriate direction to the Collector as well as to respondents 1 and 2.

35. It has also been held in R. K. Sekar District Collector, (supra) that it is essential to follow the principles of natural justice before cancellation of Community Certificate.

36. We are not in a position to sustain the order passed by the Hon"ble single Judge as the basic principles had been lost sight of and as such a view will run counter to the principles of natural justice besides violative of Article 14. Hence we hold that the action of the respondents is arbitrary and runs counter to the law laid down by the Apex Court as well as this Court. There could be no discreet enquiry and no action could be taken by the respondents based upon the discreet enquiry with respect to the social status of the petitioner.

37. In the light of the settled position of law and the learned counsel appearing for the respondents fairly admitted the legal position, the impugned proceedings of the first respondent as well as the order of dismissal passed by the second respondent on August 21, 1997, which is nothing but a consequential order to the impugned communication of the Collector dated August 7, 1985 as well as the report of the Revenue Divisional Officer are quashed and the Writ Appeal is allowed.

38. Mr. G. Subramaniam learned Senior Counsel appearing for the second respondent fairly submitted that the order of dismissal dated August 21, 1997 will automatically go consequent to this Court quashing the communication of the first respondent and that liberty be given to the second respondent to proceed afresh.

38A. In the circumstances, the order of dismissal passed by the second respondent on August 21, 1997 in his office reference HR/IR/ 1461/205 is

quashed and the second respondent shall forthwith reinstate the writ petitioner with all backwages and continuity of service.

39. It is made clear that it is open to the first respondent to proceed afresh for verification of the social status certificate already issued in favour of

the writ petitioner and the first respondent will proceed according to law by issuing a show cause notice and affording sufficient opportunity of

enquiry and hearing. As and when the first respondent passes orders, if any with respect to the verification of petitioner's social status and in the

event of community certificate already issued in favour of the petitioner is being cancelled, it is open to the second respondent to proceed afresh.

40. In the circumstances, the Writ Appeal is allowed, the order of the Hon''ble single Judge is set aside and the impugned proceedings of the first

respondent as well as the second respondent are quashed. No costs. Consequently, C.M.P.Nos. 13090/1997, 108/1998 and 109/1998 are

closed.