

(2000) 08 MAD CK 0047

In the Madras High Court

Case No : Writ Petition No. 6597 of 1993

V. Gurusamy

APPELLANT

Vs

The Collector of Madurai, Madurai and another

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Citation : (2000) 4 CTC 487

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. P. Srinivas, for the Appellant; Mr. P. Subramanian, Government Advocate, Mr. S. Subbiah, for the Respondent

Judgement

1. V. Guruswamy, the petitioner herein, has filed this writ petition seeking for the issue of a writ of certiorari calling for the records relating to the

proceedings of the Collector of Madurai in Na.Ka.No.1336108/92 Adi-8 dated 19.3.1993 and quash the same.

2. The short facts which are relevant for the disposal of this writ petition are as follows:-

The petitioner was initially appointed as "Temporary Messenger" by the second respondent-Bank on 26.8.1985, under reserved Scheduled Tribe

category by declaring himself as "Kammara" community. Subsequently on 20.8.1992, he was promoted to the Clerical cadre and posted to the

second respondent's branch at Vembakkottai. At the time of joining service with the second respondent, he had produced a community certificate

dated 13.4.1983 issued by the Tahsildar, Usilampatti for proving his caste status. In the year 1992, the second respondent, on the basis of a

complaint received in regard to his community certificate, referred the matter to the Collector of Madurai, the first respondent herein, for

verification of the certificate produced by the petitioner. The first respondent-Collector, in turn, issued instructions to the Revenue Divisional

Officer, Usilampatti to enquire into this and make a report about the genuineness of the community certificate. The Revenue Divisional Officer, after

enquiry, sent a report to the Collector of Madurai to the effect that the petitioner does not belong to Kammara Community, but belongs to

Vadugan community which is a backward community and hence, the community certificate is a bogus one. After receipt of the said report, the

personal enquiry was conducted on 15.3.1993 by the District Adi Dravidar Welfare Officer, Madurai on behalf of the Collector. After examination

of the records produced by the petitioner, the impugned order has been passed by the first respondent cancelling the community certificate.

Aggrieved by the said order, this Writ Petition has been filed by the petitioner.

3. I heard the counsel for the petitioner and the respondents.

4. On going through the records, it is clear that the first respondent has not followed the due procedure in conducting the enquiry over the

genuineness of the community certificate, as laid down by various decisions of this Court.

5. Even according to the counter filed by the first respondent, after receipt of report from the Revenue Divisional Officer, the petitioner was not

furnished with a copy of the report. Though the impugned order dated 19.3.1993 was passed by the Collector, in the counter, it is stated that the

enquiry was conducted by the District Adi Dravidar Welfare Officer, Madurai on behalf of the Collector. Moreover, there is no reference in the

impugned order that during the course of enquiry, the report of the Revenue Divisional Officer was made available to the petitioner.

6. It is also relevant to note that the Collector mainly concluded on the basis of the Revenue Divisional Officer's report, without furnishing the

Revenue Divisional officer's report to the petitioner and without allowing the petitioner to file his objections and adduce evidence to disprove the

contents of the report, the Collector cannot cancel the community certificate by merely accepting the report of the Revenue Divisional Officer. This

is purely the violation of the principles of natural justice.

7. The Division Bench of this Court in *D. Illamaram v. Govt. Of India*, 1996 W.L.R. 482 would hold as follows:-

Whenever the question arises, as to whether a person belongs to a particular community recognised as the schedule Tribe or Schedule Caste,

decision has to be taken by the Collector of the District, after holding due enquiry and 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.

8. N.Balasubramani v. The Collector Dindigul, 1999 WLR 605, it is held as follows:-

The first respondent has also utterly failed to make available the reports of the enquiry conducted by various officials to the petitioner also shows

that he has violated the Principles of Natural Justice before passing the order of cancellation.

9. In Ramamurthy v. State of Tamil Nadu, 1998 (3) MLJ 699, this Court would hold as follows:-

The authority has to furnish copy of the report of the Enquiry Officer to the concerned person and also further opportunity to be given to file

objections and adduce evidence, if any. Such procedure has not been followed in this case.

10. In Anuradha Reddy v. State of Tamil Nadu, 1993 WLR 370, it is held as follows:-

In the light of the principles as enunciated above in the various decisions of this Court, it goes without saying that in the instant case, the petitioner

has succeeded in her complaint of the violation of the principles of natural justice in the sense of not giving to her the minimum of opportunity to put

forward her case. This calls for interference and in that view of the matter, the impugned order of the fourth respondent-Collector is liable to be

quashed.

11. In R. Ravichandran v. The Collector of Salem and others, 1999 W.L.R. 187. this Court would observe as follows:-

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 statement 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.

12. In the light of the above-guidelines, it can be safely held that the first respondent-Collector, without furnishing the copy of the report of the

Revenue Divisional Officer to the petitioner, has concluded that the petitioner did not belong to Kammara community. The primary duty enjoined

on the first respondent is to furnish the copy of the report of the Revenue Divisional Officer to the petitioner to enable him to go through the report,

and to direct him to appear before him by giving opportunity to adduce evidence in contra to the finding given in the report of the Revenue

Divisional Officer and then to decide the issue. This being the mandatory procedure, which has been laid down in various decisions as referred to

above, has not been followed. Under these circumstances, the impugned order is liable to be set aside.

13. The matter would ordinarily be required to be remitted back to the District Collector for fresh enquiry after furnishing the petitioner copy of the

said report and after affording him a reasonable opportunity of being heard. Now, it is noticed, as referred to by a Division Bench of this court

headed by Hon^{ble} A.C. Agarwal, C.J., in *A. Selvaraj Vs. State of Tamil Nadu and two others*, that a District High Level Caste Scrutiny

Committee has been constituted in terms of the directions issued by the Supreme Court in the case of *Kumari Madhuri Patil and another Vs.*

Addl. Commissioner, Tribal Development and others, .

14. Therefore, in view of the above, the present enquiry will, therefore, be required to be conducted by the District High Level Caste Scrutiny

Committee. In the circumstances, the impugned order is set aside and the matter is remitted back to the District High Level Caste Scrutiny

Committee, which shall issue fresh notice to the petitioner, furnish relevant documents pertaining to the aforesaid report in regard to the enquiry

conducted by the Revenue Divisional Officer and afford him a reasonable opportunity of being heard and thereafter, decide the claim made by the

petitioner, on merits and in accordance with law within six weeks from the date of receipt of a copy of this order, in the event of coming to the

conclusion that the petitioner does not belong to Kammara Community, the said committee will be required to intimate the result of the enquiry to

the second respondent also.

15. The writ petition is disposed of accordingly. No costs.