

(2001) 10 MAD CK 0019

In the Madras High Court

Case No : Writ Appeal No. 218 of 1997 and C.M.P. No. 3751 of 1997

V. Ramalingam

APPELLANT

Vs

The District Collector, The Revenue Divisional Officer and
Central Bank of India

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Citation : (2001) 10 MAD CK 0019

Hon'ble Judges : N.V. Balasubramanian, J;A.K. Rajan, J

Bench : Division Bench

Advocate : N. Kannadasan, for the Appellant; R. Lakshmi Narayanan,
Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—This Writ Appeal has been filed against the dismissal of in W.P. No. 1894 of 1988.

2. The Writ Petition was filed against the cancellation of the community certificate of the Appellant herein. The Appellant was appointed as a clerk

in the Central Bank of India against the quota reserved for Scheduled Tribes on the basis of the community certificate by the Tahsildar. On the

request of the bank authorities, the R.D.O., conducted a discreet enquiry, in the enquiry, it was found that the Appellant does not belong to

Konda Reddy"" community, but actually belongs to Reddiar Community which is a forward Community. So notice was issued to the individual

requesting him to appear before the Collector, Tiruchirapalli to show cause why his community certificate should not be cancelled. He was also

furnished with a copy of the enquiry report of the Revenue Divisional Officer, Musiri, dated 11.8.1987, together with a copy of the statement of

the villagers of Krishnapuram, hamlet of Murugur village, Turaiyur Taluk, in order to facilitate the Appellant to offer further explanation in the

matter. Thereafter, the Appellant offered explanation on 18.12.1987 ; in that, he has stated that signatures of the villagers were obtained in the

statements prepared by the Revenue Divisional Officer without disclosing the contents therein. Further, he also produced some statements of the

villagers stating that the Appellant belongs to ""Konda Reddy"" community. Personal hearing was given. After hearing the Appellant, the District

Collector concluded that the Appellant does not belong to "Konda Reddy" community and therefore cancelled the community certificate issued by

the Tahsildar. In that order, the Collector has also stated that in the first page in the S.S.L.C. book of the Appellant, it has not been stated that the

Petitioner belongs to any of the ST / SC / BC. Therefore, the Collector stated that it is evident that the Appellant does not belong to any

Backward or Scheduled Caste or Scheduled Tribe. Against that order of the District Collector, the writ petition was filed. Learned single Judge

after hearing the argument of the Appellant, dismissed the writ petition; against that, this writ appeal has been filed.

3. learned Counsel for the Appellant argued that in order to cancel the community certificate, no discreet enquiry can be conducted. In support of

his argument, he relied upon the judgment rendered in R.A. 104 of 1999 in W.A. No. 887 of 1999, dated 4.2.2000 wherein the Division Bench of

this Court has held that,

It is needless to add that any enquiry that may be conducted either by the Respondents 1 or 2 shall be conducted in the presence of the Petitioner

and the Petitioner shall be allowed to cross examine those witnesses whose statements are recorded.

Relying upon this, the learned Counsel for the Appellant argued that inasmuch as discreet enquiry has been conducted in the Appellant's absence

and as there was no opportunity for him to cross-examine the witnesses whose statements were recorded, such statements cannot be relied upon.

The learned Counsel referred to another decision of this Court in W.A. No. 1927 of 2000, dated 10.11.2000, wherein this Court directed the

Appellant therein to approach the District Level Committee, in a similar situation. The counsel also relied upon another decision of the Division

Bench of this Court in W.A. No. 1020 of 1999, dated 12.7.2000; in that case, the Division Bench directed to furnish a copy of the report of the

discreet enquiry to the Appellant, in order to give him opportunity for filing his objections and adduce evidence. It also directed the District

Collector, Tiruchirapalli to decide ""whether he belongs to ""Konda Reddy"" community or not, after hearing the Appellant therein. It also held that in

the event of the District Collector holding that the Appellant does not belong to ""Konda Reddy"" community, the District Collector shall cancel the

community certificate issued to the Appellant. In Writ Appeal Nos. 1460 to 1476 of 1995, dated 8.1.1996, this Court directed the District

Collectors of Salem, Madurai, Tiruchirapalli and Coimbatore to issue notice to the first Respondent therein and also to furnish the documents, if

any, relied upon by them for the purpose of deciding the question as to whether the Appellants therein belong to the community to which they claim

to belong ; the District Collector was permitted to record evidence that may be produced by the Appellants therein and then to decide the question

whether the community certificates obtained by them were true or not. Against that an SLP was filed and the Supreme Court by order dated

8.8.1997 confirmed the order of the division Bench and directed the collector to conduct enquiry afresh, in accordance with law. Therefore, the

judgment of the Division Bench had merged with the order in the S.L.R as per the decision of the Supreme Court in Kunhayammed and Ors. v.

State, of Kerala and Anr. (2000) 6 Supreme Court Cases 359 and therefore, the counsel for the Appellant argued that in this case also, the

Collector should be directed to conduct enquiry afresh as has been done earlier.

4. The learned Counsel for the Appellant has also relied upon a decision in C. Baskaran v. The District Collector, Tricky 1997 Writ L.R. 33, this

Court held that,

When the order itself is based on the discreet enquiry, the records of which were not made available to the Petitioner, no more thing is required

than a mere reading of the order of the District Collector.

The learned Counsel also relied upon the Government Order, G.O. (2D) No. 18, dated 1.4.1997, and requested the matter to be referred to the

District Level Committee to decide the question whether he belongs to the ""Konda Reddy"" community or not.

5. The Division Bench of this Court in the case of Illamaram, D. v. Government of India 1996 Writ L.R. 482 held that,

Whenever the 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 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.

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A copy of the report made by the Revenue Divisional Officer should be furnished to the Petitioner and thereafter the Petitioner and thereafter the

Petitioner should be given time to file his objections and adduce evidence, if any, and then the Collector shall decide the matter after hearing the

Petitioner, as to whether the Petitioner belongs to Konda Reddy Community or not. In the event, it is held that the Petitioner does not belong to

Konda Reddy community, the Collector shall cancel the community certificate issued to the Petitioner by the Tahsildar that he belongs to Konda

Reddy community and intimate to Respondents.

6. We heard the learned Counsel for the Appellant and the learned Counsel for the Respondent. We are of the view that it is not necessary to go

into the effect of G.O. 18, dated 1.4.1997 by which the District Level Committee as well as the State Level Committee was established, as in the

instant case, the order of the District Collector, Tiruchirapalli was passed on 1.2.1988 much prior to the issue of G.O. 18, dated 1.4.1997. We

are of the view that it would have been necessary to consider the effect of G.O. 18, dated 1.4.1997 and the applicability of the unreported

judgment of this Court in W.A.1927 of 2000, dated 10.11.2000, if we decide to set aside the order of the District Collector, Tiruchirapalli. We

are of the view that the District Collector at the relevant point of the time had the power and also the duty to decide the issue whether a certificate

granted by the Tahsildar is true or not wherever necessary. While doing so, as

held by the Supreme Court in *Illaraman, D. v. Government of India*

1998 Writ L.R. 482, the District Collector can either conduct the enquiry by himself or through the Revenue Divisional Officer, initially and

thereafter give an opportunity to the persons concerned to hear their views and then can decide the issue. While conducting such a preliminary

enquiry, the Revenue Divisional Officer has the power to conduct discreet enquiry. In cases where such preliminary discreet enquiry is conducted,

the only requirement is, that the report of the Enquiry Officer must be furnished to the persons concerned alongwith the copies of the statements

recorded by the R.D.O.; the person concerned must be given an opportunity to put forth his version and to rebut the findings of R.D.O.

Thereafter, the Collector can pass orders. When once that procedure is followed, the order is perfectly valid. There cannot be any grievance for

the concerned persons once the above procedure had been followed.

7. The observation by this Court in Review Application No. 104 of 1999 in *W. A. 887 of 1999*, dated 4.2.2000 that any enquiry must be

conducted in the presence of the Petitioner relates to the subsequent enquiry that was to be conducted by the Collector after the matter was

remitted.

8. An order of District Collector will be valid, in case the Collector had followed the procedure correctly. That is, if the Collector had given the

copy of the discreet enquiry report along with the copies of statements recorded during such enquiry along with the show cause notice, thus giving

the opportunity to the person concerned to submit his explanation and to adduce any other evidence, oral as well as documentary and after

considering those materials, the Collector passed the order, such an order would be valid as per the decision of the Supreme Court in *Gulzar Singh*

v. Sub-Divisional Magistrate (1993) 3 SCC 107 wherein the Supreme Court has held as follows:

If this certificate was to be cancelled on the basis of some enquiry which had been conducted by the department, it was incumbent on the

department, keeping in view the principles of natural justice, to issue a show cause notice to the Appellant requiring him to explain as to why the

Scheduled Caste Certificate which had been issued should not be cancelled. If there were statements of other persons which were recorded, as

seem to have been done in the present case, on the basis of which the department came to the conclusion that the Appellant was not a Majhbi Sikh

by caste but was a Christian, then fairness would require that the said statements should be put to the Appellant before a final decision is taken.

Therefore, in cases where discreet enquiries are conducted and statements were recorded from various persons, the view of the Supreme Court is

that, fairness would require that the statements should be put to the Appellant before final decision is taken. It does not mean that statements

should be recorded in the presence of the person aggrieved. The principles of natural justice would be satisfied, if copies of the statements are put

on notice to the employee before the final decision is taken.

9. From the affidavit filed by the Petitioner in the writ petition, it is clear that he was furnished with the copy of the discreet enquiry conducted by

the E.D.O. and also the copies of the statements recorded from the villagers. He also participated in the enquiry conducted by the Collector and

only thereafter, the Collector has cancelled the community certificate. Therefore, all the formalities have been complied with. There is no infirmity in

the order passed by the Collector. The decision of the learned single Judge is therefore legally correct. Hence, the Writ Appeal is liable to be

dismissed.

10. In the result, the writ appeal is dismissed. In the circumstances of the case, no costs. Consequently, C.M.P. No. 3751 of 1997 is dismissed.