Balamani Vs. Tahsildar

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Court : Kerala

Decided On : Apr-07-2005

Reported in : AIR2005Ker208; 2005(2)KLT746

Judge : K.T. Sankaran, J.

Acts : Kerala Manufacture and Sale of Stamp Rules, 1960 - Rules 16, 35, 35(6) and 37; Constitution of India - Article 226

Appeal No. : O.P. No. 1227 of 2003

Appellant : Balamani

Respondent : Tahsildar

Advocate for Def. : P.V. Kunhikrishnan, Adv. and; Waheeda Babu, Government Pleader

Advocate for Pet/Ap. : P.K. Ashokan and; M.R. Venugopal, Advs.

Disposition : Petition allowed

Judgement :

K.T. Sankaran, J.

1. The petitioner submitted an application on 22.4.2002 for being selected as the Stamp Vendor licensee in 'Peruvanna City' in Kozhikode Taluk, on the basis of

Ext.R3(a) notification dated 4.4.2002, issued by the Additional Tahsildar, Kozhikode. The petitioner was called for an interview on 1.1.2003 as per Ext.P2 notice dated 5.12.2002. The petitioner appeared for the interview. The Original Petition is filed alleging that the third respondent was selected on extraneous considerations. The petitioner states that as per Ext.P1 application form, previous experience as a Stamp Vendor is a relevant criterion for selection. The petitioner had worked as Stamp Vendor at Pantheerankavu for a total period of two years, when the Stamp Vendor at Pantheerankavu was on leave. Ext.P3 issued by the Tahsildar, Kozhikode shows that the petitioner was allowed to work in the leave vacancy from 5.5.1994 to 4.11.1994. The petitioner was again appointed in the leave vacancy from 5.11.1994 to 4.5.1995, as per Ext.P4 proceedings, dated 13.1.1995, issued by the first respondent. According to the petitioner, she was again appointed in the leave vacancy from 11.5.2001 to 25.4.2002 by the District Treasury Officer, Kozhikode. The petitioner contends that her previous experience was not taken into account by the first respondent. The third respondent, who had no such previous experience, was selected under the pressure and influence of a political party. The prayers made in the Original Petition are for the issue of a writ of certiorari to quash the selection and appointment of the third respondent as Stamp Vendor in Peruvanna City in Kozhikode Taluk and for the issue of a writ of mandamus commanding the first respondent to select and appoint the petitioner as Stamp Vendor.

2. In the counter affidavit filed on behalf of the first respondent (the counter affidavit having been sworn to by the Junior Superintendent, Taluk Office, Kozhikode), it is contended, inter alia, as follows: Applications for appointment as Stamp Vendor were invited from eligible persons as per notification dated 18.4.2002, based on the proceedings dated 19.3.2002, issued by the District Collector, Kozhikode. 15 applications were received. Nine applicants were selected for interview. The interview was conducted by the Additional Tahsildar on 1.1.2003. The third respondent was selected and the selection was approved by the District Collector, Kozhikode on 14.1.2003.

3. An interim order dated 15.1.2003, was passed by this Court in the Original Petition, that the appointment of third respondent will be subject to the result of the

Original Petition. However, on 23.3.2004, another order was passed by which it was clarified that the order dated 15.1.2003, will not stand in the way of appointing the third respondent as Stamp Vendor. The matter was reported to the District Collector on 18.8.2004 as the new Government Order, G.O.(P)No. 23-03/TD dated 7.2.2003, insists to form a District Committee consisting of District Collector, District Registrar and District Treasury Officer as members for examining the applications for the selection of Stamp Vendor and the District Treasury Officer to appoint the Stamp Vendor. The District Collector in his letter No. B4.30994/04 dated 20.9.2004, directed the Additional Tahsildar to take further steps to appoint the Stamp Vendor within a fortnight, as the said proposal was approved by the District Collector as early on 14.1.2003, prior to the new Government Order. On the basis of the said direction, the Additional Tahsildar appointed Smt. P.M.Komalavally (respondent No. 3) as the Stamp Vendor temporarily as per order No. K.Dis. 16272/01/02 dated 4.10.2004. In the counter affidavit filed on behalf of the first respondent, there is no specific denial of the allegation made in the Writ Petition that there was political interference.

4. The third respondent in her counter affidavit contended that the Original Petition is not maintainable, as an appeal lies to the Revenue Divisional Officer against any order passed by the Tahsildar under Rule 35 of the Kerala Manufacture and Sale of Stamp Rules, 1960. A revisional power is also given to the District Collector who can invoke such power either suo motu or on an application. Without invoking such alternative remedy, it is contended by the third respondent, that the petitioner cannot invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Ext.R3(b) is the application submitted by the third respondent in the prescribed form. It is further stated in the counter affidavit thus:

'On receiving the applications from the eligible persons, the 1st respondent scrutinised the same in detail. It is understood that, altogether 15 applications were there and from this, 9 applicants were selected for interview. The 1st respondent issued interview card to 9 persons including myself. The 1st respondent conducted the interview in detail and selected the better candidate. The interview and selection were so transparent and there was no allegation regarding the manner in which interview and selection was conducted....'

The third respondent contends that she is fully qualified for the post of Stamp Vendor as per Ext.R3(a) notification and that for selecting the better candidate, the Additional Tahsildar took the ability of the candidates into consideration. It is further contended that Ext.R3(a), the notification issued inviting applications, does not say that experience as a Stamp Vendor is a criterion for selection. According to the third respondent, the petitioner is now working as a Stamp Vendor and that she wants the entire area under her control, in the counter affidavit of the third respondent, it is further stated thus:

'... The allegation that the legitimate claim of the petitioner was overlooked because of my influence is also incorrect.....There was no political pressure as stated by the petitioner.....There was no pressure or influence as stated by the petitioner...'

5. As directed by this Court, records in the case were made available. The records would reveal that fifteen applications were received before the Additional Tahsildar. The names and addresses of those fifteen applicants are contained in the list at pages 89 and 90 of the records. On 4.4.2002, Ext.R3(a) notification was issued. On 16.5.2002, a letter was addressed to the Village Officer, Peruvanna, directing the latter to make an enquiry as to the financial status, character and qualification of the applicants and also to enquire whether appropriate place is available for them for the sale of stamps in Peruvanna City. The Village Officer was directed to submit the report within one week. The Village Officer, submitted the report, dated 12.7.2002 (pages 99 to 110 of the records). A note was submitted to the Additional Tahsildar (page 4 of the records) suggesting that all the fifteen applicants could be called for interview. On 5.12.2002, the Additional Tahsildar approved the note and fixed the date of interview as 1.1.2003 at 11 a.m. Page 139 of the records would reveal that notice was issued to all the fifteen applicants directing them to appear for the interview on 1.1.2003 at 11 a.m. The applicants were directed to produce at the time of interview the documents to prove the educational qualifications, previous experience and the availability of place/room for the sale of stamps. The interview was held as scheduled and the

notes made by the Additional Tahsildar in respect of the interview are contained at pages 5 and 6 of the records. It would appear that nine persons appeared for the interview. The Additional Tahsildar noted the number of the S.S.L.C. Book of the applicants and in some cases noted the educational qualifications. At the foot of page 6, it is stated that no other person appeared for the interview and Smt. P.M.Komalavally was selected for appointment as Stamp Vendor. There is also a direction to get approval of the District Collector. There is nothing in the records to reveal that the Additional Tahsildar considered the merits of the applicants, evaluated the same and selected the most suitable candidate. There is no discussion at all about the comparative merits of the applicants. No marks are awarded to the candidates by the Additional Tahsildar and it is not possible to find out as to how he selected the third respondent, Smt. P.M.Komalavally. How the Additional Tahsildar arrived at the conclusion is not discernible from the records.

6. The interview is intended for selecting the best candidate. There was no written examination and, therefore, the whole selection process depends on the consideration of the merits of the applicants at the interview. What was the criterion adopted by the Additional Tahsildar for selecting the candidate for appointment is not clear. If educational qualification is the criterion. Sri. P.Sreenivasan Nair is the person having better educational qualification as he is the only graduate. He is also an ex-serviceman. The petitioner has failed in Pre-degree examination. She has passed English and Malayalam Typewriting Higher Examinations. The third respondent has passed Pre-degree and Typewriting English Examination (not clear whether Lower or Higher). Ramesh P., another applicant, passed S.S.L.C. and obtained Diploma in Radio and Television Engineering. If previous experience is the relevant criterion, the petitioner is the only candidate having previous experience as Stamp Vendor. The application form in which the candidates were directed to submit their application is not the one prescribed by the Kerala Manufacture and Sale of Stamp Rules. Who prescribed the application form is not stated. As per the application form, the candidate is directed to state his educational qualification, previous experience as a Stamp Vendor, whether he has been issued with any other licence, whether he is retired from Government service, whether he is the legal representative of a deceased Stamp Vendor, whether the applicant would be able to provide for a building in

case he is granted licence and the details regarding the financial status of the applicant. The press note issued by the Additional Tahsildar (page 11 of the records) would show that the applications should be submitted by the applicants in the prescribed form. The notice issued to the candidates, as already stated, would indicate that the educational qualification and previous experience are also relevant. The Additional Tahsildar having not taken into account any of these aspects, it cannot be said that the selection of the candidate was properly done.

7. The contention of the petitioner is that the third respondent was selected on extraneous considerations. The specific allegation made in the Original Petition in this regard was not denied in the counter affidavit filed on behalf of the first respondent. The first respondent was expected to file a counter affidavit, but he did not do so and deputed only a Junior Superintendent in the Taluk Office to swear to the counter affidavit. It is apposite to note here that the Original Petition was filed on 13.1.2003 and the counter affidavit on behalf of the first respondent was sworn to on 2.2.2005. When allegations are made against the Additional Tahsildar that he was acting under the political pressure, he was expected to file a counter affidavit.

8. At page 151 of the records, a letter dated 23.6.2002 issued by the Member of Legislative Assembly, Kozhikode I, to the District Collector is seen. The above letter is as follows:

At page 149 of the records, a representation dated nil, submitted by the third respondent to the District Collector, Kozhikode is seen. In that representation, it is stated that she had submitted the application for being selected as a Stamp Vendor and that the interview was scheduled to be held an 1.1.2003. The prayer in that representation is to issue orders so that she is selected as the Stamp Vendor. The District Collector made an endorsement dated 23.12. (must be 23.12.2002), which reads as follows:

'Forwarded to Tahsildar for urgent n/a.'

9. The letter issued by the M.L.A. to the District Collector and the act of the District Collector in forwarding the representation submitted by the third respondent for

necessary action to the Tahsildar speak volumes. The allegation made by the petitioner that the Tahsildar was acting under the political pressure cannot be ruled out. The records would clearly show that the statutory authority who is invested with the jurisdiction to appoint the Stamp Vendors under Rule 35 was not acting as an independent statutory authority.

10. Rule 35 of the Kerala Manufacture and Sale of Stamp Rules, 1960 reads as follows:

'35. The sale of stamps shall be made by the treasurers as ex-officio Stamp Vendors and by licenced Stamp Vendors appointed by the Tahsildars. The Junior Superintendent and the Accountant, Central Stamp Depot, Trivandrum, shall be ex-officio Vendors in respect of the documents embossed and returned to the parties under Rule 16. The District Collector shall determine the number of Stamp Vendors licences required in any area in his district after examining the necessity. The Tahsildars shall get the permission of the District Collector, to issue additional licences in an area or to transfer a licenses from an area to another. An appeal shall lie to Revenue Divisional Officer against any Order passed by the Tahsildar under this rule or any order passed by the Tahsildar revoking a licence under Rule 37. The District Collector may on application or suo motu revise any order passed by the Revenue Divisional Officer. The Tahsildar shall be competent to grant leave to licensed Stamp Vendors without limit of time. He is also competent to fill up temporary vacancies caused by the grant of such leave and to grant licence for the sale of stamps to substitutes appointed by him in such cases.'

Rule 35 was substituted by another Rule which came into force on 13.2.2003. The new Rule 35 reads as follows:

'35. (1) The sale of stamps shall be made by the Treasurers as ex-officio Stamp Vendors and by licensed Stamp Vendors appointed by a District Committee consisting of the District Collector, the District Registrar (General) and the District Treasury Officer as members. The licence will be issued by the District Treasury Officer to such vendors so appointed on the basis of the report of the District Committee.

(2) No person shall be eligible for Stamp Vendors licence if he has not completed the age of 18 years or has completed the age of 60 years and has not passed the S.S.L.C. Examination.

(3) The Junior Superintendent and the Accountant, Central Stamp Depot, Thiruvananthapuram, shall be ex-officio vendors in respect of the documents embossed and returned to the parties under Rule 16.

(4) The District Collector shall determine the number of Stamp Vendors licensees required in any area in his district after examining the necessity.

(5) The District Treasury Officer shall get the permission of the District Collector to transfer a licence from one area to another.

(6) An appeal shall lie to the Director of Treasuries against any order passed by the District Treasury Officer under this rule or against any order passed by the District Treasury Officer revoking a licence under Rule 37.

(7) The District Treasury Officer shall be competent to grant leave to the licensed Stamp Vendors without limit of time and also to fill up the temporary vacancies caused by the grant of such leave and to grant licence for the sale of stamps to substitutes appointed by him in such cases.

(8) The Stamp Vendor's Licence issued shall be valid for a period of 3 years and after the expiry of the said period the licensee shall apply for licence afresh.

(9) The Stamp Vendors' Office shall function from 10 a.m. to 5 p.m. on all days except Sundays and Public holidays.'

11. Under Rule 35 of the Kerala Manufacture and Sale of Stamp Rules, 1960 before its substitution by the present Rule, the Tahsildar was the authority to appoint Stamp Vendors, while under the new rule, the appointing authority is a Committee consisting of the District Collector, District Registrar (General) and the District Treasury Officer. The licence will be issued by the District Treasury Officer. Under the old rule, the appeal lay to the Revenue Divisional Officer against any order passed by the Tahsildar. The District Collector had the revisional power over

the proceedings of the Revenue Divisional Officer. Under the present rule, the appeal shall lie to the Director of Treasuries under Sub-rule (6) of Rule 35. No revision is contemplated under the new rule. In Ramakrishnan v. District Collector, 1986 KLT 976, this Court held that appointment of Stamp Vendor made by the Tahasildar following the instructions issued by the Government to appoint a particular person is contrary to the scheme of the Rules and the provision in Rule 35. It was also held that it would constitute illegal interference with the power, which vested in the statutory authority. It was held thus:

'4. Neither the statutory rules nor the Circulars confer on the Government power of selection or appointment of Stamp Vendors. Power of appointment in the absence of any other provision, comprehends power of selection also. The power of selection and appointments vests with the statutory authority, namely, the Tahsildar, subject to jurisdiction of the appellate and revisional authorities. The rules do not confer on the Government power of selection or appointment: nor do the rules confer on the Government the power of interfering in any manner with the selection or appointment made by the Tahsildar. It is clear that Government have no power to impose a person of their choice on the Tahsildar and direct him to appoint that person as Stamp Vendor.'

12. Though in the case on hand there was no order, instruction or direction issued by the District Collector to the statutory authority to appoint a particular person, the message is clear in forwarding to the Tahsildar the representation submitted by the third respondent to the District Collector. It was not proper on the part of the District Collector to forward to the Additional Tahsildar the representation submitted by the third respondent. From the representation itself, it is clear that the interview was scheduled to be held on 1. 1.2003. The District Collector was expected to know that the statutory authority to select the candidate is the Tahsildar. The prayer in the representation is clear and unambiguous. If that prayer is accepted, the interview would be a farce. The letter issued by the M.L.A. also forms part of the records. Therefore, it is clear that there was illegal interference in the discharge of duties by the statutory authority under Rule 35. This vitiates the selection and appointment of the third respondent. The contention raised by the petitioner that the selection and appointment was not free and fair,

stands proved.

13. When a statutory authority is invested with the jurisdiction to make an appointment, he is expected to discharge that function free from any extraneous consideration, influence or pressure. The selection was made not on the basis of any written test, but solely on the basis of an interview. This makes the duty of the statutory authority more onerous. An appeal and revision are provided under Rule 35 to challenge the decision of the statutory authority. The appellate and revisional authorities should be able to make out from the records as to how the selection was made by the statutory authority and whether any interference is called for in appeal or revision. The appellate or revisional power could not be satisfactorily and meaningfully discharged unless the primary authority records its reasons for arriving at the conclusion. The records must reveal that the primary statutory authority considered all relevant aspects and selected the best suitable person for the post. The selection and appointment of the Stamp Vendor should not be at the will and pleasure of an individual or individuals. It should be on the basis of the rules made in that behalf. The selection should be free and fair. People at large must have faith in the system of selection and appointment. If the statutory authorities think that they are always bound by the illegal instructions or directions issued by the superiors or by the Government or by the legislators, and if they act accordingly, people would have no faith in the system at all. Interview is intended for selecting the best merited candidate and it should not be a make belief. Evaluation of the merits of the candidates should be independently made by the statutory authority before coming to the conclusion. This is particularly so, in the absence of any guidelines in the Kerala Manufacture and Sale of Stamp Rules even after the substitution of the present rule.

14. No forms are prescribed under the Rules for submitting the application. Who prescribed the application forms in the case on hand, is not clear. Whether the forms to be submitted by the candidates are uniform all throughout the State of Kerala is also not clear, If, as per the application form, a candidate is required to state his previous experience and if as per the interview card he is required to produce the testimonials for the same, it cannot be said that previous experience is not a relevant criterion at all, as argued by the learned Senior Government

Pleader and the learned counsel for the third respondent. If previous experience as Stamp Vendor is not relevant, there was no justification for directing the candidates to produce documents for proving the contents of the application and for providing a column in the application form to state about the previous experience of the candidate as a Stamp Vendor. If previous experience is not a consideration for selection, it cannot be said that it is illegal or improper. But in the absence of a prescribed form under the Rules and in the absence of any specific guideline for selection, it cannot be said that the requirements noted in the application form and the interview card are irrelevant. At the same time, the chances of a candidate gaining previous experience in a contrived leave vacancy also cannot be ruled out. From Exts.P3 and P4, the averments in the Original Petition and the counter affidavit as well as from the records, it is not clear as to how the petitioner was selected for different periods as Stamp Vendor in the leave vacancy of Sri. M.Sukumaran. It is also not clear whether other candidates were also considered for appointment in the leave vacancy.

15. On 9.1.2003, the Additional Tahsildar submitted a report to the District Collector stating that out of the fifteen candidates, nine persons appeared for the interview on 1.1.2003. Out of whom, one person is aged more than the prescribed age limit. From this report, it is clear that the averment in the counter affidavit filed on behalf of the first respondent that out of the fifteen applicants, nine applicants were selected for interview, is clearly wrong. In the reply notice dated 21.8.2004, issued by the Additional Tahsildar to the counsel for the third respondent, it is stated that as per G.O.(P) No. 23/2003/TD dated 7.2.2003, the selection of Stamp Vendor shall be made by a District Committee. In the letter dated 2.9.2004, issued by the Additional Tahsildar to the Principal Secretary, Taxes Department, Thiruvananthapuram also, it is so stated. That letter would also indicate that a report was submitted by the Additional Tahsildar to the District Collector in that regard. As per the letter dated 20.9.2004, issued by the District Collector to the Tahsildar, the latter was directed to appoint the third respondent within two weeks. It is stated therein that the appointment is directed to be made on the basis of the order in C.M.P.No. 2127 of 2003 in the Original Petition. The contention of the third respondent that the Original Petition is not maintainable as the alternative remedy of appeal and revision are not exhausted by the petitioner is to be

considered in the light of the facts and circumstances mentioned above. It is clear from the records that the District Collector was making undue interference, in the matter. The Appellate Authority is the Revenue Divisional Officer, who is a Subordinate Officer of the District Collector. The revisional authority is the District Collector himself. Therefore, an appeal or revision would be a farce.

16. In Thansingh v. The Superintendent of Taxes, Dhubri and Ors., AIR 1964 SC 1419, the Constitution Bench of the Supreme Court held thus:

'... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations...'

It is well settled that the jurisdiction under Article 226 would not be exercised if there is an alternative efficacious remedy available to the writ petitioner. For the reasons stated above, the appeal and revision as provided in Rule 35 of the Kerala Manufacture and Sale of Stamp Rules would not be an effective alternative remedy for the petitioner, in the facts and circumstances of the case. There are glaring illegalities which go to the root of the matter, in the proceedings of the Additional Tahsildar. The Additional Tahsildar did not discharge his statutory functions properly and legally. In such circumstances, this Court would definitely interfere under Article 226 of the Constitution of India and quash the proceedings of the Additional Tahsildar. This Court in the decision in V. Vijayakumaran Nair v. State Bank of Travancore, 2005 (1) KLT 953 = 2005 (1) KLJ 547, held that the High Court can entertain a Writ Petition even in cases where alternative remedy is available. The order/proceeding of the Additional Tahsildar, Kozhikode in selecting and appointing' the third respondent as Stamp Vendor in Peruvanna City in Kozhikode is liable to be quashed by the issue of a writ of certiorari. I do so.

17. As per Rule 35 of the Kerala Manufacture and Sale of Stamp Rules, as substituted by notification dated 7.2.2003, and published on 13.2.2003, the appointing authority of Stamp Vendors is the District Committee consisting of the

District Collector, the District Registrar (General) and the District Treasury Officer as members. It is only proper that the Stamp Vendor in Peruvanna City is selected by the District Committee. Notice shall be issued to all the applicants except Sri. V.Damodaran Nair, who is aged more than sixty years; calling for any test or interview as the Committee thinks fit. The selection shall be made afresh. Merits alone should be the consideration in the matter of selection. The Committee as such is not a respondent in the Original Petition. Therefore, copy of this judgment shall be forwarded to the District Collector, Kozhikode; the District Registrar (General), Kozhikode and the District Treasury Officer, Kozhikode. The selection and appointment of Stamp Vendor in Peruvanna City shall be made by the District Committee within a period of three months. It is made clear that the observations regarding previous experience as Stamp Vendor as a criterion, are made only to consider whether the proceedings of the Additional Tahsildar were legal and proper. The District Committee shall make the selection and appointment untrammelled by those observations. The District Committee shall consider the applications and select the best meritorious candidate on such criteria which the Committee may decide and record.

The Original Petition is allowed. No costs.