V. Bhaskaran Vs. the State of Tamil Nadu Represented by Commissioner and Secretary, Adi Davida and Tribal Welfare Department and ors.

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Court : Chennai

Decided On : Dec-02-1998

Reported in : (1999)2MLJ154

Appellant : V. Bhaskaran

Respondent : The State of Tamil Nadu Represented by Commissioner and Secretary, Adi Davida and Tribal Welfare Dep

Judgement :
ORDER

M. Karpagavinayagam, J.

1. V. Baskaran, the petitioner herein has sought for the issuance of a writ of certiorarified mandamus by calling for the records in Na.Ka.Adhi.8.28172/88, dated 28.2.1991 on the file of the District Collector, Madurai, the second respondent herein and to quash the same and to forbear the Zonal Manager, Syndicate Bank, Madras third respondent herein, from placing reliance on the impugned order.

2. The facts that are required for the disposal of the writ petition are as follows:

The petitioner claiming that he hails from Kattunaicken community, a scheduled tribe, applied for the appointment of clerical cadre job in the Banking Services Recruitment Board, Southern Region. He was selected for appointment as clerk in the Bank of Zonal Manager, Syndicate Bank, Madras, third respondent. The said allotment was made under the scheduled tribe category. Though the job was allotted on the basis of the Tahsildar's certificate dated 25.11.1981 and the certificate of Adi Dravida Welfare Special Tahsildar dated 12.6.1984, the third respondent-Bank referred to the Collector for verification about the genuineness of the certificate, after obtaining the information from the Headmaster of the School in which the petitioner studied, that it was mentioned in the Secondary School Leaving Certificate that he belonged to Hindu Naidu Community. Accordingly, the second respondent Collector directed the Revenue Divisional Officer to conduct an enquiry with reference to the community status of the petitioner and to submit the report to him. In pursuance of the said letter by the Collector, the Revenue Divisional Officer conducted enquiry by sending a notice dated 6.8.1990 directing the petitioner to appear before him, in order to establish his claim that he belonged to scheduled tribe. Hence, the petitioner appeared and produced documents to substantiate his claim. However, the Revenue Divisional Officer sent a report to the Collector, the second respondent herein recommending for the cancellation of the community certificate. Again, the petitioner received a notice from the District Collector, dated 8.11.1990 asking the petitioner to appear before him to show cause as to why the community certificate already issued should not be cancelled, by producing the materials. Accordingly, the petitioner appeared and produced the documents. His father also gave explanation as to why the community of the petitioner was mentioned as 'Naidu' in the Secondary School Leaving Certificate. However, the District Collector, the second respondent herein cancelled the community certificate by his order dated 28.2.1991. This order is sought to be quashed in this writ petition.

3. Mr. Nanda Kumar, the counsel for the petitioner though raised several points in the writ petition, confines himself with a ground that the petitioner was not given adequate opportunity by the District Collector, while conducting the enquiry by furnishing the copy of the report of the Revenue Divisional Officer and other documents which were proposed to be relied upon by the Collector before passing

the order. He would cite several authorities of the Single Bench and Division Bench of this Court and submit that the petitioner was not allowed to establish before the Collector to substantiate his claim that he belongs to schedule tribe and the report of the Revenue Divisional Officer is contrary to truth, by adducing sufficient materials before the Collector.

4. In reply to the said submission, the counsel for the respective respondents would submit that the opportunities have been given by both the Revenue Divisional Officer and the District Collector and as such, he cannot now claim that no opportunity was given, especially when he did not ask for the report of the Revenue Divisional Officer.

5. In the light of the above submissions, let me see as to whether the impugned order cancelling the community certificate is sustainable under law, in view of the various guidelines given by this Court in regard to the mode of enquiry by the District Collector and necessity of opportunity to be given to the person concerned to substantiate his claim.

6. While dealing with the point for determination arises in this case, it is appropriate to recapitulate the facts and background of the case which led to the passing of the impugned order.

7. The petitioner, who passed B.A. degree, on 18.3.1983 applied for the post of clerk-in the Banking Services Recruitment Board. At the time of interview, he produced mark sheet and the community certificate. The said community certificate dated 25.11.1981 was issued by the Tahsildar, Madurai stating that the petitioner belongs to Kattunayakkan community which is recognised as a scheduled tribe. On 7.3.1984, he was selected under the scheduled tribe quota and allotted to the third respondent-bank. During routine verification, the bank noticed on the first page of his S.S.L.C. book, he was merely stated to be a Hindu and no community was mentioned. Therefore, the third respondent-bank wrote a letter dated 6.1.1988 to the Headmaster of the school asking for the particulars of caste of the petitioner, as recorded in the school records, since he joined the service of the bank under the reserved scheduled tribe quota. On 27.1.1988, the Headmaster of the school replied stating that as per the data in the Admission

Register, his caste was 'Hindu-Indian-Naidu'. Therefore, the third respondent-bank wrote a letter on 6.2.1988 to the District Collector, Madurai, the second respondent herein, requesting to make a thorough enquiry, in order to find out whether he actually belonged to the scheduled tribe, after giving notice to him and giving him opportunity to clear the matter. In pursuance of this requisition sent by the bank, the District Collector, directed the Revenue Divisional Officer to conduct an enquiry and submit a report to him by the letter dated 28.2.1988. On 16.8.1990, the Revenue Divisional Officer sent a notice to the petitioner asking him to appear on 26.8.1990, in order to participate in the enquiry with the materials to establish his claim that he belongs to scheduled tribe. After such enquiry, the Revenue Divisional Officer sent a report to the District Collector, the second respondent herein on 18.9.1990 recommending for the cancellation of the community certificate. On receipt of the said report, the District Collector sent another notice to the petitioner on 8.11.1990 intimating him about the report of the Revenue Divisional Officer and asking him to send further documents in support of his claim that he belongs to scheduled tribe. In reply to this notice, the petitioner sent a written objection on 20.1.1.99.1. Thereafter, on 28.2.1991, the District Collector, after considering the documents filed by the petitioner and the report of the Revenue Divisional Officer, passed the impugned order cancelling the community certificate earlier issued in favour of the petitioner.

8. It is quite relevant to note, in this context, that in the letter of requisition sent by the third-respondent bank, he specifically mentioned that thorough enquiry is required to be made by the District Collector after giving adequate opportunity to the petitioner or otherwise the entire proceedings would be struck down by the High Court, as it happened in few cases. Of course, it is true, in pursuance of the said letter dated 6.2.1988, the enquiry was conducted by both Revenue Divisional Officer and the District Collector by taking sufficient time. It is also clear that both authorities namely, the Revenue Divisional Officer and the District Collector sent notice to the petitioner thereby the petitioner was given opportunity to produce materials before the respective authorities to show that the community certificate issued in his favour was a genuine one and that he belongs to scheduled tribe. It is also equally true that he has produced documents before both the authorities. A perusal of the impugned order passed by the second respondent also would make

it clear that those documents had been taken into consideration through careful scrutiny and the decision had been arrived at.

9. But, it is quite unfortunate to see that in spite of the clue given in the letter of requisition sent by the third respondent-bank to the second respondent-Collector stating that unless adequate opportunity is given to the petitioner to clear the point of issue, the High Court would strike down the impugned proceedings, the procedure to be followed for giving opportunity to the petitioner as held by this Court on various occasions, had not been followed.

10. It is quite important to refer at this stage that the petitioner thought it fit hot to show the second page of the S.S.L.C. book to the third respondent-bank at the time of interview, while he chose to produce the community certificate alone to show that he is entitled for the schedule tribe quota. At that point of time, there was no verification. However, when this was noticed subsequent to the allotment of job after some years, the third respondent bank sent a letter on 6.1.1988 to the Headmaster of the school asking for verification and the Headmaster by letter dated 27.1.1988 stated that the other page of the S.S.L.C. book contains the details regarding his caste and the same is mentioned as 'Indian-Hindu-Naidu'. So, it is clear that the particulars of the community were virtually suppressed.

11. In such circumstances, the third respondent-bank referred the matter to the District Collector for verification about the communal status of the petitioner under Clause 13(3) of the Rules.

12. It is seen from the impugned order that the father of the petitioner gave some explanation to the Revenue Divisional Officer that the caste was mentioned in the S.S.L.C. book as 'Naidu' wrongly. Therefore, the District Collector, the second respondent herein, has to necessarily consider all the relevant documents and the statement given by the father to the Revenue Divisional Officer narrating the circumstances under which he gave wrong particulars regarding his caste as 'Naidu' to the school authority, and the Revenue Divisional Officer's report.

13. The reading of the impugned order shows that the second respondent the District Collector, took into consideration of the Revenue Divisional Officer's report,

while referring to various documents filed by the petitioner before the Collector to establish his claim. As directed by this Court, on various occasions, the District Collector ought to have given full and adequate opportunity by furnishing the Revenue Divisional Officer's report. Furthermore, after recording those evidence adduced by the petitioner, the District Collector has to give opportunity to the petitioner for personal hearing also. Admittedly, this was not done.

14. The principles and guidelines have been reiterated by this Court in several reported cases. The said decisions are as follows:

(1) N. V. Subramanian v. The Additional Collector, Salem District, etc. 1997 W L.R. 508. (2) D. Illamaran v. Government of India 1996 Writ L.R. 482. (3) Duraisamy Reddy v. Collector of Salem District and two others 1998 W L.R. 606 and (4) R.K. Sekar v. District Collector, Chengair M.G.R. District 1996 WLR. 484.

15. It is settled law that whenever a question arises as to whether a person belongs to a community recognised as Scheduled Caste or Scheduled Tribe, a decision has to be taken only by the Collector of the District after holding due enquiry. In such cases, he may himself hold the enquiry or direct the Revenue Divisional Officer to hold an enquiry and submit a report. When the Revenue Divisional Officer conducts the enquiry, he shall send a report to the Collector for passing final order. The Collector before passing the final order has necessarily to give the concerned person opportunity by furnishing him a copy of the report submitted by the Revenue Divisional Officer and allow him to file his objection and produce his materials, if any, and then to decide the matter after hearing the aggrieved person. In the event of his coming to the conclusion that there are no materials to hold that the person belongs to Schedule Caste or Scheduled Tribe, the Collector shall cancel the community certificate issued by the Tahsildar to the said person and intimate the same to the concerned department.

16. As stated earlier, admittedly, the report of the Revenue Divisional Officer and other documents proposed to be relied on by the Collector have not been given to the petitioner by the District Collector, the second respondent herein before passing of the final order. So, this situation warrants this Court to interfere with the impugned order and remit back the matter again to the second respondent herein,

in order to give effective opportunity to the petitioner for adducing evidence before the Collector to show that the conclusion arrived at by the Revenue Divisional Officer was not correct and that he belongs to the Scheduled Tribe.

17. In view of the above factual and legal situation, I am of the view that the impugned order dated 28.2.1991 is liable to be quashed and the matter is remitted back for fresh enquiry. Accordingly, the writ petition is disposed of in the following terms:

(i) The order of the second respondent, the District Collector, Madurai dated 28.2.1991 is quashed.

(ii) The second respondent Collector is directed to conduct a fresh enquiry by sending notice to the petitioner along with the copy of the report and the documents proposed to be relied upon by the Collector and shall give opportunity to the petitioner to file his objections and adduce evidence to establish his claim that he belongs to the Scheduled Tribe and that the conclusion arrived at by the Revenue Divisional Officer was not a correct one. Thereafter, the Collector shall give further opportunity for personal hearing to the petitioner and decide the matter;

(iii) In the event of holding that the petitioner does not belong to the Kattunayakkan community, the collector shall cancel the community certificate already issued to the petitioner and intimate the same to the petitioner as well as the third respondent Bank;

(iv) The District Collector, the second respondent shall comply with this order within four months from the date of receipt of copy of this order.

18. There is no order as to costs.