

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2006

CORAM

THE HON'BLE MR. JUSTICE D. MURUGESAN

W.P.No.2192 of 2006 and
W.P.M.P.Nos.2458 and 2459 of 2006

Balagovinda Rao

.. Petitioner

vs

1. The Deputy Chairman
Chennai Port Trust
Rajaji Salai, Chennai-1.
2. The Chief Engineer
Chennai Port Trust
Rajaji Salai, Chennai-1.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court for the issue of a Writ of Certiorari, calling for the records relating to the 2nd respondent's proceedings made in E6/5302/96/E dated 11.8.2005 and quash the same.

For Petitioner
For Respondents

... Mr.L.Chandrakumar
... Mr.Jagadeesan

ORDER

The petitioner hails from Dharmavaram in Vizianaragam District of Andhra Pradesh. According to the petitioner, he belongs to "Kondakappu" community, which is notified to be a Scheduled Tribe. On the strength that the petitioner was issued with a community certificate dated 1.7.1983 issued by the Tahsildar, S-Kotta, certifying himself to be belonged to "Konda Kappu" community, which is notified to be a Scheduled Tribe, he secured appointment as Mazdoor (PW) in Chennai Port Trust on 17.7.1984. It appears that thereafter he was promoted to higher post and presently he is working as Maistry.

2. Chennai Port Trust, on verification of the certificate produced by the petitioner, came to a prima facie conclusion that the said certificate was bogus/fake, called for a report from the District Collector, Vizianagaram as to the fact whether such certificate was

issued to the petitioner by the authority competent to issue the same in the letter dated 23.11.1995. By the proceedings dated 24.02.1996 the District Collector, Vizianagaram sent the communication to the Chennai Port Trust which reads as follows:

"(M) D.Dis.2473/95C7 dt.24.2.96. Collector's Office
Vizianagaram

From
Sri T.Vijaykumar IAS
Collector, Vizianagaram
Sir,

To
The Secretary
Port Trust, Madras

Sub: Establishment-Verification of the
community certificate produced by
Sri Balagovinda Rao, Asst. Maistry
T.No.2840 Dept., -Information-reg.

Ref: Your Lr.No.SCT2/13371/93 dt.23.11.95
With reference to your letter cited, the
required information is given below:-

i. Whether an enquiry was
conducted and the individual
given opportunity as
is being done by Tamil Nadu
Government.

There is no such
person in Dharmavaram
(V) of S. Kota (M) as per
the enquiry of the Mandal
Revenue Officer, S. Kota

ii. Whether cancellation
of the community certificate
dt. has ordered

According to the report
of the Mandal Revenue
Officer, S. Kota no S.T.
Caste certificate was
issued. Hence issue of
cancel orders does not
arise.

iii. Whether the original
community certificate
of the individual for
cancellation

Since the certificate
produced by the candi-
date might be a fake
one, the Port Trust
authorities Madras may
take further action
after giving an oppor-
tunity to the individual
for being heard.

Yours faithfully,
S/d. Pardhasaradhi
for Collector
Vizianagaram.

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3. On the basis of the above communication, a charge memo dated 9.7.1996 was issued to the petitioner asking him to show cause as to the bogus community certificate. Questioning the same, the petitioner had earlier approached this Court in W.P.No.2737/1998. It was argued on behalf of the petitioner that the report sent by the District Collector, Vizianagaram stating that the certificate produced by the petitioner is fake and that action has to be taken cannot be relied upon nor it could be a basis or foundation to initiate disciplinary proceedings. It was also argued that the respondent Port Trust was not at all justified in accepting the said report, as such, a reply had been sent behind the back of the petitioner by the District Collector Vizianagaram without enquiry. It was argued that enquiry could have been conducted as to the social status claimed by the petitioner and an opportunity ought to have been given to the petitioner. All the above contentions were considered and ultimately, this Court by order dated 18.02.2003, passed the following order:

- " The charges have been framed and the petitioner
It is well open to the petitioner to raise all
the objections with respect to the contents of
the report received from the third respondent
and also rely upon the various pronouncements
referred to before this Court by Mr.P.K.Raja-
gopal, learned counsel. It is equally well open
to the petitioner to get fresh certificate or
declaration as the case may be, with respect
to the social status claimed by him and produce
the same before the Domestic Enquiry Officer,
As and when such materials are placed, the
Enquiry Officer shall take into the materials
into consideration and also consider the law
laid down by this Court as well as Supreme
Court in such matters and thereafter, further
appropriate action should be proceeded. Further,
if still the respondents are of the opinion
that action has to be taken with respect to
the alleged bogus claim of social status it is
open to them to proceed according to law. This
is not a fit case, where this Court could be
justified in interfering with the disciplinary
proceedings initiated by the competent authority
at the stage of enquiry and it cannot be stated
that the authorities initiated proceedings
without any basis or authority.
In the circumstances, the Writ Petition is
dismissed while giving liberty to the petitioner
to raise all objections including legal objections
as well before respondents 1 and 2. Consequently,
W.M.P.no.4070 of 1998 is also dismissed. No costs".

4. Pursuant to the said order, present impugned notice of enquiry dated 11.8.2005 has been issued which is as follows:-

Chennai Port Trust

E6/5302/96/E
Memo

Dt. 11.8.05

Sub: Establishment-Alleged production of
Bogus community certificate by Shri
Balagovinda Rao, Maistry (PW)-
Disciplinary action-Fresh enquiry
to be conducted-reg.

It is informed that the Hon'ble Justice Shri E. Padmanabhan of High Court of Madras vide his judgment dated 18.02.2003, on the Writ Petition No.2737/1998 filed by Shri Balagovinda Rao against the Chairman, Chennai Port Trust and the chief Engineer, Chennai Port Trust had dismissed the petition while giving liberty to the petitioner to raise all objections including legal objections, as well as before the Chairman Chennai Port Trust and the Chief Engineer, Chennai Port Trust. In this connection, a fresh enquiry is ordered to be conducted by Shri S.C.Shankar Engineer of D.C.'s Department and Shri Pitchai Jr.A.O. as Presiding Officer on the following charges:

" That at the time of his initial appointment as Mazdoor (PW) in the Trust he had produced Bogus Scheduled Tribe Community Certificate and gained employment in the Trust "

The above act is a serious misconduct under regulation 4(4) of Madras Port Trust Employees (Conduct) Regn.1987. The date, time and place of enquiry will be informed to him by Enquiry Officer in due course.

In case the charges are proved he is liable for severe disciplinary action under Madras Port Trust Employees CCA Regulation, 1988.

He may file a written statement before the Enquiry Officer on the charges framed against him, if he desires, within seven days from the date of receipt of this memo. If his written statement is not filed within the specified period it will be assumed that

he has no statement to make and the enquiry will be proceeded with.

A form of questionnaire is enclosed, which is to be filed in, signed and returned to this office along with his statement.

If he desires to avail the assistance, which is to be filled in, signed and returned to this office along with his statement.

If he desires to avail the assistance of his co-workers to defence in the enquiry he may submit a panel of three names of his co-workers of this department, who are not connected with any other enquiry duly obtaining their concurrence in writing. Any one in the panel as found convenient to the administration will be allowed to assist him in his defence. In case he fails to submit the panel as mentioned above, it will be assumed that he does not wish to avail the opportunity for his defence.

If he fails to attend the enquiry on the dates to be notified, the enquiry will be conducted ex parte and further action will be taken as deemed fit.

Encl: One Questionnaire Sd..x.x.x.x.x.x.
Chief Engineer

To

Shri Balagovinda Rao
Maistry, T.No.2840
P.W.Engineering

5. Mr.L.Chandrakumar, learned counsel appearing for the petitioner has submitted that in challenging the impugned Notice that inasmuch as the genuineness of the certificate of the petitioner has not been verified by the committee constituted, as per the direction of the Supreme Court in the judgment reported in MADHURI PATIL V. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT (A.I.R. 1995 Supreme Court 94), the respondent Port Trust has no right to proceed with the enquiry.

6. I have heard Mr.Jegadeesan, learned counsel appearing for the respondent Port Trust.

7. The issue relates to community status and genuineness of the community certificate came up for consideration before the Supreme Court in the decision referred to above and the Supreme Court has issued the following directions:

" 4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any Officer higher in rank of the Director of the concerned department, (II) the Director, Social Welfare/Tribal Welfare/ Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another Officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of groups of tribes or tribal communities"

8. As per the judgment of the Supreme Court, the community status of a person with reference to the community certificate already issued can only be verified by the committee constituted in accordance with the directions of the Supreme Court in the above Judgment. There cannot be any dispute to this extent. However, on the facts of the present case, whether the petitioner would be justified in relying upon the judgment of the Supreme Court and challenging the action of the respondent on the ground that the community certificate issued to the petitioner has not been so far either verified or cancelled by the committee constituted in accordance with the judgment of the Supreme Court.

9. In my opinion, while the Supreme Court had laid down the law by issuing directions to the State Governments to constitute committees to go into the genuineness of the community certificates, it only directed that such of those certificates issued either by the authority who was competent to issue or by the authority who was incompetent to issue to go into the genuineness of such certificates if it is so warranted. The said judgment would be applicable only when issuance of such certificate is not in dispute and whether the individual in whose favour such certificate was issued would be entitled to the same or not. On the other hand, when the Officer who is said to have issued the community certificate himself disowns the issuance of such certificate on the verification of the records from the office, the question of verification of the genuineness of the certificate may not arise. For applying the judgment of the Supreme

Court the factum of issuance of certificate from the office must be first satisfied and thereafter only the genuineness of the said certificate would be verified. When the issuance of such certificate itself is disowned by the authority who is said to have issued, it must be presumed that the same is either bogus or fake and the question of verification of the genuineness of such certificate does not arise and consequently, the judgment of the Supreme Court may not be applicable to the said case.

10. On the above principle, the facts of this case should be looked into. In the communication dated 24.2.1996, the District Collector has not only reported that there is no such person in Dharmavaram (V) of S. Kota (M) as per the enquiry of the Mandal Revenue Officer, S. Kotta but also that no Scheduled Tribe caste certificate was issued to the petitioner from the said office. The District Collector has also said that as there was no such certificate issued the certificate produced by the petitioner might be a fake one and the Port Trust Authority was entitled to take action. From the report it is clear that no such certificate was issued by the office from which the petitioner claims to have obtained the same. In fact while the proceeding of the District Collector was sought to be relieved upon by the respondent Port Trust, this Court after considering the same, negated all the contentions by holding that "though the argument is attractive, this Court will not be justified in examining such a contention in this Writ Petition at this stage". In my opinion, considering the facts of the case, the judgment of the Supreme Court in KUMARI MADHURI PATEIL will not be applicable to contend that so long as the certificate is cancelled by the authority competent, the respondent cannot proceed on the ground that the certificate is false. Under these circumstances, it would not be correct to say that the respondent cannot proceed with the enquiry.

11. The enquiry which is sought to be conducted is in respect of the fact as to whether the petitioner has got employment by furnishing bogus/fake certificate or not and the issue does not relate to whether such certificate was genuine or not. As already referred, the power to enquire by the committee constituted in terms of the guidelines framed by the Supreme Court in the judgment referred to above, could be exercised only in respect of the genuineness of the certificate if sought to be made. In the event, such issuance of certificate itself is denied, the question of verification of genuineness of the same does not arise. In such event, the respondent Port Trust is entitled to conduct enquiry to find out as to whether the petitioner has got employment by producing bogus/fake certificate. Of course, as already directed by this Court, the petitioner is entitled to participate in the enquiry and satisfy the respondent that the certificate produced by him was not a fake one and it was a genuine one and in such event till such time, no action can be taken by the respondent Port Trust. When such a right is available to the petitioner, I am not inclined to entertain the Writ Petition.

12. In view of the above, the Writ Petition is dismissed. No costs. Consequently, W.P.M.P.Nos.2458 and 2459 of 2006 are also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vbs

To

1. The Deputy Chairman
Chennai Port Trust
Rajaji Salai, Chennai-1.
2. The Chief Engineer
Chennai Port Trust
Rajaji Salai, Chennai-1.

1 cc to Mr.L.Chandrakumar, Advocate, Sr. 3399
1 cc to Mr.M. Jagadeesan, Advocate, Sr. 3312

W.P.No.2192 of 2006

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