

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 16TH DAY OF FEBRUARY, 2017

BEFORE:

THE HON'BLE MR. JUSTICE G. NARENDAR

W.P. No.103502/2016 [GM-CC]

Narayan V. Shiroor v/s. The Tahsildar

ORDER

Heard the learned counsel for the petitioner, the learned Special Standing counsel for the 1st respondent and learned counsel for the 2nd respondent.

2. The above writ petition is preferred praying for the following reliefs:

- i) Issue a writ, order or direction, in the nature of mandamus, directing respondent No.1 to cancel the caste certificate issued in favour of respondent No.2 in pursuance of the letter addressed by the Chairman and Deputy Commissioner, District Caste Verification Committee, dated 09.07.2015, produced at Annexure-"B", insofar as respondent No.2 is concerned.
- ii) Pass such other order/orders as this Hon'ble Court deems fit in the facts and circumstances of the case, including an order as to costs, in the interest of justice and equity.

3. The factual matrix are that the petitioner belongs to Samagar caste, which is notified as scheduled caste under Article 341 of the Constitution of India and that the 2nd respondent belongs to Category-I backward class notified by the State under G.O. No.SWD 225 BCA 2000

dated 30th March, 2002. The said notification has been issued by invoking the power vested with the State under the Provisions of Articles 15(4) and 16(4) of the Constitution of India. That the 2nd respondent in collusion with the 1st respondent has obtained a caste certificate, certifying him as belonging to a schedule caste community and that the certificate came to be issued on 19.08.2014.

4. It is submitted that aggrieved by the order of the Tahsildar, the petitioner has preferred an appeal before the Assistant Commissioner. The Assistant Commissioner referred the matter to the District Caste Verification Committee and that the Verification Committee by its Order dated 23.11.2014, directed respondent No.1-Tahsildar to verify and cancel the Caste Certificate, issued in favour of respondent No.2. Pursuant to the orders passed by the Verification Committee, the Assistant Commissioner, Batakhal has issued a letter to cancel the Caste Certificate of respondent No.2. But, despite the long passage of time, respondent No.1 has not taken any steps to cancel the said caste certificate and to further complicate the issue, respondent No.1 has addressed a letter seeking clarification from the Deputy Commissioner as to whether Grade II Tahsildar like himself had the jurisdiction to cancel the caste certificate and in response

to the same, the Deputy Commissioner by a Communication dated 09.07.2015 has issued a direction to respondent No.1 to cancel the Caste Certificate issued to respondent No.2. The 1st respondent was further put on notice, in the event of his failure to abide by the direction, the omission would be viewed seriously. Despite such a stringent advise, the 1st respondent has omitted to abide by the direction issued by the competent authority and hence, the petitioner is before the Court, seeking for a direction to the 1st respondent to initiate action and comply with the direction issued by the Deputy Commissioner, who is also a Chairman of the Verification Committee.

5. The writ petition is stoutly resisted by the 2nd respondent. Learned counsel appearing on behalf of the 2nd respondent would vehemently contend that the writ petition itself is not maintainable and that the petitioner has no locus standi to maintain the writ petition. He would contend that the petitioner is a third party and he is not a person, who is affected or aggrieved by the Certificate issued by the 1st respondent. He would contend that the order of the 1st respondent is perfectly in order and does not call for any interference and that the writ petition

ought to be rejected at the threshold. In this regard, learned counsel for the 2nd respondent would place a reliance on the ruling of the Hon'ble Apex Court, in the case of Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra, reported in Laws(SC)-2012-11-11. He would draw the attention of this Court to the observations of the Hon'ble Apex Court at paragraph 5 and would contend that it is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. He would further contend that only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. He would contend that the petitioner is a stranger and has suffered no legal injury and hence, the writ petition is unsustainable.

6. Per contra, learned counsel for the petitioner would submit that the petitioner belongs to the schedule caste category and that the persons belonging to the scheduled caste as a class have been conferred certain

rights by way of reservation and the said right has been infringed by the act of the respondents by which an undue advantage has been conferred upon the 2nd respondent, which he otherwise was disentitled to.

7. He would contend that the omission of the 1st respondent to remedy the breach of statutory duty is despite the orders by the statutory authority and by the authority having superintendence over the 1st respondent is the cause of action for the writ petition as it amounts to an act of misfeasance. He would also draw the attention of the Court to the observation of the Hon'ble Apex Court with regard to the definition of an aggrieved person as stated in the aforesaid citation itself. The Hon'ble Apex Court in the aforesaid decision has in paragraph 7 placed reliance on its own Judgment in the case of A.Subhash Babu Vs. State of A.P., reported in AIR 2011 SC 3031, wherein it was held as follows:

“The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It

cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant"

8. A reading of the above would demonstrate that the person invoking jurisdiction of this Court must have a semblance of right, to maintain the petition before this Court. In the instant case, it is an admitted fact that it is the petitioner, who has been instrumental in complaining to the competent authority regarding the illegality of the Certificate issued to the 2nd respondent, thereby conferring upon him an undue advantage and entitling him to certain benefits, which he otherwise in law, was disentitled to. It is seen that the 2nd respondent has not raised any similar objection regarding locus standi before the authority and the entire proceedings has been at the instance of the

petitioner. It is seen that the premises on which the writ petition proceedings have been initiated is on account of the abdication of duty by the 1st respondent and as held by the Hon'ble Apex Court that breach of a statutory duty would constitute a cause of action for a person to maintain the writ petition. It is also not in dispute that the petitioner belongs to the scheduled caste community, whose members alone have been conferred with certain rights and it is the basis of the plaint of the petitioner, that the 2nd respondent though not belonging to the said community and despite being disentitled to the benefit, has been illegally conferred with similar benefits. In view of the above discussion, this Court is of the considered opinion that the above petition complaining breach of statutory duty is maintainable and the contention of the 2nd respondent regarding maintainability stands rejected. Hence, the objection to the present petition cannot be countenance and is accordingly rejected and it is held that the writ petition is maintainable.

9. A useful reference could be made to the provisions of Section 4-B of the Karnataka SC/ST and Other BC (Reservation of Appointments, Etc.) Act, 1990 [hereinafter referred to as "the Act 1990" for short] which provides that any person aggrieved by an order of Tahsildar issuing a caste certificate may prefer an appeal before the Assistant Commissioner and in the instant case, the petitioner had preferred the appeal before the Assistant Commissioner. It is admitted by the learned counsel for the 2nd respondent, that no objection relating to the maintainability of the appeal was raised.

10. Nextly, learned counsel for the 2nd respondent would contend that the issue as to whether the "Moger" caste/community in the State of Karnataka are scheduled caste or not has been laid to rest by a ruling of the Division Bench of this Court. He would further refer to the pronouncement in W.P. No.11756/2010 dated 29.06.2011 and would submit that the Division Bench has categorically held that in view of the entry at Sl. No.78 of the Notification issued by the Presidential Order under the provisions of Article 341 of the Constitution of India, it is not open for the parties to contend or plead that the

“Moger” caste residing or hailing from a particular part of the State alone are entitled to be declared as belonging to the scheduled caste category and plea of “Moger” caste/community hailing or residing in other parts of the State come under the backward caste/community as notified by the State. He would also contend that in view of the ruling by the Division Bench. The question now raised is no more res-integra and the writ petition requires to be rejected.

11. Per contra, learned Special Standing Counsel would submit that the issue has not attained finality and in fact, the State has appealed against the same and the Hon’ble Apex Court has condoned the delay vide Order dated 16.10.2012 and that Special Leave to Appeal [Civil] No.28993/2012 is pending consideration before the Hon’ble Apex Court. He would also draw the attention of the Court to the ruling of the Division Bench of this Court in C.C.C. No.2393/2011 [Civil], whereby the Division Bench was pleased to reject the contempt petition and has observed as follows:

“3. The State Government had passed a circular contrary to the Presidential Order of 1976 imposing an area of restriction. The said circular of the State Government has been struck down in W.P. No.11756/2010. The

Division Bench decision does not deal with the matter, whether the "Moger" Fisherman community comes under Category-I, and the "Moger" Scheduled Caste found in the Presidential Order are one and the same. The order of the learned single Judge also does not determine that the petitioner belongs to "Moger" community belonging to Scheduled Caste. A direction is issued to the Caste Verification Committee to pass an appropriate order and issue necessary certificate, keeping in view the Judgment of the Division Bench and also observation made in the order.

4. On thoroughly going into the facts and the issue, we find that in the first place, it is to be seen that the question whether "Moger" Scheduled Caste and "Moger" Fisherman are one and the same and whether "Moger" Fisherman included under Category-I, could be issued a Scheduled Caste certificate is the question that requires to be determined.
..."

12. Learned Special Standing Counsel would submit that the issue, as to whether the "Moger" Fisherman community are also included in the list of Scheduled Castes as notified under Article 341 of the Constitution of India has not attained finality. He would place reliance upon another ruling of the Hon'ble Apex Court in AIR 2006 SC 1177 [Anjan Kumar Vs. Union of India & Ors.] and

submits that a certificate endorsing the person as belonging to the scheduled caste or scheduled tribe is not a largesse to be distributed at the discretion of the authority. He would draw the attention of the Court to paragraph 15 of the said citation, which reads as follows:

“The Scheduled caste and Scheduled Tribe Certificate is not a bounty to be distributed. To sustain the claim, one must show that he/she suffered disabilities – socially, economically and educationally cumulatively. The concerned authority, before whom such claim is made, is duty-bound to satisfy itself that the applicant suffered disabilities socially, economically and educationally before such certificate is issued. Any concerned authority issuing such certificates in a routine manner would be committing the dereliction of Constitutional duty.”

13. Learned Special Standing counsel relying on the observation quoted supra and also relying upon the distinction drawn by the Division Bench in the contempt petition noted supra would submit that it was required of the authority, being the 1st respondent, to exercise its power in a judicious manner and ought to have concluded as to whether the 2nd respondent belongs to “Moger” Fisherman community as notified by the State under the

backward class list or "Moger" scheduled caste/community as notified at Sl. No.78 of the Presidential Order notified under the provisions of Article 341 of the Constitution of India. He would further submit that it was this failure that resulted in the statutory authority i.e., the District Caste and Income Certificate Verification Committee, directing the Tahsildar to verify the caste certified issued in favour of the 2nd respondent, which the 1st respondent has omitted to comply with.

He would further rely upon the authoritative pronouncement of the Hon'ble Apex Court in the case of Dayaram Vs. Sudhir Batham and others; reported in [2012]1 SCC 333; wherein the Larger Bench of the Hon'ble Apex Court, hearing the reference with regard to the validity of the direction issued in Madhuri Patil case, reported in [1994]6 SCC 241, was pleased to uphold the directions issued by the Two Judges of the Hon'ble Apex Court in Madhuri Patil case and he would further submit that it was mandatory upon the authority issuing the certificate to hold an enquiry and satisfy itself regarding the genuineness of the claim and thereafter pass an order accepting or rejecting the application and in the instant case, the original authority has failed to act in consonance with the provisions of law. Hence, he would submit that

the writ petition could be disposed of by directing the competent authority to conduct an enquiry as specified under the Act and pass appropriate orders. He would also draw the attention of the Court to the observation of the Hon'ble Apex Court at paragraphs 6 and 7 of Dayaram's case, which reads as follows:

"6. In Madhuri Patil, a two-Judge Bench of this Court found that spurious tribes and persons not belonging to Scheduled Tribes were snatching away the reservation benefits given to genuine tribals, by claiming to belong to the Scheduled Tribes. This Court found that the admission wrongly gained or appointment wrongly obtained on the basis of false caste certificates had the effect of depriving the genuine Scheduled Castes or Scheduled Tribes of the benefits conferred on them by the Constitution. It also found that the genuine candidates were denied admission to the educational institutions or appointments to posts under the State, for want of social status certificate; and that ineligible or spurious candidates who falsely gained entry resorted to dilatory tactics and created hurdles in completion of the inquiries by the Scrutiny Committee, regarding their caste status. It noticed that admissions

to educational institutions were generally made by the parents, as the students will be minors, and they (parents or the guardians) played fraud in claiming false status certificate.

7. This Court was therefore of the view that the caste certificates issued should be scrutinized with utmost expedition and promptitude. To streamline the procedure for the issuance of caste (social status) certificates, their scrutiny and approval, this Court issued the fifteen directions,..."

14. From a summation of the above facts the point that falls for consideration before this Court is;

Whether the authorities have acted as per the mandate of law?

15. The undisputed facts are that the 1st respondent has issued a Caste Certificate on 19.08.2014 certifying that the 2nd respondent belongs to "Moger" Scheduled Caste Community. It is not made known to this Court as to whether the 1st respondent held an enquiry as prescribed by sub-Section (3) of Section 4-A of the Act 1990 or whether he has followed the prescribed procedure as mandated by sub-Section (4) of Section 4-A of the Act 1990 while issuing the Caste Certificate dated 19.08.2014.

16. It is seen that the petitioner has preferred an appeal under sub-Section (1) of Section 4-B of the Act and the Appellate Authority was required to conduct an enquiry after giving both the parties an opportunity of being heard and thereafter it was required to pass orders allowing or dismissing the appeal. In the instant case, the Assistant Commissioner has abdicated the duty cast upon him. On the contrary, he has referred the appeal to the District Caste Verification Committee, which in the considered opinion of this Court is contrary to the provisions of sub-Section (2) of Section 4-C of the Act 1990, which limits the class of people who may refer a certificate for verification to the Committee. A reading of sub-Section (2) of Section 4-A of the Act 1990 would demonstrate that it is only the person, who has obtained the caste certificate under Section 4-A or 4-B of the Act 1990 or the Appointing Authority or any Authority making admission to a course of study in University or any Educational Institution alone are entitled to make the application to the Verification Committee, seeking authentication of the Caste Certificate issued or submitted to them. Thus, the reference of the appeal by the Assistant Commissioner to the Caste Verification Committee is without the authority of law and in the back-drop of the facts of this Case, this court is

restrained to conclude the act as a probable dilatory tactics. This Court is constrained to construe so in view of not only the above said act of reference by the Appellate Authority but also the subsequent conduct by the other authorities i.e., the act of the District Verification Committee in referring it to the Tahsildar and the act of referring to the 1st respondent and the act of the 1st respondent in calling for a verification from the Deputy Commissioner with regard to the powers to pass such an order. A reading of a scheme of the Act would clearly demonstrate that the said action was not supported by the enactment.

17. In this regard, it is necessary to refer to the undisputed dictum of law that when a statute requires a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect being done in some other manner.

18. The Hon'ble Apex Court in the case of State of Bihar and another Vs. J.A.C. Saldanna and others, reported in 1980 SC 326 was pleased to hold at paragraph 17 as follows:

“... It was incidentally submitted that it is an undisputed dictum of law that when a statute requires a thing to be done in a certain manner it shall be done in that manner alone and the Court would not expect its being done in some other manner....”

It was further contended that because such an interpretation would derogate from the principle that where a thing is required by a statute to be done in a particular way it shall be deemed to have prohibited that thing being done in any other way. In *ex-parte Stephens*, [1976]3 Ch D 659, the principle is stated that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. Subba Rao, J. in *Patna Improvement Trust v. Smt. Lakshmi Debi* [1963] Supp 2 SCR 812 at p.823, spelt out the combined effect of the aforementioned principles thus;

“A general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way.”

A reading of the Scheme of the Act mandates that any person or any candidate or his/her parents or guardian desirous of claiming a benefit of reservation under Section 4 either for appointment in any service or post are required to make an application to the jurisdictional Tahsildar. In such form and in such manner as prescribed, for issue of an income and Caste Certificate. Upon receipt of such an application either under sub-Section (1) or sub-Section (2) of Section 4-A of the Act 1990. Sub-Section (3) mandates the Tahsildar to hold such enquiry and after satisfying himself regarding the genuineness of the claim and upon arriving at such conclusion, he is required to issue the Caste Certificate in the prescribed form or reject the application. It is mandatory on the Tahsildar to follow such procedure as prescribed before passing the Order under sub-Section (3).

19. That a conjoint reading of the above provision would demonstrate that the Act stipulates the requirement for an enquiry under sub-Section (3) and that the enquiry ought to be in conformity with the procedure prescribed and as mandated by sub-Section (4) of the said Section. Section 4-B of the Act, 1990 stipulates that any person aggrieved by the order of the Tahsildar may prefer an appeal to the Assistant Commissioner of the Divisionalsub-

Division. Sub-Section (2) of Section 4-B of the Act 1990 stipulates that the Assistant Commissioner of the Revenue Sub-Division after giving both the parties an opportunity of being heard shall pass orders allowing or dismissing the appeal or in appropriate case directing issue of Caste Certificate or Income and Caste Certificate to the applicant i.e., in essence sub-Section (2) empowers the Appellate Authority with limited powers with regard to the relief it could grant. The Assistant Commissioner can either allow or dismiss the appeal or direct issue of Certificate. That in the instant case, the Appellate Authority has ventured to refer the same to the Verification Committee, which power is not vested with the Assistant Commissioner. The Act i.e., sub-Section (2) of Section 4-B having stipulated the nature of the relief and orders that could be granted by the Appellate Authority. The Appellate Authority could not have ventured to grant the relief other than those stipulated under the Act in the light of the above discussion and in the light of the law laid-down by the Hon'ble Apex Court in the case of J.A.C. Saldanna, the act of the Appellate Authority in referring the appeal to the Verification Committee is contrary to the Scheme and mandate of the Act and hence, the same is unsustainable. Consequently, it is held that the reference of the appeal to the Verification Committee and the consequential reference of the same to

the Tahsildar by the Verification Committee and the Order of the Deputy Commissioner and the instructions of the Deputy Commissioner directing the Tahsildar - 1st respondent to cancel the Certificate are unsustainable being contrary to the principles of law-laid down by the Hon'ble Apex Court and the provisions of the Act 1990 and the provisions of sub-Section (2) of Section 4-B of the Act 1990. Accordingly, while holding so, it is to be seen that the relief sought for i.e., prayer No.(1) sought for by the petitioner cannot be granted as no powers of cancellation are vested with the Tahsildar under the provisions of sub-Section (2) of Section 4-B of the Act 1990 and it is the Appellate Authority, who alone can either confirm the grant of Certificate or set aside the Certificate granted.

20. In the peculiar facts and circumstances of the case, the following direction is issued:

The parties are directed to appear before the jurisdictional Assistant Commissioner, Bhatkal on 06.03.2017 and the Assistant Commissioner, Bhatkal, before whom the appeal was preferred originally shall hear the parties on merits and pass necessary orders in conformity with the provisions of sub-Section

(2) of Section 4-B of the Act 1990. That the Authority shall conduct the proceedings strictly in conformity with the law and mandate of the Act.

The copy of this order be forwarded to the Assistant Commissioner, Bhatkal for compliance.

The writ petition stands disposed of in the above terms.