

Case relating to non-enclosure of certificate:

Parties : The Secretary, Tamil Nadu Public Service Commission & Others Versus J. Thamizhisai & Others

Court : High Court of Judicature at Madras

Case No : Writ Appeal No. 1419 of 2010 & M.P.Nos. 1 & 2 of 2010

Judges: THE HONOURABLE CHIEF JUSTICE MR. M.Y. EQBAL & THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Appearing Advocates : For the Appellants: C.N.G. Niraimathi, Advocate. For the Respondents: R1 - R. Ramachandran, Advocate, R2 & R3 - Raja Kalifulla, Govt. Pleader Assisted by Ms. M. Sneha, Government Advocate.

Date of Judgment : 01-02-2011

Head Note :-

Letters Patent - Clause 15 – service – on seeing advertisement first respondent/writ petitioner applied for the post, and submitted her application together with other documents - provisional selection of the writ petitioner to the post of Village Administrative Officer was cancelled by the appellant-commission – against that writ petitioner filed writ petition - writ petition is allowed – against that appellant/commission filed appeal – Court held - first respondent belongs to Most Backward Class, which was mentioned in the application, and accepting that she belongs to that community, she was allowed to appear in the examination, and she was also provisionally selected -cancellation of the selection of the first respondent on the ground that the community certificate, which was produced, was obtained after the advertisement was published in the newspaper is absolutely illegal, highly arbitrary, capricious and without jurisdiction – dismissed.

Cases Referred:

1. Charles K. Skaria v. C. Mathew reported in 1980 (2) SCC 752.
2. Dolly Chhanda vs. Chairma, JEE reported in 2005 (9) SCC 779.

Comparative Citation:

2011 (3) MLJ 1

Judgment :-

(Prayer: Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No. 25382 of 2008 dated 27.01.2010 on the file of this Court.)

THE HON'BLE CHIEF JUSTICE

1. This appeal by the appellant-Tamil Nadu Public Service Commission, Chennai is directed against the judgment and order dated 27th January, 2010 passed in W.P.No.25382 of 2008 whereby the learned single Judge allowed the writ petition filed by the writ petitioner-first respondent, and set aside the order by which her provisional selection to the post of Village Administrative Officer was cancelled.

2. The facts of the case lie in narrow compass: -In the year 2006, an advertisement was issued calling applications for selection and appointment to the post of Village Administrative Officer. The first respondent-writ petitioner applied for the said post, and submitted her application

together with other documents. The application so filed by the writ petitioner was entertained and processed, and she was allowed to appear for the written examination. After she was provisionally selected, she was directed to appear for certificate verification. However, while verifying the original certificates, it was found that the community certificate produced by the writ petitioner was obtained after the date of the notification issued by the Commission. On this ground, the provisional selection of the writ petitioner to the post of Village Administrative Officer was cancelled by the appellant-commission. The writ petitioner moved this court by filing the aforementioned writ petition. The writ petitioner's case was that certificates regarding date of birth, educational/technical qualification and community certificate were furnished along with the application, and then only she was allowed to appear for the written examination. The writ petitioner belongs to Most Backward Class community and at the time of verification of the original certificates, she produced the community certificate in support of her case that she belongs to Most Backward Class community. However, the Commission on the basis of sub-clauses 3 & 4 of Clause 5 of the General Instructions, and also on the basis of Clause 15 of the General Instructions cancelled the selection of the writ petitioner stating that the original community certificate produced by her was obtained after the notification was issued by the Commissioner.

3. The learned single Judge considered the condition namely sub-clauses 3 & 4 of Clause 5 of the General Instructions and came to the following conclusion: -

"5. However, from a perusal of the same, it can be seen that it is not applicable to the facts of the case. As per sub-clause 3, if any candidate claims that she belongs to Scheduled Caste or Scheduled Tribe or Backward Class, etc, after the date of application i.e., if the claim is made only subsequent to the filing of the application alone, that application can be rejected under sub clause 3. As far as sub clause 4 is concerned, the community certificate and certificates relating to educational qualification are accepted based on the information furnished in the application form. But in the event of the Commission not being satisfied with that, the provisional selection can be cancelled. But here is a case, where the petitioner, in the application form, had specifically stated that she belongs to MBC and the community certificate produced during the certificate verification also indicates that she belongs to MBC. As such, there is no variation or the claim made by the petitioner in the application submitted is not a false claim."

4. The learned single Judge also considered Clause 15 of the General Instructions and observed as under: -

"7. As far as the petitioner is concerned, she had produced the original certificates at the time of certificate verification. As such, relying on Clause 15, the Commission's arguments cannot be accepted and apart from this, as per the judgment of the Division Bench (Madurai) in Writ Appeal No.585 of 2009 by order dated 11.11.2009, the Division Bench has held that certain certificates are to be treated as important one and which relate to the academic qualification, but as far as the other certificates including community certificate are concerned, the non-production of the said application and before the provisional selection is finalized, if those certificates are produced, the same should be accepted. For the reasons stated above, I am of the opinion that the petitioner is entitled to succeed. Hence, the impugned order is set aside and the writ petition is allowed."

5. Aggrieved by the order of the learned single Judge, the Commission has come forward with this appeal.

6. Learned counsel appearing for the appellant assailed the impugned order of the learned single Judge mainly on the ground that in term of sub-clauses 3 and 4 of Clause 5 of the General Instructions the provisional selection of the writ petitioner has been rightly cancelled. According

to the learned counsel, the conditions contained in the Instructions empower the Commission to reject the provisional selection of any of the candidate. Learned counsel in support of her contention relied upon an unreported decision of the Division Bench of this Court rendered in W.A.No. 585 of 2009 dt. 11.11.2009 (The Secretary, Tamil Nadu Public Service Commission vs. M.Chitra and another)

7. Before appreciating the submission made by the learned counsel, we would like to quote sub-clauses 3 & 4 of Clause 5 and Clause 15 of the General Instructions, which reads as under: -
“(iii) Any claim by a candidate that he belongs to Scheduled Caste or Scheduled Tribe or Backward Class or Most Backward Class/Denotified Community or that he has obtained a higher or additional qualification made after the submission of an application will not be entertained.

(iv) The claims of the candidates with regard to the date of birth, educational/technical qualifications and community are accepted only on the information furnished by them in their applications. Their candidature, therefore, will be provisional and subject to the Commission satisfying itself, about their age, educational/technical qualifications, community etc. Mere admission to the interview or inclusion of name in the list will not confer on the candidates any right for appointment. The candidature is therefore provisional at all stages and the Commission reserves the right to reject any candidature at any stage, even after the selection has been made.

15. Production of Evidence for claims made in the application: - Candidates should enclose Xerox copies of the certificates, duly attested by Group A/Group B Officers along with the application. However, original certificates in support of the claims made in the application should be produced at the time of attending the oral test or when called for. One set of Xerox copies of all certificates along with a copy of the photograph identical to the one pasted in the application should also be handed over while attending the oral test or when called for.

A candidate who has applied to the Commission on a previous occasion should produce the required documents even though they were produced on a previous occasion and were returned to them.”

8. From a bare perusal of the aforesaid provision, it is manifest that by sub-clauses 3 and 4, the Commission reserves its right to reject the candidature's provisional selection, if it is found that necessary information with regard to date of birth, educational qualification and community certificate are not furnished along with the application. Clause 15 of the Instructions, however, provides that the original certificates made in support of the claim made in the application should be produced at the time of attending the oral test or as and when the candidate is called for by the Commission.

9. In the instant case, as noticed above, in the application submitted by the writ petitioner, she has very categorically and specifically disclosed that she belongs to Most Backward Class community. On the basis of the information furnished by the writ petitioner, her application was segregated along with other applications of the candidate who belong to the same community, and they were allowed to appear in the written examination. After the writ petitioner was provisionally selected for appointment, she was called for to furnish all the original documents. At that time, the writ petitioner furnished all the original documents along with the community certificate. It was only because that the community certificate furnished by the respondent was obtained after the advertisement was published by the Commission, her provisional selection was cancelled by the Commission.

10. It was the specific case of the writ petitioner in the writ petition that copy of the community certificate enclosed with the application was only the community certificate obtained in the year 1993, which was only in half sheet of paper. However, she procured another community certificate and produced the original before the Commission at the time of verification of the certificates. In the counter affidavit filed by the Commission in the writ petition, it is mentioned that the petitioner's provisional selection was cancelled only on the ground that the original community certificate produced by her was obtained after the notification was issued by the Commission.

11. For better appreciation, paragraphs 3 and 4 of the counter affidavit are reproduced herein below: - "3. It is submitted that the written examination for the said post was conducted on 10.06.2007 and based on the marks obtained by the candidates in the written examination and following the rule of reservation, candidates were selected and they were summoned for verification of original certificates. During verification of original documents she had not produced the original community certificate of the alleged community certificate said to have been enclosed with her application i.e., the community certificate, if any obtained prior to the date of notification. However, she produced a fresh community certificate in original obtained after the date of notification i.e., 27.09.2007.

4. It is submitted that in the Instruction No.25 of the Information Brouchre under the heading "Check list for production of Documents" a specific note has been stated as follows:

"Original documents need not be sent. Xerox copies of the documents duly self attested by the candidates or attested by Group A or Group B officers should be sent along with the application. If the copies of the certificates referred to above are not received, the candidature's application will be summarily rejected" Further, in the notification for the said post against para 21(5) under the heading "How to apply", it has been stated as follows: -

"Applications received without attested copies of certificates not duly filled in and unsigned will be rejected."

12. From a perusal of paragraph-3 of the counter affidavit, it is seen that the only stand taken by the Commission is that the original community certificate was obtained by the writ petitioner after the date of the notification and therefore, the aforesaid instructions stand violated, which in turn disentitle the writ petitioner to get appointment. We do not find any force in the stand taken by the Commission. Firstly, there is no such condition contained in the notification/instructions that the candidate must have obtained community certificate prior to the date of the notification. Secondly, it is not the case of the Commission that the writ petitioner-first respondent either disclose a different community in the application and subsequently produced a certificate of a different community nor that the community certificate so produced by the writ petitioner is a false or fake one. The only mistake said to have been committed by the writ petitioner is that she did not enclose the Xerox copy of the original community certificate at the time of submitting the application although she categorically mentioned in the application about her community. Nevertheless, the original was produced at the time of verification of the certificates, but the same was not accepted on the ground that the said certificate was obtained after the post was advertised/notified. Consequently, her selection was cancelled. Such an action of the Commission is wholly illegal, arbitrary and unjustified.

13. In the case of Charles K.Skaria v. C.Mathew reported in 1980 (2) SCC 752, a similar question, as arisen in the instant case, fell for consideration before the Supreme Court. In that case, a notification inviting applications was published by the State of Kerala under Gazette dated February 2, 1979 wherein the last date for receipt of the applications was set down as 31st

March, 1979. In that advertisement provision for allotment of additional marks for a particular qualification was fixed, provided the proof of such qualification was to be enclosed along with the application. It appears that some candidates were allotted marks for acquiring such diploma qualification. However, the same was challenged. The High Court took the view that the Diplomas of the candidates should have been excluded from consideration by the selection committee on the ground that the certificates required had to be produced along with the application. However, Clause 12 enjoins summary rejection for non-compliance. The matter ultimately went to Supreme Court. The Supreme Court while considering the conditions contained in the notification held that such a condition not be interpreted as mandatory. Their Lordships observed: - (page 762)

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

"(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application."

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence."

14. Similar is the view in the case of Dolly Chhanda vs. Chairma, JEE reported in 2005(9) SCC 779. In that case, the appellant appeared for Joint Entrance Examination-2003 under the Reserved MI category being daughter of an ex-serviceman. Under Clause 2.1.4 of the Information Brouchre certain percentage of seats were reserved for children/widows of personnel of armed/paramilitary forces of Orissa. The appellant ranking in the examination under the Reserved category was 20. Accordingly, she was called for counseling for admission to a medical college. However, during the course of scrutiny of papers, it was revealed that the certificate given to her father by the Zilla Sainik Board in Column-3, which pertain to the

disabled/killed in war/hostilities, the word "not eligible" were written. Since the aforesaid certificate did not satisfy the requirement of the Reserved MI category, her candidature was rejected. It appears that the appellant produced the disabled certificate, which was issued to her father by the army authorities, but in view of the requirement of clause 2.1.4 of the Information Brouchre, the same was not accepted as the same was not enclosed along with the application. Before the Supreme Court, the stand taken by the respondent was that although the appellant secured ranking at Sl.No.20 in the medical stream under MI category, but in the certificate produced it was not mentioned that her father was a disabled personnel of the army/paramilitary forces. It appears that in the certificate issued by the authority, it was mentioned that her father suffered from permanent disability, but by mistake that was not written in the certificate issued by the Zilla Sainik Board, which was subsequently rectified. The Supreme Court noticed that the appellant's father Manoranjan Chhanda was discharged from the Army on the ground of permanent disability. While allowing the appeal, Their Lordships held as follows: - (para.7, pages 781-782)

"The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc., necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

15. As noticed above, the facts of the instant case is quite similar to the facts in the cases before the Supreme Court, which are referred to above. Here also, indisputably, the first respondent belongs to Most Backward Class, which was mentioned in the application, and accepting that she belongs to that community, she was allowed to appear in the examination, and she was also provisionally selected. In such circumstances, the cancellation of the selection of the first respondent on the ground that the community certificate, which was produced, was obtained after the advertisement was published in the newspaper is absolutely illegal, highly arbitrary, capricious and without jurisdiction.

16. Learned counsel for the appellant placed heavy reliance on the unreported judgment and order passed by this Court in W.A.No.603 of 2008. We respectfully disagree with the view taken by the Division Bench in that case. Consequently, we have no hesitation in holding that the conclusion arrived at by the learned single Judge is perfectly justified and in accordance with law.

17. For the reasons aforesaid, we see no merit in this appeal, which is accordingly dismissed. No costs. Consequently, miscellaneous petitions are closed.