

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17-8-2015

Pronounced on : 24-8-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

W.P.No.2194 of 2014 & M.P.No.1 of 2014
Crl.O.P.No.32601 of 2014 & M.P.No.1 of 2014

W.P.No.2194 of 2014

G. Saratha Rani .. Petitioner

Vs.

1. The District Collector,
Namakkal, Namakkal District.

2. The Revenue Divisional Officer,
Thiruchengode, Namakkal District.

3. Bharat Petroleum Corporation Ltd.,
rep.by the Area Marketing Manager,
Tamil Nadu & Pondicherry,
No.1, Ranganathan Gardens,
Off. 11th Main Road, Anna Nagar,
Chennai - 600 040.

4. S. Velusamy .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records of the second respondent in his proceedings in Na.Ka.No.400-2013-D, dated 8.7.2013 and quash the same and direct the third respondent to grant the BPC Dealership in favour of the petitioner as per the selection conducted on 23.1.2012.

Crl.O.P.No.32601 of 2014

G. Saratha Rani .. Petitioner/Accused

Vs.

referred to as 'BPC'), filed on behalf of BPC and the relevant contents are extracted verbatim, except inclusion of the name of the parties in the place of petitioner and 4th respondent.

"1. I am the Territory Manager (Retail) of the 3rd respondent Corporation and as such I am well acquainted with the facts of the case from the records.

2. I have read the affidavit of G.Saratha Rani filed in support of the writ petition for the issue of a writ of certiorarified mandamus calling for the records of the 2nd respondent in his proceedings in Na.Ka.No.400-2-13 NU dated 08.07.2013, quash the same and to direct the 3rd respondent to grant the dealership in her favour as per the selection conducted on 23.1.2012 and do not admit the allegations made therein save as to those that are specifically admitted hereunder. Non-traverse of any of the allegations shall not deem to mean acceptance or admission.

3. At the outset I state and submit as follows:

Bharat Petroleum Corporation Ltd (hereinafter referred to as "Corporation") called for appointment of retail outlet dealers in the State of Tamil Nadu in and by advertisement dated 16.9.2011 published in "Daily Thanthi". One such location was Sl.No.528 in relation to the location Kokkarayanpettai, Namakkal District.

I state that a total of two applications were received.

Two applicants were called for the interview held on 23.1.2012.

Two applicants attended the interview on 23.1.2012.

G.Saratha Mani in the above writ petition was the 1st empanelled candidate, while S.Velusamy in the above writ petition was the 2nd empanelled candidate.

The result of the interview was published in the website of the Corporation and displayed at the notice board of the Corporation on 23.1.2012.

S.Velusamy filed W.P.No.24871/2012 challenging the award of marks with regard to selection process for the location of Kokkarayanpettai Village, Namakkal District and with regard to empanelling G.Saratha Rani who secured 109.54 marks by seeking a writ of certiorarified mandamus to quash the result of the publication and to direct the Corporation to select himself as the dealer of the Corporation.

A counter was filed by the Corporation stating that G.Saratha Rani was the 1st empanelled candidate; that she submitted a Residency Certificate from the Tahsildar of Tiruchengode stating that she is a resident of Kokkarayanpettai Village; the evaluation committee of the Corporation have gone strictly by the residential proof submitted by her for award of marks. As per the norms for selection of candidate for petroleum dealership only certificate issued by Deputy Tahsildar/Tahsildar/Dy.Mamlatdar/Mamlatdar/Deputy Commissioner of Police by any other authority will not be considered for evaluation. Taking into account the certificate of Tahsildar who mentioned that Ms.G.Saratha Rani is a resident of Kokkarayanpettai Village in Pappampalayam Panchayat, she was rightly awarded 20 marks as per guidelines.

The matter was heard by His Lordship Mr.Justice Venkataraman, who by His order dated 22.1.2013 in W.P.No.24871/2012 issued a direction to the Revenue Divisional Officer to dispose of the appeal filed by S.Velusamy on merits in accordance with law, after hearing Mr.S.Velusamy and G.Saratha Rani and if for any reason, the said authority passed an order in favour of Sri.S.Velusamy, it is open to Sri.S.Velusamy to come back to the Court challenging the action of the Corporation in awarding the dealership to G.Saratha Rani. It was also observed that if Sri.S.Velusamy has got any right to do so in accordance with law, he can exercise that right.

Aggrieved by the order dated 22.1.2013 in W.P.No.24871/2012 Ms.Saratha Rani filed W.A.No.2462/2013.

Subsequent to the order passed in W.P.No.24871/2012, the Revenue Divisional Officer, Tiruchengode cancelled the Residency Certificate of G.Saratha Rani by proceedings in Na.Ka.400-2-13-D dated 08.07.2013.

The said cancellation order is the subject matter of challenge in the present W.P.No.2194/2014.

Writ Appeal No.2462/2013 filed by G.Saratha Rani was disposed off on 3.4.2014, taking into consideration namely the cancellation of Residency certificate of Ms.Saratha Rani and in view of the fact that W.P.No.2194/2014 is pending and granting liberty to the parties to agitate all their contentions in the pending W.P.No.2194/2014 filed by G.Saratha Rani.

4. I state that since the order of 2nd respondent is challenged in the present writ petition, the dispute relates to G.Saratha Rani and the 2nd respondent (Revenue Divisional

Officer). I further state that the 3rd respondent is prepared to abide by orders to be passed by this Hon'ble Court in the present writ petition. Recording the same, suitable orders be passed."

5. From the above it is evident that G.Saratha Rani obtained a residence certificate dated 24.9.2011 from the Tahsildar, Thiruchengode to the effect that she is a permanent resident of Pappampalayam village, a hamlet of Kokkarayanpettai in Thiruchengode Taluk, Namakkal District. Based on this residence certificate, she applied to BPC for allotment of petrol bunk in Kokkarayanpettai, and she was declared as the first empanelled candidate. Naturally, her competitor, S.Velusamy became incensed and he started digging for evidence to unsettle her and thus stumbled upon certain infirmities in the residence certificate dated 24.9.2011. Therefore, he challenged the validity of the residence certificate dated 24.9.2011 issued by the Tahsildar, before the Revenue Divisional Officer, Thiruchengode, by an appeal petition dated 22.12.2012. Since the Revenue Divisional Officer was not passing orders on his petition, he approached this Court in W.P.No.24871 of 2012 challenging the empanelment of G.Saratha Rani on the ground that she is not a resident of Kokkarayanpettai, and that, the residence certificate has been obtained by misrepresentation. This Court disposed of W.P.No.24871 of 2012 on 22.1.2013 with a direction to the Revenue Divisional Officer, Namakkal, (instead of directing RDO, Thiruchengode) to dispose of the appeal filed by S.Velusamy, challenging the residence certificate.

6. When the matter was under consideration of the Revenue Divisional Officer, Thiruchengode, G.Saratha Rani made a representation to the Revenue Divisional Officer, Thiruchengode that he is not empowered under the Citizen's Charter to deal with the appeal petition of S.Velusamy, and that it is only the District Collector, who is the appellate authority. On receipt of the objection raised by G.Saratha Rani, the Revenue Divisional Officer sent the file to the District Collector, Namakkal. The District Collector sent back the file to the Revenue Divisional Officer on the ground that the High Court has directed only the Revenue Divisional Officer to dispose of S.Velusamy's petition. Therefore, in obedience to the orders of the High Court in W.P.No.24871 of 2012 and of the District Collector, the Revenue Divisional Officer called for a report from the Tahsildar with regard to the genuineness of the residence certificate dated 24.9.2011 issued to G.Saratha Rani. In the meantime, the Tahsildar, Thiruchengode, who issued the impugned residence certificate dated 24.9.2011 to G.Saratha Rani was transferred and the new incumbent sent a report to the Revenue Divisional Officer that the particulars given in the residence certificate are untrue, inasmuch as Pappampalayam Village is not an hamlet of Kokkarayanpettai, and that, Pappampalayam and Kokkarayanpettai are two different and distinct cluster of villages. On the strength of the report issued by the Tahsildar, the Revenue

Divisional Officer cancelled the residence certificate dated 24.9.2011 by order dated 8.7.2013. Aggrieved by the cancellation order dated 8.7.2013, G.Saratha Rani is before this Court.

7. S.Velusamy did not rest on his oars even thereafter. On coming to know that G.Saratha Rani had obtained a false residence certificate he went hammer and tongs against her by lodging a police complaint dated 16.9.2013, based on which the Inspector of Police, Pappampalayam Police Station has registered a case in Crime No.635 of 2014 under Sections 470 and 420 IPC against G.Saratha Rani, challenging which G.Saratha Rani has filed Crl.O.P.No.32601 of 2014 with a prayer to quash the FIR.

8. On the orders of the then Hon'ble Administrative Judge, both W.P.No.2194 of 2014 and Crl.O.P.No.32601 of 2014 were posted before this Court for disposal, and in such circumstances, this Court heard both the cases together.

9. Mr.G.Jeremiah, learned counsel appearing for G.Saratha Rani submitted that under the Citizen's Charter, an appeal from the order of the Tahsildar will lie only to the District Collector and not to the the Revenue Divisional Officer. He further submitted that no Court can confer appellate jurisdiction on an authority and therefore the impugned order passed by the Revenue Divisional Officer is illegal. In support of this submission, he relied upon the judgments of the Hon'ble Supreme Court reported in (2003) 8 SCC 40 : CDJ 2003 SC 812 (V.K.Majotra & Others v. Union of India & Others) and (2009) 3 SCC 634 : CDJ 2009 SC 253 (U.P.State Road Transport Corporation v. Assistant Commissioner of Police (Traffic), Delhi).

10. The Revenue Divisional Officer, Thiruchengode, has filed a counter affidavit in W.P.No.2194 of 2014 wherein he has categorically stated as follows:

"4. It is submitted that she is residing at Door No.310 Errkudil Kokkarayanpettai Village and Post, Thiruchengode Taluk, Namakkal District. Errkudil is a hamlet of Pappampalayam Village and not in Kokkarayanpettai village. It is proved that she is a resident of Errkudil hamlet of Pappampalayam village and not resident of Kokkarayanpettai village. Certificate also issued by the President, Village Panchayat, Pappampalayam."

11. This Court gave its anxious consideration to the arguments advanced on behalf of the contesting parties. To a pointed question posed by this Court as to whether the very residence certificate issued by the Tahsildar dated 24.9.2011 was a fabricated one, the learned Additional Public Prosecutor submitted that the residence certificate dated 24.9.2011 is not perse a fabricated document, and that it has been issued by the Tahsildar, Thiruchengode, but the particulars given in the residence certificate are false.

12. Now, the question that is to be answered by this Court is, whether the cancellation order dated 8.7.2013 passed by the Revenue Divisional Officer, Thiruchengode requires to be set aside on the grounds urged by Mr.G.Jeremiah, learned counsel appearing for G.Saratha Rani.

13. The Citizen's Charter has no statutory backing. It is common knowledge that the District Collector is the head of the revenue administration in the district. In the administrative hierarchy, Revenue Divisional Officer and the Tahsildar stand beneath the other in the said order. The Revenue Divisional Officer is empowered to act as an appellate authority against the orders of the Tahsildar on several issues.

14. In this case, when S.Velusamy came to know that G.Saratha Rani has obtained a certificate with false particulars from the Tahsildar, he approached the Revenue Divisional Officer with his grievance, who is superior to the Tahsildar. This is not a case where the High Court conferred any appellate jurisdiction on the Tahsildar as contended by Mr.G.Jeremiah.

15. In V.K.Majothra's case (supra) the Supreme Court observed as follows:

"5. The writ petition was taken up for final disposal by the High Court on 9th April, 2002. Instead of disposing of the writ petition on the pleas raised in the writ petition or the points raised by the counsel for the parties during the course of the arguments, the High Court going completely off the tangent went on to hold that the Vice-Chairman of the Tribunal should be from a legal background and can only be a sitting or retired High Court Judge or an advocate who is qualified for appointment as a High Court Judge. It was held that in the instant panel prepared by the Government and in all future panels only the person referred to in Section 6(2)(a) of the Act can be appointed as the Vice-Chairman of the various benches of the Tribunal. It was also observed that there are number of Tribunals in the country like CEGAT, Board of Revenue, Income Tax Appellate Tribunal, etc., which should have persons from a legal background as the presiding Judge to maintain the confidence of the public."

Only in those circumstances the Supreme Court held that the High Court ought not to have gone beyond the scope of the enquiry.

16. In this case, while deciding the validity of G.Saratha Rani's empanelment in W.P.No.24871 of 2012, this Court was informed that the appeal petition filed by S.Velusamy challenging the

residence certificate is pending before the Revenue Divisional Officer, who can go into the question of fact and only in those circumstances this Court, instead of going into the validity of the residence certificate, directed the Revenue Divisional Officer to dispose of S.Velusamy's appeal petition.

17. As regards the facts in U.P.State Road Transport Corporation case (supra), statutory powers under the Motor Vehicles Act came up for discussion and in these circumstances the Hon'ble Supreme Court held that the Court cannot confer a jurisdiction on an authority, ignoring legal provisions.

18. As stated above, the Citizen's Charter has no statutory backing. In fact, the Revenue Divisional Officer has not acted as an appellate authority as generally understood by everyone. He called for a report from the Tahsildar himself about the genuineness of the residence certificate dated 24.9.2011 and on receipt of the report from the Tahsildar stating that Pappampalayam is not the hamlet of Kokkarayanpettai, he cancelled the residence certificate dated 24.9.2011 by order dated 8.7.2013. In fact, under Administrative law, an administrative authority himself has the power to cancel a certificate, if he later finds that the same has been issued erroneously.

19. This Court also perused the residence certificate and observed that G.Saratha Rani has been shown as daughter of one Gunadharan and a resident of Kokkarayanpettai hamlet. At the first blush the residence certificate appears as if G.Saratha Rani is a spinster, but in the counter affidavit filed by G.Saratha Rani herself in W.P.No.24871 of 2012 she has stated that she was married to one Vishnu of Karur, who is employed in Chennai, and that she is living with her parents in D.No.3/310, Errkudil, Kokkarayanpettai, Thiruchengode Taluk, in order to do business with the concurrence of her husband. If that is so, the residence certificate should have disclosed her husband's name. Thus, it is obvious that for the purpose of bagging the petrol bunk outlet, G.Saratha Rani, with the connivance of the then Tahsildar, Thiruchengode, has obtained a residence certificate containing false particulars, which has been rightly cancelled by the Revenue Divisional Officer.

20. Coming to CrI.O.P.No.32601 of 2014, the FIR discloses commission of a cognisable offence, inasmuch as G.Saratha Rani has obtained a residence certificate giving false particulars, on the strength of which she even bagged the petrol bunk contract in the first round. In the light of the law laid down by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335, the impugned FIR cannot be quashed and the Police should proceed with the investigation in accordance with law.

21. Can the litigation be put to rest by merely dismissing the petitions without anything more ? Who would compensate the loss suffered by BPC and the inconvenience suffered by the common public, is the question that begs an answer. On account of the petitioner obtaining the impugned residence certificate with the connivance of the Tahsildar, the scheme of BPC to provide a petrol outlet in Kokkarayanpettai had come to a standstill from 2012 onwards. Therefore, the petitioner is directed to pay Rs.50,000/- as cost to BPC and the District Collector is directed to initiate appropriate disciplinary action against the Tahsildar, who had issued the impugned residence certificate dated 24.9.2011 to the petitioner.

21. In the result, both W.P.No.2194 of 2014 and Crl.O.P.No.32601 of 2014 are dismissed. The petitioner is directed to pay a cost of Rs.50,000/- to the Bharat Petroleum Corporation Limited/third respondent in the writ petition. The District Collector, Namakkal is directed to initiate appropriate disciplinary action against the Tahsildar, who had issued the impugned residence certificate dated 24.9.2011 to the petitioner. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vr
To

1. The District Collector,
Namakkal, Namakkal District.
2. The Revenue Divisional Officer,
Thiruchengode, Namakkal District.
3. Bharat Petroleum Corporation Ltd.,
rep.by the Area Marketing Manager,
Tamil Nadu & Pondicherry,
No.1, Ranganathan Gardens,
Off. 11th Main Road, Anna Nagar,
Chennai - 600 040.

- + 2 ccs to Mr.G. Jeremiah, Advocate Sr.45067
+ 1 cc to Mr.O.R. Santhanakrishnan, Advocate Sr.44790
+ 1 cc to Mr.V. Ayyadurai, Advocate SR.44894

W.P.No.2194 of 2014 &
Crl.O.P.No.32601 of 2014

BVR(CO)
EU 08.09.15