

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.07.2016

Delivered on : 28.07.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANANARAYANAN

AND

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WP.No.23766/2014

S.Venkateswaran

...

Petitioner

Versus

1 The Government of Tamil Nadu
Rep. by its Chief Secretary
Fort St George,
Chennai 600 009.

2 The Secretary
Public [Special A] Department
Fort St George,
Chennai 600 009.

3 The Registrar General
High Court of Madras
Chennai-104.

4 D.Lingeswaran

5 The Inspector of Police
B-4, High Court Police Station
Chennai.

..

Respondents

***R5 impleaded as per the order
of this Court dated 24.06.2016
in MP.NO.1/2015 in WP.No.23766/2016.

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent to delete the name of the 4th respondent from the Selection List of District Judge [Entry Level] 2013 and cancel his appointment as a District Judge [Entry Level] and to appoint the petitioner in the vacant place.

For Petitioner : Mr.S.Doraisamy
For RR 1 , 2 & 5 : Mr.R.Vijayakumar, AGP
For R3 : Mr.R.Tholgappian
For R4 : Mr.L.Chandrakumar

ORDER

The petitioner claims to be a practicing Advocate and he is also one of the candidates who applied for the post of District Judge [Entry Level] to the Tamil Nadu State Judicial Services in terms of the Notification published in the News Daily on 02.05.2013. The petitioner was successful in his written examination and also participated in the Viva Voce ; but was not selected. It is the specific case of the petitioner that the 4th respondent who was selected, at the time of submission of the application for recruitment to the said post, had suppressed the fact of his involvement as 4th accused in Crime No.16 of 2004 for the commission of the offences under sections 147, 341 and 323 IPC, which, after investigation, has culminated in a charge sheet in CC.No.9617/2004 on the file of the Court of VII Metropolitan Magistrate, George Town, Chennai, and as such, the petitioner has sought for the quashment of the Selection List and to appoint him in the vacant place, by filing the present writ petition.

2 The petitioner, in the affidavit filed in support of this writ petition would state that he belongs to Most Backward Class Community, namely, "Mahendra Medara" and is a practicing Advocate in Karur, for more than 7 years on the date of the above said Notification. In the Application Form to be submitted by the applicants, as per Serial Numbers / Column Numbers 14 and 15, the candidate should make a declaration as to whether he is involved in any litigation, civil or criminal and whether any criminal complaint pending investigation or trial and ever convicted or acquitted in any criminal case. It is the specific case of the petitioner that the 4th respondent, while filling up the Application, has stated "NO" in respect of Column Nos.14 and 15, though he is very well aware of the fact of being arrayed as 4th accused in the above said crime number / case. The petitioner also took a legal stand that in similar facts and circumstances one S.Panidarajan, whose selection as a District Judge [Entry Level] came to be cancelled and the said S.Panidarajan made a challenge by filing WP.No.739 of 2012 and a Division Bench of this Court, vide order dated 16.07.2012, has

upheld the order of cancellation and in the light of the said order, the appointment of the 4th respondent is to be quashed and the petitioner should be selected and appointed as District Judge [Entry Level] in the vacant place and hence, the petitioner came forward to file the present writ petition.

3 Mr.S.Doraisamy, learned counsel appearing for the petitioner would submit that pendency of this writ petition, the petitioner filed an application under section 6 of the Right to Information Act, 2005, to the Bar Council of Tamil Nadu and Puducherry, as to the persons in the name of "Lingeswaran" who got enrolled as Advocates and the Bar Council of Tamil Nadu and Puducherry, has furnished the information. As per the information furnished, three Advocates in the name of "Lingeswaran.D", "Lingeswaran.J" and "Lingeswaran.M" got enrolled. The Date of Birth of the 4th respondent is 10.05.1974 and has given his address bearing Door No.7/21-A, Nethaji Nagar, Kotta Karai, Gummidipoondi, and he got enrolled on 09.08.2000 and was assigned with the Enrollment No.1044/2000 and insofar as the other Advocates, viz., J.Lingeswaran and M.Lingeswaran, are concerned, they were enrolled on 07.08.2011 and 07.12.2007 only and on the date of Notification, they were ineligible to apply for the said post. It is the further submission of the learned counsel appearing for the petitioner that the Headmaster of the Government High School, Ponneri, has also given information under the Right to Information Act, stating that the 4th respondent was born on 10.05.1974 and as per the School Records, the address is No.18.C, GNT Road, Gummidipoondi. The learned counsel has invited the attention of this Court to the Final Report filed by the 5th respondent and the following are the persons who are arrayed as parties by the prosecution:-

The Inspector of Police, B-4, High Court Police Station, Chennai-104, Vs. [1] Prabakaran, Advocate, President of Madras High Court Advocates Association, High Court of Madras, Chennai-104 ; [2] Madhavaram Senthil, Advocate, High Court of Madras, Chennai-104 ; [3] Pondicherry Abdul Ameer, Advocate, High Court of Madras, Chennai-104 ; [4] Gummidipoondi Lingeswaran, Advocate, High Court, Chennai-104 ; [5] Tamilarasan, Advocate, High Court, Chennai-104 ; [6] Baskaran, Advocate, High Court, Chennai-104 ; and [7] Teek Raj, Advocate, High Court, Chennai-104.

4 The positive Final Report filed by the 5th respondent was taken on file in CC.No.9617/2005 on the file of the Court of VII Metropolitan Magistrate, George Town, Chennai

and the name "Gummidipoondi" tallies with the information furnished by the Bar Council of Tamil Nadu as well as the Government High School, Ponneri and therefore, the 4th respondent is arrayed as 4th accused and despite being aware of it, the 4th respondent has deliberately suppressed the fact while filling up the Application and got the appointment as District Judge [Entry Level] and in the light of the overwhelming circumstances in the form of the above said material documents, his selection has to be quashed and in the vacant place, the petitioner is to be appointed.

5 Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents 1, 2 and 5, on instructions, would submit that after appointment, police verification was done and nothing adverse was noted against the 4th respondent.

6 Mr.R.Tholgappian, learned counsel appearing for the 3rd respondent would submit that the petitioner in the Application Form has given his permanent address as "Door No.1/136, Thoppu Street, Muthu Mothan Molzhi, Radhapuram Taluk, Tirunelveli District" and given his Chamber Address as "Chamber No.254, Law Chambers, High Court Buildings, Chennai," and given his Enrollment Number and the Date of Enrollment as "MS.1044/2000 and 09.08.2000" respectively and in Column Nos.15 and 16, he has stated "NO" and after undergoing selection process, he secured total marks of 53.63 and got selected and appointed and at present, functioning as District Judge [Entry Level].

7 Mr.L.Chandrakumar, learned counsel appearing for the 4th respondent has invited the attention of this Court to the Counter Affidavit and would submit that the 4th respondent was selected and appointed under the General Turn and that he belongs to Backward Class community and whereas the petitioner belongs to Most Backward Class community and since the vacancy earmarked for Most Backward Class community had already been filled up, the petitioner cannot be considered either in the General Turn or in any other category and also in view of less meritorious performance in the selection process. Insofar as the primordial allegation levelled against the 4th respondent that he suppressed the pendency of criminal case by filling up and submitting the application, it is the submission of the learned counsel for the 4th respondent that on the date of application or even thereafter, the 4th respondent is not aware of the registration / filing / pendency of the said case and he neither received any summons nor any notice from the police in this regard and he was never enquired or interrogated about the alleged occurrence and since he is not at all aware of any such

incident, declaration made by him that he is not involved in criminal case, is correct and would not amount to false declaration. It is the further submission of the learned counsel for the 4th respondent, by drawing the attention of this Court to the Final Report, that even in the Final Report, the array of accused is not clear and admittedly, in respect of none of the accused, the name of the father, specific residential or office address has been furnished and insofar as A4 is concerned, the Charge Sheet merely says "Gummidipoondi Lingeswaran, Advocate, High Court, Chennai-104" and in the absence of any specific address and to the identity, it cannot be concluded that A4 in the above said case is the 4th respondent herein. Lastly, it is submitted by the learned counsel for the 4th respondent that the petitioner without making any proper verification as to the real facts, with an oblique and mala fide motive, has filed the present writ petition and prays for dismissal of this writ petition with exemplary cost.

8 The petitioner also filed a reply affidavit to the Counter Affidavit of the 4th respondent reiterating that since the 4th respondent was a resident of Gummidipoondi, he is the 4th accused and deliberately suppressed the said fact at the time of submission of the application.

9 This Court, having taken note of the fact that the summons are yet to be served on some of the accused, had directed the learned Additional Government Pleader to get necessary instructions. The petitioner has also filed Additional typed set of documents which contains a Status Report and it would disclose that summons are yet to be served on some of the accused and insofar as A1, A2, A6 and A7 are concerned, they filed CrI.OP.No.32998/2014 on the file of this Court and the criminal proceedings, insofar as they are concerned in CC.No.9617/2005 pending on the file of VII Metropolitan Magistrate, George Town, Chennai, have been quashed and in respect of the remaining accused, summons are yet to be served.

10 The primordial question arises for consideration is whether the 4th respondent has deliberately suppressed the fact of pendency of the criminal case in Crime No.16/2004 on the file of the 5th respondent herein while submitting the application for selection to the post of District Judge [Entry Level].

11 A perusal of the Final Report filing by the 5th respondent would indicate that the identity of the accused have not been properly stated / disclosed. As already pointed out, the name of the father of each accused or their specific residential address or office address have not at all been indicated.

12 The learned counsel for the petitioner places heavy reliance upon the information furnished by the Bar Council of Tamil Nadu and Puducherry, under the Right to Information Act, 2005, wherein it has been stated that the 4th respondent got enrolled on 09.08.2000 with Enrollment No.1044/2000 and has given his address bearing Door No.7/21-A, Nethaji Nagar, Kotta Karai, Gummidipoondi. Similarly, the information furnished by the Headmaster, Government High School, Ponneri, would also indicate that the address of the 4th respondent is given as No.18C, GNT Road, Gummidipoondi, and that Date of Birth is 10.05.1974.

13 The Station House Officer of the 5th respondent was also present at the time of hearing of this writ petition and this Court has also enquired him and he would submit that the Final Report was filed by his predecessor in office and the summons are yet to be served on the remaining accused against whom criminal prosecution is pending.

14 It is unfortunate to note that the Investigating Officer while filing the Final Report, has not even given the proper description of the accused and therefore, the Court of VII Metropolitan Magistrate, George Town, Chennai, is finding it extremely difficult to complete the service of summons on them.

15 It is very pertinent to point out at this juncture that no steps have been taken by the Investigating Officer either to arrest the accused pendency of the investigation or calling them for interrogation and therefore, in all probability the accused might not have been aware of the fact that they are arrayed as accused. Similarly, even after the Final Report is taken cognizance in CC.No.9617/2005, summons are yet to be served, on that ground also the accused are yet to be served. Therefore, concerned persons are not aware of the fact of being made as accused in the above cited case.

16 In M.Manohar Reddy and Another Vs Union of India and others reported in [2013] 3 SCC 99, a writ of quo warranto was filed to quash the appointment of the 3rd respondent therein as the Judge of High Court of Andhra Pradesh and another writ petition was filed praying for issuance of a writ of mandamus commanding the Bar Council of Andhra Pradesh to cancel his enrollment as a Advocate. The Hon'ble Supreme Court of India, after analysing the facts of the case, found that there is nothing on record to show that any attempt, let alone any serious attempt, was made to serve the summons or the Non-Bailable Warrants on any of the accused persons and the Court also finding it difficult to hold that the 3rd respondent therein

was even aware that in some record buried in the Courts of Mangalagiri, he was named as an accused and he was required to appear in the Court in connection with the said case. The Hon'ble Supreme Court, ultimately concluded that they have no hesitation in holding that at the time the 3rd respondent was being considered for appointment as Judge of the High Court, he was unaware of any case being pending in which he was named as an accused and it is quite wrong to refer him as "an absconder and a proclaimed offender" in the case. In the considered opinion of this court, the above cited judgment is fully applicable to the facts of the case.

17 The learned counsel for the petitioner made a last reach attempt by submitting that the 4th respondent was residing at Gummidipoondi and as such, he is very much aware of the pendency of the criminal case and in order to submit the application for selection as the District Judge [Entry Level], he had deliberately suppressed the fact by filling up Column Nos.14, 15 and 16. No doubt, as per the information furnished by the Bar Council of Tamil Nadu and Puducherry and the Headmaster of Government High School, Ponneri, the 4th respondent was residing at Gummidipoondi and the said information may not lead to the automatic reference that the 4th accused, namely, "Gummidipoondi Lingeswaran" is the 4th respondent himself. The Investigating Officer / Station House Officer of B-4 Police Station, High Court, Madras, while filing the Final Report, ought to have applied his mind and given proper description of the accused. But for the reasons best known to him, he has failed to do so and no steps appear to have been taken to call the said accused for interrogation or to arrest them. Therefore, this Court, in the light of the above facts and circumstances is of the view that the 4th respondent has not deliberately suppressed about the pendency of the criminal case said to be pending against him.

18 The reliance placed by the learned counsel for the petitioner to the order dated 16.07.2012 made in WP [MD] No.739/2012 has no application to the facts of this case and however, it is relevant to extract paragraph 68 of the said order:-

"68.Before parting with the case, we are of the view that while commenting about the selection process, especially relating to the high post in the District Judiciary, wherein the appointee is going to sit as a District Judge heading the judicial wing of the district, the responsibility of the appointing authority is very high and people who have confidence in the democracy and the judicial system expect the

persons of high caliber and dignity to be appointed to the post and such caliber and dignity is not merely on the basis of the marks obtained by the candidates in the qualifying examination, but also dependent on the apparent conduct of the persons, which should be above reproach and they should follow the straight and narrow everyday of their lives. The extraordinary power invested in the judicial office demands a high standard of behaviour. Independence has always been considered a cardinal feature of the role of a Judge, however, the reason for this grant of independence must not be lost. The concept of justice must not only be done but also seen to be done is very relevant in cases of appointment of judicial officers. The premise underlying the grant of judicial independence is that it is in the interest of justice. It is also vital that the independence be vested in persons who will behave in an ethical manner even in their personal lives. Even a slight doubt on the part of the citizen about the character of a judge will have a great effect of making inroad into the very concept of judiciary, which has proved itself to be a basic pillar of the entire concept of democracy throughout the world....."

19 The 3rd respondent shall make every endeavour to see to that the advocates with criminal and suspicious background and unethical practice, are prevented from entering the judicial service, for the reason that the selected candidate after becoming a judicial officer, must have integrity, honesty, knowledge of law and basic common sense. This Court is also of the view that even after selection of a candidate, a thorough and proper scrutiny is to be done as to the character and antecedents of the selected candidate and that the 3rd respondent would definitely adhere to the same in future selection and appointment of Judges in the Subordinate judiciary.

20 In the result, the writ petition is dismissed subject to the above observations. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

1 The Chief Secretary
Government of Tamil Nadu
Fort St George,
Chennai 600 009.

2 The Secretary
Public [Special A] Department
Fort St George,
Chennai 600 009.

3 The Registrar General
High Court of Madras
Chennai-104.

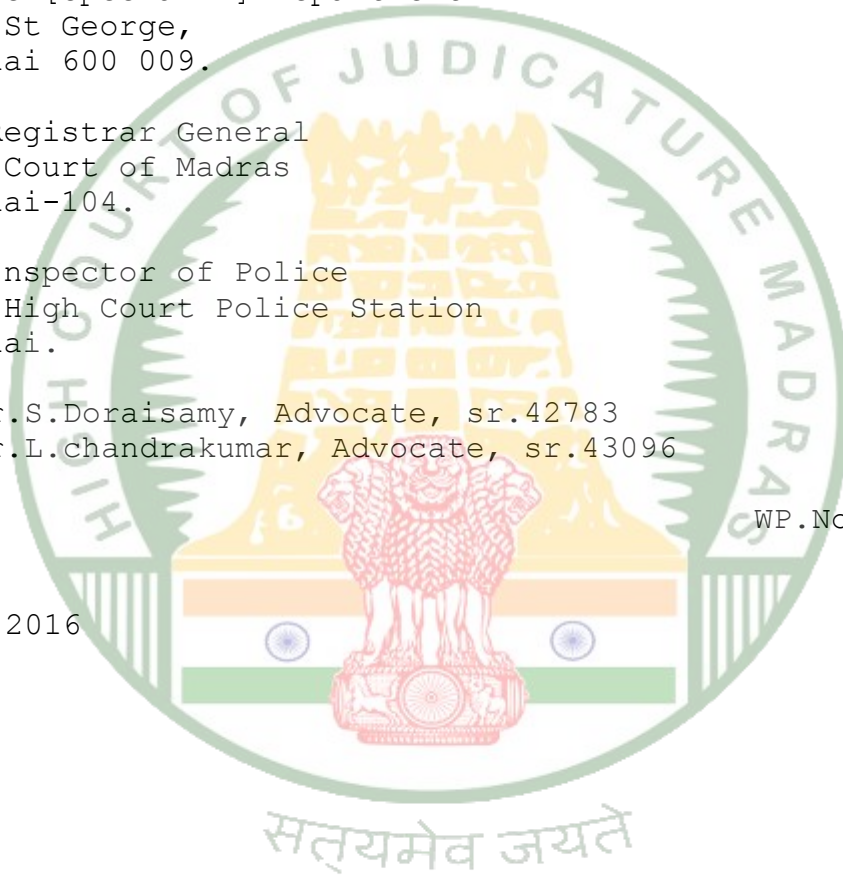
4 The Inspector of Police
B-4, High Court Police Station
Chennai.

1 cc to Mr.S.Doraisamy, Advocate, sr.42783

1 cc to Mr.L.chandrakumar, Advocate, sr.43096

WP.No.23766/2014

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