

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.35029 of 2016

K.Kanagarajan

... Petitioner

Versus

The Principal Commissioner and
Commissioner of Revenue Administration
O/o. Revenue Administrative Office,
Chepauk,
Chennai - 600 005. ... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, to direct the respondent to consider the representation dated 19.08.2015 and remainder dated 18.04.2016 and 22.06.2016, seeking to reconsider the application for alternation of Date of Birth.

For Petitioner : Mr.J.Shanmugasundara Babu

For Respondent : Mr.A.N.Thambidurai,
Special Govt. Pleader

ORDER

By consent of both parties, the present writ petition is taken up for final disposal at the time of admission itself.

2. The petitioner, who is working as a Block Development Officer at Vellore Union, has submitted applications to the respondent on 22.11.1991 and 10.08.1992, seeking alteration of his date of birth as 12.02.1962 instead of 15.10.1960, which was forwarded to the Revenue Divisional officer, Vellore to conduct an enquiry. After the enquiry, the Revenue Divisional Officer, who obtained statements from the family members of the petitioner, recommended to alter the Date of Birth and forwarded the same to the respondent on 22.03.1993. But, the respondent has rejected the petitioner's application on 05.07.1993, by citing technical reasons.

The petitioner made several representations on 09.08.1993, 14.06.1995, 13.10.2000, 21.04.2010 to reconsider his application for altering his date of birth. As the said

representations have not been considered, the petitioner made another representation dated 19.08.2015 to the respondent. He has also sent reminders on 18.04.2016 and 22.06.2016 with regard to the same. Now, the petitioner is before this Court.

3. Heard the learned counsel appearing for the petitioner as well as the learned Special Govt. Pleader appearing for the respondent.

4. Originally, the petitioner's application, seeking to alter his date of birth as 12.02.1962 instead of 15.10.1960 was rejected by the respondent as early as on 05.07.1993. Since the petitioner has not challenged the rejection order for the past 22 years, it has become final. The petitioner, without filing an appeal against the rejection order of the first respondent and without taking any steps to challenge the same, has straightaway filed the present writ petition seeking a direction to the respondent to consider his representation. That being so, the direction sought for by the petitioner cannot be granted. In this context, it will be useful to refer to the decision of the Division Bench of this Court, in which I was one of the party, in the case of (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, wherein the Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the

representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

5. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no straight-jacket formula to be

adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued. In this case also, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences whereby the respondent will be forced to discharge his statutory duty, which he is not bound to do at the instance of the petitioner.

6. In the light of the above, the relief sought for by the petitioner cannot be granted. The writ petition is therefore dismissed. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Principal Commissioner and
Commissioner of Revenue Administration
O/o. Revenue Administrative Office,
Chepauk, Chennai - 600 005.

+1cc to M/s.J.Shanmuga Sundara Babu, Advocate SR.NO.36837
+1cc to Government Pleader SR.No.57219

W.P.No.35029 of 2016

SDR 12.11.2016

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