THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.36644 of 2015

ORDER:

This Writ Petition has been filed by petitioner challenging the endorsement dt.04-09-2015 rejecting petitioner's application dt.30-05-2015 for issuance of Community Certificate under the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1963 (for short "the Act") and the Rules made thereunder.

2. Petitioner claims to be belonging to "Madasi Kuruva" which is designated as S.C. community. He applied on 30-05-2015 to the 3rd respondent through Meeseva Center, Kunool for issuance of a certificate certifying that he belongs to the said community.

3. Petitioner contends that the Mandal Revenue Inspector recorded the petitioner's statement along with statement of petitioner's neighbours on 02-08-2015 and gave an enquiry report stating that petitioner's family belongs to "Madasi Kuruva" community and had forwarded the same to the 4th respondent, but the 4th respondent did not recommend for issuance of such certificate to the 3rd respondent, and the 3rd respondent issued the impugned endorsement dt.04-09-2015 giving a cryptic reason "r*ejected as not recommended by the Tahsildar*".

4. Learned counsel for petitioner contended that as per sub-Section (1) of Section 4 of the Act, the competent authority should

pass a reasoned order and that in the absence of reasons furnished by 3rd respondent for not issuing the S.C. community certificate sought by petitioner, the impugned endorsement is unsustainable.

5. In the counter affidavit filed by 4th respondent on behalf of himself and 2nd respondent, it is contended that the petitioner has a remedy of appeal under Section 7 of the Act and therefore the petitioner ought to have availed the said remedy. It is stated that the Mandal Revenue Inspector, who enquired into the matter, recommended for rejection of issuance of Community Certificate of "Madasi Kuruva" to the petitioner. It is also stated that during enquiry by the Mandal Revenue Inspector, it was revealed that petitioner never followed any traditions and customs of the said community.

6. Learned Government Pleader for Social Welfare appearing for respondents reiterated the said contentions.

7. Section 4 of the Act states :

> *"4. Community Certificate to be issued by competent authority:*
>
> *(1) The Competent Authority may, on an application made to it under Section 3, satisfy itself about the genuineness or otherwise of the claim made therein and thereafter issue a community certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer or authority other than the competent authority shall be invalid.*

(2) Before the issue or rejection of a certificate under sub-Section (1), the competent authority shall follow such procedure as may be prescribed".

8. Thus, as per sub-Section (1) of Section 4 of the Act, the Competent Authority has to give reasons in writing for rejecting an application for issuance of Community Certificate. The impugned endorsement issued by 3rd respondent, however states that the application of petitioner is rejected since it was not recommended by the Tahsildar (4th respondent). This reason given by 3rd respondent is very cryptic and the 3rd respondent is expected to apply his mind to the material available before him and give reasons why petitioner's application for issuance of Community Certificate is liable to be rejected.

9. A Constitution Bench of the Supreme Court in **S.N.Mukherjee Vs. Union of India**[1], observed:

"34. ..... An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities

[1] AIR 1990 SC 1984

exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

10. Such reasons cannot be furnished in the counter-affidavit filed in the Writ Petition here. It is settled law that an order passed by a statutory authority cannot be supported by reasons not contained in it and by referring to counter-affidavit filed in challenge to the said order.

11. In **Commissioner of Police, Bombay Vs. Gordhandas Bhanji**[2], the Supreme Court has held that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. They have to be construed objectively with reference to the language used in the order itself.

12. Also, it is incumbent on the part of 3rd respondent to furnish to the petitioner the report of the Mandal Revenue Inspector and the recommendations of the Tahsildar thereon, hear the objections of the petitioner to the said Report and then pass a reasoned order. Only then would his order be in accordance with the principles of natural justice.

13. As regards the plea of respondents that the petitioner should have availed the remedy of appeal under the provisions of the Act, it is settled law that if there is a clear violation of principles of natural justice, as in this case by non-furnishing of reasons, the existence of alternative remedy is not a bar for entertaining the Writ Petition under Article 226 of the Constitution of India (**Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others**[3]). Therefore the said contention raised by respondents is rejected.

14. Accordingly the Writ Petition is allowed; the impugned endorsement dt.04-09-2015 is set aside and the matter is remitted back

[2] AIR (39) 1952 SC 16
[3] (1998) 8 SCC 1

to the 3rd respondent; the 3rd respondent shall furnish to the petitioner copy of the report of the Mandal Revenue Inspector as well as the recommendation of the Tahsildar within two (02) weeks from the date of receipt of a copy of this order; the petitioner shall then file his objections to the same within four (04) weeks from the date of receipt of above documents; and thereafter the 3rd respondent shall pass a reasoned order and communicate the same to the petitioner. No costs.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-09-2016
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