

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/4/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.10505 of 2019

T. Velmurugan

...

Petitioner

Vs

The Chief Electoral Officer &
Secretary to Government
Tamil Nadu Election Commission
Secretariat
Chennai 9.

...

Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the respondent's rejection order passed in Letter No.3652/Elec-IV/2019-42 dated 29/3/2019 and quash the same as illegal and consequently direct the respondents to issue Star campaigner pass to the petitioner.

For petitioner ... Mr.K.Gandhi Kumar

For respondent ... Mr.Niranjan Rajagopalan

O R D E R

(Order of the Court was made by S.Manikumar,J)

Mr. Velmurugan, President of Thamizhaga Vazhvurimai Katchi, Chennai, has filed the instant writ petition, seeking for a writ of certiorarified mandamus, to quash the order of rejection, in Letter No.3652/Elec-IV/2019-42, dated 29/3/2019, passed by the Chief Electoral Officer & Secretary to Government, Chennai, and consequently, direct the Chief Electoral Officer & Secretary to Government, Chennai, respondent, to issue Star campaigner pass, to the petitioner.

2. Petitioner has contended that on 22/3/2019, on his behalf, one Mr.Kamaraj, went to the office of the Chief Electoral Officer & Secretary to Government, Chennai, to submit an application, seeking permission for Star

Campaigner and vehicle pass. After receipt of the application, respondent advised his representative to collect the pass, on 25/3/2019. When the representative went, on 25/3/2019, to collect the Star Campaigner pass, he was not permitted to see the respondent. Reason assigned was that respondent was in an important meeting and permission letter was not issued.

3. On 25/3/2019 itself, the petitioner talked to the respondent over phone and sought his appointment to meet him to discuss the abovesaid issue. Appointment was given to the petitioner only on 27/3/2019. On the said date, he submitted the application, seeking permission for Star Campaigner pass to him and 19 of his party leaders. However, on 1/4/2019, petitioner received a letter No.3652/Elec-IV/2019-42, dated 29/3/2019, rejecting the request, for issuance of Star Campaigner Pass, stating that the application of the petitioner was received only on 27/3/2019 and hence rejected. Petitioner has contended that the presence of the representative was duly recorded in CCTV footage. He has also made allegations that under the pressure of ruling party, Chief Electoral Officer & Secretary to Government, Chennai/respondent has rejected the application.

4. On the above averments, Mr.K.Gandhi Kumar, learned counsel for the petitioner reiterated that on 22/3/2019 itself, application was submitted to the respondent.

5. Mr.Niranjan Rajagopalan, learned counsel for the Election Commission of India, who takes notice, on behalf of the respondent submitted that though the petitioner has contended that an application, dated 22/3/2019, was submitted, there is no proof in the office of the Chief Electoral Officer.

6. On the contra, petitioner has submitted an application, dated 27/3/2019 and the same was received in Tapal section with official seal.

7. Learned counsel for the Election Commission of India, has produced a photo copy of the application, dated 27/3/2019, submitted by the writ petitioner, to the Chief Electoral Officer & Secretary to Government. Inviting the attention of this Court to Section 77 of the Representation

of the People Act, Mr. Niranjan Rajagopalan, learned counsel for Election Commission of India submitted that application is not filed in the manner, and also within the time provided therefor, and therefore, order impugned does not warranting any interference.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. Explanation 2 to sub-Section 1 of 77 of the Representation of the People Act, 1951, reads as follows:-

"For the purposes of clause (a) of Explanation 1, the expression "leaders of a political party", in respect of any election, means -

(i). where such political party is a recognised political party, such persons not exceeding forty in number, and

(ii). where such political party is other than a recognised political party, such persons not exceeding twenty in number,

whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the Notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place."

10. In State of Punjab v. Amar Singh Harika, reported in AIR 1966 SC 1313, one of the questions posed before the Hon'ble Supreme Court was whether the order of dismissal can be said to be effective from the date, when it was made known or communicated to the concerned public servant. In

the above reported case, though the order of dismissal was passed on June 3, 1949, and a copy thereof was sent to six other persons noted thereunder, no copy was sent to the concerned public servant, who came to know of it only on May 28, 1951 and that too, through another officer. Rejecting the contention of the official respondent that the order became effective as soon as it was issued, the Hon'ble Supreme Court, held that mere passing of the order of dismissal would not make it effective, unless it was published and communicated to the concerned officer.

11. Meaning of the word, "communicate" came to be interpreted by the Hon'ble Apex Court in State of Punjab v. Khemi Ram reported in AIR 1970 SC 214, wherein, the question for consideration was whether the order of suspension, passed against a Government servant would take effect, when it was made ready or when it was actually served on, and received by him. Short facts of the reported case are that the respondent therein was appointed as a Sub Inspector, Co-operative Societies Department in the service of the State of Punjab and gained his promotion. While he was serving as a Inspector of Co-operative Societies, he applied for the post of Assistant Registrar in Himachal Pradesh and on reference by the Government of Punjab, his services were lent to Himachal Pradesh Government for appointment as Assistant Registrar. While he was serving in Himachal Pradesh, he was charge sheeted on August 9, 1955, by the Registrar, Co-operative Societies, Punjab, in connection with certain matters which occurred in 1950, while he was working under the Punjab Government. Government of Punjab decided to take disciplinary action against the respondent and informed the Himachal Pradesh Government on July 17, 1958. Himachal Pradesh Government granted him, 19 days leave preparatory to retirement, which was to take place on August 4, 1958. Punjab Government by its telegram, dated July 25, 1958 informed the Himachal Pradesh Government that they have no authority to grant such leave and requested that the deputationist be reverted to Punjab Government immediately. On July 31, 1958, Punjab Government sent a telegram to the respondent, at his residence. But the respondent had already left for his home town on leave being granted to him, as aforesaid. The said telegram read that the respondent was suspended from service, with effect from 2nd August, 1958. On the very next day, Punjab Government sent a charge sheet to the respondent, at the address of the Registrar, Co-operative Societies, Himachal Pradesh, who re-directed the same to the respondent's home address. Immediately, by letter dated August' 2, 1958, Himachal Pradesh Government informed

the respondent, that his services were reverted to the Punjab Government and that the leave granted to him had been curtailed by two days, i.e., upto August 2, 1958, instead of August 4, 1958, as originally granted. On August 25, 1958, respondent therein sent a representation to the Registrar, Co-operative Societies, Punjab, in which, he contended that he had already retired from service on August 4, 1958, and that the order of suspension, which he had received after that date, and the order for holding the enquiry against him were both invalid. On completion of the enquiry, Punjab Government, dismissed the respondent from service. In this factual background, the Hon'ble Supreme Court, at Paragraphs 16 and 17, held as follows:

"16. The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the

person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab v. Amar Singh* contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.

17. In this view, we must hold that the order of suspension was validly passed and was communicated to the

respondent before August 4, 1958, and therefore, was effective as from July 31, 1958. Accordingly, we allow the State's appeal and set aside the judgment and order of the High Court. But as the High Court did not decide the aforesaid three questions raised on behalf of the respondent, we remand the case to the High Court with the direction to give its decision thereon in accordance with law. The cost of this appeal will be costs before the High Court."

12. An appeal preferred under the Motor Vehicles Act was rejected out of time. While determining the starting point for filing an appeal under the above said statute, the Hon'ble Supreme Court in *The Assistant Transport Commissioner, Lucknow v. Nand Singh* reported in AIR 1980 SC 15, at Paragraph 2, held that,

"the date of communication of the order will be the starting point of limitation for filing an appeal under Section 15. Mere writing an order in the file kept in the Office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order but ordinarily and generally speaking the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not."

13. In *MCD v. Qimat Rai Gupta* reported in 2007 (7) SCC 309, the Hon'ble Supreme Court explained the importance of communication of an order to a person whose status is affected. At Paragraph 27 of the judgment of the Hon'ble Supreme Court held that,

"27.What is, therefore, necessary to be borne in mind is the knowledge leading to the making of the order. An order ordinarily would be presumed to have been made when it is signed. Once it is signed

and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of a statute, the same cannot be changed or altered. It, subject to the other provisions contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, the order is required to be communicated.

14. In Union of India v. S.P.Singh reported in 2008 (3) Supreme 609, a member of an Indian Revenue Service submitted an application, dated 10.05.2005, seeking voluntary retirement, w.e.f. 1st September 2005, on having completed 30 years of qualifying service. A communication, dated 25th August, 2005, was sent to his residential address asking him to deposit some outstanding dues, so that his request could be finalised. On 9th September 2005, he received an order, dated 30th August 2005, placing him under suspension. By another order, dated 31st August, 2005, his request for voluntary retirement was declined. He challenged the same before the Central Administrative Tribunal and after adjudicating the dispute, the Tribunal held that the order was despatched to a wrong address and therefore, held is not effective, and that the order had actually been received by the Government servant only on 9th September 2005, whereas, he had retired on 1st September 2005. Union of India, preferred an appeal. Following the decision in State of Punjab v. Amar Singh Harika reported in AIR 1966 SC 493, the Hon'ble Supreme Court, dismissed the appeal with the following observations:

"the department was well aware that the respondent was residing in NOIDA and had reported for duty before the Board on 21st June, 2005 as the incumbent in Hyderabad had refused to make way for him, yet the suspension order had been sent to Nagpur. We are therefore of the opinion that though the suspension order had been dispatched by facsimile before 1st September 2005 yet it had been dispatched to the wrong address and could not be deemed to have been communicated to the respondent."

15. For Tamil Nadu and Parliamentary Constituencies, 2019, Election Commission of India, has issued Notification, on 19/3/2019. As per Explanation 2 (ii) of 77 of the Representation of the People Act, 1951, a political party with leaders, for the purposes of such election, have to submit a petition, within a period of seven days from the date of the Notification, for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under the Act, to the competent authority by the Chief Electoral Officer & Secretary to Government, respondent.

16. Though the petitioner has contended that an application, dated 22/3/2019 was submitted to the respondent, through his representative, there is no proof of acknowledgment. Further, the contention of the petitioner, that he had talked to the respondent over phone, on 25/3/2019, seeking for an appointment, to discuss with him, but appointment was given only on 27/3/2019, are not supported with any materials. Petitioner has contended that his representation was recorded in CCTV footage. Writ Court cannot conduct a roving enquiry into this matter. What is contemplated under the statute, is that a petition should be filed, within seven days, from the date of Notification. In the light of the decisions considered by the Hon'ble Supreme Court, petition should be submitted in writing.

17. Though the learned counsel for the petitioner submitted that no prejudice would be caused to the respondent, entertaining an application, even if it is submitted belatedly, we are not inclined to accept the said contention. When the statute provides for a specific time limit, Courts cannot extend the period. There are no merits in the writ petition, warranting interference.

18. In view of the above discussion and decisions stated supra, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS iv)

//True Copy//

Sub Assistant Registrar

mvs.

To
The Chief Electoral Officer &
Secretary to Government
Tamil Nadu Election Commission
Secretariat
Chennai 9.

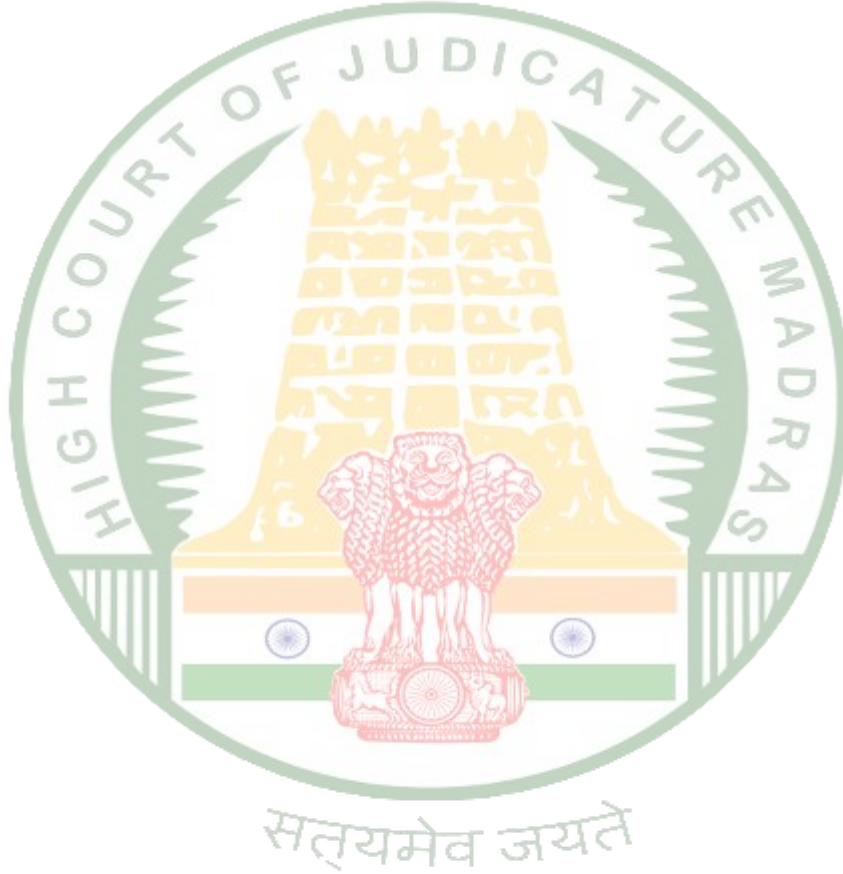
+1cc to Mr. K.Gandhi Kumar, Advocate SR.No. 33560

+1cc to M/s.G.R.Associates, SR.No. 33707

+1 cc to Government Pleader SR.NO. 34262

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A.SK(12/04/2019)



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