

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 29-04-2021

Order Pronounced on : -06-2021

Coram:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Review Application No. 200 of 2018
in
W.P.No.5990 of 2018

G. Lingannan

.. Review Applicant

Versus

1. The Secretary
Chennai Port Trust
Rajaji Salai
Chennai - 600 001

2. State Level Scrutiny Committee
rep. by the Chairman and Secretary to Government
Adi Dravidar and Tribal Welfare Department
Secretariat, Chennai - 600 009

.. Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the Order dated 12.10.2018 passed in W.P. No. 5990 of 2018 on the file of this Court.

For Review Applicant : Mr. M. Radhakrishnan

For Respondents : Mr. R. Karthikeyan for R1

Mrs. A. Srijayanthi
Special Government Pleader for R2

ORDER

R. Subbiah, J

This Review Application is filed seeking to review the Order dated 12.10.2018 passed by this Court in W.P. No. 5990 of 2018.

2. The Review Applicant has filed the aforesaid Writ Petition to quash the proceedings dated Nil.02.2018 passed by the first respondent and to direct the first respondent to treat him that he belongs to Kurumans Community (Scheduled Tribe) for all purpose of his service in the Chennai Port Trust and forbear the respondent No.2 committee from verifying his community status at any time.

3. This Court, after hearing the counsel on both sides, dismissed the said writ petition on 12.10.2018. Such order of dismissal is sought to be reviewed by the Review Applicant in this review application on the ground that there is an error apparent on the face of the records in the order dated 12.10.2018 passed by this Court.

4. For the purpose of disposal of this Review Application, the facts, which had given rise to the filing of the writ petition, has to be examined.

5. The Review Applicant joined the services in the first respondent-Port Trust as Assistant Shed Master on 08.11.1990. He was promoted as Shed Master in the year 1998 and further promoted as Section Superintendent with effect from 29.03.2004. The Review Applicant claimed himself to be a member of Scheduled Tribe. It is his contention that even on 30.03.2007, he was declared to be a member of Scheduled Tribe by the competent Caste Scrutiny Committee, viz., District Vigilance Committee. He also claims that the order of declaration dated 30.03.2007 made by the three-member District Vigilance Committee has become final besides it was also approved by a Division Bench of this Court in the order dated 10.07.2015 passed in W.P. No. 2532 of 2015.

6. According to the Review Applicant, while the facts are so as stated above, the first respondent sent a communication dated Nil.2.2018 to the second respondent-Committee enclosing his Community Certificate for verification of his communal status, which according to the Review Applicant, is unwarranted, inasmuch as even as on 30.03.2007, his communal status had

been declared as Kurumans Community by the competent District Vigilance Committee. While so, the first respondent has no authority to cause a further verification of his communal status with the second respondent. It is in those circumstances, the Review Applicant has filed the writ petition seeking to quash the communication dated Nil.02.2018 with consequential relief as mentioned supra.

7. The writ petition was opposed by the respondents herein by filing a counter affidavit indicating the various writ petitions filed by the Review Applicant and the directions issued thereof and prayed for dismissal of the writ petition.

8. By order dated 12.10.2018, which is sought to be reviewed, this Court placed reliance on the earlier order dated 11.04.2011 passed in W.P.Nos.7587 and 9261 of 2011. In the order dated 11.04.2011 it was concluded that, depending upon the outcome of the order to be passed by the Revenue Divisional Officer, the first respondent-Chennai Port Trust can take appropriate action. Pursuant to such direction, the Revenue Divisional Officer has concluded that the Review Applicant does not belong to Kurumans Community. It is in those circumstances, the first respondent sought a

verification to be done by the second respondent with respect to the community certificate issued to the Review Applicant. Accordingly, this Court refused to interfere with the communication dated Nil.02.2018, which was impugned in the writ petition and dismissed the writ petition filed by the Review Applicant.

9. Mr.M.Radhakrishnan, learned counsel appearing for the Review Applicant contended that in Para No.13 of the order dated 12.10.2018 in W.P.No.5990 of 2018, this Court merely referred to a portion of the conclusion reached by the Revenue Divisional Officer in the order dated 26.09.2011 to the effect that the Review Applicant does not belong to Kurumans community. Such a conclusion arrived at by this Court is not correct. Further, in the latter portion of the order dated 26.09.2011, the Revenue Divisional Officer has categorically stated that *"it has to be construed that the ST community certificate issued to the petitioner on 16.07.1977 is still in force and not yet cancelled. When the petitioner is already in possession of a community certificate, it would not be appropriate for the Revenue Divisional Officer to issue another certificate."* According to the learned counsel for the Review Applicant, the latter portion of the observation made by the Revenue Divisional Officer in the order dated

26.09.2011 had not been considered by this Court while dismissing the writ petition. Further, this Court did not consider the observation made by this Court in the earlier order dated 10.07.2015 passed in WP No. 2532 of 2015 filed by the Review Applicant to the effect that *"At this juncture, it is worth pointing out that as per G.O. (2D) No.108, Adi Dravidar and Tribal Welfare (CV-I) Department dated 12.09.2007, the decision taken by the three member District Vigilance Committee with regard to the community status of the members of Scheduled Tribe, upto the date of the issue of the said Government Order, is final and there is no quarrel on this"*. According to the learned counsel for the Review Applicant, this portion of the observation made by this Court in paragraph 13 of the order in the writ petition filed by the Review Application, is error apparent, which had resulted in the dismissal of the writ petition. It is also his contention that, as per the oft-repeated decision of the Supreme Court in *Kumari Madhuri Patil vs. Addl. Commisisoner, Tribal Development and others*, reported in (1994) 6 SCC 241, the attempt on the part of the first respondent to cause a further verification of the communal status of the Review applicant when it was already concluded even as on 30.03.2007, is unsustainable under law. In such circumstances, when already the communal status of the Review Applicant has been confirmed even as on 30.03.2007, this Court ought to have restrained the second respondent from taking up any

further investigation with respect to the community certificate issued to the Review Applicant. Therefore, it is submitted that the order dated 12.10.2018 calls for a review by this Court and consequently, the writ petition filed by the Review applicant has to be allowed.

10. Mr.R.Karthikeyan, learned standing counsel appearing for the first respondent as well as Mrs. Srijyanthi, learned Special Government Pleader appearing for the second respondent vehemently opposed the Review Application mainly on the ground that the communication, which was impugned in the writ petition, was only in the nature of a notice issued to the second respondent seeking to cause a verification with respect to the genuineness of the community certificate issued to the Review Applicant. It is their contention that the notice dated Nil.02.2018 issued by the first respondent addressed to the second respondent is not an order finally determining the right of the Review Applicant or the correctness or otherwise of the community certificate issued to him has been determined. Therefore, it is contended by them in unison that the order of dismissal passed by this Court on 12.10.2018 requires no review and prayed for dismissal of this Review Application.

11. We have heard the learned counsel appearing on either side and perused the materials placed on record.

12. The main contention of the learned counsel for the Review Applicant is that in para No. 13 of the order dated 12.10.2018, this Court has only referred to a portion of the order dated 26.09.2011 passed by the Revenue Divisional Officer, Tirupathur and if the order dated 26.09.2011 is read in entirety, it would make it clear that no where the Revenue Divisional Officer has stated that the Review Applicant does not belong to Kurumans Community. However, the observations in para No.13 of the order dated 12.10.2018 would indicate that this Court has inferred the order dated 26.09.2011 of the Revenue Divisional Officer to conclude that the Review Applicant does not belong to Kurumans Community. Further, it is contended that the communication, which was impugned in the writ petition, is an attempt on the part of the first respondent to harass the Review Applicant by referring his communal status once and over again for verification with the second respondent even though it was declared by this Court by this Court in the order dated 11.04.2011 passed in WP No. 7587 and 9261 of 2011 that the Review Applicant belong to Kurumans Community.

13. We are not inclined to consider the aforesaid submission of the learned counsel for the Review Applicant, to review our order dated 12.10.2018, for more than one reason. First of all, the observations made by this Court in para No.13 of the order dated 12.10.2018 is not the foundation and/or basis for our conclusion to dismiss the writ petition. The observations made in Para No.13 with respect to the Order dated 26.09.2011 of the Revenue Divisional Officer, Tirupathur is only to evaluate the factual matrix involved in the case. Given the nature of dispute involved in the writ petition, it was not necessary for us to consider the entire Order dated 26.09.2011 of the Revenue Divisional Officer, Tirupathur. The primary reason for dismissing the writ petition is that the communication dated Nil.02.2018, which was impugned therein, is only a notice simplicitor and it has not finally determined the right of the Review Applicant. It is well settled that as against a show cause notice or communication, a writ petition cannot be entertained as, at that stage, the right of the parties to the *lis* would not have been finally determined. In this case, on the basis of the communication dated Nil.02.2018 of the first respondent, the second respondent only intended to examine the claim of the Review Applicant by conducting an enquiry. While so, the second respondent cannot be restrained from conducting any enquiry with respect to the genuineness of the community certificate. In fact, it was the Review

Applicant, who has mis-read para No.13 of our order dated 12.10.2018. If para No.13 of our order dated 12.10.2018 is read in entirety, and not isolation, it would indicate that there was a specific observation made with respect to the maintainability of the writ petition as against a communication issued by the first respondent. In such circumstances, we are of the view that this is not a fit case where we will be justified in exercising the jurisdiction conferred under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review our order dated 12.10.2018.

14. On a perusal of the grounds of Review Application, we are of the view that they are nothing but an attempt to re-argue the case. The grounds raised in this review application have already been considered by us in our order dated 12.10.2018 and no new grounds have been raised for our consideration. Therefore, a review of our order dated 12.10.2018 is not plausible in this case. In this context, we gain strength from the decision of the Supreme Court in the case of **Kamlesh Verma vs. Mayawati and others**, reported in **(2013) 8 SCC 320**, wherein the Supreme Court, after examining various judgments, has laid down the circumstances, as to when the Court can review its own judgment. The relevant portion of the judgment is extracted as under:

"12.This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

15. In the light of the above, we refuse to review the Order dated 12.10.2018 passed in WP No. 5990 of 2018. Accordingly, the Review Application is dismissed. No costs.

सत्यमेव जयते

(R.P.S.J.) (R.P.A.J.)
-06-2021

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Speaking Order: Yes / No

Internet: Yes / No

To

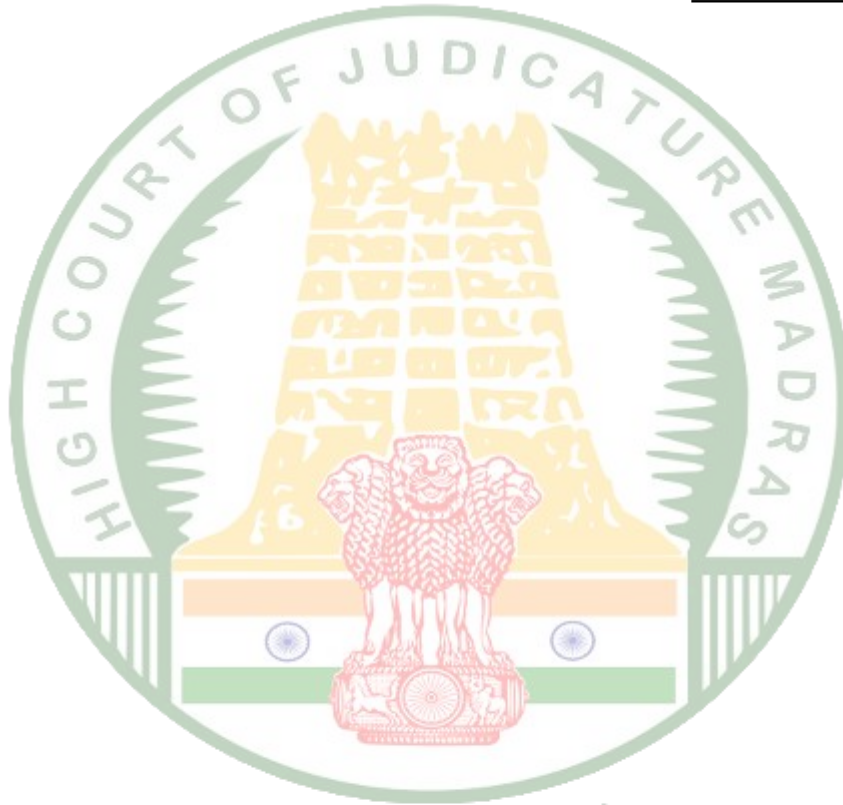
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Chennai Port Trust
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2. State Level Scrutiny Committee
rep. by the Chairman and Secretary to Government
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Secretariat, Chennai - 600 009



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Pre-delivery Order in
Rev.Appln No. 200 of 2018

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