

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 18 AUG 1994

APPLICATION NUMBER: 4 Of 1993

APPLICANTS:

Sri. T. Thimme Gowda vs. Chief Secretary, Govt. of Karnataka
and Others.

1. Sri. B. B. Bajentri, Advocate, No. 71B (1220),
22nd Cross, 2nd Block, Rajajinagar,
BANGALORE - 560 010

2. Sri. M. S. Padmarajiah,
Sr. C.G.S.C. High Court Bldg,
BANGALORE - 560001

3. Sri. D. Rajashekappa,
Govt. Advocate Advocate General's Office,
K.A.T. Unit, BDA Shopping Complex,
Indiranagar, BANGALORE - 560038

Subject:- Forwarding of copies of the orders passed by the
Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER/~~, passed by this Tribunal in the above
mentioned application(s) on 20-07-94

Issued on
19/8/94

R

of/c

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Se Banerji, 18/8

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.4/93

WEDNESDAY, THIS THE 20TH DAY OF JULY, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI T.V. RAMANAN ... MEMBER (A)

T. Thimmegowda,
S/o. Daddi Thimmegowda,
aged about 47 years,
No.3795, 7th Main HAL II Stage,
Bangalore - 560 038. ... Applicant

(By Advocate Shri B.B. Bajentri)

Vs.

1. The State of Karnataka
represented by its Chief Secretary,
Vidhana Soudha, Bangalore-560 001.

2. The Karnataka Lokayukta,
represented by its Registrar,
M.S. Building, Bangalore-560 001.

3. Union of India,
represented by the Secretary,
Dept. of Personnel and Public
Grievances, New Delhi. ... Respondents

(By Advocate Shri D. Rajashekarappa for R-1 & 2 &
Shri M.S. Padmaraajaiah, Central Govt. Senior
Standing Counsel for R-3).

ORDER

Shri Justice P.K. Shyamsunder, Vice Chairman

The applicant herein is one Thimmegowda, who at present
we are told, is the Deputy Commissioner of Chickmagalur district
in the State of Karnataka. He is an I.A.S. officer who was inducted
into the I.A.S. cadre on promotion from the Karnataka Administrative
Service in the year 1989. He gained admittance into the Karnataka
Administrative Service (K.A.S. for short) after successfully competing
in a competitive examination conducted somewhere in the year 1972.
Admittedly, he gained access to the K.A.S. on the basis of his
excellence of performance in the examination, it appears, having
secured the 8th rank. This information, we got from a communication
issued by the Secretary of the Karnataka Public Service Commission
(K.P.S.C.) and is found at Annexure-A6.



2. At the time of registering his application with the K.P.S.C. for competing for the K.A.S., it would appear he had produced an income certificate dated 23.9.1989 made it evident that his father, one Dodda Thimme Gowda, an agriculturist, in Mandya District, was in receipt of an income of only Rs.1,200/- per annum. It is not in dispute, on the basis of the declared income of the applicant's father as Rs.1,200/- p.a., he would have certainly become entitled to the benefit of reservation in the matter of employment on the basis being a member of Backward Class category. But, it did however transpire that Thimmegowda did not really stand any need of seeking assistance of that Income certificate and consequently filling a slot reserved for the Backward Class of citizens. He appears to have made it on his own by virtue of his performance in the State Civil Service examination securing the 8th rank. The Public Service Commission has made it clear in its communication that even otherwise, Thimmegowda would have been eligible for selection on general merit. It would be advantageous at this stage to refer to the communication referred to supra at Annexure-A6 dated 27.2.1991. It reads:

"...In this connection, it is noted from the records, that you have filed your application dated 14/10/1972, under BC reserve category for the posts specified by you in the application and, you have also enclosed the requisite certificate dated 14/10/1972.

In the competitive examination held for the selection of Gazetted Probationers in 1974, your order of merit is eight (8) which entails your selections to Class-I posts Assistant Commissioner, under General Merit. You have been shown against the 8th vacancy which is counted as reserved vacancy for BCs for the purpose of reservation."

Though the above communication lacks in clarity, but probably it would not be wrong to guess or read the same as enjoining the conclusion that applicant was selected on the basis of the general merit, although, he fits into the reservation quota.

3. Be that as it may, Thimmegowda, on joining the K.A.S., appears to have risen steadily without any rip-off in his career and in the usual course, he was absorbed into the I.A.S. in the year 1989 on promotion. But in this happy state of affairs, Thimmegowda, suffered a temporary set-back when somebody saying himself as the Secretary of the Karnataka Dalitha Students Federation shot off an anonymous complaint to the Karnataka Lokayukta alleging that the aforesaid Thimmegowda who had sought and obtained a job on the basis of his belonging to the Backward Class community with his father's income having not exceeded Rs.1,200/- has since made it good and has amassed wealth and property disproportionate to his known source of income and had built a palatial house at a cost of Rs.12.00 lakhs. He wanted the Lokayukta to investigate the same.

4. Admittedly, the Lokayukta, notwithstanding the pseudonymous nature of the complaint enquired into the same and found that the allegation of Thimmegowda having amassed wealth beyond imagination and had built a house worth Rs.10.00 lakhs was false. But, it however, felt that the complaint of having produced false Income certificate certifying that his father was in receipt of an income of Rs.1,200/- p.a. required to be investigated by the Govt. since its own investigations revealed that the figure of Rs.1,200/- p.a. did not reflect to the present state of affairs. On receipt of that report, Govt. shot off a notice to Thimmegowda asking to explain to Govt. about the furnishing of the Income certificate regarding which they had their own reservations and doubts. The notice is at Annexure-A4, dated 3.12.1992 and it reads:


"...With a view to get an appointment under Backward Class Reservation, you have suppressed the real facts and produced false Income Certificate of Revenue Authority as Rs.1200/- even though the Annual Agricultural Income of your father Sri Doddi Thimma Gowda was Rs.9,925/- during the year and period of application 1972-73. You have also indicated your previous appointment as Lecturer in Economics at P.E.S. College, Mandya as temporary, even though the said appointment as on 14-12-72, and got selected under

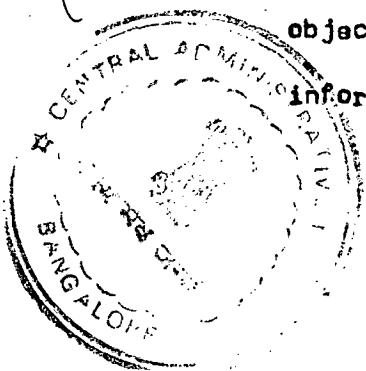
Backward Class Reservations for which you were not entitled. This is an offence under Section 415 of I.P.C.

You are requested to furnish your explanation. If any, to the Government within 15 days positively, you are also requested to send the Original Certificate of Income of your father Sri. Doddi Thimme Gowda alias Thimme Gowda in 1972, issued by the Revenue Authority, i.e. Tahsildar, Mandya, issued to you, to take further action in the matter."

Furthermore it appears to indict the applicant Thimmegowda for having suppressed the real facts and produced false Income Certificate of Revenue Authority as Rs.1,200/- even though the Annual Agricultural Income of his father was Rs.9,925/- during the period of the application made for securing a place in the K.A.S. in the year 1972. It also refers to the omission of the applicant to refer to his own income as Lecturer in the P.E.S. College in Mandya, albeit on temporary basis and suggested that his selection under the Backward Class Reservation which was undesirable and that he had actually committed an offence under Section 415 of I.P.C. The Govt. desired that he should tell them within a fortnight of the receipt of the notice what exactly he desired to state in that behalf. Thimmegowda denied in a reply to the said show cause notice denying all allegations regarding his furnishing a false Income certificate. He also contended, inter alia, that the investigation done by the Lokayukta was clearly otiose because it was investigating something that had come to pass in the year 1972 on the basis of a complaint recorded in the year 1992. He pointed out that Lokayukta had no jurisdiction to investigate into an event that was already 5 years and even earlier and therefore submitted that the investigation by the Lokayukta had to be treated as non-existent as it would be beyond its competence and asked government not to pay heed to the same and further asked Govt. not to proceed in the matter either subjecting him to any disciplinary action. But, immediately after submitting the representation as aforesaid, he came to this Tribunal and filed this O.A. in which he

seeks quashing of the show cause notice at Annexure-A4 and also asks for other reliefs as well. It is maintained on his behalf, neither the Lokayukta nor the Govt. had any jurisdiction to untrouble him by a show cause notice purporting to rise to the fore a past misdemeanour supposedly committed in the year 1972. What is more, it is urged, although not directly, that so long as the Certificate issued by a competent authority certifying that the income of his parents was only Rs.1,200/- was still prevalent and is still treated as valid and not put aside by a competent authority in an appropriate proceedings, no authority much less the Govt. could look askance at that certificate and much less accuse him of having produced a false certificate for gaining a material advantage. It is really this aspect of the matter that caught our attention and enjoined on us to pursue this matter further, by examining the vires or tenability of the show cause notice itself, in the light of the contention that as long as the Income certificate issued by the competent authority was alive and current, nobody could raise their eye-brows and seek to put his career in jeopardy.

5. The learned Government Pleader, Shri D. Rajashekharappa, does not seek to contravert this application on facts although time was taken on behalf of the Govt. of Karnataka on several occasions for filing an objection statement. We propose to proceed with this application even without waiting for the objection statement. The position would have not been different, if he had filed the objection statement on the facts. What however, the Govt. Pleader sought to contend was that it was not as if Govt. had after issuing the impugned notice gone into a slumber. They had, infact, after receipt of the objections filed on behalf of the applicant, begun to collect information from their own sources and it is very likely they would



themselves have come to a conclusion. Then, in the facts and circumstances, the show cause notice was unwarranted and would have themselves desisted from probing further into the matter. In this context, we must say that it is for this kind of reaction on behalf of the State Govt., we did wait for over one year and last week, we were told, the Chief Secretary, himself, had moved in the matter and the file had been put up to the Chief Minister for appropriate orders which are however, yet to come. We had on more than one occasion adjourned this application and told the Govt. Pleader, if on the part of the Govt., no development in this behalf was forthcoming, in the absence thereof, we should feel free to dispose of this matter to the best of ~~our best~~ ^{care} on merits. The position today is, as it was on the earlier occasion, ~~to~~ that, from the Govt. end, there is just a vacuum and we therefore, proceed to dispose of this case on its merits with whatever assistance counsel or book rules could provide.

6. We would at the threshold observe that in such matters, i.e., where the matter still stands at the initial stage of notice and consideration of objections, we would not readily interfere. As a matter of fact, there are very few instances where we had interfered. But, in this case, we propose to interfere, as this case is covered by more than one decision of the Karnataka Administrative Tribunal (K.A.T.) in which the Govt. of Karnataka itself was a party. The path breaker in the field is a decision of a Division Bench of the Madras High Court, ~~Subsequently~~, followed by our sister Bench at Madras as also of the K.A.T. holding that a Caste Certificate issued by a competent authority that continued to be prevalent could not be side tracked or ignored unless and until it was set aside by the order of any competent authority passed after an appropriate enquiry held in that behalf. This question came up

further for
consideration by a Bench of the Madras High Court in Sakthi Devi

Ms. Collector of Salem reported in 1975 11 M.L.J. 204 = 88 L.W.50.

Therein, their Lordships laid down the following dicta:

"The certificate issued by the 18th Metropolitan Magistrate, Madras, being a competent authority to issue such a certificate and it having not yet been cancelled, and the petitioner having satisfactorily established that she belongs to Konda Reddi community, there is no warrant for any enquiry to be held.

The following general directions has been given by the Division Bench for guidance of all Courts and authorities:

1. A Caste/Community certificate issued by an empowered public authority under seal continues to be a valid document till it is cancelled by the said authority or by his superior authority.

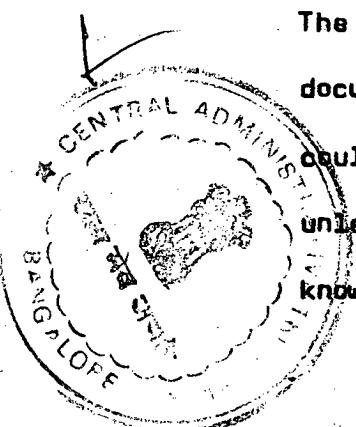
2. Their contents are to be treated as correct and every public authority, undertakings, bodies, institutions, etc., which are bound by instructions relating to such certificates are bound to act upon them, so long as they are not cancelled.

3. In no disciplinary proceedings, their genuineness or correctness of their contents can be gone into. It is open to the department or employer or organisation, to ask the issuing authority or District Collector, as the case may be, to verify whether the certificate as issued could be still valid, on materials which have since come to their knowledge. They can appear in the verification enquiry and place the materials.

4. If the certificate is cancelled, then disciplinary proceedings can be initiated for having furnished false information.

5. Appointing authorities have the right to verify the genuineness of the certificates by approaching the District Magistrate - Collector of the District or such other constituted authority and once the report is received that the certificate is genuine, thereafter the certificate holder cannot be further harassed to prove his caste/ community in any other manner."

The categoric dicta supra that caste certificate, being a public document, cannot be ignored during its prevalence and that no action could be taken on the score of having produced a false certificate unless and until the certificate itself was set aside in a manner known to law by the appropriate authority. The decision was followed



with approval by the K.A.T. in the case of Narayan Reddy Vs. State of Karnataka - 1990 K.S.L.J. 1388, after setting out the dictum in Sakthi Devi's case, the learned Members of the Bench made a very apposite observation as follows:

"What is clear from the above is that when the Government has power to verify and if necessary to cancel the certificates produced by the candidates, without getting a certificate cancelled it is not correct to initiate a disciplinary inquiry for production of false certificate. Certificates of this type are given by the authorised officers. They are satisfied about the correctness thereof before issuing the certificates. If the contents thereof are not correct the same could be cancelled by the higher competent authority or the Government after giving a show-cause notice to the person who produced the certificate. Until the certificate is cancelled by competent authority it remains as a valid certificate issued by a competent authority and therefore no charge could be framed that it is a false certificate. The view similar to that expressed by the Madras High Court has been taken by Central Tribunal also in VASU R. - VS UNION OF INDIA (4), DHARAMISHI FULABHAI - VS UNION (5), we are inclined to agree with the said view."

The K.A.T. followed the dictum in Sakti Devi's case again in the case of Hayath G.M. Vs. State of Karnataka - 1992 K.S.L.J. 1194.

The Learned Member, Shri Vittal Rai (A), speaking ^{for} in the Bench, in the order held:

"Departmental Inquiry - Charge - Charge of producing false backward class certificate for purposes of selection - Framing of, - Certificate issued by the Competent Authority is not cancelled after holding proper inquiry and therefore it remains as a valid certificate - Unless and until the backward class certificate issued by the Tahsildar is cancelled, no charge could be framed against the applicant - Held, not possible to frame charge of producing false certificate."

^{CL}
Also, our sister bench in Madras in the case of R. Vasu Vs. Union of India & another (1990) 12 ATC 278, had an occasion to go into this controversy again and had then pointed out that if the genuineness of the certificate could not be doubted ^{but even then} even if it was obtained on the basis of wrong information, even then such a certificate cannot be by-passed and disciplinary action taken to punish a Govt.

servant. But, the position was otherwise, i.e., where the certificate was bogus, such a bogus certificate need not be cancelled and action could be taken even without cancelling such a bogus certificate. The Learned Members also referred to Sakthi Devi's case supra and restated the dicta by holding that in a case when a caste certificate has been issued and is current, no disciplinary or any other action could be taken for indicting a person on grounds of having produced a false certificate, without prior clearance by adopting proceedings for setting aside such certificates. What now becomes very obvious is that the position to which we have adumbrated makes the matter no longer res *integra* covered as it by the several authorities referred to hereinbefore. We must, therefore, really fall in line with those authorities as we find no reason to differ from any of them, especially with two of the decided cases of Narayan Reddy and Hayath by K.A.T. to which the State Govt. itself was a party. But, may be another good ground for giving a quietus to this matter is the fact that it seeks to revive a controversy which is supposed to have arisen in the year 1972 when the applicant made his foray for selection to the K.A.S. on the basis of the alleged false Income certificate. We think it is too stale a complaint to be raked up, investigated and acted upon, whereas, on the contrary, it should have been simply ignored and not subject the officer to the ordeal of an enquiry. In an identical situation, i.e., submission of a false certificate, we proceeded to dispose of the case of Dr. Kum. Vijayalakshmi S. Vs. Union of India in O.A. No.559/93, by noting that being a case in which an enquiry was sought to be held, 17 years after the production of Caste certificate ^{alleged to be false,} ~~for said~~ It was too late for the department to have raised that controversy or irregularity for imposing a punishment on the applicant. Of-course, we really do not know ^{whether} if any punishment

would have followed in this case, but we think it was wholly unnecessary for the Govt. to have pursued this matter after a lapse of over two decades. This is yet another reason why we have interfered.

7. For the reasons mentioned above, this application succeeds and is allowed. The show-cause notice issued by the Govt. of Karnataka under Annexure-A4 dated 3.12.1992, shall stand quashed. The Govt. of Karnataka is directed not to proceed further in the matter of production of the alleged false Income certificate by the applicant as above. No order as to costs.

Sd/-

(T.V. RAMANAN)
MEMBER (A)

Sd/-

(P.K.SHYAMSUNDAR)
VICE CHAIRMAN



TRUE COPY

S. Srinivas
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE