

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

W.P.Nos.19355 of 2008, 13217 & 15265 of 2015

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Dated 02.07.2015

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Between:

Mirthivada Alekyareddy

... Petitioner in all the WPs

and

—
WP.No.19355/08

1.Dr.NTR.University of Health Sciences,
Vijayawada, rep. by its Registrar and 3 others.

...Respondents

WP.No.13217 & 15265 of 2015

1.The State of Andhra Pradesh,
rep. by its Prl.Secretary,
Hyderabad and 4 others

...Respondents

Counsel for the petitioner: Mr.K.Venkatesh

WP.No.19355/08

**Counsel for respondent No.1: Mr.A.Prabhakar Rao, SC for
University**

Counsel for respondent No.2: None appeared

**Counsel for respondent Nos.3 & 4: GP for Social Welfare
(AP)**

WP.No.13217 & 15265 of 2015

Counsel for respondent Nos.1 to 4: GP for Social Welfare (AP)

**Counsel for respondent No.5: Mr.A.Prabhakar Rao, SC for
University**

The Court made the following:

Common Order:

The petitioner and the respondents in all these three Writ Petitions are common. Therefore, they are heard and being disposed of together.

W.P.No.19355 of 2008 is filed for a Mandamus to set aside Order, dated 03-09-2008, of respondent No.4, whereby he has confirmed Order, dated 07-08-2008, of respondent No.3.

WP.No.13217 of 2015 is filed for a Mandamus to declare the action of respondent No.4 in not considering the petitioner's application, dated 09-03-2015, for grant for Integrated Community Certificate (Scheduled Tribe), as illegal, arbitrary and violative of the principles of natural justice. The petitioner sought for a consequential direction to the respondents to consider her application.

WP.No.15265 of 2015 is filed for a Mandamus to set aside Order, dated 01-05-2015, of respondent No.4, rejecting the petitioner's application for grant of ST caste certificate.

For convenience, the parties are referred to as they are arrayed in WP.No.19355 of 2008.

The petitioner made an application, on 01-08-2008, to respondent No.3 for issue of Caste Certificate

by showing her as belonging to the ST Community. By endorsement, dated 07.08.2008, respondent No.3 has rejected her application. Feeling aggrieved by the said rejection, the petitioner has filed a statutory appeal before respondent No.4. By Order, dated 03.09.2008, respondent No.4 has dismissed the appeal. Assailing these two orders, the petitioner has filed WP.No.19355 of 2008. As the petitioner was seeking admission into MBBS course under ST quota, she has sought for an interim direction to respondent Nos.1 and 2 for her admission into the said course as ST candidate. By Order, dated 05-09-2008, this Court has granted an interim direction to treat the petitioner as belonging to ST community for provisional admission into the MBBS course. Accordingly, the petitioner was given provisional admission. Since then, no counter-affidavit was filed in this Writ Petition.

In March, 2014, the petitioner has completed her MBBS course and appeared for medical entrance for admission into PG course. She has again applied to respondent No.3 for issue of a caste certificate. She has also filed WP.No.13217 of 2015 for a Mandamus to declare the action of respondent No.4, in not considering her application, dated 09-03-2015, for issue of caste certificate, as illegal. By Order, dated 29-04-

2015, this Court has directed the respondents to allow the petitioner to participate in the counselling for admission into PG course, but however, directed that her admission shall be kept in abeyance until further orders.

On 01-05-2015, respondent No.3 has passed an order rejecting the petitioner's application for grant of ST caste certificate. Questioning the said order, the petitioner filed WP.No.15265 of 2015.

By an order passed by this Court on 18-06-2015, all these cases were directed to be posted together. As no counter-affidavits were filed in these Writ Petitions, this Court has directed the Officials concerned to be present before the Court. Accordingly, they are present and they have filed separate but similar counter-affidavits in all the three cases.

In his counter-affidavit, respondent No.3 has *inter alia* reiterated the stand reflected in his earlier orders as well as the order passed by respondent No.4 in the appeal by stating that the discreet enquiries made at different stages reveal that Mirthiwada people have migrated from plain areas to agency areas prior to 1950 and that the surname 'Mirthiwada' belongs to 'Reddy' Community. He has also averred that the caste certificate was issued to the father of the petitioner viz., Atchuta Rao treating him as belonging to ST community

in the year 1984 *i.e.*, prior to the commencement of Act 16 of 1993 and that therefore, the same cannot be taken as conclusive evidence of the petitioner's caste. It is also averred that an enquiry into the community status of Mirthiwada Trimurthulu, who is the paternal grand uncle of the petitioner, was initiated. It is further stated that another enquiry into the caste status of Mirthiwada Peddabbai Reddy, who is none other than the step brother of the petitioner *i.e.*, the son of the petitioners' father through his first wife, is also pending before the District Level Scrutiny Committee, Kakinada, East Godavari District.

The learned Counsel for the petitioner has submitted that so long as the caste certificates of the petitioner's father as well as her step sister and step brother describing them as belonging to ST community are in force, the respondents are not justified in rejecting the caste certificate to the petitioner as the person belonging to ST community. He has further submitted that though Rule 5 (e) of the A.P. S.C. S.T. and Backward Classes - Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short 'the Rules'), envisages a detailed enquiry by respondent No.3, no such enquiry was held and that based on the statements of the petitioner and her mother recorded in

the appeal, respondent No.4 has dismissed the same, confirming the order of respondent No.3.

A perusal of the impugned endorsement, dated 07-08-2008, issued by respondent No.3 shows that he has heavily banked upon the report of the Village Revenue Officer, Rampachodavaram, in concluding that the petitioner does not belong to Konda Reddy caste. The endorsement does not show that any enquiry was held by him and an opportunity was given to the petitioner and her parents by allowing them to participate in such enquiry.

In this context, Rule 5 (e) of the Rules, which is relevant for the case, reads as under:

“5. Procedure for Verification:

(a)...

(b)...

(c)...

(d)...

(e) The Competent Authority should give reasonable opportunity to the applicant/parent/guardian to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode may be published in the village or locality to which the applicant/parent/guardian belongs. If any person or association oppose such a claim, opportunity to produce the evidence in person before the Competent Authority may be given to him or her. After giving such an opportunity to that person or

association the Competent Authority may make such enquiry as it deems expedient and consider claims of the applicant/guardian/parent *vis-à-vis* the objections raised by his/her/their opponent.”

In the counter-affidavit, respondent No.3 has not claimed that the detailed procedure envisaged under Rule 5 (e) of the Rules is followed. It is not in dispute that besides the fact that the petitioner’s family members *viz.*, her father, step sister and step brother are treated as belonging to ST community, the petitioner’s transfer certificate also described her as belonging to ST community. However, as rightly pleaded by respondent No.3, the school certificates or the community certificates held by the family members of the petitioner cannot be treated as conclusive proof of her caste. But, at the same time, before denying the benefit of the ST community status to the petitioner, the law envisages a full-fledged enquiry wherein she shall be given an opportunity to place the evidence before the authority concerned to prove that she belongs to the ST community. As respondent No.3 has failed to follow this mandatory procedure, his order, rejecting the petitioner’s application for grant of community certificate, cannot be sustained.

Ordinarily, this Court would have remanded the

case to respondent No.3 for a detailed enquiry as envisaged under Section 5 (e) of the Rules. However, this necessity is obviated due to the reason that the enquiry into the caste status of the petitioner's step brother viz., Peddabbai Reddy is pending before the District Level Committee headed by respondent No.4 and the result of the said enquiry will have direct bearing on the claim of the petitioner. Therefore, instead of directing respondent No.3 to hold an enquiry into the caste status of the petitioner, it is appropriate to permit the petitioner and her parents to participate in the pending enquiry into the caste status of Peddabbai Reddy before the District Level Committee and produce the relevant material in addition to the material, which may have already been produced by/on behalf of Peddabbai Reddy. On completion of such enquiry, the District Level Committee shall pass a detailed order.

Learned Counsel for the petitioner has agreed that the findings rendered in such enquiry shall bind the petitioner as well.

In view of the same, the District Level Committee is directed to complete the enquiry, pass a final order and communicate the same to the petitioner, her step brother- Peddabbai Reddy and also respondent No.1- University within three months from the date of receipt

of this order.

As the petitioner was already directed to be considered for admission into the PG course, no purpose will be served by continuing the seat to be kept in abeyance. Respondent No.2 is, therefore, directed to grant provisional admission to the petitioner into PG course, if she is otherwise entitled for such admission as ST candidate and allow her to pursue the course till the enquiry is completed and a final order is passed by the District Level Committee as directed above. The entitlement of the petitioner to continue the PG course shall depend upon the result of the enquiry. It is made clear that the petitioner shall not claim any equities only on account of her admission, in the event of the District Level Committee holding that she does not belong to ST community.

Subject to the above directions, all the three Writ Petitions stand disposed of.

As a sequel to disposal of the Writ Petitions, miscellaneous petitions, pending if any, stand disposed of.

(C.V.Nagarjuna Reddy, J)

Dt: 2nd July, 2015
LUR