

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.27726 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India challenges the proceedings of the Collector and District Magistrate, Prakasam District, Ongole vide proceedings No.Rc/C4/402/2013, dated 02-09-2014.

Heard Sri M. Pitchaiah, learned counsel for the petitioner and learned Government Pleader for Social Welfare for respondents, apart from perusing the material available before this Court.

On the complaint made by one Sri Palaparti Satish, the respondent authorities pressed into service the provisions of Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate Act 1993 (Act 16 of 1993) (for short, 'the Act') and the Rules framed thereunder.

The Collector and District Magistrate – 2nd respondent herein vide impugned proceedings cancelled the Caste Certificate of the petitioner herein issued by the Mandal Revenue Officer, Dornala.

Calling in question the validity and the legal sustainability of the said order of cancellation passed by the 2nd respondent – District Collector on 02-09-2014, the present writ petition has been filed.

It is contended by the learned counsel for the petitioner that

the orders passed by the District Collector are highly illegal, arbitrary and unreasonable and violative of Articles 14 and 16 of the Constitution of India and violative of principles of natural justice besides being opposed to the very spirit and object of the provisions of the Act and Rules framed thereunder. It is also the submission of the learned counsel for the petitioner that second respondent herein did not consider the material on record from proper perspective. It is also submitted by the learned counsel that now basing on the said cancellation orders, dated 02-09-2014, the Depot Manager, A.P.S.R.T.C., Ongole, Prakasham District issued a charge sheet, dated 01-08-2015, calling for the written explanation.

On the contrary, it is submitted by the learned Government Pleader that there is no illegality nor any procedural infirmity in the impugned order, dated 02-09-2014 and in absence of the same, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is also submitted by the learned Government Pleader that in view of the availability of the alternative statutory remedy of appeal under the provisions of Section 7 of the Act, the present writ petition filed under Article 226 of the Constitution of India is not maintainable.

Section 7 of the Act reads as under:

“Section 7 Appeal and Review

(1) Any person aggrieved by an order passed under sub section (1) of Section 4 by the competent authority rejecting an application made to it under Section 3, may within thirty days from the date of receipt of such order, appeal to the District Collector and the District Collector may after giving the appellant an opportunity of being heard, either confirm the

order appealed against or set aside the said order and direct the competent authority to issue a community certificate.

(2) Any person aggrieved by an order passed under Section 5, by the District Collector may, within thirty days from the date of publication of such order in the Andhra Pradesh Gazette, appeal to the Government and the Government may, after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed, confirm or set aside the order appealed against.

(3) The Government may, on an application received from any person aggrieved by an order passed by the Government under sub section (2) of Section 5, within thirty days of the publication of that order in the Andhra Pradesh Gazette, review any such order if it was passed by them under any mistake, whether of fact or law or in ignorance of any material fact.

(4) Pending disposal of an appeal under sub section (2) or review under sub section (3), it shall be competent for the Government to stay the operation of the order against which an appeal or review, as the case may be, is filed.”

In view of the above said provision of law, which enables the petitioner herein to question the impugned order by way of filing statutory appeal, this Court is not inclined to entertain the present writ petition. However, taking into consideration the totality of the circumstances and the nature of controversy, this Court is of the considered opinion that the ends of justice would be met if permission is granted to the petitioner herein to assail the impugned order, dated

02-09-2014 passed by the District Collector – 2nd respondent herein by way of filing appeal before the State Government under the provisions of Section 7 of the Act.

For the aforesaid reasons and having regard to the nature of controversy, the writ petition is disposed of, permitting the petitioner herein to file statutory appeal under the provisions of Section 7 of the Act against the orders of the District Collector

issued vide proceedings No.Rc/C4/402/ 2013, dated 02-09-2014 before the State Government – 1st respondent within a period of two (2) weeks from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated above, the 1st respondent herein be consider the same and pass appropriate orders, in accordance with law, after giving notice and opportunity of being heard to the petitioner herein. It is also made clear that the petitioner herein is also entitled to file a stay application under the provisions of Section 7 (4) of the Act and it is open for the State Government to pass appropriate orders on the same.

Miscellaneous Petitions pending, if any, shall stand closed.

There shall be no order as to costs.

A.V. SETHA SAI, J

August 31, 2015

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