

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

WRIT PETITION No.21229 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India assailing the order passed by the Collector and District Magistrate, Nellore – 2nd respondent herein vide proceedings No. D.Dis.(C5) (M) 950/2014, dated 23-06-2015.

Heard Sri B. Chandrasen Reddy, learned counsel for the petitioner and learned Government Pleader for Social Welfare for respondents.

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.

Followed by a report submitted by the District Level Scrutiny Committee, dated 21-05-2015, the 2nd respondent herein passed the impugned order, dated 23-06-2015, in exercise of the powers conferred under Section 5 (1) of the Act read with Rule 9 (7) of Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997 ordering cancellation of Caste Certificate of the petitioner herein issued by Tahsildar, Kovvur vide F.Dis.No.401/ST/ 2013, dated 07-07-2013.

According to the petitioner, the said order passed by the 2nd respondent – District Collector is highly illegal, arbitrary and violative of the Act and the Rules framed thereunder and violative of Article 14 of the Constitution of India. It is also the submission of the learned counsel for the petitioner that respondent authorities passed the impugned orders without taking into consideration the material available and without properly appreciating the explanation offered by the petitioner herein.

On the contrary, it is vehemently contended 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."

As evident from the above provision of law, any person aggrieved by an order passed under Section 5 of the Act, by the District Collector may, within 30 days from the date of publication of such order file an appeal to the State Government. According to Sub-Section 2 of Section 7 of the Act the State Government is conferred with the power of staying the operation of the impugned order.

In the instant case, the petitioner herein has directly approached this Court without availing the alternative remedy of appeal before the State Government. In view of the said reason, this Court is not inclined to go into the merits and demerits of the matter and deems it appropriate to relegate the petitioner to the said alternative statutory remedy of appeal before the Government.

At the hearing it is requested by the learned counsel for the petitioner that the petitioner herein may be permitted to avail the said remedy and in the meanwhile, as there is threat of criminal prosecution also, the interest of the petitioner herein may be

protected for some time. This Court is of the opinion that the said request is reasonable one.

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.(C5)(M)950/ 2014, dated 23-06-2015 before the State Government – 1st respondent. The petitioner herein is also entitled to file a stay application under the provisions of Section 7 (4) of the Act. If any such appeal is filed within the statutory period as stipulated under the Act the 1st respondent herein shall consider the same and pass appropriate orders, in accordance with law. Taking into consideration the nature of controversy in the matter, there shall be no coercive action against the petitioner herein pursuant to the impugned proceedings, dated 23-06-2015, pending stay application before the State Government. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SETHA SAI, J

July 10, 2015

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