

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

Writ Petition No.19663 of 2015

ORDER:

Heard Sri R.V. Mallikarjuna Rao, learned counsel for the petitioner and the learned Government Pleader for the respondents.

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

“..... to call for the records relating to the impugned order of the respondent bearing Rc.No.604/2013/C4, dated 15.10.2014 and set aside the same by declaring it is illegal, arbitrary, unconstitutional and void being violative of principles of natural justice by issuing a writ more in the nature of Writ of Mandamus or any other writ order or direction and pass such other order or orders may deem fit in the circumstances of the case and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

When the matter is called today, a preliminary objection with regard to maintainability of the writ petition is taken by the learned Government Pleader stating that as against the order impugned in the present writ petition, appeal lies under Section 7 of the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and as such the writ petition is not maintainable.

Section 7 of the said Act reads thus:

“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.”

The above provision of law makes it clear that any person aggrieved by an order passed under Section 5 of the Act may appeal to the Government. In the instant case, without availing such alternative statutory remedy, the petitioner herein filed the present writ petition.

In view of the availability of alternative statutory remedy of appeal, this Court is not inclined to pass any orders in this writ petition on merits.

For the aforesaid reasons, the writ petition is disposed of, permitting the petitioner herein to file an appeal under Section 7 of the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 against the order in Rc.No.604/2013/C4, dated 15.10.2014 passed by the first respondent-Collector & District Magistrate, Guntur, within a period of one month from the date of receipt of a copy of this order. If any such appeal is filed within the period stipulated above, the same shall be dealt with in accordance with law and appropriate orders be passed within a period of two months thereafter after giving notice and opportunity to the petitioner.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed. No order as to costs.

Date: 01.07.2015

Isn

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

-
-
-
-
-
-
-
-
-
-

Writ Petition No.19663 of 2015

-

DATE: 01.07.2015

Isn