

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.10478 of 2006

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ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, challenging the order in D.Dis.No.C6/501/M/2006, dated 12.04.2006, issued by the Collector and District Magistrate, Kurnool District, Kurnool, cancelling the Caste Certificate issued in favour of the petitioner.

2. Heard Sri A. Rama Subbaiah, learned counsel for the petitioner and the learned Government Pleader for Social Welfare appearing for the respondents.

3. According to the petitioner, he belongs to Scheduled Tribe Community. The Collector and District Magistrate, Kurnool District, pressed into service the provisions of Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1973 (Act 16 of 1993) (for brevity "the Act") and passed order in D.Dis.No.C6/501/M/2006, dated 12.04.2006, under the provisions of Section 5 of the Act, cancelling the Schedule Tribe (Koya) Community Certificate issued earlier in favour of the petitioner. Challenging the validity and legal sustainability of the said order passed by the District Collector, Kurnool District, the present writ petition came to be filed.

4. This Court, while ordering notice before admission on 25.05.2006, granted interim suspension of the impugned order dated 12.04.2006, thereafter ordered continuation of the same on

13.06.2006 and, while admitting the writ petition on 28.07.2006, directed for continuation of the said interim orders until further orders.

5. The sum and substance of the case of the petitioner, as per the pleadings available on record, is that without giving any proper and reasonable opportunity to the petitioner and in contravention of the mandatory provisions of the Act and the Rules framed thereunder, the respondent authorities cancelled the Caste Certificate of the petitioner.

6. It is the submission of the learned counsel for petitioner, while reiterating the writ averments, that without furnishing the copies of the proceedings dated 26.12.2004 of the Mandal Revenue Officer, Pathikonda; and the proceedings dated 10.09.2005 of the Revenue Divisional Officer, Adoni, which formed the basis for the District Level Scrutiny Committee to arrive at the conclusion against the petitioner, the respondents resorted to the impugned action. It is also the contention of the learned counsel for petitioner that even along with the show cause notice issued prior to the order of cancellation, the District Collector did not furnish the above mentioned proceedings and the said action on the part of the respondent authorities is in total violation of the principles of natural justice.

7. On the contrary, it is vehemently submitted by the learned Government Pleader for Social Welfare that only after meticulously and thoroughly examining the entire material and in strict compliance of the provisions of the Act and the Rules framed thereunder and only after giving complete opportunity to the petitioner, the District Collector cancelled the Caste Certificate of

the petitioner.

8. In this connection, it may be appropriate to refer to the averments made in the counter affidavit filed by the Collector and District Magistrate, Kurnool. While answering the allegation of the petitioner on the aspect of failure to furnish the documents, it is stated that the petitioner, neither at the time of enquiry before the District Level Scrutiny Committee nor at the time of submitting his reply to the show cause notice, demanded/asked for the documents. But the counter affidavit does not say that the documents referred to supra were, in fact, furnished to the petitioner.

9. Section 5 of the Act 16 of 1993 mandates that the District Collector can pass an order only after giving the person concerned an opportunity of making a representation. The said provision of law and the language employed therein cannot be construed as a mere formality and the same is required to be adhered to in true letter and spirit.

10. In this context, it may be appropriate to refer to the judgment cited by the learned counsel for petitioner in the case of DUDA RAMESH v. STATE OF A.P.^[1], wherein, this Court at paragraph Nos.30, 32 and 38 held as under:

“30. In ground No.(h) of the affidavit filed in support of the writ petition, it was specifically pleaded that the petitioners were denied reasonable opportunity since the report of the Mandal Revenue Officer, the Sub-Collector, the statements stated to be recorded by the Mandal Revenue Officer etc were not furnished. The requirement of reasonable opportunity cannot be said to have been fulfilled by requiring the petitioners to inspect the records having regard to the nature of enquiry and the serious consequences involved. No opportunity was given for perusing the records etc as alleged. Having regard to the complicated nature of enquiry etc., the 3rd respondent was bound to furnish copies of reports, statements etc and a mere allegation that the petitioners

were permitted to peruse the records is not sufficient compliance of the requirement of fair hearing.

32. In the light of the stand taken in the counter affidavit, it is clear that the petitioners were not furnished with the reports and the statements and reliance was placed by the 3rd respondent on them while making the impugned order. In **BHAKTHA VATHSALA SUKUMAR v. HINDUSTAN PETROLEUM CORPORATION LTD**, this Court held that the non-furnishing of report while canceling the Caste Certificate, would amount to the violation of principles of natural justice.

38. Apart from this aspect of the matter, Clause 28 of the Instructions of the Government of India, dated 27-04-1962, circulated in D.Dis.No.53-9820/69, dated 14.01.1970, also had not been taken into consideration. Inasmuch as the impugned order, dated 18-03-1997, was made without following the proper procedure and without affording reasonable opportunity and in violation of principles of natural justice, this Court is of the considered opinion that the petitioners need not be driven to the revisional remedy on the strength of the decision of the Division Bench referred to supra and hence, the impugned order cannot be sustained and the same is hereby quashed. However, it is made clear that the liberty is given to the competent authority, under the Act to proceed in this regard in accordance with the Act of 1993 and the Rules framed there under, in case, he is required to do so.”

11. In the instant case also, except stating that the petitioner did not ask for the documents, the counter is absolutely silent with regard to the supply of the documents, on which reliance was placed by the respondents for arriving at the impugned conclusions. In the considered opinion of this Court, the principle laid down in the above referred judgment is squarely applicable to the facts and circumstances of the present case and the action, in the definite opinion of this Court, impugned in the present writ petition is in violation of the principles of natural justice and on this ground alone, the impugned order is liable to be set aside.

12. For the aforesaid reasons, the writ petition is allowed, setting aside the order in D.Dis.No.C6/501/M/2006, dated 12.04.2006, issued by the Collector and District Magistrate, Kurnool District,

Kurnool. However, it is made clear that this order will not preclude the respondent authorities from proceeding in accordance with the provisions of the Act 16 of 1993 and the Rules framed thereunder and in the light of the observations made supra. No order as to costs.

13. As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE A.V. SESA SAI

30.06.2016.
Msr

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