

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.8086 OF 2004

ORDER:

This Writ Petition is filed to quash G.O.Ms.No.28, Social Welfare (CVI), Department, dated 19.03.2004 upholding the proceedings of the second respondent in R.Dis.1515/96 dated 10.10.1997 and declare the same as illegal, arbitrary and in violation of Article 14 of the Constitution of India and in violation of the procedure contemplated under G.O.Ms.No.58, Social Welfare (J), Department dated 12.05.1997 and consequently to direct the respondents to issue caste certificate certifying that the petitioners belong to 'Bariki' Caste, which is a Scheduled Caste.

It is the case of the petitioners that the first petitioner obtained a social status certificate as 'Bariki' caste, which is a Scheduled Caste in the year 1980 from the Tahsildar, Yemmiganur Taluk after thorough enquiry. Later, on 02.04.1996 and 08.04.1996, petitioner Nos.1 to 4, father and his three children, applied for issue of Caste Certificates certifying that petitioner Nos.2 to 4 belong to Schedule Caste 'Bariki' community. But, there was no response from the second respondent. Thereupon, the petitioners filed WP.No.18949 of 1996 questioning the inaction of the second respondent on the representations of the petitioners and for issue of Caste Certificate. The said Writ Petition was allowed by this Court by order dated 12.12.1996 directing the District Collector to issue Caste Certificate within a week. Thereupon, the second respondent constituted a committee consisting of Revenue Divisional Officer, Adoni, Deputy Director (Social Welfare) and Executive Director, SC Corporation, for making an enquiry. They submitted their report and in strength of the same, Caste Certificate was denied to the petitioners vide proceedings in Rc.No.D12/1515/96 dated 13.10.1996. The same was challenged before this Court in WP.No.24538 of 1996 whereunder this Court by order dated 01.08.1997 directed respondent Nos.1 and 2 to conduct fresh enquiry

after giving opportunity to the petitioners and it also made clear that it is open to the petitioners to adduce any evidence which they feel necessary for disposal of the enquiry by the committee and set aside the proceedings dated 13.10.1996.

In pursuance of the order in WP.No.24538 of 1996 dated 01.08.1997, the second respondent issued notice on 16.09.1997 directing the petitioners to appear before the Collector on 29.09.1997 at 11 am and to furnish all documentary evidence in support of his community claim. Accordingly, the first petitioner appeared before the Collector and produced certain documents and made a representation on 29.09.1997 requesting to consider the documents furnished by him and sought permission to examine the caste elders in support of his claim. The second respondent was not available in the office and the representation and documents were received by the staff of the office concerned while promising to send another notice requiring them to appear before the Collector for necessary enquiry but without issuing any notice and relying on the report of the earlier committee dated 12.10.1996, the impugned order dated 10.10.1997 was passed and the same was confirmed by the Government by issuing G.O.Ms.No.28 dated 19.03.2004.

It is the contention of the petitioners that the Collector did not conduct enquiry and did not afford any opportunity in accordance with Rule 5(b) of the A.P. S.C. S.T. and Backward Classes – Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (“the Rules” for brevity) and violated the direction given by this Court in WP.No.24538 of 1996 dated 01.08.1997 and thereby, the order passed by the second respondent dated 10.10.1997 and G.O.Ms.No.28 dated 19.03.2004 are illegal, arbitrary and in violation of principles of natural justice.

As seen from the material on record, the first petitioner obtained a Caste Certificate from the Tahsildar as if he belongs to ‘Bariki’ community, which is a Scheduled Caste but when he applied for issue

of Caste Certificate for his children, the second respondent did not take any action. However, his inaction was questioned by the petitioners in WP.No.18949 of 1996 wherein this Court by order dated 12.09.1996 directed the second respondent to consider the representation of the petitioners and issue Caste Certificate in accordance with law. To comply with the direction, a committee was constituted consisting of Revenue Divisional Officer, Adoni, Deputy Director (Social Welfare) and Executive Director, SC Corporation, to conduct an enquiry and submit a report to the second respondent. Accordingly, they submitted report on 12.10.1996 without following necessary procedure under the Rules referred to above. On the strength of the report, the Collector issued proceedings denying Caste Certificate as petitioner Nos.2 to 4 do not belong to 'Bariki' community, which is a Scheduled Caste and the same was challenged before this Court in WP.No.24538 of 1996. This Court, having satisfied that the committee did not follow the procedure and submitted report without affording an opportunity, issued a direction to the second respondent to afford an opportunity to the petitioners to participate in the enquiry and permit them to adduce evidence if they feel necessary but the Collector instead of following the procedure contemplated under Rule 5(b) of the Rules, issued notice dated 16.09.1997 requiring the first petitioner to appear before the second respondent on 29.09.1997 at 11 am in his chamber and furnish evidence in support of his community claim. By misfortune of the petitioners, the Collector was not available on that day but the first petitioner submitted necessary documents along with representation dated 29.09.1997 seeking permission to examine the witnesses belonging to his community in support of his caste claim but no notice thereafter was issued affording an opportunity to the petitioner to adduce any evidence and produce any document in support of their caste claim.

Rule 5(b) of the Rules reads as under.

"If the Competent Authority feels that further enquiry is necessary, he shall then examine the school records, birth

registration certificate, if any, and also examine the parent/guardian or applicant, in relation to his/her/their community. He may examine any other person who has the knowledge of the social status of the applicant/parent/guardian, as the case may be. He shall take into account, in the case of Scheduled Tribes, their anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., before issuing the Community, Nativity and Date of Birth Certificates. The Competent Authority shall have power to call for further information and/or collect such evidence/document and also conduct such enquiry as specified in the Form-IV, if deemed necessary. Notice in Form IV should be issued to the parent/guardian, in case the applicant is a minor, to appear before the Competent Authority.”

In view of the specific procedure contemplated under Rule 5(b) of the Rules, it is the duty of the authority to examine the school records, birth registration, examine the parent, guardian or applicant in relation to his or her community, examine any person who has knowledge of the social status of the applicant/parent/guardian as the case may be and take into account, in case of Scheduled Tribe, their Anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., before issuing community, nativity and date of birth certificates. The competent authority shall have power to call for further information, to collect such evidence and also conduct such enquiry as specified in Form IV if it deems necessary. Notice in Form IV should be issued to the parent/guardian in case the applicant is a minor. This Court in WP.No.24538 of 1996 directed the respondents therein to afford an opportunity to the petitioners to participate in the enquiry before the committee of officers and permit the petitioners to adduce evidence, if they feel it necessary. In violation of Rule 5(b) of the Rules referred to supra and in utter deviation of the direction given by this Court in WP.No.24538 of 1996, the second respondent passed order dated 10.10.1997 denying Caste Certificate certifying that the petitioners

belong to 'Bariki', which is Scheduled Caste. Thus, it is evident from the record that the second respondent did not properly conduct any enquiry to find out the caste of petitioner Nos.2 to 4 but passed an order considering the enquiry conducted by the Board of officers and denied Caste Certificate. The procedure adopted by the second respondent is totally in utter disregard of Rule 5(b) of the Rules and the directions given by this Court in WP.No.24538 of 1996.

The Government also issued G.O.Ms.No.28 dated 19.03.2004 without considering the procedure followed by the second respondent herein and thereby, the G.O. issued by the Government is arbitrary and illegal since the order passed by the Collector is totally in violation of principles of natural justice and the procedure contemplated under Rule 5(b) of the Rules and the directions issued by this Court in WP.No.24538 of 1996. Hence, the order passed by the District Collector dated 10.10.1997 and G.O.MS.No.28 dated 19.03.2004 are declared as arbitrary, illegal and the same is set aside.

Learned counsel for the petitioner made a request to direct the respondents to issue Caste Certificate certifying that petitioner Nos.2 to 4 belong to 'Bariki' community, which is a Scheduled Caste. The said request cannot be accepted for the reason that the powers of this Court under judicial review are limited and since it is a disputed question of fact, for issuance of Caste Certificate procedure as per the provisions of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 is to be followed and the Rules made thereunder. Hence, no such direction can be issued. However, the second respondent is directed to make further enquiry as contemplated under Rule 5(b) of the Rules, afford an opportunity to the petitioner to participate in the enquiry and permit them to adduce evidence, if they so desire, in support of their caste claim and pass appropriate order within a period of fifteen (15) days from the date of receipt of a copy of this order.

With the above directions, the Writ Petition is allowed. There

shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

18th March 2016

RRB