

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

WRIT PETITION No.18187 OF 2010

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order of the Collector and District Magistrate, Vizianagaram – 2nd respondent herein issued vide proceedings (M) Rc.No.725/2005 C5, dated 26.06.2010.

2. Petitioner herein is an employee in the 3rd respondent organisation. According to the petitioner, he belongs to Schedule Tribe called Manykapu or Manyapukapu or Kondakapu. On a reference made by the Chief Vigilance Officer of 3rd respondent organisation with regard to the Schedule Tribe Caste Certificate, the 2nd respondent initiated enquiry under the provisions of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (herein after, 'the Act, 1993). The Collector and District Magistrate vide order in proceedings (M) Rc.No.725/2005 C5, dated 26.06.2010 ordered cancellation of the Schedule Tribe Certificate of the petitioner issued by the Tahsildar, Bobbili vide proceedings R.Dis.No.6129/83, dated 25.11.1983 and 15.07.1987. This writ petition calls in question, the said order of the 2nd respondent dated 28.06.2010. This Court, initially on 30.07.2010 granted interim suspension of the impugned order for four weeks and thereafter this Court, while ordering *Rule Nisi*, on 16.08.2010, extended the said interim order until further orders.

3. Petitioner herein initially filed the present writ petition against respondents 1 and 2 and pending writ petition, the 3rd respondent filed W.P.M.P.No.6607 of 2011 under Rule 16-A of the Writ Rules, praying

for its impleadment as respondent while stating in the supporting affidavit that pursuant to the impugned order, 3rd respondent issued a charge sheet on 20.10.2010 and the petitioner filed written defence on 25.10.2010 and in view of the interim orders the disciplinary proceedings came to a complete halt. This Court by way of an order dated 23.01.2012 ordered impleadment of the 3rd respondent. Counter affidavits have been filed by the respondents, denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned orders.

4. Heard Sri V.V.L.N.Sarma, learned counsel, appearing for the petitioner, learned Government Pleader for the Social Welfare appearing for respondents 1 and 2 and Sri V.Ravinder Rao, learned standing counsel, appearing for the 3rd respondent, apart from perusing the material available before this Court.

5. It is contended by the learned counsel for the petitioner that the questioned order is highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (herein after, 'the Act, 1993) and the Rules framed thereunder; that without affording sufficient opportunity, 2nd respondent passed the impugned order; that the 2nd respondent failed to consider the representation dated 25.04.2010 submitted by the petitioner in response to notice (M) Rc.No.725/05C5, dated 26.03.2010 issued by the 2nd respondent while communicating findings of the District Level Scrutiny Committee; that the said action is contrary to the provisions of Section 5 of the Act, 1993; that the District Collector has no power to issue impugned order in view of Rule 9(10) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth

Certificates Rules, 1997 (herein after, 'Rules 1997') which was inserted by G.O.Ms.No.72, Social Welfare (CV-2) Department, dated 24.07.2002; that the 2nd respondent did not independently assess the material available on record.

6. Per contra, it is contended by the learned Government Pleader appearing for the respondents 1 and 2 and the learned Standing Counsel for 3rd respondent, Sri V.Ravinder Rao that there is no illegality nor there exists any procedural infirmity in the impugned action as such the present writ petition is not maintainable under Article 226 of the Constitution of India and the petitioner herein is not entitled for any relief from this Court. It is further contended that since the District Collector passed the impugned order, strictly adhering to the provisions of the Act and Rules framed thereunder, the said impugned order is not amenable for any judicial review under Article 226 of the Constitution of India.

7. In the above backdrop, now the issue that arises for consideration of this Court is:

“Whether the questioned order dated 28.06.2010 passed by the 2nd respondent, cancelling the Caste Certificate of the petitioner is sustainable in the eye of law?”

8. The provision of law which is germane and relevant for the purpose of consideration and resolution of the issue in the present writ petition is Section 5 of the Act, 1993 and the said provision of law reads as under:

“5. Cancellation of false Community Certificate:-

(1) Where, before or after commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such castes, Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and

enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation:

Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government."

9. The above provision of law, in clear and unequivocal terms, mandates and obligates the District Collector to afford reasonable opportunity to the person whose caste status is under scrutiny. The said opportunity, as mandated, is not a mere formality having regard to the scheme of the legislation. The said requirement needs to be scrupulously followed in its true letter and spirit; otherwise the very object of the provision would be frustrated. The issue in the present writ petition is required to be verified, examined and tested in the light of the said intention of the legislature.

10. In the instant case, after submission of the report by the District Level Scrutiny Committee, the Collector and District Magistrate – 2nd respondent issued a notice bearing notice (M) Rc.No.725/05C5, dated 26.03.2010, calling upon the petitioner to submit representation on the enquiry report while communicating the copy of the same. There is absolutely no controversy on the fact that after receipt of the said notice, the petitioner herein on 25.04.2010 submitted his representation/objections on the report of the District Level Scrutiny Committee, enclosing the supporting documents. A perusal of the questioned order shows that the District Collector, except referring to the same, did not make any endeavour or attempt to consider the

contents of the said representation. On the otherhand, the District Collector simply discarded the said representation and documents enclosed simply on the ground that the District Level Scrutiny Committee already considered the same. If that being so, there is absolutely no meaning for insertion of Section 5 of the Act. Therefore this Court is of the opinion that the exercise undertaken by the Collector is opposed to the very object of Section 5 of the Act.

11. In the definite opinion of this Court, District Collector, having called for the representation/objections on the enquiry report submitted by the District Level Scrutiny Committee ought to have considered the contents of the representation submitted by the petitioner on the enquiry report. The mode and manner in which the 2nd respondent – District Collector proceeded with the issue can neither be approved nor countenanced and the same is preposterous, iniquitous and reprehensible. Therefore, on this ground alone, the impugned order is liable to be set aside.

12. The contention of the counsel for the petitioner that in view of Sub-rule 10 of Rule 9 of the Rules, 1997, the District Collector cannot proceed with the matter in the absence of report of the Tribal Welfare Commissioner cannot stand for judicial scrutiny in the teeth of language employed in Section 5 of the Act, 1993. Therefore, the said contention is rejected. However, in view of non adherence to the mandatory provisions of Section 5 of the Act, 1993 the impugned action cannot be sustained in the eye of law.

13. For the aforesaid reasons, Writ Petition is allowed, setting aside the order passed by the 2nd respondent – Collector and District Magistrate vide proceedings (M) Rc.No.725/2005 C5, dated 26.06.2010 and the matter is remanded to the 2nd respondent for fresh consideration by duly taking into account the representation dated 25.04.2010 and enclosed documents, in accordance with law, after

giving notice and opportunity of being heard to the petitioner herein.
Till such exercise attains finality, the interim suspension granted by
this Court on 30.07.2010 shall continue. Petitioner herein is also
permitted to file additional grounds, if any.

14. Miscellaneous petitions pending consideration, if any, in the Writ
Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

11.03.2016

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