

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

W.P.No.5168 of 2006

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%10.06.2016

#Sakuru Mnojkumar,

...Petitioner

VERSUS

\$ The District Collector, Visakhapatnam,
Visakhapatnam District and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri M.Ravindranath Reddy.

^Counsel for Respondents: G.P. for Social Welfare for the
Respondents.

? Cases referred

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.5168 OF 2006

Between:

Sakuru Mnojkumar,
S/o S.Venugopalarao, aged
About 20 years, R/o Visakhapatnam,
Visakhapatnam.

.. Petitioner

AND

The District Collector,
Visakhapatnam, Visakhapatnam District
and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED:10.06.2016

SUBMITTED FOR APPROVAL:

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

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|---|--|-----|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes |
| 3 | Whether His Lordship wish to see the fair copy of the Judgment? | Yes |

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

W.P.No.5168 of 2006

ORDER:

In the present writ petition, challenge is to the action of the respondents in proposing to review the order dated 23.01.2003 passed in the appeal filed by the petitioner vide Memo No.5771/CV.2/2002-6, dated 04.03.2006, as arbitrary, illegal and without jurisdiction.

2. Heard Sri M.Ravindranath Reddy, learned counsel for the petitioner and the learned Government Pleader for Social Welfare for the respondents.

3. Pursuant to a report submitted by a District Level Scrutiny Committee, the District Collector, Visakhapatnam by virtue of an order vide Rc.No.386/2001 CS, dated 04.03.2002, cancelled the Scheduled Tribe certificate issued in favour of the petitioner by the Mandal Revenue Officer, Visakhapatnam (Urban). Questioning the validity of the said order of cancellation, petitioner herein preferred a statutory appeal under the provisions of Section 7 (2) of A.P. (SC, ST & BCs) Regulation of Issue of Community Certificate Act, 1993 (Act 16 of 1993) (hereinafter called 'the Act').

4. According to the petitioner, the first respondent granted stay on 30.04.2002 and subsequently on 31.12.2002 heard the arguments in the appeal and reserved the appeal for orders. Thereafter, on 23.01.2003, the Hon'ble Minister allowed the appeal filed by the petitioner by setting aside the proceedings of the District Collector dated 04.03.2002. It is further submitted that the second respondent, while pointing out certain aspects on 10.12.2003, requested the first respondent to uphold the orders passed by the District Collector and subsequently on 28.02.2004, the first respondent while answering the objections raised by the second respondent, directed the second respondent to issue G.O., in the direction of implementing the orders

dated 23.01.2003. Thereafter, the second respondent requested the first respondent to dismiss the appeal by reviewing the earlier orders and subsequently the second respondent issued Memo No.5771/CV.2/2002-6, dated 04.03.2006, asking the petitioner to appear in the office of the Hon'ble Minister on 20.03.2006 for personal hearing of the appeal. Challenging the validity and the legal sustainability of the said action, which culminated in issuance of Memo No.5771/CV.2/2002-6, dated 04.03.2006, the present writ petition came to be filed.

5. This Court, while ordering *Rule Nisi* on 17.03.2006, granted interim stay of all further proceedings pursuant to the impugned memo dated 04.03.2006. Though, this Court admitted the writ petition as long as back as on 17.08.2009, no counter affidavit has been filed by the respondents, either denying the averments in the writ affidavit or in the direction of justifying the impugned action.

6. It is contended by the learned counsel for the petitioner that the impugned action is a deliberate attempt to review the earlier orders passed by the Hon'ble Minister on the appeal filed by the petitioner on 23.01.2003 and the same is impermissible and without jurisdiction. It is also the submission of the learned counsel that the impugned action is highly illegal, arbitrary and opposed to the very spirit and object of the provisions of the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificate Act, 1993. It is also the submission of the learned counsel for the petitioner that the Act does not authorise the second respondent to initiate the impugned action. It is also contended that the order passed by the Hon'ble Minister on 23.01.2003 on the appeal filed by the petitioner is a quasi judicial order, as such, the second respondent herein cannot reopen the issue once again without there being any authorisation by the statute.

7. On the contrary, it is vehemently contended by the learned Government Pleader that the impugned action is strictly in accordance

with the provisions of the Act and the Rules framed thereunder and there is no illegality nor there is any procedural infirmity in the impugned action, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is the further submission of the learned Government Pleader that the impugned action has the sanction as per the provisions of sub-Section (3) of Section 7 of the Act and as such the impugned action cannot be faulted by any stretch of imagination.

8. In the above backdrop, now the issue that boils down for consideration of this Court in the present writ petition is_“Whether the impugned action on the part of the second respondent is in accordance with law?”

9. The correctness of the above averments made in the affidavit filed in support of the writ petition including passing of orders by the Hon’ble Minister on 23.01.2003 is neither disputed nor denied and the same would also be evident from the copies of the note-file obtained by the petitioner under the Right to Information Act, which are placed before this Court.

10. In this connection, in order to adjudicate the sustainability of the impugned action, it may be appropriate to refer to the relevant provisions of the Act 16 of 1993. 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.”

11. It is evident from the above provision of law that sub-section (2) of Section 7 of the Act enables any person aggrieved by an order passed by the District Collector under Section 5 of the Act to file appeal before the State Government within 30 days. In the instant case, the petitioner herein, aggrieved by the orders of cancellation of caste certificate passed by the District Collector, preferred a statutory appeal under sub-Section (2) of Section 7 of the Act. There is absolutely no controversy with regard to the reality that the Hon'ble Minister heard the appeal on 23.01.2003 and did set aside the orders passed by the District Collector while holding that the appellant/petitioner herein is Yerukala by Caste which is a Scheduled Tribe. Sub-section (3) of Section 7 of the Act enables any person aggrieved by the order passed by the Government under sub-section (2) of Section 5 within 30 days of publication of the order to file a review.

12. In the instant case, the Hon'ble Minister passed the order on 23.01.2003 obviously under the provisions of Section 7 (2) of the Act and admittedly not an order passed under Sub-section (3) of Section 5 of the Act. Therefore, this Court has absolutely no scintilla of hesitation to hold that the impugned action sought to be initiated by the second respondent which obviously in the nature of a review is totally without

jurisdiction and is not authorised by law. Therefore, the impugned Memo No.5771/CV.2/2002-6 dated 04.03.2006 cannot be sustained in the eye of law.

13. For the aforesaid reasons, the writ petition is allowed, setting aside the Memo No.5771/CV.2/2002-6, dated 04.03.2006 and consequently the respondents are directed to take consequential action pursuant to the orders of the Hon'ble Minister dated 23.01.2003. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

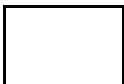
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.5168 of 2006

Dated: 10.06.2016

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