

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

WRIT PETITION No.13105 OF 2005

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order passed by the District Collector, Medak District, Sangareddy – 2nd respondent herein vide proceedings No. C2/CV/215/2001-1, dated 28.05.2005.

2. Heard Sri M.Ravindranath Reddy, learned counsel, appearing for the petitioner and learned Government Pleader for Social Welfare, appearing for the respondents, apart from perusing the material available before the Court.

3. The respondent authorities pressed into service the provisions of the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (herein after 'the Act') and the Rules framed thereunder. The Chairman and Joint Collector, District Level Scrutiny Committee, vide Form V, directed the petitioner to attend the enquiry.

4. In response to the said notice, petitioner herein submitted an explanation on 28.02.2005. Thereafter, the Joint Collector issued a show-cause notice bearing No.C2/CV/215/2001, dated 01.04.2005, asking the petitioner to show-cause with documentary evidence in writing as to why the caste certificate, 'S.T.– Kammara', should not be cancelled. After receipt of the said show-cause

notice, the petitioner herein submitted a representation to the Joint Collector on 11.04.2005, requesting to furnish the copies of the report of the Mandal Revenue Officer, Jaggampet (Mandal), dated 29.04.1995 and the statements relied on by the Mandal Revenue Officer. Subsequently, on 19.04.2005, the petitioner herein submitted another representation to the Joint Collector and Chairman, Medak District, reiterating the earlier request. Subsequently, the District Collector and Magistrate, Medak District, by way of an order vide proceedings No.C2/CV/215/2001-1, dated 28.05.2005, cancelled the caste certificate issued earlier by the Mandal Revenue Officer, Ramachandrapur. The same was published vide notification bearing L.R.No. C2/CV/215/2001-2, dated 28.05.2005. Calling in question, the validity and legal sustainability of the said order of cancellation passed by the 2nd respondent, the present writ petition came to be filed.

5. This Court, while ordering *Rule Nisi* on 20.06.2005, granted an order of *Status quo* in W.P.M.P.No.16649 of 2005. It is contended by the learned counsel for the petitioner that the questioned action is in violation of the principles of natural justice and is highly illegal, arbitrary and opposed to the very spirit and object of the provisions of the Act and the Rules. It is further contended by the learned counsel that without furnishing copies of the report submitted by the Mandal Revenue Officer, Jaggampet Mandal, dated

29.04.1995 and the statements relied on by the Mandal Revenue Officer as sought vide representations dated 11.04.2005 and 19.04.2005, the 2nd respondent – District Collector, cancelled the caste certificate issued in favour of the petitioner. It is also submitted by the learned counsel that the petitioner was admitted in the school at the age of six years and basing on the caste certificate issued in favour of the father of the petitioner, the caste of the petitioner was recorded in the school records and subsequently, petitioner herein was also issued Schedule Tribe caste certificate on 26.03.1997 and the petitioner got admission in Medical Course basing on the said caste certificate. It is further stated that except the same, petitioner did not claim any benefits under the caste certificate dated 26.03.1997 as Schedule Tribe candidate. It is further submitted that the petitioner secured appointment as Civil Surgeon under O.C. category in 2008 and also secured admission in the Post Graduate Medical Course in M.S.(Ophthalmology) as 'O.C. in-service candidate'. It is further submitted that, at this length of time, further initiation of proceedings, if any, may not be warranted. In support of his submissions and contentions, learned counsel places reliance on the judgments of Hon'ble Apex Court and this Court in **Yogesh Ramchandra Naikwadi vs. State of Maharashtra and others**¹ and

¹ (2008) 5 SCC 652

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Tribal Welfare Dep. Govt. of A.P., Hyd., & Another².***

6. Per contra, it is strenuously contended by the learned Government Pleader that only after affording complete opportunity to the petitioner, the 2nd respondent – District Collector, passed the impugned order, cancelling the caste certificate of the petitioner. It is further submitted that the writ petition is liable to be dismissed on the ground of availability of alternative remedy of Appeal to the State Government under Section 7 of the Act.

7. In the above background, now the issues that emerge for consideration of this Court are:

- (i) Whether the present writ petition is liable to be rejected on the ground of availability of alternative remedy of Appeal to the State Government under Section 7 of the Act?
- (ii) Whether the order passed by the 2nd respondent, cancelling the caste certificate of the petitioner is in accordance with law?

8. **Issue No.1:**

It is no doubt true that an order passed by the District Collector under Section 5 of the Act is Appealable to the State Government, within a period of 30 days, according to Section 7(2) of the Act. The petitioner herein filed the present writ petition in the year 2005 and this Court admitted the writ

² 1996 (1) Law summary 408

petition on 20.06.2005 and granted *Status quo* order. Since this Court admitted the writ petition and granted interim order and entertained the writ petition, notwithstanding the availability of alternative remedy of Appeal under Section 7 of the Act, at this length of time, this Court does not find any justification to relegate the petitioner to avail the alternative remedy of Appeal to the State Government under Section 7 of the Act. Accordingly, Issue No.1 is answered in favour of the petitioner and against the respondents herein.

9. **Issue No.2:**

Coming to the merits of the matter – there is absolutely no dispute with regard to the reality that after receipt of Form V notice, dated 08.02.2005, at Paragraphs 3 to 5 of her representation dated 28.02.2005, the petitioner herein stated as follows:

“3. From the above it is evident that the cancellation of the certificate of my father, vide proceedings dated 15.11.1995 was mainly based on the report of the M.R.O. and statements recorded by him. The said report and the said statements were not furnished to my father and even I do not have copy of the same. The said report and statements have a direct bearing in the enquiry with respect of my father’s social status and also in this enquiry now proposed to be conducted into the social status of myself.

4. In these circumstances, I am making efforts to procure the copies of the said report and statements from the office of M.R.O., Jaggampet, East Godavari District. The said documents are crucial for me to

participate in the proposed enquiry, otherwise my rights will be seriously affected, more so when I am in final M.B.B.S. Course.

5. *Therefore, without such report and statements if I am asked to participate in this enquiry it would be violative of Principles of Natural Justice, as held by the Hon'ble Supreme Court and Hon'ble High Court in the following judgements:*

- a) AIR 1988 SC 1309 Supreme Court.
- b) 1989 (1) ALT 182 A.P. High Court.
- c) 1990 (3) ALT 48 -do-
- d) 2002 (2) LS 167 -do- "

10. Thereafter, the Joint Collector, issued a show-cause notice bearing No.C2/CV/215/2001, dated 01.04.2005, calling upon the petitioner to show-cause as to why the caste certificate of the petitioner should not be cancelled.

11. In this context, it may be pertinent to note that under Rule 8(e) of the Rules framed under the Act, The Chairman of the Scrutiny Committee i.e., Joint Collector needs to send the recommendations of the Committee to the Competent Authority stating clearly whether the community claim of the person in question is genuine or false with reasons thereof, within 45 days from the date of the receipt of the case referred to it by the Competent Authority. In the instant case, though the Competent Authority is the District Collector under Section 5 of the Act, the Joint Collector issued a show-cause notice. Neither the Act nor the Rules authorise the Joint Collector to issue show-cause notice of cancellation.

Therefore, in the considered opinion of this Court, the said show-cause notice cannot be sustained, as it suffers from inherent lack of jurisdiction.

12. The material on record further discloses that on 11.04.2005, the petitioner herein, after receipt of show-cause notice, submitted a representation to the Joint Collector, requesting to furnish the copies of the report of the Mandal Revenue Officer dated 29.04.1995 and the statements relied on by the Mandal Revenue Officer. Subsequently, also on 19.04.2005, another representation was made to the Joint Collector, reiterating the earlier request while bringing to the notice of the Joint Collector the consequences of failure to furnish the necessary documents and also bringing to the notice of the Joint Collector, the judgment of this Court W.P.No.19557 of 1994, dated 09.12.2004. A perusal of the order of cancellation passed by the 2nd respondent, which is under challenge in the present writ petition, shows that the District Collector came to a conclusion that the intention of the writ petitioner behind the said request made for furnishing the documents was to kill the government's time and to complete the M.B.B.S. Course. Another significant fact which needs mention, at this juncture, is that the impugned order of cancellation dated 28.05.2005 does not even refer to the enquiry report of the District Level Scrutiny Committee. Having regard to the material available on record, this Court is of the considered opinion that the

respondent authorities resorted to the impugned action contrary to the very spirit and object of the provisions of the Act and the Rules made thereunder and in deviation to the principles of natural justice and passed the impugned order of cancellation. It is also to be noted, which is not in dispute, that the petitioner herein completed her M.B.B.S. course and secured appointment as a Civil Surgeon under O.C. category on 04.02.2008 and she also paid the tuition fee as applicable to other candidates and did not claim any reimbursement of the fee also, which facility is available to the Scheduled Tribe candidates. It is also to be noted that the petitioner herein secured Post Graduate Medical Examination Course in M.S.(Ophthalmology) in Osmania Medical College under O.C. category without availing any benefit under caste certificate. It is also stated in the affidavit filed in support of W.P.M.P.No.25005 of 2016 that she has not played any fraud or otherwise in obtaining the said caste certificate and not taken any benefit of ST candidate except at the time of admission into MBBS course and she also undertakes that she would not claim benefit as ST candidate in future.

13. In this connection, it may be appropriate to refer to the judgments cited by the learned counsel for the petitioner. In ***Yogesh Ramchandra Naikwadi vs. State of Maharashtra and others***, the Hon'ble Apex Court, at paragraph Nos.6 to 9, held as under:

“6. In *Milind* ((2004) 2 SCC 105), the question was whether the first respondent who belonged to ‘Koshti’ caste could claim the benefit of ST reservation on the ground that it was a sub-tribe of ‘Halba’ [Entry No.19 in Part IX of the Constitution (Scheduled Tribes) Order 1950. This Court held that ‘Koshti’ was not a part of the Scheduled Tribe of Halba and that the entries in the Scheduled Tribes Order could not be amended or expanded by any Authority. As a consequence, the State’s appeal was allowed and the claim of first respondent therein that he belonged to a scheduled tribe was rejected. Having allowed the State’s appeal, this Court moulded the relief in exercise of its power under Article 142 by permitting the first Respondent therein to retain the benefit of his degree (for the reasons extracted above). *Vishwanatha Pillai* ((2001) 1 SCC 4) merely followed *Milind*. In *Milind*, there was a bona fide doubt as to whether ‘Halba-Koshti’ could be considered as ‘Halba’. In *Vishwanatha Pillai*, the candidate’s caste certificate was cancelled merely as a consequence of cancellation of his father’s caste certificate. Thus in *Milind* and *Vishwanatha Pillai*, the candidates apparently believed that they belonged to a scheduled tribe/caste when they sought admission and were admitted. Further, their caste certificates showing them as belonging to a scheduled tribe/caste had not been invalidated when they were admitted to the course. The direction in both cases permitting retention of degree was in exercise of power under Article 142 of the Constitution.

7. There may however be cases where it will not be proper to permit the student to retain the degree obtained by making a false claim. One example is where the candidates secure seats by producing forged or fake caste certificates. There may be cases, where knowing full well that they do not belong to a scheduled tribe/caste, candidates may make a false claim that they belong to a scheduled tribe/caste. There may also

be cases where even before the date of admission, the caste certificates of the candidates might have been invalidated on verification by the Scrutiny Committee. There may be cases where the admissions may be in pursuance of interim orders granted by courts subject to final decision making it clear that the candidate will not be entitled to claim any equities by reason of the admission. The benefit extended in Milind and Vishwanatha Pillai, cannot obviously be extended uniformly to all such cases. Each case may have to be considered on its own merits. Further what has precedential value is the ratio decidendi of the decision and not the direction issued while moulding the relief in exercise of power under Article 142 on the special facts and circumstances of a case. We are therefore of the view that Milind and Vishwanatha Pillai cannot be considered as laying down a proposition that in every case where a candidate's caste claim is rejected by a caste verification committee, the candidate should invariably be permitted to retain the benefit of the admission and the consequential degree, irrespective of the facts.

8. *We may therefore examine the facts of this case to decide whether the appellant should be given any benefit and if so whether they should be similar to relief granted in Milind and Vishwanatha Pillai. As the caste claim of the appellant had been rejected by the Scrutiny Committee even before admission, this case stands on a different footing. But in this case though the scrutiny committee had rejected the appellant's claim even prior to his admission to the professional course, the High Court by order dated 22.6.1995 had directed the Director of Technical Education to accept the admission form of appellant without insisting upon the validation of caste and to process the same as if appellant belonged to Scheduled Tribe, making it clear that admission if any made was provisional, and if the*

appellant failed in his petition he will not be entitled to the benefit of degree he may obtain.

9. As observed in *Milind*, if the appellant's admission or degree is to be annulled, it is to nobody's benefit as his seat cannot be offered to someone else. There is also no allegation that appellant forged or faked the caste certificate. His admission to engineering course was nearly thirteen years back and he secured the degree more than four years back. We are therefore of the view that the appellant herein should be permitted to retain the benefit of the degree but subject to terms. The first is that he shall not claim or seek any further benefit by claiming to belong to a scheduled Tribe. The second is that if the State has spent or incurred any expenditure on the appellant's professional degree education by extending the benefit of exemption from payment of fee or award of scholarship or by extending the benefit of concession in fee (that is less than what is charged to general category students) by treating him as a Scheduled Tribe candidate, the appellant cannot retain such financial benefits. The third Respondent may, on behalf of the State Government, take appropriate steps to enquire and assess the amount, if any spent on the appellant either towards fee, scholarship or by way of concession in fee and make a demand on appellant for payment thereof. If the appellant fails to pay the amount so found due within six months of the demand by the third Respondent, the third Respondent may take steps for recalling the degree granted to the appellant. If no amount is found to be due or if the amount determined and demanded is paid by appellant, he may be permitted to retain the degree obtained by him."

14. In ***I.B.Rajendra Prasad Vs. The Director of Tribal Welfare, Tribal Welfare Dep. Govt. of A.P., Hyd., & Another***, Division Bench of this Court, held as under:

“The question as to how the rights of the parties, which had accrued on the basis of the then existing state of law, which is subsequently reversed or modified, would be largely a question of equity so far as the exercise of jurisdiction under Article 226 of the Constitution of India is concerned.

There cannot be a straight jacket formulae for dealing with all cases as facts of each case would warrant the particular approach to be adopted, keeping in view the equities of the situation. It is well settled that so far as the parties to any adjudication by court are concerned, their rights so determined by a final judgment are not liable to be interfered with because of the subsequent change of the law due to a fresh judgment delivered in another case. Similarly, when a state of affairs have come into existence over a number of years on the basis of the existing law, to allow it to be suddenly upset because of a changed position would almost certainly create hardship which in given situations may be unremediable. It is not to say that in no cases such rights should not be unsettled, as indeed it can be done where the justice of the situation so demands. Having given our anxious consideration to the facts of the case we feel, the interest of justice would be subserved if the same approach as was taken in S.VENUGOPAL REDDY v. REGISTRAR OF COOPERATIVE SOCIETIES and the unreported decisions is adopted, Viz., no action is taken against the appellant, making out a case of his having produced a false caste certificate, getting his appointment and promotion on the basis of such certificate, and he is allowed to retain the present post; but that caste certificates issued in his favour

though has been cancelled without affording him opportunity to contest, yet would be treated as nonest in the eye of law and no further benefit either to him or his offspring would be allowable on its basis in any filed whatsoever and that the appellant and his offspring would not be treated as scheduled tribes for any purpose hereafter.”

15. In view of the above reasons and having regard to the law laid down in the above two referred pronouncements, Writ Petition is allowed, setting aside the order of the 2nd respondent dated 28.05.2005 issued vide proceedings No.C2/CV/215/2001-1. Accordingly, issue No.2 is answered in favour of the petitioner and against the respondents herein. It is also made clear that the petitioner shall not claim any benefit under S.T. category in future.

16. For the aforesaid reasons, Writ Petition is allowed. 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

24.10.2016

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