

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

WRIT PETITION No.20019 of 2008

ORDER:

The issue in the present writ petition arises under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (hereafter called, 'the Act').

The order passed by the State Government vide G.O.Ms.No.106 Social Welfare (CV.2) Department, dated 09-06-2008 and the orders of the 2nd respondent – the District Collector issued vide proceedings No.C2/2887/2001, dated 08-03-2004 are under challenge in the present writ petition.

Heard, Sri D.V. Nagarjuna Babu, learned counsel for the petitioner and learned Government Pleader for Social Welfare for respondents.

According to the petitioner, he belongs to Yanadi caste, a Scheduled Tribe. The District Collector, based on the complaint of the employer of the petitioner herein initiated proceedings under the Act by referring the matter to the District Level Scrutiny Committee. The District Level Scrutiny

Committee submitted a report to the District Collector and the District Collector issued a show cause notice vide letter No.C2/2887/2001, dated 21-12-2003 while communicating a copy of the findings of the District Level Scrutiny Committee to the petitioner.

Subsequently, the District Collector vide proceedings, dated 08-03-2004 passed an order of cancellation. Aggrieved by the said order of cancellation passed by the District Collector, the petitioner herein preferred a statutory appeal under Section 7 of the Act. The State Government vide G.O.Ms.No.106 Social Welfare (CV.2) Department, dated 09-06-2008 rejected the appeal, thereby confirming the order of cancellation passed by the District Collector. The said orders of primary and appellate authority are under challenge in the present writ petition.

It is contended by learned counsel for the petitioner that the orders under challenge are erroneous, contrary to law and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the Act and the Rules framed thereunder. It is further submitted by learned counsel that the respondents completely discarded the voluminous evidence placed on record by the petitioner and that the respondents did not supply the report of Revenue Divisional

Officer, dated 23-01-2003. According to the learned counsel, the impugned orders are also untenable on the ground of non-adherence to Rules 9(3), 9(4) and 9(5) of the A.P. S.C. S.T. and Backward Classes – Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (hereafter called, ‘the Rules’). It is further submitted by learned counsel for the petitioner that the father’s caste is decisive. In support of his submissions and contentions learned counsel placed on reliance on a decision reported in 2010 (3) ALT 663 (D.B.).

On the contrary, it is strenuously contended by learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned action and that totally adhering to the procedure contemplated under the Act and Rules and after giving complete opportunity to the petitioner herein, the caste certificate of the petitioner was cancelled.

The information available before this Court manifestly reveals that in response to the show cause notice, dated 21-12-2003, the petitioner herein submitted an explanation, dated 29-01-2004. In the said explanation the petitioner herein categorically stated that his father belongs to Yanadi community which is a listed Scheduled Tribe community and whereas his mother belongs to Padmasali community, which

is a listed backward class community. The petitioner herein also stated in the said explanation that before the District Level Scrutiny Committee he filed the following documents:

“1. My notarized affidavit, wherein I have narrated my family history.

2. Copy of the Community certificate issued by Smt. Sumitra Devi, MLA, dated 18-12-1972

3. Copy of the Community Certificate issued Editor, Tribal, Cultural Research and Training Institute, Tribal Welfare Department, Govt. of A.P.

4. Copy of the Community Certificate issued by the Honourable First Class Magistrate.

5. Notarized affidavit of my mother elaborating my family details.

6. Notarized affidavit of Sri Tupakula Pottaiah S/o.Kartrtaiah, Hanumanthunigadda, Mahabubabad village, Warangal District to the effect that my father is his relative, that my father belongs to Yanadi community and that he married my mother who belongs to Padmashali community.

7. Notarised affidavit of Sri Vetagiri Gopaiah S/o.Muttaiah, Mahabubabad Village, Warangal District to the effect that my father is his relative, that my father belongs to Yanadi community and that he married my mother who belongs to Padmashali community.”

It is further clear that the petitioner herein also enclosed the said documents along with the said explanation, dated 29-01-2004 to substantiate his case.

A perusal of the order passed by the District Collector shows that the District Collector did neither refer to the said documents nor considered the same and the said mode and manner adopted by the District Collector, in the considered opinion of this Court, is highly preposterous, inequities and cannot be approved. The said non-consideration of the material documents is fatal to the case of the respondents herein.

Before the State Government – appellate authority also the petitioner herein brought to their notice by filing of the above said documents by him. But the appellate authority also in the impugned G.O.Ms.No.106 Social Welfare (CV.2) Department, dated 09-06-2008 completely discarded the said documentary evidence made available by the petitioner herein.

Another significant aspect which needs mention in this context is that the District Collector for arriving at the conclusions against the petitioner herein placed complete reliance on the report of the Revenue Divisional Officer, dated 23-01-2003. Though the non-supply of the same was specifically brought to the notice of the District Collector in the explanation, dated 29-01-2004 the District Collector simply discarded the said request by saying that the findings

of the District Level Scrutiny Committee were supplied to the candidate wherein the report of the Revenue Divisional Officer, Chevella was also available for reference. In the said order of cancellation the District Collector further observed that there was an attempt by the petitioner to prolong the period.

In the considered opinion of this Court the said non-supply of the report of Revenue Divisional Officer, Chevella, dated 23-01-2003 which formed the basis for the District Collector to pass the order of cancellation is highly unreasonable and violative of principles of natural justice besides being arbitrary and illegal.

Yet another contention raised by learned counsel for the petitioner is that the impugned order of cancellation is in contravention of Rules 9(3), 9(4) and 9(5) of the A.P. S.C., S.T., and Backward Classes – Issue of Community, Nativity and Date of Birth Certificates Rules, 1997. In this context it may be appropriate to refer to the said Rules, which read as under:

“9. **Fraudulent claims:**

... ..

3. *The Scrutiny Committee shall in such cases cause enquiry by the protection of Civil Rights/Vigilance Cell*

also i.e., through the officer representing the Protection of Civil Rights/Vigilance Cell as the member of the committee. The Protection of Civil Rights/Vigilance Cell should investigate the social status claimed by the person by the sending the Inspector of Police to the local place of residence of that person and where he/she usually resides or in case of migration, to the town or city from which he/she originally hailed from. The Inspector should personally verify and collect all the facts, about the community claim of the person or the guardian or the parent, as the case may be.

4. *Where the person on whom a notice served in Form – VI fails to respond to the notice within the period specified in the notice, the Scrutiny Committee may finalise its findings based on the material made available by the District Collector i.e., enquiry report of the Revenue Department, enquiry report of the Protection of Civil Rights/vigilance cell and the reports of the expert/Officer of the Research Organisation of the Commissionerate of Social Welfare/Tribal Welfare.*

5. *The Scrutiny Committee shall compare the enquiry reports of the Revenue Department furnished by the District Collector, the reports of the Protection of Civil Rights/Vigilance Cell and the reports of the Expert or officer of the Research Organization of the Commissionerate of Social Welfare/Tribal Welfare and then finalize its findings whether the Community, Nativity and Date of Birth Certificate given to the person or his/her children is genuine or otherwise.”*

In the instant case, there is absolutely no evidence on record to show that the respondents undertook exercise as stipulated under the above said Rules. In the impugned

orders also there is no reference to show that the respondents called for the reports from the agencies shown in the said Rules. When the Statute directs the authorities to do a particular act in a particular manner the authorities are required to follow the same. But in the instant case the same has been adhered to in breach. Therefore, the entire exercise undertaken by the respondents gets vitiated.

It is also significant to refer to the judgment of this Court in **GOVERNMENT OF A.P. REP. BY ITS PRINCIPAL SECRETARY, AGRICULTURE AND CO-OPERATION (CO-OP.II) DEPARTMENT, HYDERABAD AND ANOTHER v. PAGADALA KHALI KANTHI AND ANOTHER**¹, wherein it is held at paragraph No.12 as follows:

*“12. The primary reason for cancellation by the Collector and recommendation by the District Level Scrutiny Committee being inter caste marriage of the father of the respondent and the assumption that the offspring is not entitled to claim such status. The aforesaid issue is clearly settled by two decisions of the Supreme Court on which the learned counsel for the respondent has rightly placed reliance. The following passage from **ANJAN KUMAR’s** case ((2006) 3 SCC 257) completely answers the aforesaid issue:*

“6. Undisputedly, the marriage of the appellant's mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha)

¹ 2010 (3) ALT 663 (D.B.)

was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or ex-communicated from the village community. Therefore, there is no question of such marriage being accepted by the village community. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to forward class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practiced by the tribals from time immemorial and accepted by the community of the village as a member of tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose. Often than not, such acceptance is preceded by feast/rituals performed by the parties where the elders of the village community participated. However, acceptance of the marriage by the community itself would not entitle the woman (Forward class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward class) who does not suffer disabilities wherefrom she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled

Castes and Scheduled Tribes. It would be a negation of Constitutional goal.”

It is evident from the above decision that the caste of the father is decisive.

For the aforesaid reasons, the writ petition is allowed, setting aside the orders passed by the 1st respondent – State Government vide G.O.Ms.No.106 Social Welfare (CV.2) Department, dated 09-06-2008 and the orders passed by the the 2nd respondent – the District Collector vide proceedings No.C2/2887/2001, dated 08-03-2004.

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

A.V. SESA SAI, J

November 28, 2016

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



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