

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

WRIT PETITION No.16415 of 2007

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, calls in question the order passed by the Collector and District Magistrate, Visakhapatnam vide proceedings Dis.No.106/2005/C5, dated 24-07-2007.

Heard, Sri Akkam Eswar, learned counsel for the petitioner and learned Government Pleader for Social Welfare for respondents.

According to the petitioner, he belongs to 'Bhagatha' community, a Scheduled Tribe, and he was an employee in Coffee Plantation Department of A.P. Forest Development Corporation. The respondent authorities initiated enquiry on the complaint made by the A.P. S.T. Employees Association, Paderu under the provisions of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (hereafter called, 'the Act').

The District Collector, by way of proceedings under challenge, cancelled the Caste Certificate issued in favour of the petitioner earlier by the Mandal Revenue Officer, G.K. Veedhi.

When the matter is taken up, a preliminary objection as to the maintainability of the Writ Petition is taken by the learned Government Pleader for Social Welfare appearing for the respondents that without availing the alternative remedy of appeal as provided under Section 7 of the Act, the petitioner herein approached this Court by way of present Writ Petition directly.

Section 7 of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 reads as under:

“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 Gazettee, 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 Gazettee, 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) of 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.”

It is very much evident from a reading of above provision of law that any person aggrieved of an order passed under Section 5 of the Act can maintain an appeal before the State Government.

In the instant case, without availing the said alternative remedy as stated above, the present Writ Petition came to be filed. In view of the above and taking into consideration the submissions of learned counsel for the petitioner and learned Government Pleader for Social Welfare, this Court deems it appropriate to relegate the petitioner to avail alternative remedy of appeal by granting some time. It is also to be noted that this Court on 13-12-2007 granted interim suspension and the same has been in existence till today and this Court deems it apt to continue the said order, pending consideration of the appeal.

For the aforesaid reasons, the Writ Petition is disposed of, keeping it open for the petitioner herein to file statutory appeal under Section 7 of the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, against the orders passed by the District Collector vide proceedings Dis.No.106/2005/C5, dated 24-07-2007 within a period of one month from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated above, the same be considered and appropriate orders be passed, in accordance with law, on merits, after giving notice and opportunity of being heard to all the stakeholders. Till such exercise attains finality, the interim suspension order, dated 13-12-2007 granted by this Court in W.P.M.P.No.20880 of 2007 shall continue to operate.

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

A.V. SESA SAI, J

December 22, 2016

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