

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WV.MP.No.2102 of 2016

in/and

WRIT PETITION No.16065 OF 2016

COMMON ORDER :

The said Writ Petition has been filed by the petitioner therein challenging the G.O.Ms.No.13, Scheduled Castes Development (POA.A2) Department, dt.27.04.2016.

2. The matter arises under the A.P. (SC, ST, & BC) Regulation of Issue of Community Certificates Act, 1993 (for short 'the Act').

3. The Petitioner, who is working as a Telugu Lecturer in the 4th respondent-College claims to belong to a SC Madiga Community and alleges that her mother belongs to the said community. After she completed a degree in distance education, she obtained further educational qualifications and obtained employment in the 4th respondent-College as a Telugu lecturer under SC(A) Backlog Woman quota. According to the petitioner, she always had her mother's social status, since she was brought up in her mother's community.

4. A complaint was lodged against the petitioner by Sri Manda Krishna which resulted in an order dt.08.12.2011 in R.Dis.Lr.No.C1/2599/2011 under Section 5 of the Act by the 2nd respondent, who cancelled the SC Madiga Community Certificate, which the petitioner possessed.

5. However, before passing the said order, it is admitted that an opportunity as contemplated by Sub-Section (1) of Section (5) of the Act was not granted to the petitioner.

6. Petitioner challenged the said order by way of appeal under

Section 7 of the Act before the 1st respondent.

7. The 1st respondent issued the impugned G.O.Ms.No.13, Scheduled Castes Development (POA.A2) Department, dt.27.04.2016 confirming the order passed by the 2nd respondent.

8. It is the petitioner's contention that substantial evidence has been produced by the petitioner before the District Level Scrutiny Committee that she was always brought up as an SC Madiga and that the same was not considered either by the 2nd respondent or by the 1st respondent.

9. Other contentions on the facts are also raised by the petitioner to assail the order passed by the 2nd respondent as well as the G.O. issued by the 1st respondent.

10. On 12.05.2016 this Court directed 'Notice before admission' and granted interim suspension of the impugned G.O. which was subsequently extended from time to time.

11. W.V.MP.No.2102 of 2016 is filed by respondents 1 and 2 to vacate the said order.

12. I have heard the submissions of Sri L.Ravichander, Senior Counsel appearing for Sri G.Satish, counsel for the petitioner and the Government Pleader for Social Welfare appearing for respondents 1 and 2.

13. Section 5 of the A.P. (SC, ST, & BC) Regulation of Issue of Community Certificates Act, 1993 states as follows:

"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.”

Thus, the above provision empowers the 2nd respondent to cancel a Community Certificate, but it can be done only after giving the person concerned, an opportunity to make a representation.

14. This mandatory provision in Sub-Section (1) of Section (5) is admittedly not followed by the 2nd respondent when he passed the order on 08.12.2011. Since the order of cancellation would visit civil consequences on the petitioner, it is not in conformity with the principles of natural justice. It is settled law that violation of principles of natural justice by the original authority i.e., the 2nd respondent cannot be cured at the appellate stage by the 1st respondent(**Mohd Yunus Khyan v. State of U.P.**^[1]).

15. Since there is a clear violation of principles of natural justice by the 2nd respondent who passed an order on 08.12.2011, its confirmation by the 1st respondent cannot render it valid.

16. Therefore, the Writ Petition is allowed; the G.O.Ms.No.13, Scheduled Castes Development (POA.A2) Department, dt.27.04.2016 issued by the 1st respondent as well as the order dt.08.12.2011 in R.Dis.Lr.No.C1/2599/2011 of the 2nd respondent, are both set aside. The matter is remitted back to the 2nd respondent to pass a fresh order in accordance with law after considering the stand of the petitioner and the material placed by the petitioner before him. This exercise shall be completed within a period of three (03) months from the date of receipt of a copy of this order. Till a fresh enquiry is conducted and decision is taken by the 2nd respondent, no action shall be taken by the respondents 3 and 4, on the basis of the impugned G.O. Ms.No.13 dt.27.04.2016 of the 1st respondent and order dt.08.12.2011 of the 2nd respondent. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner. There shall be no order as to costs.

17. Consequently, WV.MP.No.2102 of 2016 is dismissed and miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

10th August, 2016.

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[\[1\]](#) 2010(10) SCC 539