

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.21296 OF 2008

ORDER:

Heard Mr.Tuhin Kumar for petitioner and the Assistant Government Pleader (Tribal Welfare).

The petitioner challenges Memo Rc.No.2370/2008/TRI/VC-5 dated 12.09.2008 as illegal, without jurisdiction and unconstitutional.

To appreciate the legal grounds urged by the petitioner, it is convenient to excerpt the Memo under challenge:

“Office of the Director of Tribal Welfare,
A.P. Hyderabad.

MEMO

Rc.No.2370/2008/TRI/VC-5, Dated 12.09.2008

Sub: TWD-TCR&TI-TSV-Cell-Hyderabad-Admissions in U.G.courses-2008-09, Verification of Scheduled Tribe status claim of the candidate seeking admission under Scheduled Tribe quota-Regarding.

Ref: 1.Act 16 of 1993 issued in G.O.Ms.No.57 S.W.(J), Dept.dt.8-5-97.
2.G.O.Ms.No.58, SW (j2) Department, dt.12-5-97.
3.G.O.Ms.No.79-SW(CV-2) Department dt.24-7-2002
4. Lr.Rc.No.31041//Exams-1/U.G.ADM-2008 Dt.28-8-2008 Registrar N.G. Ranga University, Rajendra Nagar, Hyderabad.

As per G.O.Ms. No.79 SW (CV-2) Department dated 24-7-2002, the Director of Tribal Welfare, Andhra Pradesh, Hyderabad either suo-motu or on a written complaint by any person or on request made by any employer/Educational Institution/appointing authority, shall enquire into the correctness of any community, nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to concerned Collector or the Govt. for its cancellation as per the procedure laid down section 5 of the Act. As requested by the The Registrar ANGRAU, Rajendra Nagar, Hyderabad, this office has constituted a team of Officers to verify the genuineness of the certificates produced by the candidates who are

seeking admissions into U.G. courses under Scheduled Tribe quota.

The social status claim of Sri/Kum. Vinod Kumar Dolai S/o.D/o.Poorna Chandra Dolai an applicant for admission into U/G. course with Rank No.10345 is found to be doubtful for the following reasons.

1. He/she claims to belong to Benthoriya tribe
2. The Surname Dolai of the applicant is uncommon among the tribe.
7. The community certificate issued by the MRO/RDO is not in order.
8. There is high incidence of false claims under the name of Benthoriya tribe.

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Therefore he/she is advised to the Director, TCR&TI, 2nd Floor, Damodaram Sanjeevaiah Samkshema Bhavan, Masab Tank, Hyderabad-500 028 on 29.9.08 at 10.30 A.M. along with parents or an elderly member of his/her family (if parents are not alive) who has full knowledge about his/her community to furnish oral and documentary evidence to substantiate their Scheduled Tribe status claim. He/she should bring the following documents in support of their Scheduled Tribe status claim so as to enable this office to place the matter before the District Level Scrutiny Committee concerned.

1. Ration Card (if ration card is not issued they are advised to bring Identity Certificate from the MRO or any Gazetted Officer).
2. Grampanchayat Voters list and any other documents, which support their claim.
3. School records like Study certificates 1st class onwards, Transfer certificate etc.
4. Land/House sale deeds etc.
5. Copies of caste certificates of his/her paternal relatives if any.

Therefore, the Registrar, U.G.-2008 admissions, ANGRAU, Hyderabad, is requested that his/her seat may be kept in abeyance and no fee shall be accepted from this candidate until clearance is issued about his/her

claim from the Director of Tribal Welfare, Andhra Pradesh, Hyderabad/District Collector concerned.

Sd/-

For District of Tribal Welfare”

The 1st respondent directed the 3rd respondent to keep in abeyance the seat allotted to petitioner. On 26.09.2008, the communication is stayed by this Court. The same is subsisting as on date. As matter of fact, the counsel for petitioner submits that the petitioner has completed the course as well.

The petitioner relies upon the decision in Madi Sri Vasishnavi v. Dr.N.T.R. University of Health Sciences, Gunadal, Vijayawada¹ contending that a similar memo issued by the 1st respondent herein has been set aside by this Court and the paragraphs on which reliance is placed read thus:

“8. The second respondent is shown to have no power, authority or jurisdiction to issue any clearance certificate. The second respondent is not also the competent certifying authority for issuing a community certificate under the provisions of the Act. Under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes & Backward Classes) issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short 'the 1997 Rules') as amended in G.O. Ms. No. 79 Social Welfare (CW2) Department dated 24-07-2002, the second respondent has been consecrated a limited domain to inquire into the correctness of any community, nativity and date of birth certificate already issued, if there be a written complaint by any person, a request made by an employer, educational institution or an appointing authority or suo motu. Rule 10 of the 1997 Rules as amended enables the second respondent on a prima facie satisfaction that a certificate is obtained fraudulently

¹ 2008 (3) ALD page 8

and on a preliminary enquiry to refer the case to the concerned Collector or the Government for cancellation of the certificate already issued as per the procedure spelt out in Section 5 of the Act.

9. Even on an expansive construction, this provision of the 1997 Rules does not consecrate any power, authority or jurisdiction in the second respondent to issue directives to an educational institution such as the first respondent to keep the seat in abeyance. The directive of the second respondent as contained in the memo dated 28-07-2007 is therefore patently incompetent and the product of a fertile imagination without any substrate in lawful authority. It is tragic that the first respondent never enquired as to the authority of the second respondent to issue such a directive and instead considered it appropriate to subscribe to and follow an unlawful order by an incompetent authority.

10. As a consequence of such conjoint conduct of the respondent Nos. 1 and 2, the petitioner is deprived of the lawful opportunity to pursue her academic career in the under graduate medical course and despite having a facially competent and valid certification that verifies her as belonging to a Scheduled Tribe community.”

I have perused the Memo impugned in the writ petition and Madi Sri Vasishnavi's case (supra). *Prima facie* I am satisfied that the direction issued by the 1st respondent is completely beyond his jurisdiction. Therefore, by following the decision in Madi Sri Vasishnavi's case (supra), the memo is set aside.

It is made clear that this Court has not examined the merits of social status of petitioner, entitlement or otherwise of particular social status claimed by the petitioner. It is always open to the authorities under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of

Community Certificates Act, 1993 (Act 16 of 1993) to enquire into and take appropriate decision.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:10.03.2017

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