

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.22915 OF 2014

ORDER:

Heard Mr.Koneti Raja Reddy for petitioner, the learned Assistant Government Pleader for respondents 1 to 4 and Mr. Syed Khader Mastan for respondent No.5.

The petitioner prays for Mandamus declaring notice Rc.No.131/2014/C4 dated 28.07.2014 of 3rd respondent, as illegal and arbitrary and set aside the notice. The 3rd respondent through the notice impugned in the writ petition has called upon the petitioner to attend enquiry on petitioner's Community claim on 11.08.2014 at 3.30 p.m. in Joint Collector's Chamber, Collector's Office, Guntur District. The issue arises under the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short 'the Act').

The case of petitioner is that the petitioner belongs to SC community and contested for the post of ZPTC, Guntur Rural Mandal and was declared elected as ZPTC. The 5th respondent is one of the candidates contesting for the same post. The 5th respondent filed EOP No.62 of 2014 challenging the election among other grounds on the social status of petitioner as well.

Adverting to the fact in issue between the petitioner and the 5th respondent, it is stated that according to 5th respondent, the petitioner does not belong to SC (Madiga) but belongs to BC, therefore, contesting in the election for the post earmarked for SC is untenable and illegal.

Against the show cause notice issued by 3rd respondent the petitioner raises the following objections:

- a) That the candidature of petitioner is accepted as a reserved candidate basing on certificate issued by the competent authority.
- b) No one including the 5th respondent challenged the certificate issued in favour of petitioner and it has become final.
- c) Assuming without admitting that a doubt cast on the social status of petitioner, the 5th respondent by choice has made all these circumstances a fact- in- issue before the Election Tribunal. The Election Tribunal is competent to enquire into all aspects including the social status of petitioner. Therefore, the enquiry in respect of social status one by 3rd respondent and another by Election Tribunal is illegal and arbitrary.

Mr. Khader Mastan does not dispute the averments stated or relied on by the petitioner. According to him, the objections raised by petitioner do not stand to legal scrutiny in the background of the definite scheme under the Act. According to him, on the complaint filed by 5th respondent, the 3rd respondent has taken up the case on file and now exercises the jurisdiction under Section 5 read with Rule 8 of the A.P.S.C. S.T. and Backward Classes- Issue of Community, Nativity and Date of Birth Certificates Rules, 1997. Section 3 of the Act is clear that a person who wishes to claim a particular social status must produce a certificate and once the certificate is the subject matter before 3rd respondent under Section 5, the Civil Court does not have jurisdiction to decide the specific social status issue. What is considered by the Tribunal is ancillary or incidental but for comprehensive determination of person's status, it

is only the 2nd and the 3rd respondents who have jurisdiction, but not the Election Tribunal. According to him, either the pendency of EOP or that an issue is incidental to ancillary to main challenge does not bar the 2nd and 3rd respondents examining the social status of petitioner.

The Assistant Government Pleader submits that continuing to hold the office or for any purpose in future, the petitioner is required to get the enquiry now initiated completed and findings, if any, by the Election Tribunal are not binding on the authorities. The circumstances leading to filing of the writ petition and the submissions of counsel are stated above. For brevity, I am not proposing to reiterate either the allegations or the contentions once again.

The challenge to notice is not on the ground of lack of jurisdiction, but on the ground that the enquiry now initiated by 3rd respondent for all purposes amounts to parallel enquiry when an issue is pending before the Election Tribunal. The straight and complete answer to above contention is given by excerpting Sections 3, 5 and 9 of the Act.

Section 3 Application of a community certificate:-

(1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under Clause (4) of Article 15 of the Constitution of India or for the purpose of contesting

for elective post in any local authority or for elective posts in the Co operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of a community certificate.

(2) Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the Fifth Schedule to the Constitution of India or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, make an application in such form and in such manner as may be prescribed to the competent authority for the issue of community certificate.

Explanation:- For the purposes of this Section and Section 13, "Scheduled areas" means the areas as defined in paragraph 6 to the Fifth Schedule to the Constitution.

Section 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.

Section 9 Competent authority to exercise the power of the Civil Court:-

The competent authority shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any Court or Office; and
- (e) issuing commissions for the examination of witnesses or documents.

In the considered view of this Court, the enquiry into the social status by 2nd and 3rd respondents ought not to be treated as a parallel enquiry to the Election O.P. No.62 of 2014 filed by 5th respondent. This Court is not in agreement with the grounds referred to above. The writ petition fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:17.11.2017
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