

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.3722 of 2008

ORDER:

This writ petition is filed by the petitioner to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus by calling for the records relating to and connected with G.O.Ms.No.18, Social Welfare (CV.II) Department, dated 07.02.2008 and set aside the same holding it absolutely illegal, arbitrary and in violation of principles of natural justice.

2. The case of the petitioner is that he belongs to Yerukula caste, which falls under the Scheduled Tribe community. The petitioner's mother-Santoshamma belongs to Scheduled Tribe community and father-Philips belongs to Mala community (Scheduled Caste) and their marriage was an inter-caste marriage, performed in the year 1968 and blessed with four sons and two daughters and the petitioner is the youngest son. The petitioner states that the marriages of maternal uncle and their children were performed under the tribal custom. That the petitioner and his brothers and sisters were brought up in the family atmosphere under the influence of his mother and the petitioner studied from kindergarten to B.Com. on the basis that he belongs to Scheduled Tribe community. It is asserted that the petitioner's brothers and sisters were got admitted in various jobs based on Scheduled Tribe status and all of them were recognized as Scheduled Tribe for the past more than four decades. Pursuant to the

notification issued by the 3rd respondent, the petitioner applied for the post of Health Assistant basing on the status of Scheduled Tribe community. The petitioner was appointed as Health Assistant in July, 2003 and he is working as Health Assistant to the satisfaction of all the concerned in the office of the 3rd respondent. While so, basing on a complaint regarding the caste certificate of the petitioner, the 3rd respondent-The District Medical and Health Officer, Nellore issued proceedings, dated 22.07.2003, requesting the 2nd respondent-The Collector and District Magistrate, Nellore, who is the competent authority, to conduct an enquiry into the matter. As such, the 2nd respondent was pleased to direct the 4th respondent-Mandal Revenue Officer, Bogole Mandal, Nellore District, to conduct an enquiry into the matter. Accordingly, the 4th respondent conducted an enquiry and submitted report to the 2nd respondent. Simultaneously, the District Level Scrutiny Committee was also asked to conduct an enquiry into the matter and in the enquiry report, it is stated that the petitioner belongs to Scheduled Caste community. Basing on the report of the District Level Scrutiny Committee, the 2nd respondent issued proceedings for cancellation of caste certificate. The 1st respondent confirmed the orders of the 2nd respondent, vide G.O.Ms.No.18 Social Welfare (CV.2) Department, dated 07.02.2008 in the appeal filed by petitioner against orders of cancellation of caste certificate of petitioner. Aggrieved by the same, the present writ petition is filed.

3. Respondent Nos.1 and 2 filed counter-affidavit, wherein it is stated that the marriages of all maternal uncles and their children were performed with tribes does not support the case of the petitioner. It is further stated that the petitioner and his family dedicated their lives to the God Jesus and the marriages were performed according to the custom and usage of Christianity. The contention of the petitioner that he was brought up by his mother is specifically denied. That all the brothers and sisters of the petitioner were married to the people of Scheduled Caste community and the petitioner has no connection at all with Scheduled Tribe people. That the appointment of the petitioner is subject to the condition of finalization of caste status by the District Level Scrutiny Committee and in those circumstances, the matter was reported to the Revenue Divisional Officer (RDO), Kavali, for submission of detailed enquiry report. That on the instructions of the District Level Scrutiny Committee, the District Tribal Welfare Officer has visited the village and after examining the school records, submitted a detailed report. That the District Level Scrutiny Committee has gone through the material available on record and conducted a detailed enquiry as per the procedure and concluded that the petitioner belongs to Mala (Scheduled Caste) community. Therefore, prayed for dismissal of the writ petition.

4. Reply affidavit is filed by the petitioner reiterating the contents of the writ affidavit and given the particulars of the names of the brothers and sisters of the petitioner stating that they are treated as

Scheduled Tribe community. Along with reply affidavit, the petitioner also produced service records of the petitioner's brothers and sisters and other documents showing that they are treated under Scheduled Tribe community for the purpose of employment.

5. Learned counsel for the petitioner submitted that the reports of Scrutiny Committee were not supplied to the petitioner, which is the basis for cancellation of caste certificate, as such, the same is in violation of principles of natural justice. More so, the report of the scrutiny committee is inconsistent with the report of the 4th respondent. He also submits that in case of inter-caste marriages, the status of the offspring is on par with the lower caste of the parents as per G.O.Ms.No.371, Employment & SW (B2) Department, dated 13.04.1976.

6. The Assistant Government Pleader for Social Welfare submits that the petitioner participated in the enquiry, which was conducted by the District Level Scrutiny Committee. He also submits that the marriage of all the sisters and brothers of the petitioner were performed to the people of scheduled caste community that itself shows the petitioner belongs to Scheduled Caste community. In **Jadhav Rekoba and others v. Government of Andhra Pradesh and others**¹, observed in paras 7, 8 and 9, which reads thus:

“7. In Certiorari proceedings, it is axiomatic the finding of fact recorded by the decision maker is not ordinarily interfered

¹ 2009 (2) ALD 296

with unless such finding is grossly perverse. Therefore, this Court is not inclined to venture adjudicating the factual dispute. But the fact remains that the order of District Collector draws sustenance and support from the report of the Chairman of the D.S.C. dated 15.02.2000. The non-furnishing of such report vitiates the entire proceedings.

8. In **Bhakthavathsala Sukumar** (supra), this court held that “when the enquiry authority relying on a document records a finding, such authority has to furnish such document to the delinquent to offer his remarks and non-supply of such copy would amount to violation of principles of natural justice”. Yet again, in **Duda Ramesh** (supra), a learned single Judge of this Court, held as under:

“30. In ground No. (h) of the affidavit filed in support of the writ petition, it was specifically pleaded that the petitioners were denied reasonable opportunity since the report of the Mandal Revenue Officer, the Sub-Collector, the statement stated to be recorded by the Mandal Revenue Officer etc., were not furnished. The requirement of reasonable opportunity cannot be said to have been fulfilled by requiring the petitioners to inspect the records having regard to the nature of enquiry and the serious consequences involved. No opportunity was given for perusing the records etc., as alleged. Having regard to the complicated nature of enquiry etc., the 3rd respondent was bound to furnish copies of reports, statements etc., and a mere allegation that the petitioners were permitted to peruse the records is not sufficient compliance of the requirement of fair hearing.”

9. In **M. Karunakar** (supra), a question arose as to whether the report of the D.S.C. should be furnished by the District Collector while passing orders under 9(7) of the Rules, explaining the mandatory nature of the requirement, this Court laid down that the District Collector has to furnish a copy of the finding of the D.S.C. to the persons and give them an opportunity of making representation before passing cancellation orders. The relevant observations are as under:

“20. In this case, the District Collector, after obtaining the preliminary report from the Revenue Divisional Officers concerned, referred, the case for enquiry to the Scrutiny Committee. However, the Scrutiny Committee neither furnished the copies of the preliminary reports submitted by the concerned Revenue Divisional Officers, nor furnished the material collected by it to the petitioners before proceedings further with the case. Likewise, the Scrutiny Committee while recording the statements of the individuals did not afford an opportunity to the petitioners to cross-examine them. In the light of the language employed in Section 5 of the Act i.e., “.... He shall by notification, cancel the certificate after giving the person concerned an opportunity of making a representation”, I am of the view that the District Collector has to furnish a copy of the findings of the Scrutiny Committee to the petitioners and give them an opportunity of making a representation before passing the impugned orders. This is what the Supreme Court stated in guideline No. 6 in Laveti Giri’s case (1) supra. Further a Division Bench of the Madras High Court also in D. Illamaram vs. Government of India, represented by Chief Engineer, All India Radio and Television, Southern Zone, Madras(1986 Writ L.R. 482) has taken a similar view which was followed in G. Muthulakshmi vs. The Collector, Madurai District and others(1999 II MLJ 147) and the relevant portion is extracted below.

21. “Whenever the question arises, as to whether a person belongs to a particular community recognized as the Scheduled Tribe or Scheduled Caste, decision has to be taken by the Collector of the District, after holding due enquiry and in such case, he may himself hold an enquiry or direct the Revenue Divisional Officer to hold an enquiry and submit a report. In the event the Collector adopts the latter course, he has to make available a copy of the report submitted by the Revenue Divisional Officer to the concerned person and give him an opportunity to file his objections and adduce evidence, if any and then decide the matter after hearing the aggrieved person, in the instant case the petitioner..... A copy of the report made by the Revenue Divisional Officer should be furnished to the petitioner and thereafter the petitioner should be given time to file his objections and adduce evidence, if any, and then the Collector shall decide the matter after hearing the petitioner, as to whether the petitioner belongs to Konda Reddy Community or not. In the event it is held that the petitioner does not belong to

Konda Reddy community, the Collector shall cancel the community certificate issued to the petitioner by the Tahsildar that he belongs to Konda Reddy Community and intimate to respondents.” The fact that the appellate authority has given opportunity to the petitioners to produce additional evidence, if any, to prove their case, will not cure the inherent defect in the procedure followed by the Scrutiny Committee as well as the District Collector, more so in the absence of furnishing a copy of the report submitted by the Scrutiny Committee, even at that stage”.

7. Learned counsel for the petitioner submits that the District Level Scrutiny Committee has not conducted the enquiry as per Rule 8 sub-rule 4, 6, 7 of rule (4) of the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules, 1997. Therefore, the petitioner prays that these aspects can be examined by the Collector after verifying the record.

8. A perusal of the record shows, all the brothers and sisters of the petitioners were treated as Scheduled Tribe community and that aspect was also not examined by both the authorities. It is also asserted that report of scrutiny committee is not forwarded to petitioner which is in violation of principles of natural justice which is not specifically denied. In view of the above facts and circumstances, the impugned orders passed by the respondent authorities are liable to be set aside.

9. Therefore, the impugned orders are set aside and the matter is remanded to the 2nd respondent for passing orders afresh after supplying a copy of the scrutiny committee report to the petitioner and after hearing the petitioner.

10. Accordingly, the writ petition is allowed to the extent indicated above.

11. Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

A. RAJASHEKER REDDY, J

10th July 2017

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