

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1270 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P.No.31614 of 2017 in W.P.No.25489 of 2017 dated 01.08.2017. The appellant herein filed the aforesaid Writ Petition seeking a mandamus to declare the order passed by the 1st respondent in G.O.Rt.No.242 dated 26.07.2017 and the proceedings issued by the District Collector, Nizamabad District dated 15.02.2016, cancelling the BC-E certificate of the appellant-writ petitioner dated 05.11.2000, as arbitrary, illegal and in violation of the principles of natural justice.

On a complaint submitted by the 5th respondent, disputing the caste status of the appellant-writ petitioner and contending that he did not belong to the BC-E category, the District Collector, by proceedings dated 15.02.2016, cancelled the community certificate issued to the appellant-writ petitioner wherein he was declared as belonging to the BC-E category. Aggrieved thereby, the appellant-writ petitioner carried the matter in appeal to the 1st respondent which, by its order dated 26.07.2017, dismissed the appeal. Aggrieved thereby, the appellant herein invoked the jurisdiction of this Court.

The Learned Single Judge, by the interlocutory order under appeal, held that whether the prefix "Mirza" by itself would disentitle a person to be treated as belonging to the Backward Classes or not was a matter which was required to be considered

as a question of law in due course; as both the primary authority and the appellate authority had held that the appellant-writ petitioner did not belong to the Backward Classes, he was not inclined to suspend the order at the stage of admission; in so far as the *locus standi* of the 5th respondent was concerned, the judgment of the Supreme Court, in ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra***¹, had no application as Section 5 of the Andhra Pradesh (SC, ST & BC) Regulation of Issue of Community Certificates Act, 1993 (for short “the 1993 Act”) empowered the competent authority to enquire into the status of an individual whether he belonged to a particular community, and whether the certificate granted to him was in order or not, either *suo motu* or on a written complaint by any person; and the observations of the Supreme Court was restricted to the procedure contemplated under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short “the 2000 Act”), which had no application to the present case.

Sri B.Vijaysen Reddy, learned counsel for the appellant-writ petitioner, would compare Section 5 of the 1993 Act with Section 7 of the 2000 Act, to submit that, in the light of the judgment of the Supreme Court in ***Ayaaubkhan Noorkhan Pathan***¹, the 5th respondent did not have *locus standi* to question issuance of the caste certificate to the appellant-writ petitioner; though this contention of *locus standi* was specifically raised before the appellate authority, the said contention was not even dealt with;

¹ (2013) 4 Supreme Court Cases 465

the mere fact that the appellant-writ petitioner had a prefix called “Mirza” did not, by itself, necessitate the conclusion that he did not belong to the Backward Classes; neither the primary authority nor the appellate authority had examined the matter on merits, nor did they ascertain whether or not the appellant-writ petitioner belonged to the Backward Classes; they were merely swayed by the appellant’s prefix of “Mirza”; as the appellant-writ petitioner was unanimously elected as a Sarpanch, and had been holding the said office for the past four years, the balance of convenience was in his favour; and the order under appeal, and the orders impugned in the Writ Petition, were liable to be suspended.

On the other hand Sri V.Ravi Kiran Rao, learned counsel for the 5th respondent, would rely on the judgment of the Supreme Court, in ***Chairman and Managing Director, FCI and others vs. Jagdish Balaram Bahira***², to submit that, as both the primary and appellate authorities have held that the appellant-writ petitioner did not belong to the Backward Class category, this Court, in proceedings under Article 226 of the Constitution of India, would not interfere as that would mean that a person, who is not entitled for the benefits extended to the Backward Sections of society, would be permitted to hold office on the basis of a false caste certificate thereby denying those, who belonged to the Backward Classes category, to the benefits they are entitled to; the language of Section 7 of the 2000 Act is different from that of Section 5 of the 1993 Act; the latter provision is far wider in terms; Section 20(aa) of the A.P.Panchayat Raj Act, 1994 disabled a person, whose Backward class caste certificate was cancelled, from

² Judgment in Civil Appeal No.8928 of 2015 dated 06.07.2017

holding office as a Sarpanch; and the Learned Single Judge was justified in refusing to interfere with the orders passed by the primary and appellate authorities.

As noted hereinabove, the Learned Single Judge has, in the order under appeal, held that, in the light of the findings of the primary and the appellate authorities, the appellant-writ petitioner did not belong to the Backward Class category; and he was not inclined to suspend the order at that stage. The Learned Single Judge has, however, dealt with the submission of the learned counsel for the appellant-writ petitioner, *albeit prima facie*, that the 5th respondent did not have *locus standi* to seek cancellation of the caste certificate issued to the appellant-writ petitioner.

While this Court may not be justified in conclusively expressing its opinion on the *locus standi* of the 5th respondent to file a complaint under the 1993 Act, more so as this appeal is against an interlocutory order, we are required, at least *prima facie*, to consider whether or not the 5th respondent had *locus standi*, as this contention has been urged before us by Sri B. Vijaysen Reddy, learned counsel for the appellant-writ petitioner.

In ***Ayaaubkhan Noorkhan Pathan¹***, the 5th respondent therein had filed a complaint through an Advocate before the Scrutiny committee to recall the certificate, issued in favour of the appellant therein, on the ground that he had obtained employment by way of misrepresentation; he did not actually belong to the Scheduled Caste category; and, as the appellant professed the religion of Islam, he could not be a Scheduled Tribe. The scrutiny committee rejected the said application holding that they lacked power to recall or review the caste validity certificate as there was

no statutory provision that provided for the same. Aggrieved thereby, the 5th respondent filed a writ petition before the Bombay High Court which set aside the order, and remitted the matter to the scrutiny committee. Aggrieved thereby, the matter was carried in appeal to the Supreme Court which initially granted stay of the said judgment of the Bombay High Court, and subsequently modified the said order directing the scrutiny committee to re-examine the matter, and submit a report to it within three months.

With respect to the contention, urged on behalf of the appellant-writ petitioner, that the 5th respondent, who did not belong to any reserved category, had no *locus standi* to challenge the appellant's certificate, and that the High Court had committed an error in directing the scrutiny committee to entertain the complaint filed by the 5th respondent, the Supreme Court held that a stranger could not be permitted to meddle in any proceeding unless he satisfied the authority/court that he fell within the category of an aggrieved person; only a person who had suffered, or suffers from, legal injury could challenge the act/action/order etc in a court of law; a writ petition, under Article 226 of the Constitution of India, was maintainable either for the purpose of enforcing a statutory or legal right, or when there was a complaint by the appellant that there had been a breach of a statutory duty on the part of the authorities; existence of such a right was a condition precedent for invoking the writ jurisdiction; the expression "*person aggrieved*" did not include a person who suffered from a psychological or an imaginary injury; the person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised; and, as the 5th respondent

therein did not belong to the Scheduled Tribe Category, the garb adopted by him of serving the cause of Scheduled Tribe candidates, who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether the 5th respondent was, in fact, in a legitimate position to lay any claim before any forum whatsoever. The Supreme Court, thereafter, held that, under ordinary circumstances, a third person, having no concern with the case at hand, could not claim to have any *locus standi* to raise any grievance whatsoever; however in exceptional circumstances, if the actual persons aggrieved because of ignorance, illiteracy, inarticulation or poverty, was unable to approach the Court, and a person, who had no personal agenda or object in relation to which he could grind his own axe, approached the Court, then the Court may examine the issue; and in exceptional circumstances, even if his bona fides were doubted, but the issue raised by him, in the opinion of the Court, required consideration, the Court could proceed *suo motu* in such respect.

While the Supreme Court, in **Ayaaubkhan Noorkhan Pathan¹** was concerned mainly with the question whether the 5th respondent therein was a person aggrieved, in which event alone would he have *locus standi* to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India, we must also examine the submission of Sri V.Ravi Kiran Rao, learned counsel for the 5th respondent, that the scope of Section 5 of the 1993 Act is far wider than Section 7 of the 2000 Act. It is, therefore, useful to read Section 7 of the 2000 Act in juxtaposition with Section 5 of the 1993 Act.

Section 7 of the 2000 Act	Section 5 of the 1993 Act
Confiscation and cancellation of false certificate:- (1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category has obtained a false Caste Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, suo motu, or otherwise call for the record and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by an order cancel and confiscate the certificate by following such procedure as prescribed, after giving the person concerned an opportunity of being heard, and communicate the same to the concerned person and the concerned authority, if any. (2) The order passed by the Scrutiny Committee under this Act shall be final and shall not be challenged before any authority or court except the High Court under Article 226 of the Constitution of India.	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 suomotu 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 7(1) of the 2000 Act enabled the scrutiny committee, either *suo motu* or otherwise, to call for the records and enquire into the correctness of the community certificate and, if it was of the opinion that the certificate was obtained fraudulently, it could, by an order, cancel and confiscate the certificate. Section 5(1) of the 1993 Act enables the District Collector, in cases where a person belonging to a Backward Class has obtained a false community certificate to the effect that either himself or his children belongs to such a caste, to 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 is entitled, by notification, to cancel the certificate.

While Section 7(1) of the 2000 Act confers power on the scrutiny committee either *suo motu* or otherwise to call for the records, the language used in Section 5(1) of the 1993 Act is wider and enables the District Collector to call for the records either *suo motu* or on a written complaint “*by any person*”. The words “*any person*” can only mean that the validity of the caste certificate, issued earlier, can be put in issue by “*any person*”, and not necessarily by a person who has suffered legal injury on such a caste certificate being issued to the person against whom the complaint was made for cancellation of the caste certificate.

While the jurisdiction of the District Collector can be invoked by any person, the scope of interference by the scrutiny committee under Section 7(1) of the 2000 Act, and by the District Collector under Section 5(1) of the 1993 Act, is limited. It is only if they are of the opinion that the caste certificate was obtained fraudulently,

can they cancel the said certificate. The object, of a complaint being entertained at the behest of “*any person*” under Section 5(1) of the 1993 Act, is only to ensure that a person, who does not belong to the Backward Classes, does not secure any benefit which was meant to be extended exclusively in favour of the backward classes, for he would have thereby deprived a person, belonging to the Backward Classes, of the said benefit.

In ***Jagdish Balaram Bahira***² the Supreme Court held that when a person, who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution, as a person who is disentitled to the benefit of a welfare measure obtains the benefit; this deprives a beneficiary, who is genuinely entitled to receive those benefits, of a legitimate entitlement; and this constitutes an egregious constitutional fraud as well as fraud on the statutes which implemented the provisions of the Constitution.

We are satisfied, *prima facie*, that the 5th respondent was entitled to file a complaint under Section 5(1) of the 1993 Act, and the orders passed by both the primary and appellate authorities could not have been set aside solely on this ground. We are, however, of the opinion that the appellant-writ petitioner’s contention on merits necessitates examination at the interlocutory stage, as dismissal of the WPMP has resulted in his having to await a final decision in the writ petition and, in the interregnum, to suffer the possibility of being removed from office, and thereby not being able to function as a Sarpanch for the remaining term of a year or so.

To the limited extent W.P.M.P.No.31614 of 2017 in W.P. No.25489 of 2017 was dismissed, the order under appeal is set aside, and the WPMP is restored to file. All the respondents, including the 5th respondent, shall file their counter-affidavits within two weeks from today. It is open to the appellant-writ petitioner to request the Learned Single Judge to hear the said WPMP any time after two weeks from today.

The Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

04th September, 2017

Note: Issue C.C. in two days.
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Date: 04.09.2017

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