

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.10412 OF 2009

ORDER:

This writ petition is filed assailing the validity of the order of the 2nd respondent vide proceedings No.Roc.C3/271/2003, dated 15.10.2004 and confirmation of the same by the 1st respondent vide G.O.Rt.No.302, Backward Classes Welfare (C1) Department, dated 27.09.2008.

2. It is the case of the petitioner that he was born and brought up at Chittoor, Chittoor District, Andhra Pradesh. His mother hails from Chittoor and his father from Arcod, Tamil Nadu State. In the year 1961, the father of the petitioner married his mother at Chittoor and his entire family members are staying all the time at Chittoor. His father was a Railway employee and he was discharging his duties in different places in southern States by maintaining the entire family at Chittoor. His mother was working as Accountant in Chittoor Municipality, Chittoor and retired in the year 1996 and whereas his father retired in the year 1990 and died in the year 2007. That he belongs to Gavara Community, which is recognized as Backward class community, both in the State of Andhra Pradesh and in the State of Tamil Nadu. He also studied at Chittoor from 1st class to Graduation at Chittoor. All his school certificates, his caste has been shown as

Gavara, which community his father belongs to. He was issued caste certificate by the 3rd respondent on 04.08.1993 and again on 29.03.1995 to the effect that he belong to Gavara community, which is a recognized Backward class community. That his mother belongs to 'Baliya' caste and marriages had been taking place among both the communities since time immemorial as they were allowed and that there is no dispute of his father's caste i.e., 'Gavara' which community prevailing predominantly in Tamil Nadu. That the petitioner possessed B.Sc., B.Ed., qualification and appeared for DSC 2003 seeking appointment for the post of School Assistant (Maths) and when he succeeded in written test, he was directed to produce latest caste certificate in respect of his community. He requested the 3rd respondent to grant fresh certificate, who refused to issue the same on the ground that his father hails from Tamil Nadu. Aggrieved by the same, petitioner filed WP No.10378 of 2004 and obtained orders directing DSC to consider his case basing on the old caste certificates issued by the 3rd respondent during the year 1992-1993. However, the DSC, Chittoor ignored the said orders. It is stated that his father made a representation through an advocate to the 2nd respondent requesting to direct the 3rd respondent to make an enquiry and issue fresh caste certificate. The RDO, Chittoor, conducted enquiry and reported that since his father had no blood relatives in Chittoor town, his request was not

considered. Thereafter, it was referred to DLSC and his father appeared before DLSC and produced documentary evidence, such as caste certificate issued in 1992-1995, his school certificates, identity card etc. The said committee in turn referred the matter to be enquired into by BCWO, Chittoor and DDSW, Chittoor and to submit a report. The said committee submitted a report stating that the petitioner's father belongs to 'Gavara Community' and mother belongs to Baliya caste; that the entire family members speak Telugu at home and that there are no relatives of his father at Chittoor, as such, the issuance of caste certificate in favour of petitioner is not possible. Government Memo No.30870/J1/90-2, Social Welfare (J) Department, dated 09.05.1991, envisages that it is not desirable to extend the benefit of reservation to the children of migrants by virtue of appointment claiming under BC quota even though the particular caste existed in the list of Backward classes of both states i.e., State of origin and State of migration. Basing on the said report, the 2nd respondent cancelled the caste certificates issued by the 3rd respondent on 04.08.1993 and 29.03.1995. Aggrieved by the said order dated 15.10.2004, the petitioner filed W.P.No.25004 of 2004, which was disposed by this Court on 24.10.2005 directing the petitioner to file an appeal before the 1st respondent. On an appeal being filed by the petitioner, the 1st respondent passed orders in G.O.Rt.No.302, dated 27.09.2009, rejecting his

request and confirmed the order of the 2nd respondent dated 15.10.2004. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the writ petition stating that the M.R.O, Chittoor had enquired the caste status of the petitioner in detail and issued an endorsement rejecting the applicant's request, as he is native of Vellore District, Tamil Nadu State and submitted his report to the R.D.O, who in turn submitted the said report to the 2nd respondent stating that the father of the petitioner is a Railway employee in Tamil Nadu and worked nearly for 30 years; that after his retirement, he settled at Chittoor; that during his enquiry, he was directed to furnish the caste certificates of his blood relatives and other documentary evidences if any, to substantiate his claim for issuance of 'Gavara' caste. In the said enquiry, the applicant had stated that he had no blood relatives in Chittoor town and that there is no other documentary evidence to substantiate his claim that he belong to 'Gavara (BC)' community. Basing on the report of the R.D.O, Chittoor, the District Collector passed orders referring the matter to the District Level Scrutiny Committee (DLSC) for a detailed enquiry and to submit its findings on the caste status of the applicant. The Chairman and Joint Collector, District Level Scrutiny Committee,

Chittoor had issued notices to the applicant to appear before the Scrutiny Committee to furnish all documentary evidences in support of his claim. Subsequently, the father of the petitioner being an applicant attended enquiry on 26.07.2004 and produced Caste certificates issued by the then M.R.O, Chittoor in the year 1983 and 1985, S.S.L.C issued by the Head Master, Islamiah High School, Arcot, Ration card in favour of the petitioner's father issued by the M.R.O, Chittoor, Election Photo identity card issued by the E.R.O, Chittoor and Endorsement to the claimant issued by the M.R.O, Chittoor. It is stated that the D.L.S.C committee asked the father of the petitioner to produce his Service Register for verification, but it is stated that the same is not available with them. Subsequently, the father of the petitioner was issued notice in Form-VI to appear before the DLSC meeting on 26.07.2004, after hearing both sides, the committee has referred the matter to Backward Class Welfare Officer (B.C.W.O), Chittoor and D.D.S.W, Chittoor, for conducting joint enquiry and submit their joint enquiry report. Subsequently, a joint report had been filed by BCWO and DDSW, Chittoor, wherein it is revealed that the father of the petitioner is a retired clerk (Loco Division) of Southern Railways; that his mother Smt.D.S.Narayanamma also retired from Government Service as Accountant in Chittoor Municipality and that she belongs to Balija (OC) Caste. The said enquiry further revealed that

the family of the father of the petitioner had no relatives in Chittoor and all the relatives are residing at North Arcot District and that there is no possibility to make enquiry and issue fresh caste certificate based on the caste certificate of the father of the petitioner. Basing on the reports of the RDO, Chittoor, joint enquiry report of the D.D.S.W and District B.C.Welfare Officer, Chittoor and findings of the D.L.S.C and also as per the circular instructions issued by the Government vide Memo No.30870/J1/90-2, S.W.(J) Department, dated 09.05.1991, the request of the father of the petitioner was rejected. Basing on the findings of the DLSC, an opportunity was given to the writ petitioner and on perusal of all records and as per the instructions issued by the Government from time to time, the caste certificates issued to the writ petitioner were cancelled vide proceedings R.Dis.No.C3/2711/2003, dated 15.10.2004 and that the aforesaid orders of the 2nd respondent (District Collector) were confirmed by the Government in the appeal filed by the writ petitioner and sought for dismissal of the writ petition.

4. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Social Welfare, appearing for the respondents.

5. Learned counsel for the petitioner submits that the family of the petitioner migrated to Chittoor District in the year 1961 and that the petitioner was born in the year 1976 at

Chittoor, i.e., after the date of notification issued in G.O.Ms.No.1793, Ed, dated 23.09.1970, by virtue which the 'Gavara' Caste is declared as BC-D category, as such, he is entitled to benefit of notification since he was born at Chittoor. He further contended that the Memo No.30870/J1/90-2, dated 09.05.1991 cannot be a ground for denying him the benefits under BC category. He also submits that the petitioner had also produced the caste certificate in favour of his father in the year 1955 before the DLSC, but the same was not properly considered. He submits that when once the father of the petitioner belongs to Gavara community, the benefits of notification in G.O.ms.No.1973, dated 23.09.1970 has to be extended to the petitioner also. He further submits that though the aforesaid aspect was raised before the appellate authority as well as original authority, but the same was not properly considered by them before passing the impugned order. In support of his contention, he relied on the judgment reported in **Union of India and others v. Dudh Nath Prasad**¹ stating that since the petitioner's family migrated to Chittoor District, in the year 1961 from Tamil Nadu for all practical purposes, they should be treated as residents of Chittoor District and benefit of notification issued under G.O.Ms.No.1793, Edn., dated 23.09.1970 has to be extended to the petitioner. He also relied on the circular

¹ AIR 2000 Supreme Court 525

No.12017/1/2002-BCC, dated 25.11.2002 issued by the Government of India in support of his contentions.

6. On the other hand, learned Assistant Government Pleader for Social Welfare appearing for the respondents submits that the petitioner has not shown any acceptable evidence showing that he belongs to Gavara community and even that even if the petitioner belongs to Gavara community, by virtue of Memo No.30870/J1/90-2, dated 09.05.1991, the said benefit cannot be extended to him, since the parents of the petitioner migrated to Chittoor from Tamil Nadu.

7. In this case, it is to be seen that admittedly, petitioner's mother belong to Balija community and his father belongs to Gavara community, who migrated from Tamil Nadu State to Chittoor District, erstwhile Andhra Pradesh State. Even after enquiry being conducted by the R.D.O, Chittoor District, the District Collector, Chittoor, referred the matter to the D.L.S.C for conducting an enquiry. After considering the documents filed by the applicant i.e., father of the petitioner in support of his claim, the said DLSC referred the matter to be enquired by the D.D.S.W and B.C.W.O. In pursuant to the said orders, the Deputy Director Social Welfare, Chittoor and District B.C.W.O, conducted an enquiry, after affording an opportunity of hearing to the father of the petitioner and after considering the documents filed by him, submitted a joint report stating that there are no relatives of the father of the petitioner at

Chittoor and they also observed that the petitioner could not produce any evidence to show what are the customs followed in their family. It is also observed that the Service Register of the father of the petitioner was not produced. Basing on the reports of the RDO and also on the reports of the DLSC as well as DDSW and BCWO, the competent authority found that it is not possible to issue Caste Certificate in favour of the petitioner and issued impugned proceedings. Though the petitioner claims that his father was issued Gavara Caste certificate, but the fact remains that his mother belongs to Balija community, which is OC category. The above said fact was not denied either in the writ petition or in the enquiry before the DLSC or before the competent authorities. When once it is revealed in the enquiry conducted by the competent authorities that the relatives of the father of the petitioner are not residing at Chittoor and also that the petitioner failed to prove that he was brought up as per the customs of Gavara community, no mandamus can be granted in this writ petition. Though the petitioner has relied on the judgment **Union of India and others v. Dudh Nath Prasad (supra)**, the same is not applicable to the facts of the present case on hand.

In **Valsamma Paul (Mrs) v. Cochin University and others**², the Hon'ble Supreme Court held as follows:

“34. In [Murlidhar Dayandeo Kesekar v. Vishwanath Pandu, IT](#) (1995) 3 SC 563 and [R. Chandevappa v. State of Karnataka, IT](#) (1995) 7

² (1996) 3 Supreme Court Cases 545

SC 93, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under [Article 16\(4\)](#). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also undergo have had same the handicaps, and must have been subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under [Article 15\(4\)](#) or 16(4), as the case may be. Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.”

In the aforesaid judgment, the Hon’ble Supreme Court categorically held that when a member is transplanted into the Dalits, Tribes and OBCs, he/ she must have been subjected to disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. In the instant case, the father of the petitioner though originally belongs to Gavara community, which comes under BC-D category, he married to a Balija woman, which caste belongs to OC category. Admittedly, the father and mother of the petitioner settled at Chittoor and also there are no relatives of the father of the petitioner at Chittoor District. Moreover, the father of the petitioner belongs to Arcot, Tamil Nadu State and that the Gavara caste predominantly prevails in Tamil Nadu State. As elicited from the enquiry by the competent authorities, there is no evidence with regard to customs being followed by the petitioner as that of Gavara

caste at Chittoor and also that there are no relatives of the father of the petitioner resides at Chittoor. Moreover, D.L.S.C, D.D.S.W and B.C.W.O, by conducting a detailed enquiry, recommended for rejection of the caste certificate. In view of above facts and circumstances, I do not see any merit in the writ petition.

Accordingly, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

24-07-2017
kvs



A.RAJASHEKER REDDY,J

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kvs



