

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.23764 OF 2006

ORDER:

Petitioners, who claim that they belong to Koya and Lingadharikoya Scheduled Tribe and hailed from Bodu Village, Tekulapalli Mandal of Khammam District, filed this writ petition questioning the G.O.Ms.No.82 Social Welfare (CV.2) department dated 06.11.2006 wherein the Secretary to Government-appellate authority under Section 7 (2) of AP (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short 'Act 16 of 1993') confirmed the orders in Pro.No.D3-914-2000 dated 25.04.2002 passed by the District Collector, Khammam District, cancelled the Migration-cum-Caste certificates issued to the petitioners while ordering for initiation of criminal action against the petitioners as per rules framed in Act 16 of 1993 and Rules, 1997, being illegal, arbitrary and contrary to the provisions of the Act.

Brief facts of the case are that the petitioners, who claim to have belonged to Koya and Lingadharikoya community of Tekulapalli and Cherla Mandals of Khammam District, obtained Migration-cum-Caste certificates of Scheduled Tribe (Koya & Lingadharikoya as the case may be) from the Mandal Revenue Officer, Tekulapalli of Khammam District. When the caste certificate of one Vibhudhi Kistaiah S/o.Pochaiah, employee of the NFCL, Hyderabad, was sought for verification by the employer, the District Collector, Ranga Reddy, requested the District Collector, Khammam, to enquire into the veracity of the caste certificate of Vibhudhi Kistaiah S/o.Pochaiah. The Commissioner of Tribal Welfare, Hyderabad, also enquired into the caste certificate and

genealogy of the individual in question and confirmed that he does not belong to the Scheduled Tribe community and that he belongs to 'Balasantha' or 'Baharupi' caste, which are not notified as Scheduled Tribe and thereby requested to initiate action against the employee. The Revenue Divisional Officer, Kothagudem, who had conducted enquiry, submitted a report stating that there is no person by name V.Kistaiah S/o.Pochaiah R/o.Bodu (V) belonging to Lingadarikoya caste and such person never resided in the village in the past and also his father never resided in the village. He further submitted that there is no caste Lingadharikoya in Bodu (V) of Tekulapalli (M) in the past or present. Based on the said report of the Revenue Divisional Officer, a show cause notice was issued to the petitioners on 17.07.2000 asking as to why action should not be taken against them for fraudulently obtaining the Migration-cum-Caste certificates from the then Mandal Revenue Officer, Tekulapally. Petitioners submitted their explanation to the show cause notice stating that their ancestors lived in Bodu (V) and their community people migrated to City decades ago, they are living at Qutbullapur since more than 25 years and their relatives are residing at Medchal and Bowenpally. They further stated that amongst Koyas, a group of Koyas are engaged in Hasta Samudrika, Vaastu, they are called as 'Lingadhari Koya' and they also perform marriages. The petitioners state that the Enquiry Officer conducted enquiry behind their back and thereby requested to conduct enquiry in their presence after giving notices to them to prove their credentials of belonging to Bodu (V) of Tekulapalli (M). Thus, for providing a fair opportunity, the personal appearance of the petitioners was ordered before the District Level Scrutiny Committee on 28.09.2000 constituted under Rule 8 of the

Rules, 1997. Accordingly, the petitioners appeared before the Committee and gave their explanation. The Committee referred the matter to Joint Director, TCR& TI, Bhadrachalam, for detailed enquiry. The Joint Director conducted enquiry at all the places where the family members of the petitioners were said to have lived in Khammam and migrated later, recorded the statements of the elders of the villages and submitted report that either the forefathers of the petitioners or the petitioners never lived in Cherla and Tekulapally Mandals in Khammam District and as such there are no Lingadarikoyas exist in Khammam District. Hence, the petitioners were issued a final show cause notice dated 29.10.2001 by the District Collector, Khammam, along with copies of the reports of the Revenue Divisional Officer, Kothagudem, and Joint Director asking as to why the Migration-cum-Caste certificates of Scheduled Tribe (Koya, Lingadhari Koya as the case may be) issued to the petitioners shall not be cancelled and criminal action be initiated against them for obtaining such false certificates. Petitioners submitted their explanation to the same. Since the said explanation does not disclose any material evidence to consider the claim that they belong to Scheduled Tribe (Koya and Lingadhari Koya as the case may be) and hail from Khammam District, the District Collector, Khammam, vide Proceedings No.D3-914-2000 dated 25.04.2002 cancelled the certificates issued by the Mandal Revenue Officer, Tekulapalli, in favour of the petitioners. The petitioners preferred appeal under Section 7 (2) of Act 16 of 1993 before the first respondent. The appellate authority after hearing the petitioners/appellants personally and after considering the report submitted by the District Collector, rejected the appeal vide

G.O.Ms.No.82 dated 06.11.2006. Being aggrieved by the same, the present writ petition came to be filed.

Sri Vedula Venkata Ramana, learned senior counsel, appearing for the petitioners would contend that the petitioners were issued Migration-cum-Caste certificate of Scheduled Tribe (Lingadhari Koya & Koya) by the then Mandal Revenue Officer, Tekulapalli, on verification of the petitioners' claim. About 25 years ago, the petitioners and their forefathers migrated to City and started living at Qutbullapur and some of their relatives are residing at Medchal and Bowenpally of the Ranga Reddy District. For the purpose of obtaining Scheduled Tribe certificate, the petitioners were issued Migration-cum-Caste certificate of (Koya and Lingadharikoya) by the then Mandal Revenue Officer, Tekulapally (M), Khammam District, after due verification. At the instance of the District Collector, Ranga Reddy, to enquire into the veracity of the caste certificate of one Vibhudhi Kistaiah S/o.Pochaiah, during the course of enquiry of the caste certificate of Kistaiah, it came to light that along with petitioners, some others also obtained false certificates. The Committee got enquired into the matter after giving opportunity to the petitioners to appear before them and after considering their explanation, at the request of the petitioners, the matter was referred to the Joint Director TCR & TI, Bhadrachalam, for detailed enquiry. The Joint Director conducted enquiry at the places where the family members and relatives of the petitioners were said to have resided in Khammam and later migrated to City. The Joint Director recommended for cancellation of the caste certificates. Thereupon, a final show cause notice was issued to the to the petitioners stating as to why the Migration-cum-Caste certificates of Scheduled Tribe (Koya and

Lingadharikoya) shall not be cancelled and criminal action be initiated against the petitioners for obtaining said false certificates. Learned counsel would submit that there is no provision to issue Migration-cum-Caste certificate of Scheduled Tribe issued to the petitioners under the provisions of the Act 16 of 1993 and Rules 1997. It has no validity. The Migration-cum-Caste certificate cannot be used for the purpose of claiming benefits under the category of 'ST'. At best, the said certificate would only enable the petitioners to obtain the Community Certificates, but the petitioners never used the said certificates, petitioners never obtained any Community Certificates and they never claimed any benefits basing on the said Migration-cum-Caste Certificates. Petitioners preferred appeal to the first respondent under Section 7 (2) of Act 16 of 1993, but the first respondent-statutory appellate authority under the Act had dismissed the appeal vide impugned G.O. without considering any of the grounds raised by the petitioners in the appeal. Despite, the first respondent adopted a strange method of calling for the remarks of the second respondent and placing reliance on such remarks, adjudicated the appeal. The statutory appellate authority has to independently decide the appeal without being influenced by the remarks submitted by the primary authority. Learned counsel further contends that as the appeal itself is directed against the order of the second respondent, calling for remarks from the second respondent and placing reliance on such remarks without putting them to the notice of the petitioners amounts to violation of principles of natural justice. The first respondent appellate authority had not given any valid reasons for dismissing the appeal. The original authority District Collector based on the

report obtained by the Revenue Divisional Officer and Joint Director, behind the back of the petitioners, and without properly appreciating the same, cancelled the migration-cum-caste certificate issued. Learned counsel further contends that the petitioners were given the Migration-cum-Caste certificates by the Mandal Revenue officer, Tekulapalli, on enquiry about the claim of the petitioners. The petitioners never misled or misrepresented the facts to the authorities. Hence, initiation of criminal action against the petitioners is illegal and without any basis. Hence, the order of the original authority and the appellate authority are liable to be set aside.

The learned Government Pleader appearing for the respondents would contend that proper enquiry was conducted as envisaged under the provisions of Act 16 of 1993 and due opportunity was given to the petitioners before the enquiry officer, but the petitioners failed to adduce any legal and documentary evidence in respect of their claim of Scheduled Tribe (Lingadarikoya & koya as the case may be). The Government Pleader, while reiterating the averments of the counter, findings of the primary authority, he would further contend that the appellate authority after considering the contentions of the appellants in the appeal and based on the evidence available on record and after elaborated discussion, in exercise of the powers under Section 7 (2) of Act 16 of 1993 dismissed the appeal while confirming the order of the District Collector dated 25.04.2002. There is no illegality or irregularity in dismissing the appeal of the petitioners. He further urged that the claim of the petitioners that they belong to Lingadari Koya & Koya community, migrated from Boda (V) of Tekulapalli (M) of Khammam District and moved to City for

livelihood is found to be without any evidence. The appellate authority further held in the appeal that the petitioners prefixed surname 'Veesam' to their names which is common in Koya and Lingadhari Koya communities, but on verification of the documents produced by the Election commission their original surnames are found to be Vibudhi, which is commonly found among Balasanthu/Budiga Jangams community. Petitioners mentioned their surnames 'Veesam Vibhudhi' by adding 'Veesam' to their original surname 'Vibudhi'. On verification, it is found that the persons belonging to 'Balasanthu', who are also called as 'Bahurupi' or 'Pagativeshagallu' or 'Budigajangalu' residing in certain areas of Ranga Reddy District are obtaining bogus ST certificates. The first respondent after careful examination of the reports and material available on record dismissed the appeal. The petitioners were given ample opportunity at every stage one before District Level Scrutiny Committee and the Joint Director and even the appellate authority after affording the opportunity of personal hearing to the petitioners, dismissed the appeal. Hence, there is no irregularity or illegality in the order of the appellate authority and the writ petition is liable to be dismissed.

In the facts and circumstances of the case and in considered view of this Court, it is found that the Mandal Revenue Officer, Tekulapalli, had issued Migration-cum-Caste Certificate of 'ST' (Koya & Lingadharikoya) to the petitioners on their claim, without properly verifying the claim of the petitioners in Bodu (V). When the District Collector, Ranga Reddy, was sought to enquire into the veracity of the Caste Certificate of one Vibhudhi Kistaiah S/o.Pochaiah, the District Collector, Ranga Reddy, addressed a letter to the District Collector, Khammam, to verify and take

appropriate action in respect of the Migration Certificates issued to the petitioners. Thereafter, the District Collector got enquired into the matter through the Revenue Divisional Officer. The Revenue Divisional Officer issued notice to the petitioners. After submission of their explanation and evidence, on enquiry in the village, it is found that the petitioners or their forefathers do not belong to Boda (V) and there is no caste exists called as Lingadharikoya or Koya in the said Village and the claim of the petitioners was not supported by any evidence. Thereafter, on the request of the petitioners, the matter was referred to the District Level Scrutiny Committee, constituted under Rule 8 (1) of the Rules, 1997, for verification. The Committee issued notice to the petitioners and after receiving their explanation and personal evidence, came to the conclusion that the petitioners do not belong to Lingadharikoya or Koya of Boda (V) of Tekulapalli (M). At the request of the petitioners, again the matter was referred to the Joint Director, Bhadrachalam, who on independent enquiry came to the conclusion that the petitioners do not belong to Koya or Lingadhari Koya community. After elaborately discussing the matter, the District Collector, Khammam, passed order dated 25.04.2002 cancelling the Migration-cum-Caste Certificates of ST (Lingadharikoya or Koya) obtained by the petitioners from the then Mandal Revenue Officer, Tekulapalli (M), Khammam District, and also ordered to initiate criminal action against the petitioners as per the rules framed in AP (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules 1997. Petitioners carried the matter before the first respondent appellate authority under Section 7 (2) of Act 16 of 1993. The appellate authority after giving proper opportunity of personal hearing, on submission of

the evidence by the petitioners-appellants, after considering the reports of the District Collector and based on the evidence available on record and in exercise of power under Section 7 (2) of Act 16 of 1993 dismissed the appeal confirming the order of the District Collector dated 25.04.2002. On perusal of the order passed by the appellate authority, this Court is of the considered view that the contention urged by the learned counsel appearing for the petitioners before this Court that the appellant authority has not independently acted in dismissing the appeal and erred in relying on the report of the District Collector in dismissing appeal and the appellate authority has not considered the grounds raised in the appeal, does not merit consideration. Hence, the impugned orders do not warrant interference of this Court under Article 226 of the Constitution of India as there are no legal infirmities in the findings recorded by the primary and appellate authorities.

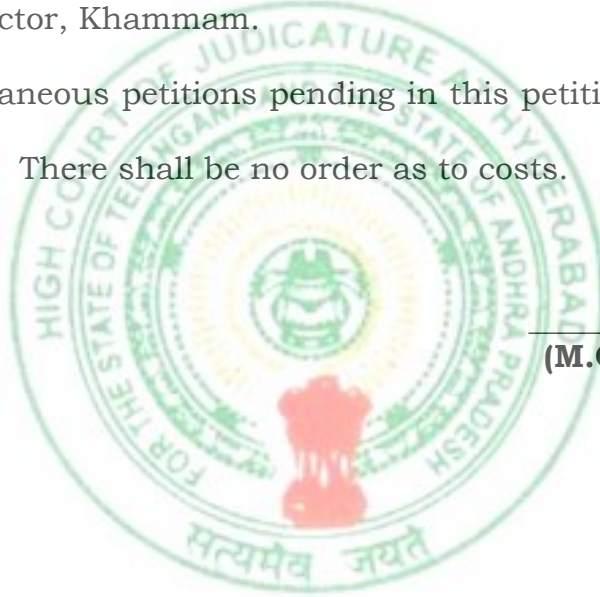
As regards initiation of criminal proceedings, learned counsel for the petitioners would contend that the petitioners have not played any fraud or misrepresentation in obtaining Migration-cum-Caste Certificates of 'ST' from the then Mandal Revenue Officer, Tekulapalli, Khammam District. But, the Certificates have no validity under law. However, the then Mandal Revenue Officer issued Certificates after due verification of the claim of the petitioners that they belong to Boda (V) of Tekulapalli (M) belonging to Lingadhari Koya or Koya communities, issued Migration-cum-Caste Certificates, but the petitioners never enjoyed any benefits out of the Certificates issued by the Mandal Revenue Officer, Tekulapalli. In those circumstances, initiation of criminal proceedings against the petitioners on the ground that they obtained caste certificates by playing fraud and misrepresentation

would not stand for legal scrutiny as the same is contrary to the provisions of Act 16 of 1993. Hence, ordering for initiation of criminal prosecution against the petitioners for obtaining Migration-cum-Caste Certificate is declared as illegal and accordingly to that extent the orders of the primary and appellate authorities are set aside while upholding the orders cancelling the Migration-cum-Caste Certificates.

Accordingly, the writ petition is partly allowed directing the respondents not to initiate any criminal prosecution against the petitioners in this regard as per the orders dated 25.04.2002 of the District Collector, Khammam.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

20.07.2018
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(M.GANGA RAO, J)