

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.1354 OF 2006

ORDER:

This Writ Petition is filed to issue a Writ of *Certiorari* calling for the records relating to proceedings No.C4/3707/01 dated 05.11.2004 of the Collector and District Magistrate, Karimnagar, as confirmed in the orders in Appeal issued in G.O.No.1 S.W. dated 07.01.2006 and quash the same as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India.

As the petitioner was selected and appointed as RTP Telegraph Assistant under ST quota, the third respondent addressed a letter to the first respondent-The Collector & District Magistrate, Karimnagar, for verification of petitioner's caste status. At the time of initial appointment, the petitioner submitted Educational Certificates i.e. X class, Transfer Certificate, etc. along with application for recruitment claiming 'BC' as his community status. At the time of regular appointment in the year 1984, he was asked to submit certificate from Tahasildar, Karimnagar, for verification. Pursuant thereto, the petitioner submitted a certificate showing that he belongs to 'Golla caste - ST'. At the instance of the third respondent, the first respondent referred the matter to the District Level Scrutiny Committee. The Committee after conducting enquiry submitted a report stating that the petitioner belongs to BC community, but not 'Golla-ST', basing on the said report of the Revenue Divisional Officer and Director of Tribal Welfare and Police authorities. Consequently, the first respondent issued proceedings No.C4-3207/2001 dated 05.11.2004 holding that the petitioner obtained caste certificate

from the Tahasildar, Karimnagar, fraudulently stating that he belongs to 'Golla-ST' community, filed bogus certificate, tried to grab the opportunity earmarked for the welfare of the Scheduled Tribe candidates and thereby cancelled the certificate and also directed the Mandal Revenue Officer, Karimnagar, to register a case for criminal prosecution in a Court of law under Section 10 of the Act 16, 1993 read with Rule 15 (a) and (b) of Andhra Pradesh (S.Cs., S.Ts., & B.Cs.) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997. The stand of the petitioner is that that while he was studying 5th class, in the year 1976, his father applied for issuance of 'Golla' caste certificate. Pursuant thereto, the then Tahasildar, Karimnagar, on the strength of the recommendations made by the Village Officer and Revenue Inspector concerned, issued Caste Certificate in L.Dis.No.A6/2509/76 dated 30.04.1976 showing the caste as 'Golla' superscribing as 'Semi Nomadic Tribe' and included in the list of Scheduled Tribes. The Deputy Secretary to Government, Education (FF) Department, Andhra Pradesh, Hyderabad, addressed a letter to the Secretary, Government of India, Department of Social Welfare, New Delhi, marking a copy thereof to the Director of Tribal Welfare showing 'Golla' as a Semi Nomadic Tribe. Therefore, the then Tahasildar issued the caste certificate as 'Golla' superscribing as 'Semi Nomadic Tribe'. Further, the then Tahasildar, Karimnagar, also renewed the Caste Certificate showing as 'Golla Tribe' on 25.04.1984. Thereafter, the petitioner was selected and appointed as a Short Duty Telegraph Assistant in the year 1982 in general category and later promoted as Section Supervisor (O) during the year 1996. At the time of submitting the

application for the post of Short Duty Telegraph Assistant, he has clearly stated that he belongs to BC-D group as 'Golla' and he never claimed reservation and hence the question of submitting bogus caste certificate to be selected and appointed as Short Duty Telegraph Assistant does not arise. The first respondent himself has submitted a caste certificate for verification to the third respondent stating that the petitioner belongs to Golla superscribed as 'Semi Nomadic Tribe' and without involvement of the petitioner, the then Tahasildar submitted the report based on the Village Officer and Revenue Inspector concerned stating that a report as per G.O.Ms.No.1790 Education Department wherein Gollas (Cattle Breeders) were included in 'Semi Nomadic Tribe' as evident from Government Letter No.835-FF1/58-1 dated 7.3.1968.

Sri D.Linga Rao, learned counsel for the petitioner, would contend that the petitioner was selected and appointed as a Short Duty Telegraph Assistant in general category and the petitioner never submitted any false and bogus certificate, but at the instance of the third respondent, the Tahasildar submitted a report based on G.O.Ms.No.1790 Education Department showing Golla (Cattle Breeders) as 'Semi Nomadic Tribe' as is evident from Government Letter No.835-FF1/58 dated 07.03.1968 and the certificate was issued based on the earlier certificate issued on the application of his father in the year 1976. Hence, the petitioner has not played any fraud in obtaining the said certificate to attract the offence under Section 10 of the Act 16, 1993 read with Rule 15 (a) and (b) of Andhra Pradesh (S.Cs., S.Ts., & B.Cs.) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997.

Hence, the impugned order as confirmed in Appeal issued in G.O.Ms.No.1 SW dated 07.01.2006 are liable to be set aside.

The learned Assistant Government Pleader appearing for the respondents would submit that the petitioner has obtained bogus certificate of 'Golla' superscribing as 'Semi Nomadic Tribe' and claimed reservation in the appointment of Short Duty Telegraph Assistant by fraudulent means and thereby deprived of the opportunity of other scheduled tribe candidates and hence he is liable for prosecution.

In the facts and circumstances of the case and in considered view of this Court, the petitioner has not obtained the certificate of 'Golla ST' on his own to illegally got appointed as Short Duty Telegraph Assistant in the Telegraph Department whereas the alleged caste certificates were issued on the application submitted by the father of the petitioner in the year 1976 and based on the report of the Village Officer and Revenue Inspector, on the strength of the G.O.Ms.No.1790 Education Department, where Gollas (Cattle Breeders) were included in 'Semi Nomadic Tribe' as evident from Government Letter No.835-FF1/58-1 dated 07.03.1968. At the time of promotion to the post of Section Supervisor (O), at the instance of the third respondent, the then Tahasildar enquired into the matter and submitted a report stating that the petitioner has submitted a bogus certificate. However, from the material available on record, it is clear that the caste certificates submitted by the petitioner, which are alleged to be bogus, were issued pursuant to the application submitted by the father of the petitioner in the year 1976 and after due recommendations of the then Village Officer and Revenue Inspector. Hence, no *mens rea*

can be attributed to the petitioner to commit the alleged offence i.e. submitting a bogus certificate, to attract punishment under Section 10 of Act 16, 1993 read with Rule 15 (a) and (b) of Andhra Pradesh (S.Cs., S.Ts., & B.Cs.) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997.

Hence, passing of the impugned order insofar as initiation of Prosecution under Section 10 of Act 16 of 1993 read with Rule 15 (a) and (b) of Andhra Pradesh (S.Cs., S.Ts., & B.Cs.) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997, and as confirmed in orders in Appeal issued in G.O.Ms.No.1 SW dated 07.01.2006 is illegal and contrary to the provisions of Section 10 of Act 16 of 1993. Therefore, the Prosecution is liable to be set aside and is accordingly set aside. Insofar as issuance of the certificate as 'Golla' superscribing as 'semi Nomadic Tribe' is concerned, the same is proper and warrants no interference of this Court as the petitioner is not entitled for issuance of caste certificate as 'Golla-ST'.

Accordingly, the Writ Petition is allowed in part.

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

(M.GANGA RAO, J)

26th July, 2018
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