

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.6035 OF 2007

ORDER:

This writ petition is filed challenging the action of respondent Nos.2 and 3 in conducting fresh enquiry on the social status of the petitioner and sought direction to respondent No.2 to pass appropriate orders as per the memo dated 18.08.2005 issued by respondent No.2.

2. It is the case of the petitioner that for the last three generations of the petitioner's family was being treated as Scheduled Tribe and he belongs to 'Bartika' community, which is a notified Scheduled Tribe. His father, basing on the ST certificate, secured a job in the Government of Composite State of Madras as River Conservancy Inspector at Penumandi, Central Public Health Engineering Division, Madras. The petitioner obtained caste certificate dated 05.11.1986 from the Tahsildar, Visakhapatnam, to the effect that he belongs to 'Bartika' of Scheduled Caste community. Basing on the same, the petitioner was selected for Group-I services in the year 1994 (direct) in the vacancy reserved for Scheduled Tribe. While so, the Director of Tribal Welfare, Hyderabad conducted an enquiry and submitted a report dated 10.03.1996 to the Government stating that the petitioner does not belong to Scheduled Tribe caste. Challenging the same, the petitioner filed W.P.No.9607 of 1997 and this Court, by order dated 30.03.1998, quashed the report and held that the Director of Tribal Welfare, Hyderabad, is not the competent authority to conduct enquiry and directed the Collector to conduct the enquiry.

3. In the meantime, the Government of Andhra Pradesh, vide Memo No.33610/Police-E/93-12, dated 28.06.1994, directed the District Collector, Hyderabad, to verify the social status antecedents of the petitioner. In pursuance of the same, the District Collector, Hyderabad, conducted enquiry and came to the conclusion that the petitioner belongs to Bartika Caste, which is notified as a Scheduled Tribe. Accordingly, he forwarded letter No.D5/4553/94, dated 22.08.1994, to the Government stating that the caste certificate of the petitioner is genuine. After seven years of the disposal of W.P.No.9607 of 1997, a Public Interest Litigation in W.P.No.799 of 2003 was filed supporting the report of the Director of Tribal Welfare, Hyderabad, and a Division Bench of this Court directed respondent No.2 herein to conduct enquiry by taking the report of the Director of Tribal Welfare, Hyderabad, as a complaint. Thereafter, the third respondent, by his proceedings dated 06.07.2004, appointed a Revenue Team of officials to investigate into the genuineness of the caste certificate of the petitioner. Simultaneously, the District Tribal Welfare Officer, Visakhapatnam, has also taken up a separate enquiry into the social status of the petitioner as per Rule 8(d)(7) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issuance of Community Certificates Act, 1993 (Act No.16 of 1993) (for short, the Act). The District Tribal Welfare Officer, Visakhapatnam, after conducting the enquiry, by his proceedings dated 09.08.2004 submitted a report to respondent No.3 stating that the report of the Director of Tribal Welfare,

Hyderabad, was not correct and that the petitioner belongs to 'Bartika' (ST).

3. The team of Revenue Officers appointed by respondent No.3, after enquiry, submitted a report dated 27.08.2004 to respondent No.3 stating that the petitioner belongs to 'Bartika' caste which comes under the Scheduled Tribe category. In spite of the same, respondent No.2, by his letter dated 11.05.2005, requested respondent No.1 to place the matter before the State Level Scrutiny Committee. Pursuant to the same, respondent No.1 issued a Memo dated 18.08.2005 directing respondent No.2 to take a final decision in the light of the findings of the District Level Scrutiny Committee, Visakhapatnam and to pass appropriate orders. Thereafter, respondent No.2 again referred the matter to respondent No.3 for conducting fresh enquiry, upon which, respondent No.3 issued a notice dated 27.02.2007 directing the petitioner to appear before him on 09.03.2007. Questioning the action of the respondents in referring the matter again and again in spite of there being reports to show that he belongs to 'Bartika' community (ST), the petitioner is constrained to file the present writ petition.

4. This Court, by order dated 28.12.2007 in WPMP.No.7712 of 2007, granted interim stay in favour of the petitioner.

5. The respondents filed a counter-affidavit stating that the order passed by respondent No.3 dated 27.02.2007 is only a notice directing the petitioner to participate in the enquiry; that there is nothing wrong in facing the enquiry and that the said order was

passed in pursuance of the Memo of respondent No.1 dated 18.08.2005 and sought to dismiss the writ petition.

6. Heard.

7. It is seen from the death register extract of Anakapalli Municipality for the year 1952-53 that the great-grandfather—Lakshmana Mahisevo, grandfather-J.Bapu Rao, and father of the petitioner-J.Srihari Venkateswara Rao, belong to 'Bartika' of Scheduled Tribe community. It is also evident from the school admission record of the father of the petitioner vide admission No.2326, dated 24.06.1930, which is pre-independence time, that the father of the petitioner borne on 10.10.1919 and was admitted in the Aided Elementary School, Trunk Road, Ichapuram and Surangi Government High School, Ichapuram during 1926 to 1936. After completion of education, the father of the petitioner, basing on the ST certificate, secured a job in the Government of Composite State of Madras as River Conservancy Inspector at Penumandi, Central Public Health Engineering Division, Madras. In the record of Pre-independence, the social status of the father of the petitioner was clearly mentioned as oriya speaking 'Bartika'. These documents were verified by the concerned officers of the respondents and submitted reports to the effect that the caste of the petitioner is 'Bartika' (ST). Apart from the aforesaid documentary evidence, the concerned officers of the respondents also made physical verification with the neighbours, recorded their statements and tallied with the antecedents about the social status of the petitioner before issuance of their reports.

8. A perusal of the above records, *prima facie* it is clear that the petitioner and his forefathers belong to 'Bartika' of ST community. There is no evidence to show that in order to avail the benefit of ST, the petitioner and his forefathers categorized themselves as 'Bartika' community. Apart from the same, the school records of the father of the petitioner, which have been issued pre-independence time, clearly show that he belongs to 'Bartika' of ST community. The Tahsildar, Visakhapatnam, issued the caste certificate dated 05.11.1968, obviously after verifying the records and after making necessary enquiry with the neighbours of the petitioner.

9. It is necessary to refer to Sections 5 to 9 of the Act, which read as under:

“5. Cancellation of the 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 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 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.

6. Burden of Proof:- Where an application is made to the competent authority under Section 3 for the issue of a community certificate in respect of Scheduled Castes,

Scheduled Tribes, or Backward Classes or in any enquiry conducted by the competent authority or the authority empowered to cancel the community certificate or the appellate authority under this Act or in any trial of offence under this Act, the burden of proving that he belongs to such Caste, Tribe or Class shall be on the claimant.

7. Appeal and review:- (1) Any person aggrieved by an order passed under sub section (1) of Section 4 by the competent authority rejecting an application made to it under Section 3, may within thirty days from the date of receipt of such order, appeal to the District Collector and the District Collector may after giving the appellant an opportunity of being heard, either confirm the order appealed against or set aside the said order and direct the competent authority to issue a community certificate.

(2) Any person aggrieved by an order passed under Section 5, by the District Collector may, within thirty days from the date of publication of such order in the Andhra Pradesh Gazette, appeal to the Government and the Government may, after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed, confirm or set aside the order appealed against.

(3) The Government may, on an application received from any person aggrieved by an order passed by the Government under sub section (2) of Section 5, within thirty days of the publication of that order in the Andhra Pradesh Gazette, review any such order if it was passed by them under any mistake, whether of fact or law or in ignorance of any material fact.

(4) Pending disposal of an appeal under sub section (2) or review under sub section (3), it shall be competent for the Government to stay the operation of the order against which an appeal or review, as the case may be, is filed.

8. Power of revision by Government:- (1) The Government may, at any time, either suo motu or on an application made to them within the prescribed period, call for and examine the record, relating to any decision made or order passed by any person, officer or authority subordinate to them for the purpose of satisfying themselves as to the legality, regularity or propriety of such decision or order and if, in any case it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub section (1) in respect thereof."

10. A perusal of the chronological events in the present case, it is clear that in pursuance of the report dated 10.03.1996 submitted by the Director of Tribal Welfare, Hyderabad, to the Government, the petitioner filed W.P.No.9607 of 1997 and this Court quashed the same. Thereafter, the Division Bench of this Court in the PIL in W.P.No.799 of 2003, directed respondent No.2 to conduct enquiry by taking the report dated 10.03.1996. Thereafter, the District Tribal Welfare Officer, Visakhapatnam, after conducting enquiry, submitted report dated 09.08.2004 stating that the report of the Director of Tribal Welfare Hyderabad, dated 10.03.1996, was incorrect and that the petitioner belongs to 'Batrika' of ST caste. Even the team of Revenue Officers appointed by respondent No.3 also submitted a report dated 27.08.2004 stating that the petitioner belongs to 'Batrika' of ST caste. Thereafter, respondent No.2 issued letter dated 11.05.2005 requesting respondent No.1 to place the matter before the State Level Scrutiny Committee. Thereafter, respondent No.1 issued memo dated 18.08.2005 directing respondent No.2 to take a final decision in the light of the findings of the District Level Scrutiny Committee, Visakhapatnam. In spite of the said reports and evidence, it is not known what transpired respondent No.2 to refer the matter to respondent No.3 for conducting fresh enquiry.

11. It is to be noted that nowhere in the earlier enquiries it has been revealed that the certificate obtained by the petitioner is a fraudulent one. It is apparent that the social status of 'Batrika' has been claiming from the forefathers of the petitioner, but it is not for

the first time by the petitioner. When respondent No.1 issued memo dated 18.08.2005 directing respondent No.2 to take a final decision in the light of the findings of the District Level Scrutiny Committee, Visakhapatnam, respondent No.2 ought to have passed the orders. Conducting of repeated enquiries on the same cause of action would not serve any purpose and it amounts to putting the petitioner to mental agony and hardship.

12. In the circumstances, it can be said that the subsequent exercise undertaken up by respondent Nos.2 and 3 for conducting enquiry and calling for explanation of the petitioner is unwarranted, since the entire record by then is available with them, and hence respondent No.2 ought to have passed orders in the light of the memo of respondent No.1 dated 18.08.2005. Hence, on this ground alone, the notice dated 27.02.2007 of respondent No.3 is set aside and respondent No.2 is directed to pass orders in the light of the memo of respondent No.1 dated 18.08.2005. It is made clear that the observations made in this order shall not be construed as having been declared the caste certificate of the petitioner is genuine one, but are made without expressing any opinion in that regard only to curtail the repeated enquiries on the same issue.

13. The writ petition is allowed to the extent indicated above. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 31-12-2018
TJMR