

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.34846 of 2017

ORDER:

In the present writ petition, challenge is to the order of the first respondent State Government issued vide G.O.Ms.No.28, Backward Classes Welfare (F) Department, dated 12.10.2017.

2. Heard Sri P.Gangaiah Naidu, learned Senior Counsel representing Sri N.Bharat Babu, learned counsel for the petitioner and the learned Government Pleader for Social Welfare for the respondents 1 to 4 and Sri M.Srikanth, learned counsel for the 5th respondent apart from perusing the material available before the Court.

3. Against the petitioner who got selected as Hindi Pandit under B.C Category in the year 2012, 5th respondent herein lodged a complaint stating that the petitioner does not belong to B.C Category. On the basis of the said complaint, the matter was referred to the District Level Scrutiny Committee and the said Committee submitted a report. Thereafter, the District Collector passed an order vide Proceedings D.Dis.C3/2082/2013, dated 27.06.2014, cancelling the B.C Caste Certificate of the writ petitioner. Assailing the validity of the said order passed by the District Collector, petitioner herein filed the statutory appeal before the State Government on 19.07.2014. Petitioner earlier also filed W.P.No.28050 of 2014 for a direction to the first respondent for disposal of the said appeal dated 19.07.2014. The said writ petition was disposed of by this Court on 19.09.2014, directing disposal of the appeal filed by the petitioner within a period of two months.

4. By way of Memo No.2061/C/A2/2014, dated 18.08.2016, the State Government disposed of the appeal and passed an order under Section 7 of

the Andhra Pradesh (Schedule Castes, Schedule Tribes & Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993) keeping the orders of the District Collector, dated 27.06.2014 under abeyance until further orders. Subsequently, the 5th respondent filed W.P.No.34177 of 2016 questioning the above said Memo No.2061/C/A2/2014, dated 18.08.2016, issued by the State Government and the said writ petition is still pending according to the learned counsel for the fifth respondent. The State Government passed an order vide G.O.Ms.No.40, Backward Classes Welfare (C) Department, dated 03.11.2016, obviously reviewing the earlier orders passed vide Memo No.2061/C/A2/2014, dated 18.08.2016. Questioning the said order, petitioner herein filed W.P.No.40666/2016 and this Court on 17.02.2017 allowed the said writ petition and the operative portion of the said order at paragraph No.6 reads as under:

“6. In the circumstances, the impugned G.O.Ms.No. 40 Backward Classes Welfare (C) Department dated 3.11.2016, is set aside and the matter is remanded to the first respondent for re-consideration of the issue in the light of the orders passed by the first respondent on 18.8.2016 and for passing appropriate orders after hearing the petitioner in accordance with law. However, it is open to the petitioner to raise all grounds that are available to him under law in the said hearing.”

5. As against the said order passed by the learned Single Judge, 5th respondent herein filed W.A.No.282 of 2017. A Division Bench of this Court on 14.03.2017 passed an order and the operative portion of the same reads as under:

“We consider it appropriate, in such circumstances, to direct the Principal Secretary, BC Welfare Department to give both the 1st respondent and the appellant herein an opportunity of being heard and, thereafter, pass appropriate orders at the earliest, and in any event not later than four months from the date of receipt of a copy of this order.

The order of the Learned Single Judge is modified to the extent indicated hereinabove, and the Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.”

6. Thereafter, the State Government issued an order vide G.O.Ms.No.28, Backward Classes Welfare (F) Department, dated 12.10.2017, dismissing the appeal filed by the petitioner herein by confirming the orders of the District Collector dated 27.06.2014.

7. It is contended by the learned Senior Counsel Sri P.Gangaiah Naidu appearing for the petitioner that the order impugned in the writ petition is highly illegal, arbitrary and is violative of the principles of natural justice and violative of Article 14 of the Constitution of India. In elaboration, it is further contended by the learned Senior Counsel, that though this Court in the order dated 17.02.2017 in W.P.No.40666/2016 specifically directed the first respondent State Government to reconsider the issue in the light of the orders passed by the State Government earlier on 18.08.2016 after hearing the petitioner, the first respondent did neither consider the effect of the order dated 18.08.2016 nor the first respondent afforded reasonable opportunity of hearing to the petitioner herein.

8. On the other hand, it is contended by the learned Government Pleader so also the learned counsel for the fifth respondent that there is absolutely no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the impugned order is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted by them that only after affording complete opportunity to the petitioner herein, the first respondent passed the impugned order, as such, the same cannot be faulted nor it is open for the petitioner herein to contend that the said order is contrary to the orders passed by this Court in W.P.No.40666/2016. It is further contended by the learned counsel for the 5th respondent that the request made by the petitioner herein cannot be

considered in view of the Judgment of the Hon'ble Apex Court in *STATE OF MAHARASHTRA v. MILIND AND OTHERS*¹

9. There is absolutely no controversy that earlier when the petitioner herein approached this Court by way of filing W.P.No.40666 of 2016 questioning the order of the State Government passed in G.O.Ms.No.40, Backward Classes Welfare (C) Department, dated 03.11.2016, this Court allowed the said writ petition setting aside the order of the Government and remanded the matter to the first respondent for re-consideration of the issue in the light of the orders passed by the first respondent on 18.08.2016 after hearing the petitioner in accordance with law.

10. It is stated in the affidavit filed in support of the writ petition at paragraph 11 that pursuant to the orders of this Court, the first respondent issued notice to appear on 03.08.2017 and thereafter passed the orders under challenge. It is also submitted by the learned Senior Counsel that the said action on the part of the first respondent is a flagrant violation of the principles of natural justice and by any stretch of imagination affording one day for the petitioner herein to appear before the State Government for finalising the matter cannot be sustained in the eye of law nor does it amount to strict compliance of the provisions of the principles of natural justice. The order impugned, which is placed on record along with the writ petition as a material paper, shows that the notice was issued to the petitioner to appear before the first respondent on 03.08.2017. Obviously, the same is referable to reference No.13 of the impugned order, which is dated 25.07.2017. There is absolutely no material on record to show that any other opportunity was given to the petitioner herein before deciding the issue.

¹ (2001) 1 SCC 4

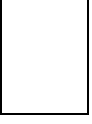
11. It is significant to note at this context that according to sub-Section 2 of Section 7 of Act 16 of 1993 an opportunity of being heard is required to be given before passing any order. The said opportunity, in the considered opinion of this Court is not a mere formality and the same is required to be afforded to the persons likely to be effected in its true letter and spirit. It is also required to be noted that in the order dated 17.02.2017 in W.P.No.40666/2016, this Court categorically directed the first respondent to reconsider the issue in the light of the orders passed on 18.08.2016 and to afford opportunity of hearing to the petitioner herein also. The impugned order did neither consider the order dated 18.08.2016 passed earlier nor afforded reasonable opportunity to the petitioner herein and on this ground alone the writ petition is liable to be allowed and the matter is required to be considered afresh.

12. For the aforesaid reasons, writ petition is allowed, setting aside the order passed by the first respondent vide G.O.Ms.No.28, Backward Classes Welfare (F) Department, dated 12.10.2017 and the matter is remanded to the first respondent for consideration afresh strictly in accordance with law, after giving opportunity to all the stake holders, within a period of three months from the date of receipt of this order. It is also made clear that it is open for all the parties to place before the first respondent the material in support of their respective cases. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 13.03.2018

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.34846 of 2017

Dated: 13.03.2018

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