
(2022) 12 TEL CK 0035
In the Telangana High Court
Case No : Writ Petition No. 28234 Of 2021

Challuri Venkataramana

APPELLANT

Vs

State Of Telangana And 5 Others

RESPONDENT

Date of Decision : 14-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 342

Citation : (2022) 12 TEL CK 0035

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : Vedula Chitralkha

Final Decision : Allowed

Judgement

1. In this Writ Petition, the petitioner is seeking a Writ of Certiorari or any other Writ to quash the proceedings of the 1st respondent in G.O.Ms.No.65 dt.16.09.2021 by dismissing the appeal of the petitioner and confirming the proceedings of the 2nd respondent in C3/159/2003 dt.31.05.2014, whereby the community certificate of the petitioner as belonging to Lingadhari Koya, ST, has been cancelled and to declare both the proceedings of the 1st and 2nd respondents, as illegal, arbitrary and unconstitutional and consequently to issue a direction to the 6th respondent to continue the petitioner as Agriculture Officer by setting aside the proceedings dt.29.04.2016 in Vig.II(1)33/2014 with full back wages and all other consequential benefits and to pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

2. Brief facts leading to the filing of the present Writ Petition are that the petitioner claimed to be belonging to Lingadhari Koya community and claimed to be residing in Adilabad District. The petitioner's father was issued caste certificate on 16.07.1982 as Lingadhari Koya and the mother of the petitioner was also issued Certificate of Community, Nativity and Date of Birth on 08.12.2009 and the petitioner was issued the caste certificate in the year 1990 and also on 12.08.1992 and subsequently in the year 2001 by the Mandal

Revenue Officer. The petitioner completed his education and in all his educational certificates, his caste was also mentioned as Lingadhari Koya, ST. In the year 2002, the petitioner had applied for the post of Assistant Inspector of Sericulture Department and was selected and appointed to the said post under appointment letter dt.13.08.2001. When the community certificate of the petitioner was referred for verification, the petitioner appeared before the 5th respondent on 01.03.2002 and submitted the documents and the 5th respondent forwarded his report to the 4th respondent who in turn sent it to the 6th respondent observing that the petitioner cannot be considered for appointment under ST quota since the enquiry revealed that the petitioner does not belong to Lingadhari Koya, Scheduled Tribe community. It is the case of the petitioner that the entire correspondence has been done behind his back without any notice to him. When the petitioner came to know about the report forwarded by the 4th respondent dt.02.01.2003, he filed O.A.No.532 of 2003 before the Andhra Pradesh Administrative Tribunal (APAT) and the Tribunal vide orders dt.22.11.2005 directed the respondents to take further action after determination of the matter by the District Level Scrutiny Committee (DLSC), as by that time the said Committee had issued a notice dt.05.03.2005 to the petitioner to conduct an enquiry under relevant rules. Consequently, the DLSC had directed the petitioner to attend before it on various dates during the years 2004-2006. The petitioner claims to have attended before the DLSC with all material in support of his claim. It is submitted that the District Collector, addressed the 4th respondent on 20.02.2006 requesting him to depute his Field Officer for enquiring into certain aspects concerning the lifestyle of Lingadhari Koya community and the 4th respondent has forwarded the report with covering letter dt.19.04.2007 to the Joint Collector holding that Lingadhari Koyas residing in the districts of Khammam and Warangal are STs but those Lingadhari Koyas residing in the district of Adilabad are not STs. It is submitted that the report of the 4th respondent dt.19.04.2007 was questioned by the District Lingadhari Koya Tribal Association, of which the petitioner was a member, by way of a Writ Petition in W.P.No.22511 of 2007 in the High Court of Andhra Pradesh and the Hon'ble High Court after dealing with the same on various grounds, such as non-observance of principles of natural justice, the anthropological record relating to the community of Lingadhari Koya and various other aspects, has set aside the impugned proceedings therein and directed the respondent therein to continue to issue community certificates to the Lingadhari Koyas of Adilabad District and basing on the same, various applicants of Adilabad District were issued community certificates as STs.

3. It is submitted that the Revenue Divisional Officer, Adilabad issued proceedings No.E/131/2009 dt.17.08.2011 certifying that the community certificate of the petitioner as Lingadhari Koya is genuine. However, the District Collector requested the 4th respondent to depute teams from Tribal Culture Research and Training Institute for re-enquiry into the matter to enable the DLSC for giving its findings, vide letters dt.31.08.2012 and 22.11.2012, but the same

did not take place. The 5th respondent however informed the District Collector on 12.09.2013 that already a report was furnished on 02.01.2003 and that the Collector may take a final decision basing on the said report. Therefore, without any enquiry being conducted by the DLSC, the 2nd respondent has issued a show-cause notice dt.18.04.2014 to the petitioner proposing to cancel his community certificate and required the petitioner to submit his objections. The petitioner submitted his explanation dt.28.04.2014 denying the proposed action and also requesting for dropping the proceedings. However, the 2nd respondent issued proceedings No.C3/159/2003 dt.31.05.2014 cancelling the community certificate of the petitioner dt.12.08.1992 issued by the Revenue Divisional Officer, Adilabad and dt.15.05.1989-1990 issued by the Tahsildar, Adilabad. Since the said proceedings were issued without any enquiry in accordance with rules and since they were passed in violation of principles of natural justice, the petitioner questioned the same before this Court in W.P.No.18392 of 2014 and the same was disposed of on 04.07.2014 with a direction to file statutory appeal before the Government and also to seek stay pending the appeal and for a period of four weeks, the impugned order was kept in abeyance. It is submitted that the petitioner filed an appeal before the 1st respondent and sought for stay pending the appeal as otherwise the 6th respondent would terminate his service. However, the 1st respondent did not pass any orders and the petitioner again approached this Court in W.P.No.17479 of 2016 and this Court disposed of the same on 14.06.2016 directing the 1st respondent to dispose of the stay petition. It is submitted that the 1st respondent did not pass any orders on the stay petition and consequently, the 6th respondent issued proceedings dt.29.04.2016 cancelling the appointment order dt.09.12.2002 on the ground that the petitioner did not belong to ST category and obtained the job in that quota on the basis of a certificate which was cancelled. Challenging the order of the 1st respondent in dismissing the appeal vide G.O.Ms.No.65 dt.16.09.2021, the present Writ Petition has been filed.

4. Sri Vedula Srinivas, learned Senior Counsel representing Ms. Vedula Chitralekha, learned counsel for the petitioner, submits that the petitioner has been out of job for a long period on the ground of illegal order of cancellation of the caste certificate and therefore he is seeking the relief of setting aside of the impugned orders and consequently to direct the 6th respondent to reinstate the petitioner into service with all consequential benefits. The learned Senior Counsel has drawn the attention of this Court to various documents and particularly to the decision of the Division Bench of this Court in W.P.No.22511 of 2007 to demonstrate that the issue of Lingadhari Koya Tribals living in Adilabad District also has been considered and it has been held that they have to be considered as Lingadhari Koya ST on par with the residents of Khammam and Warangal. It is submitted that since the decision of this Court has become final, the respondents were bound by the same and have to issue Lingadhari Koya ST certificate to the petitioner, but instead, have relied upon the report which has already been set aside by the Division Bench to deny and cancel the community certificate issued

to the petitioner. He submitted that it is not only Contempt of Court but grave injustice done to the petitioner.

5. The learned Senior Counsel submitted that the parents and siblings of the petitioners along with the petitioner have been issued certificates of ST community on the ground that they belong to Lingadhari Koya community. It is the case of the petitioner that none of the certificates issued to others other than the petitioner have been cancelled and it is only the petitioner whose community certificate has been cancelled and that too without enquiry into his community by the DLSC. He has drawn the attention of this Court to the procedure prescribed under the Telangana (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 for cancellation of community certificates to demonstrate that none of the steps have been followed by the respondents before cancelling the caste certificate of the petitioner. It is submitted that the Telangana (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community Certificates Act, 1993 prescribes a detailed procedure for issuance of a community certificate and also for cancellation of such a certificate. It is submitted that it is only the District Level Scrutiny Committee which can consider the issuance of or cancellation of the community certificates and the District Collector is only Head of such a Committee and cannot unilaterally cancel the certificates. He further submitted that there is no allegation against the petitioner that he has obtained the community certificate in a fraudulent manner. He submitted that the only ground for cancellation of the community certificate is that Lingadhari Koyas in Adilabad District do not belong to ST category. He submitted that the said issue is no longer res integra and the issue has been considered in detailed by the Division Bench of this Court to hold that Lingadhari Koyas of Adilabad District are also belonging to ST community and there cannot be any discrimination between Lingadhari Koyas of Khammam and Warangal Districts and Adilabad District. He submitted that the respondents have not referred to or considered the judgment of the Division Bench of this Court in W.P.No.22511 of 2007. He also referred to the proceedings of the Revenue Divisional Officer dt.17.08.2011 which was issued after the decision of the Hon'ble Division Bench of this Court certifying that the community certificate of the petitioner as Lingadhari Koya is genuine. He submitted that without giving any reasons for not accepting the same and without following the due procedure of enquiry by the DLSC, the respondents have cancelled the caste certificate of the petitioner. He submitted that since the cancellation is illegal and in violation of principles of natural justice, it is not sustainable and therefore it should be set aside and respondent No.6 should be directed to reinstate the petitioner with all consequential benefits.

6. The learned Government Pleader for Social Welfare, on the other hand, relied upon the averments made in the counter affidavit and submitted that only such communities which are enumerated under Article 342 of the Constitution of India can be considered as STs. He relied upon the judgment of a Five-Judge Bench of the Hon'ble Supreme Court of India in the case of State of Maharashtra Vs. Milind

and others Case No. Appeal (Civil) 2294 of 1986 dt.08.01.1988 to argue that no Government or Courts have any power to make any amendment to the said List. He submitted that the authorities have verified the factual position and have held that the petitioner only belongs to Lingadhari community and not to Koya community and have accordingly cancelled the community certificate in accordance with law. Therefore, he submitted that there is no need for interference with the orders of the authorities below.

7. Having regard to the rival contentions and the material on record, this Court finds that the only ground for cancellation of the caste certificate of the petitioner is that Lingadhari Koya community living in Adilabad District do not belong to ST on the basis of their ethnographic study. The respondents have also held that the petitioner is only Lingadhari and not Koya and therefore, he is not eligible to be considered as ST. This Court, on going through the decision of the Division Bench of this Court in W.P.No.22511 of 2007, finds that the Division Bench has considered the issue as to whether there was any caste or group by name Lingadhari and also whether they are Lingadhari Koya community and after a detailed discussion about the same, has held as under:

"It is evident from the material on record that none of the families, who claim Schedule Tribe status as 'Lingadhari Koyas' of Adilabad district, were given an opportunity of being heard before the ethnographic report, on the basis of which the impugned proceedings were issued, was finalized. While the ethnographic report, enclosed to the impugned proceedings refers to the various habits, customs and practices of the 'Lingadhari Koyas' in Khammam and Warangal districts and the so called 'Lingadharis' of Adilabad District, it is useful to note that Christoph von Furer – Haimendorf, in his book "Tribal Cohesion in the Godavari Valley", (1998 edition), observed thus:-

".....In the Adilabad district there are approximately 11,230 Koyas, but these do not form a compact group occupying a specific area but are dispersed over several parts of the district, and according to their location and main occupation are referred to by the following names:

1. Gommu Koya:- dwellers on river banks
2. Lingadari Koya:- Shaivite priests
3. Campa Koya:- basket makers
4. Musari Koya:- brass workers
5. Gutta Koya :- mountain dwellers
6. Dolo Koya :- traditional bards of Koya

All the members of these subdivisions except Dola Koya style themselves as Racha Koya and Dorala sattam.

Similarly in 'Koyas of Andhra Pradesh', a publication of the Tribal Cultural

Research and Training Institute Tribal Welfare Department, (published in May, 2008), it is observed, under the Chapter "Social System", thus:-

"The Koya tribe is divided into several functional endogamous groups which are further divided into certain exogamous clans similar to Gond phratry system. A. Aiyappan in his report on the "socio-economic conditions of Aboriginal Tribes of the province of Madras" mentioned about the following sub-divisions or subsects.

It is believed that all the sub-divisions became different sub-tribes.

1. Gutta Koya or Racha Koya
2. Gomu Koya or Dora Chattam
3. Kammara Koya Blacksmith or Carpenter
4. Musara Koya – Brass worker
5. Gampa Koya- Basket maker
6. Oddi Koya- Priest
7. Pettadi Koya- Beggar
8. Doli Koya – Mala (Musicians)
9. Kaka Koya – Kapu
10. Matwa Koya or Matta – Golla
11. Lingh Koya – Saivites

He opined that serial No.8 to 11 are not real Koyas but plainsmen admitted into Koya tribe. The sub-divisions described by Aiyappan are only functional groups and some names are over lapping and misleading. Generally Raqcha Koyas and Gutta Koyas are two distinct sub-divisions. The Racha Koyas are generally found in plain areas where as Gutta Koyas live on hill tops. The nomenclature Dorala Chattam is referred to all Koyas and not to a particular sub-group of Gomu Koyas. Gomu means river banks and Koyas living on river banks are called Gomu Koyas. Linga Koya is a separate group who professes saivism and wears 'lingam' in their neck. They are pure vegetarians....."

The aforesaid passages have been extracted, not to re-appreciate the findings in the ethnographic report enclosed to the impugned order, but only to note that other studies have shown that Lingadhari Koyas also exist in Adilabad district of the State of Andhra Pradesh.

Part-1, of the Schedule to the Constitution (Schedule Tribe) Order, 1950, enumerates the list of Schedule Tribes in Andhra Pradesh. Entry No.18 thereof read thus:

"Koya, (Doli Koya, Gutta Koya, Kammara Koya, Musara Koya, Oddi Koya, Pattidi Koya) Rajah, Rasha Koya, Lingadhari Koya, Bhine Koya, Rajkoya"

Under the Presidential order, certain Tribes have been declared as Schedule Tribes provided they hail from certain specific districts. For instance Entry -30 of part-I relating to the State of Andhra Pradesh reads thus:

"Thoti (in Adilabad, Hyderabad, Karimnagar, Khammam, Mahabubnagar, Medak, Nalgonda, Nizamabad and Warangal districts)"

On the other hand no such limitation has been prescribed in so far Koyas, including Lingadari Koyas, are concerned. Lingadari Koyas, whichever district they belong to within the State of Andhra Pradesh, are Schedule Tribes entitled to the benefits of reservation. The benefits of reservation as Schedule Tribes cannot, therefore, be restricted only to Lingadhari Koyas of Khammam and Warangal Districts of Andhra Pradesh.

The power to exclude a Tribe, from the list of Schedule Tribes in the Presidential order, has been conferred, by Article 342 of the Constitution of India, on Parliament alone. Neither the State Legislature nor the State Government have been conferred any such powers much less the 3rd respondent herein. The impugned order, which by way of an executive fiat denies the Lingadhari Koyas of Adilabad District the benefits of reservation, is therefore arbitrary and illegal.

It is also evident that schedule tribe status has been conferred on members of the petitioner's association, as Lingadhari Koyas of Adilabad district, (ever since the Presidential order was issued in the year 1950), till the year 2006. As such they, as a class, could not have been denied the benefits of reservation as Schedule Tribes without being afforded an opportunity of being heard before the ethnographic report was prepared and finalized. While the benefits of reservation should undoubtedly not be extended to those who are not entitled thereto, it is also essential that such benefits which the Lingadhari Koyas of Adilabad district have been extended for more than four decades, is not denied to them on the basis of an ethnographic report prepared behind their back thereby denying them an opportunity of placing evidence, to the contrary, in support of their claim to be Lingadhari Koyas in Adilabad District.

The impugned proceedings dated 19.4.2007, which seeks to make a distinction between Lingadhari Koyas of Khammam and Warangal Districts and Lingadari Koyas of Adilabad district must, therefore, be and is, accordingly, quashed. The respondents shall receive applications submitted by members of the Petitioner Association, and others similarly situated, and consider their case for grant of Schedule Tribes certificates in accordance with law, without placing reliance on the ethnographic report enclosed to the impugned order, within a period of three months from the date of receipt of the applications.

The Writ Petition is allowed to the extent indicated hereinabove. However, in the circumstances, without costs."

8. Admittedly, the above decision has not been challenged by the authorities and it has become final and the respondents have issued ST certificates to various

Lingadhari Koya community applicants of Adilabad District. In view of the same, this Court finds that the impugned orders passed by the respondents are without even referring to the judgment of this Court in W.P.No.22511 of 2007 and are therefore unsustainable. They are accordingly set aside and the caste certificate issued to the petitioner is restored and respondent No.6 is directed to reinstate the petitioner into service with all consequential benefits including back wages provided the petitioner submits proof/evidence that he was not gainfully employed elsewhere during the relevant period of time.

9. The Writ Petition is accordingly allowed. No order as to costs.

10. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.