
(2010) 01 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 20829 of 2007 and 1634 of 2008

Government of A.P. and Another

APPELLANT

Vs

Pagadala Khali Kanthi and Another

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 21, 5

Citation : (2010) 3 ALT 663 : (2010) 1 APLJ 167

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiah, J

Bench : Division Bench

Advocate : A.A.G, for the Appellant; D.V. Nagarjuna Babu and M. Vijaya Kumar,
for the Respondent

Final Decision : Allowed

Judgement

Vilas V. Afzulpurkar, J.—WP. No. 20829 of 2007 is filed by the State of Andhra Pradesh aggrieved by the order of the Andhra Pradesh Administrative Tribunal in O.A. No. 3787 of 2007 dated 08.08.2007 whereunder O.A. No. 3787 of 2007 filed by the respondent herein was allowed by the tribunal directing the State to issue appointment order to the respondent herein for the post of Deputy Registrar of Cooperative Societies within a period of four weeks from the date of receipt of the order, as she was selected by the Andhra Pradesh Public Service Commission (APPSC).

2. The State has assailed the aforesaid order, primarily, on the ground that the social status certificate produced by the respondent in support of her claim that she belongs to Konda Kapu caste and as such is recognized Schedule Tribe (ST), is itself fraudulent and incorrect. In other words, therefore, the State denied her claim that she belongs to Konda Kapu caste and notwithstanding her selection by APPSC for Group I services under the Government of AP to the post of Deputy Registrar of Cooperative Societies; the appointment order in her favour was not issued. The aforesaid claim of the Government is based upon the verification

report by the Commissioner of Tribal Welfare dated 04.06.2007 and communicated to the Collector and District Magistrate, Hyderabad District vide letter of the Commissioner bearing Rc. No. 276/17/2007TRI/VC-7 dated 04.06.2007. The said Commissioner of Tribal Welfare was requested by the Commissioner for Cooperation and Registrar of Co-operative Societies, AP, Hyderabad to verify the social status claim of the respondent, who was selected under the ST quota by APPSC for the post of Deputy Registrar. As stated above, based on the said report, the respondent was denied orders of appointment, whereupon she had approached the tribunal vide O.A. No. 3787 of 2007 referred to above. The respondent had sought a direction from the tribunal to declare the action of the third respondent in OA (Commissioner for Co-operation and Registrar of Co-operative Societies, AP) in not issuing appointment order to her as Deputy Registrar of Co-operative Societies, in spite of her selection by APPSC, as arbitrary and unjust. Under the impugned order, the tribunal has allowed the said OA, correctness of which is subject matter of this writ petition.

3. While admitting the writ petition, this Court had issued interim direction on 04.10.2007, which is as follows:

Interim direction to the petitioners-department to consider the case of the 1st respondent for appointment to the post of Deputy Registrar without referring to the Commissioner's report dated 04.06.2007. But, however, we make it clear that this order will not preclude the petitioners-department from enquiring into the social status of the 1st respondent in accordance with law, if they so desire.

4. Questioning the said order, the State had approached the Honourable Supreme Court vide SLP (Civil) No. 20931 of 2007 and by order of the Supreme Court dated 19.11.2007 while issuing notice on the SLP, stay of operation of the impugned order extracted above was granted. The order of the Supreme Court is extracted hereunder:

Issue notice. Mr. A.K. Ganguli, learned senior Counsel appearing for respondent No. 1 accepts notice on behalf of Mr. Y. Raja Gopala Rao, caveator and Advocate on record for respondent No. 1. Three weeks' time is granted for filing counter affidavit. Rejoinder, if any, be filed within two weeks thereafter. List the matter after five weeks. In the meanwhile, there shall be stay of operation of the impugned judgment.

We, however, make it clear that in the meantime the High Court will be at liberty to proceed with the main matter.

5. As the interim order of this Court dated 04.10.2007 gave liberty to the State to enquire into the social status of the respondent in accordance with law, the District Collector, who is the competent authority empowered to cancel a false community certificate under the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (hereinafter referred to as Act 16 of 1993) referred the claim of the respondent to the scrutiny committee as provided under the Rules under the Act 16 of 1993. The said District Level Scrutiny

Committee issued notice to the respondent whereupon she entered appearance through vakalat and filed memos together with documents in support of her social status claim. On the further date of hearing i.e. 27.10.2007 some more documents were filed and on 17.11.2007 another 10 additional documents were filed by the respondent. Thereafter, the District Level Scrutiny Committee posted the enquiry to 24.11.2007 on which date again the respondent's Counsel filed a memo along with supporting documents and claimed that in view of the stay granted by the Supreme Court the enquiry cannot go on. While the respondent claims that there was no hearing as such on 24.11.2007 or thereafter, the petitioner/State claims that enquiry was completed on that date and consequently the District Collector passed final orders in proceedings No. D6/4452/07 dated 06.12.2007 canceling the social status certificate granted to the respondent by the Mandal Revenue Officer, Tirumalgiri Mandal, Secunderabad dated 18.03.2006.

6. Against the aforesaid proceedings of the District Collector canceling the social status certificate issued in favour of the respondent, writ petition in WP. No. 1634 of 2008 was filed by the respondent. Inter alia, she relied upon the certificate dated 21.10.1986 issued by the MRO, certificate dated 25.07.1994 also issued by the MRO apart from the certificate dated 18.03.2006 issued by the MRO. It is contended by the respondent in the said writ petition that only the last of the said certificates dated 18.03.2006 was cancelled by the impugned order whereas the earlier certificates were issued prior to coming into force of the Act 16 of 1993 and hence, the earlier certificates are saved u/s 21 of the Act 16 of 1993. The respondent also contended that there are several procedural irregularities in the enquiry conducted by the District Level Scrutiny Committee and hardly there was any opportunity of hearing and complete non-consideration of the documents on record. Further, a ground u/s 5 of the Act 16 of 1993 is raised that no notice has been issued to the respondent by the Collector before canceling the community certificate.

7. As the order of the Supreme Court, referred to above, which gave liberty to this Court to proceed with the hearing of the writ petitions, both these writ petitions are listed for hearing. We had accordingly heard the learned Additional Advocate General in support of WP. No. 20829 of 2007 and Sri D.V. Nagarjuna Babu, learned Counsel, in support of WP. No. 1634 of 2008, who are vice versa appearing for the respondents in the writ petitions.

8. Learned Additional Advocate General relied upon the report of the District Level Scrutiny Committee that the grandfather of the respondent had obtained a community certificate as late as 28.11.1985 from the Mandal Revenue Officer, Dumbriguda Mandal, Visakhapatnam District on the ground that the said grandfather of the respondent belonged to Araku Village in Dumbriguda Mandal. It was also found in the report that the said grandfather of the respondent had migrated to Secunderabad in 1907 and later the father of the respondent was born and brought up in Secunderabad. The father of the respondent was later married to a

non-tribal lady, as such, the respondent having been born out of an inter caste marriage, having been born and brought up in Secunderabad and as such, cannot be considered as belonging to Konda Kapu community. Learned Additional Advocate General also contended that there is no evidence of social acceptance of the respondent or her father in the Konda Kapu community inasmuch as the father of the respondent having married a lady belonging to Yadava community no evidence is forthcoming regarding the linkage of the respondent's family. It was also found in the enquiry that relatives of the respondent have all married in other communities other than the Konda Kapu community and the respondent's grandfather obtained the certificate in the year 1985 when he was aged 80 years and had all along been settled in Sikh Village, Secunderabad. He, therefore, submits that the action of the District Level Scrutiny Committee in recommending cancellation of the certificate is fully justified and the District Collector, as the statutory authority under the Act 16 of 1993 was justified in canceling the caste certificate. Consequently, he submits that the tribunal committed an error in allowing the OA filed by the respondent, as the tribunal could not have gone into and determined any of the factual issues.

9. Sri D.V. Nagarjuna Babu, on the contrary, submits that it is not in controversy that the respondent's grandfather and great grandfather belong to Araku Village of Dumbriguda Mandal, Visakhapatnam District and as such, their nativity from the tribal area by itself establishes their tribal status. He, further, submitted that birth marks do not get wiped off on account of subsequent settlement of such tribal people in urban areas and even if they are socially advanced over the decades, have married out side their caste, is of no consideration for denying the social status to which they belong. He also contended that even as per the enquiry the great grandfather of respondent viz. Sri Potharaju Kodandaramayya, was born and brought up in Araku Village and he has shifted his residence to Secunderabad as he joined Military as Subedar in 1907. The enquiry also found that the grandfather of the respondent viz. Sri Potharaju Chakrapani was born in 1905 (sic) at Araku village and later migrated to Secunderabad. The grandfather of the respondent had married one Lakshmibai, a tribal from native Araku village and as such, the father of the respondent having been born to both parents, who are tribals, cannot be said to be not belonging to Konda Kapu tribe, merely because he later married a lady from Yadava community. Further, the respondent though having been born out of the said inter caste marriage, her father being from the said Konda Kapu community, the social status of the father justifiably accrues to the respondent. In support of his contention he has relied upon the decisions of the Supreme Court in Anjan Kumar Vs. Union of India (UOI) and Others, and Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others, for the proposition that when a tribal marries a non-tribal women the offshoots of such wedlock would obviously attain the tribal status but on account of the marriage the woman, who belongs to forward class cannot automatically attain the status of a tribal unless she has been accepted by the community as one of them and observed all rituals and customs. He also relied upon another decision

of the Supreme Court in *State of Bihar v. Sumit Anand* (2005) 12 SCC 248 for the proposition that when the respondent's father, grandfather, uncle and other siblings have been certified as belonging to particular status, the same cannot be denied to the respondent.

10. Learned Counsel also contends that the respondent's siblings, uncles and aunts have all been certified as belonging to Konda Kapu community including respondent's brother. He has also pointed out that her aunts had secured employment in ECIL (Central Government undertaking) where ECIL authorities referred verification of their social status to CBCID and the District Collector, Hyderabad. The CBCID submitted a report dated 24.01.1989 to the Deputy Inspector General of Police, CID that all family members belong to Konda Kapu community, which was later confirmed by the District Collector, Hyderabad. He also made a reference to a number of documents, which are referred to in the affidavit filed in support of WP. No. 1634 of 2008 and submitted that all these documents were produced before the District Level Scrutiny Committee but there is neither any consideration nor any discussion on any of the documents either by the committee or by the Collector while passing the cancellation order dated 06.12.2007. Learned Counsel, therefore, submits that the tribunal was justified in issuing directions as prayed for in O.A. No. 3787 of 2007 and the subsequent cancellation orders passed by the Collector under the AP Act 16 of 1993 dated 06.12.2007 are liable to be quashed.

11. We have considered the aforesaid contentions and on an analysis of the material produced by either side, we are of the view that the respondent is entitled to claim the said social status as belonging to schedule tribe community and the denial of appointment to her, in spite of her selection by APPSC, was not justified. It is clearly evident from the record, particularly, the report of the Commissioner of Tribal Welfare dated 04.06.2007 referred to above that the great grandfather and grandfather of the responder having originally migrated from Araku village, Dumbriguda Mandal of Visakhapatnam District, is not in dispute. It is, no doubt, true that they have been residing at Sikh Village, Secunderabad from the time of their great grandfather's migration. It is also not in dispute that the father of the respondent was born at Araku village in 1905 and later migrated to Secunderabad. Their claim for social status is being denied on the ground that later the father of the respondent married a lady belonging to Yadava community though the great grand parents of the respondent, undoubtedly, belong to Konda Kapu community. Though the respondent in her affidavit had made specific and categorical statement that all her siblings, uncles and aunts have been accepted, on verification, as belonging to Konda Kapu community, the same is not contraverted by the State. Learned Counsel for the respondent has relied upon the report of the CBCID, which had confirmed the social status of aunts of the respondent, when they were employed in ECIL, Hyderabad. The proceedings of the District Level Scrutiny Committee, which is the basis of cancellation of the community certificate of the respondent by the District Collector, proceeds on the basis that respondent being offspring of an

inter caste marriage between a tribal and a non-tribal and her father having got married to a non-tribal member, she is not entitled to claim schedule tribe status. It is useful to extract the last sentence in Para 5 of the recommendation of the District Level Scrutiny Committee:

...There is no documentary evidence except her grandfather's Konda Kapu caste certificate issued by the Mandal Revenue Officer, Dumbriguda Mandal dated 28.11.1985, which cannot be relied. The candidate, who is claiming ST status is an offspring of an inter caste marriage between said to be tribal father and admittedly non-tribal mother, has also again married a non-tribal member.

The above clearly shows that the respondent's father being a tribal is not in dispute and the fact that he married outside the caste and later the respondent herself married outside the caste is taken into consideration and it is concluded that the offspring cannot claim the status. The Collector under the impugned proceedings has relied upon the aforesaid portion of the conclusions of the District Level Scrutiny Committee. He has, further, held that the MRO, Tirumalgiri could not have issued the certificate to the respondent, as he was not competent and consequently accepting the opinion of the District Level Scrutiny Committee cancelled the respondent's community certificate.

12. The primary reason for cancellation by the Collector and recommendation by the District Level Scrutiny Committee being inter caste marriage of the father of the respondent and the assumption that the offspring is not entitled to claim such status. The aforesaid issue is clearly settled by two decisions of the Supreme Court on which the learned Counsel for the respondent has rightly placed reliance. The following passage from Anjan Kumar's case (1 supra) completely answers the aforesaid issue:

6. Undisputedly, the marriage of the appellant's mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha) was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or excommunicated from the village community. Therefore, there is no question of such marriage being accepted by the village community. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to forward class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practiced by the tribals from time immemorial and accepted by the community of the village as a member of tribal society for the purpose of social relations with the village community. Such acceptance must be by the village community by a resolution and such resolution must be entered in the Village Register kept for the purpose. Often than not, such acceptance is preceded by feast/rituals performed by the

parties where the elders of the village community participated. However, acceptance of the marriage by the community itself would not entitle the woman (Forward class) to claim the appointment to the post reserved for the reserved category. It would be incongruous to suggest that the tribal woman, who suffered disabilities, would be able to compete with the woman (Forward class) who does not suffer disabilities wherefrom she belongs but by reason of marriage to tribal husband and such marriage is accepted by the community would entitle her for appointment to the post reserved for the Scheduled Castes and Scheduled Tribes. It would be a negation of Constitutional goal.

(emphasis supplied)

13. It would be noticed from the above that the case before the Supreme Court was a converse case where the candidate was an offspring of a mother, who was a tribal woman and a father, who was a Kayastha, whereas in the present case father is tribal and mother from Yadava community, a non-tribal. The following statement of law in the decision aforesaid is, therefore, significant:

The situation will, however, stand on a different footing where a tribal man marries a non-tribal woman (forward class) then the offshoot of such wedlock would obviously attain the tribal status.

The case on hand is, therefore, squarely covered by the aforesaid proposition and even if the father of the respondent has married outside his caste, the respondent, as offspring, is entitled to claim the same status. Further, as held by the Supreme Court in Sumit Anand's case (3 supra) the siblings, uncles and aunts of the respondent being certified as belonging to schedule tribe community, there is no reason to deny the same status to the respondent.

14. With regard to the other contention of the learned Counsel for the respondent regarding procedural irregularities in the enquiry conducted by the District Level Scrutiny Committee is concerned, it is not necessary to give any findings as we have considered the claim of the respondent on merits and are of the opinion that the social status claimed by her was justified. In addition to the above, the learned Counsel for the respondent has submitted that though one particular certificate dated 18.03.2006 issued by the MRO, Secunderabad was cancelled there are several other certificates issued prior thereto and even subsequently, the Revenue Divisional Officer, Secunderabad has also issued another community certificate in her favour being certificate No. M/3582/07-1602-8100-3415-3902 dated 22.09.2007. The social status claimed by the respondent, thus, being interlinked with the status of her grandfather, father, siblings of the father and the brother of the respondent; while the acceptance and continuance of the social status of all the above relatives having been accepted and continued, the denial of the same so far as the respondent is concerned, therefore, is highly unjustified and arbitrary.

15. Consequently, therefore, the order of the tribunal impugned in W.P. No. 20829 of 2007 deserves to be confirmed and the said writ petition is liable to be

dismissed. Further, the cancellation of the community certificate by the District Collector in exercise of his powers as competent authority under A.P. Act 16 of 1993 by the impugned order dated 06.12.2007 having been found to be arbitrary and unsustainable in law, W.P. No. 1634 of 2008 deserves to be allowed and is accordingly allowed.

16. In the result, W.P. No. 20829 of 2007 is dismissed and W.P. No. 1634 of 2008 is allowed. In the circumstances, there shall be no order as to costs.