

(1994) 01 AP CK 0014
In the Andhra Pradesh High Court
Case No : Writ Appel No. 917 of 1992

Govt. of Andhra Pradesh and another	APPELLANT
Vs	
R.K. Ragala and another	RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226

Citation : AIR 1994 AP 238 : (1994) 2 ALT 28

Hon'ble Judges : Y. Bhaskar Rao, J;J. Eswara Prasad, J

Bench : Division Bench

Advocate : Govt. Pleader for Social Welfare, for the Appellant; Duba Mohanna Rao, for the Respondent

Judgement

J. Eswara Prasad, J.—This writ appeal arises out of the judgment of a learned single Judge in Writ Petition No. 9275/87, quashing the proceedings issued by the 2nd appellant, dated 26-3-1989.

2. The writ petition was filed by the first respondent herein questioning the show cause notice dated 26-3-1989 issued by the 2nd appellant -- District Collector, East Goda-vari, calling upon the first respondent-petitioner to show cause as to why the status certificate issued in his favour declaring him as "Konda Kapu" should not be cancelled and why he should not be declared as "kapu" or "telaga", as illegal and arbitrary, predetermined and biased. The contention of the first respondent was that the social status certificates were issued in his favour to the effect that he is konda kapu, which is a scheduled tribe after enquiries, and that at least two such enquiries were held by the concerned revenue authorities, as well as the Inspector-General of Police, CID, Hyderabad, in the years 1956, 1957 and 1988 and that the impugned proceedings amount to harassment, issued at the instance of the first appellant-Government of A.P., which had already come to the conclusion that he is not a konda kapu and that repeated enquiries should not be permitted to be held. The learned single Judge came to the conclusion that the social status certificates were issued in favour of

the first respondent after holding proper enquiries and that there was no warrant for holding repeated enquiries, after the revenue and police officials had already made enquiries and held that the first respondent is a konda kapu and allowed the writ petition, quashing the impugned proceedings dated 26-3-1989. Aggrieved by the decision of the learned single Judge, the Government of Andhra Pradesh and the Collector, East Godavari District, have preferred this appeal.

3. The first submission of the learned Government Pleader for the appellants is that the writ petition questioning the show cause notice is not maintainable under Article 226 of the Constitution of India, and that the learned Judge should not have quashed the impugned proceedings. He further submitted that the question for determination of status social of a person is a question of fact and has to be enquired by competent authority, namely, the District Collector, and that it is not open to the Court to give a finding with regard to the social status of a person and that it was open to the first respondent to participate in the enquiry and to satisfy the competent authority, by proving his social status. The further contention of the learned Government Pleader is that even if there were earlier enquiries, it was always open to the competent authority to make further enquiries when a doubt is entertained and that there was no bar for holding such an enquiry. The last submission of the learned Government Pleader is that the learned single Judge was in error in declaring the social status of the first respondent, which is within the purview of the prescribed authority.

4. Sri Duba Mohanarao, appearing for the first respondent submitted that holding of successive enquiries amounts to harassment of the first respondent, which amounts to violation of Article 21 of the Constitution of India. He contends that the father of the first respondent was shown as konda kapu as long back as in the year 1889, the genuineness of which cannot be questioned now. He contends that in the absence of an allegation of fraud in obtaining social status certificates and in the conduct of the earlier enquiries by the revenue and police officials, it was not open to the Collector to hold yet another enquiry. Holding of successive enquiries is arbitrary and violative of Article 14 of the Constitution of India. He lastly submitted that the first respondent is at the fag end of his service in the Indian Police Service and that it is not proper to subject him to harassment at this stage by holding repeated enquiries.

5. The contentions of the learned Counsel give rise for consideration of this court to the questions: whether the writ petition is maintainable; whether the holding of repeated enquiries amount to violation of Articles 14 and 21 of the Constitution and whether the learned single Judge could have declared the social status of the first respondent.

6. Dealing with the last submission of the learned Government Pleader, namely, that the learned single Judge was in error in declaring the social status of the first respondent, it has to be held that the contention is without any substance, as the learned Judge did not give any such declaration. There was no prayer in the writ petition seeking such a declaration and no such declaration was given by the

learned single Judge. The first respondent prayed for quashing of the impugned proceedings dated 26-3-1989 and the writ petition was allowed quashing the same. The contention of the learned Government Pleader that the effect of quashing the show cause notice amounted to granting the declaration sought for, cannot be accepted. In fact, the learned single Judge observed, "the petitioner has not asked for any such declaration or relief and is only seeking to quash the show cause notice." The social status of the first respondent was mentioned in the certificates issued in his favour from time to time, as upheld by the earlier enquiries, and required no fresh declaration of this Court. The contention of the learned Government Pleader on this question, is therefore, rejected.

7. The brief facts leading to the filing of the writ petition, are as follows: The first respondent was selected to the Indian Police Service in the year 1962 and was allotted to the State of Andhra Pradesh. After serving with the Government of India for some time on deputation, he was repatriated to this State in the year 1988. Prior to his selection to the Indian Police Service, an enquiry into the social status of the first respondent was initiated as per the directions of the Collector, East Godavari in the year 1956. The Revenue Divisional Officer, Peddapuram, who enquired into the social status of the first respondent, submitted the report dated 20-5-1957 stating that the enquiry revealed that the first respondent belong to konda kapu community. Based on a communication from the 2nd respondent dated 3-8-1983 to the Government of India, an enquiry was conducted with respect to the social status of the first respondent by the Inspector-General of Police, CID, Hyderabad, and a report dated 31-5-1988 was submitted to the effect that the first respondent belongs to konda kapu community. After repatriation of the first respondent to this State and after he was posted as Deputy Inspector-General of Police, Forests Vigilance, the District Collector, East Godavari issued the impugned show cause notice dated 26-3-1989, calling upon the first respondent to show cause why his social status certificate should not be cancelled. The impugned show cause notice is consequent to the Memo No. 28/SC.C-82/20 dated 21-2-1989 issued by the Chief Secretary to the Government of Andhra Pradesh, stating that the Government and the Director of Tribal Welfare have decided to cancel the false caste certificate of the first respondent and requesting the Collector, East, Godavari, to issue a show cause notice to the first respondent and to take further necessary action to cancel his caste certificate.

8. The learned single Judge referred to various certificates certifying that the first respondent belongs to konda kapu community and the enquiry reports of the Revenue Divisional Officer dated 20-5-1957 and the report of the Inspector-General of Police, CID dated 31-5-1988 and held "that it is not desirable to subject the petitioner to further enquiry in view of the fact that repeated enquiries will result in harassment of the petitioner." The learned Judge further held that the Government have already concluded the matter as seen from the Memo of the Chief Secretary dated 21-2-1989 and therefore, the first respondent was justified in moving the Court for quashing the impugned proceedings.

9. It is well-established principle that a mere show cause notice will not be interfered with by the courts in exercise of jurisdiction under Article 226 of the Constitution of India. The contention of the learned Government Pleader in this respect is not disputed; but the question which falls for consideration is, whether a citizen can be subjected to repeated enquiries. The enquiry reports of the Revenue Divisional Officer, Peddapuram dated 20-5-1957 and the Inspector-General of Police, CID dated 31-5-1988, which were produced before the learned single Judge, are not disputed by the appellants. The learned Government Pleader relied on GO Ms. No. 147 dated 27-4-1977 laying down that social status certificate can be issued by Officer not below the rank of a Tahsildar or Revenue Divisional Officer, Sub-Collector etc., All the certificates which were issued in favour of the first respondent were issued by the Officers not below the rank of a Tahsildar and therefore, there is no violation of the said GO. The learned Government Pleader referred to GO Ms. No. 289 dated 28-11-1986, according to which, all Gazetted Officers were competent to issue caste certificates. It is not disputed that the certificates issued in favour of the first respondent were by Gazetted Officers.

The learned Government Pleader next placed reliance on GO Ms. No. 282 dated 19-12-1988 empowering the District Magistrates etc., to cancel false certificates. He also relied on GO Ms. No. 117 dated 1-1-1989 under which the Collectors, Inspector-General of Police, CID etc., are the competent authorities to enquire into the allegations with regard to false caste certificates. In case of conflict of reports of different authorities, a High-level Committee constituted under GO Ms. No. 3 dated 8-11-1989 has to go into the same and resolve the conflict. The first enquiry was held on the direction of the Court in the year 1956 culminating in the report of the Revenue Divisional Officer, Peddapuram dated 30-5-1957. It was held in the said report that the first respondent belongs to Konda-Kapu Community. A second enquiry was conducted by the Inspector-General of Police, CID, and in the report dated 31-5-1988 it was held that the first respondent belongs to konda kapu community. These enquiries are in conformity with the Government Orders which were in force at the relevant time. Holding of yet another enquiry, in the face of the above two enquiries, in our view, would amount to holding of repeated enquiries. It is pertinent to note that there is no reference to the report of the Inspector-General of Police dated 31-5-1988 in the impugned show cause notice. Obviously, neither the Government of Andhra Pradesh, nor the District Collector, East Godavary, have taken into consideration the report of the Inspector-General of Police, before initiating the present proceedings. It is also to be noted that there was no allegation of any fraud played by the first respondent in obtaining the social status certificates or in the issuance of enquiry reports of the Revenue Divisional Officer and the Inspector-General of Police.

10. The learned Government Pleader placed reliance on the decision of a Division Bench of this Court in South Central Railway Vs. B. Veera Raju, and contended that High Court exercising the power conferred under Article 226 of the

Constitution, does not function as a civil court and that there is no estoppel against holding a fresh enquiry. He further contended that the power to grant judicial review does not extend to this court substituting itself to that of the competent authority. This court held that the principle of estoppel has no application to a case where fraud is played on administration in the matter of selection to posts reserved for members of Scheduled castes and scheduled Tribes. In the present case, there is not even a whisper of an allegation of fraud being played upon the administration. The learned Judge held that the power to grant judicial review does not extend to this court substituting itself for the concerned authority. As observed earlier, the learned single Judge nowhere gave a declaration as to the social status of the first respondent, nor do we propose to do so. We are only concerned with the question as to whether repeated enquiries can be made. When that is the situation, we fail to see how this decision will help the appellants. The facts before the Division Bench in that case are totally different, as it was found that the enquiry conducted by the Revenue Division Officer with regard to the social status of the respondent in that case was clearly in breach of principles of natural justice and therefore, there was every need for holding a fresh enquiry. The learned Judges held that it was for the concerned authority to hold a fresh enquiry and it was not for the Court to substitute itself for the concerned authority. This decision is not applicable to the case on hand.

11. The next submission of the learned Government Pleader is that determination of social status of a person has to be made as a question of fact and the High Court is not competent to give a finding on that aspect. In support of the said contention, he relied on *Kumari Aparna Shrikant Bhaye Vs. State of Maharashtra and others*, . That was a case where the certificates relied on by the petitioner therein for admission to medical college on the basis that she belongs to a Scheduled Tribe, were rejected by the Scrutiny Committee. In the circumstances, it was held that the decision of the Scrutiny Committee or the Appellate decision disclosed no error calling for any interference in a writ petition. Reliance was placed on *State of Andhra Pradesh and others Vs. Nagam Chandrasekhara Lingam and others*, by the learned Government Pleader in which it was held that a District Judge or a judicial officer is better qualified to conduct an enquiry relating to social status of a person selected to Indian Administrative Service. We are unable to understand the relevance of this decision to the case on hand. The learned Government Pleader relied on *Arya Vyasa Sabha and Others Vs. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others*, in which it was held that a question whether a particular institution is a religious denomination is a question of fact and cannot be determined in writ proceedings. In the present case, we are not enquiring into the question as to whether the first respondent belongs to Scheduled Tribe. We are only dealing with the question as to whether successive enquiries can be held in respect of the same subject which was concluded long ago.

12. The unreported decision of this Court in W.P. No. 11051/88 dated 10-8-1988

relied on by the learned Government Pleader is also of no assistance, as there was no enquiry with regard to the social status of the petitioner therein and it was therefore, held that the question of bar of an enquiry based on principle of *res judicata*, did not arise. As already observed, in the present case, there were two earlier enquiries and therefore the principle laid down in the said decision will not be applicable in this case.

13. The learned Government Pleader referred to *Smt. D. Neelima Vs. The Dean of P.G. Studies, A.P. Agricultural University, Hyderabad and others*, and contended that persons not belonging to Scheduled Tribe should not be permitted to carry away the posts reserved for Scheduled Tribes, as the reservations for the Scheduled Tribes are made on the basis that a person belonging to a Scheduled Tribe underwent stresses or strains or suffered environment disadvantages and therefore, the real backward class citizens alone should have the benefit of reservation. We are in entire agreement with the principles laid down in the aforesaid decision which cannot be disputed. The reservations are in fact meant only to benefit and give protection to the classes of persons who really suffered from environmental disadvantages and stresses and strains. Nothing should be done to let the purpose of reservations to whittle down besides permitting entry of citizens who do not belong to Scheduled Tribes for the posts reserved for them. The facts of that case are totally different, in that, the petitioner therein, who belonged to a forward caste, sought to avail the facility of reservation by virtue of her marriage with a person belonging to a Scheduled Tribe and the Division Bench to which one of us (Bhaskar Rao, J.) was a party, negated such a claim. No such situation arose in the present case.

14. Learned Counsel for the first respondent was issued several certificates by the competent authorities and in the face of two earlier enquiries, which were held by persons competent to hold such enquiries, holding a further enquiry would only amount to harassing the first respondent endlessly. He relied on an unreported decision of this Court in W.P. No. 888/78 dated 27-12-1978 and WP No. 5726/82 dated 11-11-1992 in which the learned Judge held that such successive enquiries cannot be permitted.

15. The learned Counsel for the first respondent contended that the right conferred on a citizen by Article 21 of the Constitution is an ever expanding concept and is capable of protecting a citizen from constant harassment by holding successive enquiries into matters which were concluded and set at rest by enquiries conducted by competent authorities. He referred to *Kharak Singh Vs. The State of U.P. and Others*, . The Supreme Court, explaining the scope of Article 21, held as follows (Para 17):

"Now let us consider the scope of Article 21. The expression "life" used in that Article cannot be confined only to the taking away of life; i.e., causing death.".....

"We shall now proceed with the examination of the width, scope and content of the expression "personal liberty" in Article 21. We feel unable to hold that the

term was intended to bear only this narrow interpretation but on the other hand consider that "personal liberty" is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Art. 19(1). In other words, while Art. 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue".

16. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc.* etc., the Constitution Bench of the Supreme Court had this to say dealing with Article 21 of the Constitution.

"Article 21 declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. It is true that the Article is worded in negative terms but it is now well-settled that Article 21 has both a negative and an affirmative dimension".

The observations of Rajgopala Ayyangar, J. in *Kharak Singh Vs. The State of U.P. and Others*, were quoted with approval. It was further observed "from Article 21 has sprung up the whole lot of human rights, jurisprudence, viz., right to legal aid and speedy trial and so on...."

Article 21 of the Constitution reads as follows:

"Perfection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

Though Article 21 is couched in negative language, it is obvious that it confers a fundamental right to life and personal liberty. By a catena of decisions the scope of the words "personal liberty", as used in Article 21, is interpreted by the Supreme Court in wide terms. The narrow interpretation placed on the words "personal liberty" in *A.K. Gopalan Vs. The State of Madras*, was departed from in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, . It is now clear that from Art. 21 had sprung up a whole lot of human rights jurisprudence and it is now well-settled that "Art. 21 has both negative and affirmative dimensions. In this expanding scenario of the scope of Art. 21 we have no hesitation in holding that a citizen is entitled to live with dignity and without being harassed by repeated enquiries. This, of course, is subject to the condition that the earlier enquiries were conducted in accordance with law.

17. Having said so, we have to consider whether the earlier enquiries conducted against the first respondent were valid. The Revenue Divisional Officer, Peddapuram, who conducted enquiry in the year 1956 and submitted his report in 1957 holding that the first respondent belongs to a Schedule Tribe, was competent to hold the enquiry. The subsequent enquiry conducted in the year 1988 by the Inspector General of Police, CID, Hyderabad in which also it is held that the first respondent belongs to the community of Konda Kapu, was validly held. The Government Orders relied on by the learned Government Pleader support the view that those enquiries were validly conducted and are legal. There

is no suggestion in the impugned proceedings that the earlier enquiries were conducted invalidly. The mere fact that some new evidence is gathered subsequently will not invalidate the earlier enquiries and the finding thereon, which were legally held and which were based on evidence. The first respondent's father was (sic) to be konda kapu and he was born in the year 1889. The birth certificate of the first respondent dated 15-7-37 perused by the Inspector General of Police CID which was taken from the Mandal Revenue Officer, Peddapuram, also revealed that the first respondent is a konda kapu. We are considering these facts not for the purpose of finding out whether the first respondent belongs to the community of konda kapu, but only to test whether the earlier enquiries were based on proper material. It is to be noted that the first respondent is at the fag end of his career and it is not proper to subject him to further harassment by holding repeated enquiries in the face of the reports of the Revenue Divisional Officer and the Inspector General of Police.

18. The last submission of the learned Counsel for the first respondent that the impugned proceedings are also vitiated as the same were issued at the instance of the Chief Secretary to Government who issued the Memo dated 21-2-1989, which revealed that the Government have decided to cancel the caste certificate of the first respondent having come to a conclusion that it was a false certificate. It is clear from the Government Memo dated 21-2-1989 that the Government had no open mind on the issue and that it had already come to the conclusion that the certificates of the first respondent are false. The issuance of the notice was a formal affair and the conclusion was already pre-determined. In such a situation, we are of the view that the impugned proceedings should be quashed on that ground also.

19. B. Venkata Rao and Another Vs. Principal, Andhra Medical College, Visakhapatnam and Another, relied on by the learned Government Pleader that there is no estoppel operating against the Government from conducting another enquiry is not applicable to the present case, as the case of the first respondent is not based on the principle of estoppel. Similarly, Inder Parkash Vs. Deputy Commissioner and Others, which is to the same effect as the earlier one B. Venkata Rao and Another Vs. Principal, Andhra Medical College, Visakhapatnam and Another, is not applicable to the facts of the case.

20. For all the aforesaid reasons, we hold that the order of the learned single Judge was correct and needs no interference. The writ appeal is accordingly dismissed. No costs.

21. Appeal dismissed.