
(2003) 08 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21365 of 2002

Kandrathi Nagaraju

APPELLANT

Vs

Commissioner of Tribal Welfare and Another

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 5
Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes — Issue of
Community, Nativity and Date of Birth Certificate Rules, 1997 — Rule 9(10)

Citation : (2003) 5 ALD 465 : (2003) 6 ALT 239

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; Government Pleader for
Social Welfare, for the Respondent

Final Decision : Dismissed

Judgement

E. Dharma Rao, J.—The petitioner Kandrathi Nagaraju, who claims to be a member of the Scheduled Tribe, filed this writ petition to issue a writ of mandamus declaring the proceedings of the first respondent in Rc. No. 2048/2002/TRI/VC-7 dated 21.10,2002 by which the Commissioner of Tribal Welfare, Hyderabad, has declared that the petitioner does not belong to Kammara Caste and is not Scheduled Tribe, as illegal, arbitrary and without jurisdiction and to further direct the respondents to continue to treat the petitioner as a Scheduled Tribe Candidate belonging to Kammara Caste as per the social status certificate issued by Mandal Revenue Officer, Kandukur Mandal, Prakasham District and to allow all the benefits conferred on the Scheduled Tribe Candidates in the State of Andhra Pradesh.

2. It is submitted that the petitioner after obtaining Bachelor's Degree in Arts in the year 1999 from M/s. CSR Sarma College affiliated to Nagarjuna University, applied for the recruitment to Group-II Services conducted by the A.P. Public Service Commission, as Kammara Caste, in Scheduled Tribe reservation category.

It is further submitted that the petitioner obtained Scheduled Tribe Certificate from the Mandal Revenue Officer, Kandukur, After undergoing the selection process i.e., written test and interview, selected for the post of Typist -cum-Assistant in the month of March, 2002 and allotted to Secretariat Services. Thereafter, the petitioner was directed to appear before the first respondent on 17.4.2002 to substantiate his social status as Scheduled Tribe candidate. Accordingly, he appeared and gave statement consolidating that the petitioner belongs to Kammara Caste and a Scheduled Tribe candidate and as directed by the first respondent, the petitioner gave particulars of the family members. But without further conducting any enquiry, the first respondent has passed the impugned order dated 21.10.2002 observing that the petitioner cannot be considered for State Services against Scheduled Tribe backlog vacancies. On the basis of these findings recorded by the first respondent stating that the petitioner belong to Kammara which is Backward Class, the impugned order is passed, which is wholly without jurisdiction and in utter violation of the judgment of the Division Bench passed in Sankaravamsam Sasidevi Vs. Commissioner of Tribal Welfare, Telugu Sankshema Bhavan, Hyderabad and Another, , wherein a Division Bench of this Court has held that the Commissioner of Tribal Welfare has no power to enquire independently into a doubtful claim as per the provisions of A.P. Scheduled Castes, Scheduled Tribes and Backward Classes Regulation of Issue of Community Certificates Act, 1993 (for short the Act). It is also submitted that the Division Bench further held that even in case of doubt, the grantee has to be admitted to the educational course provisionally subject to the final orders that may be passed by the Competent Authority under the Act and the said principle laid down by the Division Bench is equally applicable to the services in the State on the basis of reservation. Therefore, the second respondent should have issued appointment order to the petitioner and enquiry with regard to the social status of the petitioner can even be conducted even after appointment. Therefore, the impugned order passed by the first respondent is totally illegal and contrary to the provisions of the Act and the guidelines issued by the Government as per Circular Memo dated 23.7.1999, according to which the verification of Kammara Caste has to be done on the basis of the factors such as traditional customs, linguistic affinity, social and cultural environment, marriage culture, etc., and the impugned order is bereft of these facts and the first respondent has decided the issue on the basis of the entries in the educational records of petitioner's cousin sisters and other family members. Therefore, the decision arrived at by the first respondent is totally misdirected. Though the petitioner has appeared and stated before the first respondent as directed by him about the traditions and other religious aspect of Kammara Caste, the first respondent has not considered the same in the impugned order. As such the impugned order is vitiated by improper decision making process. It is further asserted by the petitioner that himself and his family members belong to Kammara Caste only, which is included in the list of Scheduled Tribe of the State of Andhra Pradesh. Therefore, in view of the impugned order passed by the first respondent, he was deprived of the State Service appointment as Typist-cum-Assistant in the Secretariat Services and thus

serious injustice was caused to him. Therefore sought for the relief stated supra.

3. In reply to the above contentions, the respondents have filed their counter-affidavit stating that Sri Kandrathi Nagaraju s/o Shivaji was provisionally selected for the post of Typist - cum - Assistant under the Scheduled Tribe quota by the A.P. Public Service Commission and was allotted to A.P. Secretariat Services and the Secretary to Government (Services), GAD directed candidates who were also selected for the post of Typist-cum-Assistants to the Office of the Commissioner, Tribal Welfare, Andhra Pradesh, for verification of their social status. The petitioner is one among them. Accordingly, all the 30 candidates have attended the office of the first respondent, furnished the required information about their community and relatives. After careful examination of the information furnished by them, out of 30 candidates, 29 candidates were found to be genuine and the report was furnished to the 2nd respondent in regard to those 29 candidates on 17.4.2002. In respect of Kandrathi Nagaraju, it was recorded that his case requires detailed enquiry and hence his appointment may be kept in abeyance until further orders from the 1st respondent. Subsequently, enquiries were conducted to verify the veracity of the information furnished by the petitioner about his Scheduled Tribe status claim and the report of the enquiry was furnished to the second respondent vide the impugned proceedings stating that the petitioner may not be considered for the post of Typist-cum-Assistant against the backlog vacancies, as the enquiry revealed that he does not belong to Kammara Scheduled Tribe. It is also submitted that there is a caste by Kammra or Kammari, sub-division of Vishwabrahmin Community inhabiting outside the scheduled areas including Prakasam District and Kamaria Scheduled Tribe inhabiting the Scheduled areas of Srikakulam, Vizianagaram, Visakhapatnam, East and West Godavari Districts, as such there are two communities with similar nomenclature and the enquiry conducted by the first respondent into the Scheduled Tribe status claim of the petitioner revealed that the petitioner does not belong to Rammara Scheduled Tribe. It is further submitted that the Mandal Revenue Officer is not the competent authority to issue community certificate in respect of Kammari Tribe inhabiting non-scheduled areas of the state is the Revenue Divisional Officer. It is also submitted that the petitioner cannot rely on the judgment of the Division Bench in Sankaravamsam Sasidevi's case, in view of the amendment to Rule 9 and insertion of Sub-rule 10 to Rule 9 of A.P. SCs, STs, and BCs. Issuing Community, Nativity and Date of Birth Certificates Rules, 1997 by virtue of G.O. Ms. No. 79 Social Welfare (CV-2) dated 24.7.2002 and by virtue of the said insertion of Sub-rule (10) to Rule 9, instead of District Collector, the Commissioner of Social Welfare was given authority to conduct enquiry either suo motu or on a written complaint by any person or on a request made by an employer/educational institution/ appointing authority, to enquire into the correctness of any community, nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, the Commissioner shall refer the case to the concerned Collector or the Government for its cancellation as per the procedure laid down in Section 5 of

the Act. Therefore, in view of the amendment, the first respondent who is the competent authority, on reference by the second respondent has conducted enquiry with regard to the genuineness or otherwise of the certificate issued by the Mandal Revenue Officer, Kandukuru dated 22.1.1999 and submitted report to the Collector, Prakasham District, to take appropriate action as per the procedure contemplated under the Rules. Therefore, it cannot be held that the impugned action of the respondents is illegal. On facts and law, the judgment relied on by the petitioner is not applicable to the instant case. The counter also shows that at the time of conducting enquiry and the petitioner and his father were given opportunity on 17.4.2002 to substantiate their community claim by oral and documentary evidence and the petitioner and his paternal uncle furnished ethnographic information on various social, cultural and religious institutions of their community as well as information about his paternal and maternal relatives, which are enclosed to the enquiry report. It is asserted that the report is not submitted by the first respondent based on educational record, but a thorough enquiry was conducted giving opportunity to the petitioner and his parents. Therefore, it cannot be said the enquiry was conducted behind the back of the petitioner and no opportunity was given. Thus, it is the case of the respondents: that the petitioner does not belong to Karnmara Caste of Scheduled Tribe, but he belongs to Kammari Caste of Backward Class and therefore, he is not entitled to claim to be a member of Scheduled Tribe Community.

4. The only issue involved in this writ petition is whether the first respondent is competent to conduct enquiry with regard to the social status of the petitioner as a member of Scheduled Tribe or a Backward Class.

5. The main claim of the petitioner is based on Social Status Certificate issued by the Mandal Revenue Officer, Kandukur, dated 22.1.1999. As per rules, the competent authority is the Revenue Divisional Officer to issue social status certificate in respect of the Scheduled Tribes inhabiting in the non-scheduled areas of the State. The petitioner was selected by the Public Service Commission to the post of Typist-cum-Assistant under the reserved quota of Scheduled Tribe and allotted to the A.P. Secretariat Service and the Secretary, General Administration Department, requested the first respondent to verify the genuineness or otherwise of 30 candidates, including the petitioner before giving appointment orders and on examination, the first respondent affirmed the genuineness of 29 candidates except the petitioner. A part of the enquiry report in respect of the petitioner reads as follows:

"...It is clear from the above that the family of the candidate belongs to Maharata Caste an immigrants community from the present Maharashtra State and adopted the blacksmith the as occupation. In course of time the family developed contacts with local Kammari sub-caste of Viswa Brahmin Caste. The candidate's father Sri Kandrathi Shivaji married Malleswari D/o Oruganti Chenchaiyah of Ananthavarappadu, Guntur District. The caste of Sri Oruganti Chenchaiyah is recorded as Viswa Brahman and Bayata Kammari in the M.P.P. Elementary

School, Ananthavarappadu, Guntur District. People belonging to Oruganti Kandrathi intiperus of Ananthavarrappadu Village are related to the candidate's family. All the students with Oruganti and Kandrathi surnames in Ananthavarappadu are recorded as belonging to Viswa Brahman or Bayatakammari or Kammari Caste from 1963 to 1978 in the admission register of M.P.P. Elementary School, Ananthavarrappadu Village, Guntur District. Many of them joined in the Z.P.P. High School, Ananthavarrappadu for further studies. Their caste was recorded as Kammari till 19.6.1982. These persons have come to know of the various reservations in educational institutions and services as well as economic benefit programmes extended to Scheduled Tribe under the Constitution subsequently and started declaring their caste as Kammara having come to know of the existence of Kammari Tribe in the list of Scheduled Tribes. Taking advantage of similarity of their community name with that of Kammara Tribe and ignorance of the authorities of the local educational institutions and revenue authorities about Kammara Scheduled Tribe, the parents of the students declared their community as Kammara, even though they infact belong to Kammari Caste, a Backward Class. They pressurised the authorities of the Z.P.P. the authorities of Z.P.P. High School, Ananthavarappadu and got their caste entry changed from Kammari, to Kammara in respect of students admitted prior to 19.6.1982. They have even tampered the caste entry in the recorded sheets issued by M.P.P. Elementary School, Ananthavarappad, Guntur District. They have altered their caste name from Kammari to Kammara in the record sheets of Sri Oruganti Dathu, Sri Oruganti Chandra Rao, Kum, Oruganti Chancha Devi, Kum.Padmavathi and Kum. Sarada.

In view of the above, the parents of Sri Kandrathi Nagaraju do not belong to Kammari Tribe. As per the records father of the candidate belongs to Maharashtra (Maharata) Caste and mother of the candidate as per the records of the educational institutions belongs to Viswa Brahmin or Bayata Kammari or Kammari Caste. Maharastra (Maharata) Caste is not declared as Schedule Tribe in this State. Even assuming that the candidate claims the caste of his mother, he cannot still be considered as a member of Scheduled Tribe as Viswa Brahmin or Bayata Kammari or Kammari Caste is not declared as Scheduled Tribe in this State. The Mandal Revenue Officer, Kamdukur was apparently misled by the caste entry in the educational records of the candidate where his caste was declared as Kammara by his parents even though neither of his parents belong to Kammari Scheduled Tribe....."

6. Thus, after a detailed enquiry, the first respondent came to the conclusion that the petitioner does not belong to Kammara, Scheduled Tribe. As such it cannot be said that the first respondent has gone to the extent of inclusion or deletion of any caste in the Scheduled Tribe List, but he determined the social status of the petitioner, based on the guidelines issued by the Government from time to time. Though initially the respondents have mentioned the caste of the petitioner as Maratha and subsequently it is stated that the petitioner belongs to Kammara Caste, However, I am not inclined to give any finding whether with regard to the

caste of the petitioner whether he belongs to Viswa Brahmin, Kammara Caste of Backward Class or Kammara Caste, Scheduled Tribe.

7. The learned Counsel for the petitioner, based on the headnote submitted that the Division Bench in Sankaravamsam Sasidevi's case has considered Rule 8 of the Rules and held that under Rule 8 the social status claim as Scheduled Tribe in respect of the doubtful claims have to be referred for District Level Scrutiny Committee and the Commissioner, Tribal Welfare is only a member of the Review Committee at State level and has no power to enquire independently into the doubtful claims. Therefore, in view of the above, the report of the Commissioner, Tribal Welfare, conducting the enquiry independently and submitting a report, is illegal and in violation of the Act and Rules.

8. As on the date of pronouncement of judgment by the Division Bench i.e. on 3rd January, 2002, the rule position is that the District Collector was competent authority to enquire into the matters with regard to the doubtful claims of social status of the individual and the Commissioner, Tribal Welfare is one of the Members of the District Level Committee. Subsequent to this judgment, the Rule 9 of the Rules was amended by G.O. Ms. No. 79 Social Welfare (CV-2) dated 24.7.2002 and was published in A.P. Gazette RS to Part I (extraordinary), dated 2.8.2002, inserting Sub-rule 10 to Rule 9, which reads as follows:

"...In respect of Tribals, the Commissioner of Tribal Welfare, either suo motu or on a written complaint by any person or on request made by an employer/ educational institution/ appointing authority, shall enquire into the correctness of any community, nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to concerned Collector or the Government for its cancellation as per the procedure laid down in Sections 5 of the Act..."

9. Therefore, on 3.8.2002 on which date the above said notification is published in the Gazette, the Commissioner, Tribal Welfare has got the power either suo motu or on a written complaint by any person or on request made by an employer/educational institution/appointing authority, to enquire into the correctness of any community, nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, he shall refer the case to concerned Collector or the Government for its cancellation as per the procedure laid down in Section 5 of the Act. Therefore, by virtue of this amendment, the power was taken away from the purview of the District Collector and was entrusted to the Commissioner, Tribal Welfare by insertion of Sub-rule (10) to Rule 9 of the Rules. Thus the Commissioner has acted upon the request made by the second respondent and submitted his report dated 21.10.2002 on which date the Commissioner, Tribal Welfare was empowered to enquire into the social status of the petitioner. Though, as on the date of conducting enquiry i.e., on 17.4.2002 Sub-rule (10) to Rule 9 was not in existence, as on the date of submission of report i.e., on 21.10.2002, the Commissioner of Tribal Welfare was well within his competence to conduct enquiry. Accordingly, the report was

submitted with a request to refer the matter to the District Level Committee for its opinion and it is for the District Level Committee to go into the matter and decide whether the report submitted by the Commissioner, Tribal Welfare, is inconsonance with the provisions of the Act and Rules. As such, when the power is entrusted to the District Level Committee, the petitioner ought not to have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution. Having regard to these facts and circumstances, I hold that the Commissioner, Tribal Welfare, is empowered under Sub-rule (10) of Rule 9 of the Rules to enquire into the doubtful claims with regard to the Social Status Certificates obtained by the candidates, alleged to be belonging to Scheduled Tribe with regard to the correctness or any community, nativity or date of birth certificates and if it is found that the certificate is obtained fraudulently, he shall refer the case to the concerned Collector or the Government for its cancellation as per the procedure laid down in Section 5 of the Act. As stated earlier, in this case, the petitioner relied on the certificate issued by the Mandal Revenue Officer, Kandukur, dated 22.1.1999. In view of the above changed position of law on the issue, the judgment of the Division Bench to the extent the petitioner relied, that the Commissioner is only a Member of the District Level Committee and the State Level Committee and he has no power to independently enquire into the doubtful claims and submit a report to the District Collector to take action, is no more a good law, in view of the amendment and insertion of Sub-rule (10) to Rule 9 of the of the Rules.

10. As rightly pointed out by the learned Counsel for the petitioner that when the Government Memo No. 1478/J2/96-1 dated 18.10.1996 was considered and set aside by a learned Single Judge of this Court in Writ Petition No. 24699 of 1997 dated 29.12.1997, the Commissioner, Tribal Welfare, should not have considered the same in his report. But it, however, does not mean that the report submitted by him is invalidated, but it is otherwise valid under the provisions of the Act and Rules.

11. For the foregoing discussion, I direct the second respondent and the District Collector, Prakasam District, to place the matter before the District Level Committee for its consideration, as requested by the first respondent through his proceedings Rc.No. 2048/2002/TRI/VC-7 dated 21-10-2002 and take appropriate action in this regard, as per law, uninfluenced by any of the observations made hereinbefore and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

12. The writ petition is accordingly dismissed. No order as to costs.