
(2016) 12 AP CK 0056
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8894 of 2008

L. Sankar Rao

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 5
Constitution of India, 1950 — Article 14

Citation : (2017) 2 ALT 1 : (2017) 2 AndhLD 667

Hon'ble Judges : A.V. Sesha Sai, J.

Bench : Single Bench

Advocate : Smt. M. Bhaskara Lakshmi, Council, for the Petitioner; G.P. for Social Welfare (AP), Council, for the Respondents

Final Decision : Disposed Off

Judgement

A.V. Sesha Sai, J.—This writ petition, filed under Article 226 of the Constitution of India, assails the order passed by respondent "No. 1-State Government vide G.O.Ms. No.29, Social Welfare (CV.2) Department, dated 23.02.2008, rejecting the appeal filed by the petitioner against the proceedings of Respondent No.2-District Collector Vizianagaram, dated 08.11.1999.

2. Heard Smt. M. Bhaskara Lakshmi, learned Senior Counsel, appearing for the petitioner and learned Government Pleader for Social Welfare for the respondents, apart from perusing the material available before the Court.

3. According to the petitioner, he joined the services of Bharat Heavy Plates and Vessels, Visakhapatnam in the year 1972 and he retired from service on voluntary basis on 31.12.2001. Earlier, on the complaint made by the Scheduled Castes and Scheduled Tribes Association, enquiry was initiated against the petitioner and on the directions issued by respondent No.2, respondent No.3-Mandal Revenue Officer, Salur submitted a report vide D.Dis. 1757/ 81. dated 12.06.1981, stating that the petitioner herein belongs to "Konda Kapu"

community, a Scheduled Tribe. Subsequently, in the year 1987, once again, the enquiry was initiated by the respondent-authorities and on 19.08.1988, respondent No.3 submitted a report vide proceedings No.93/88D, stating that the petitioner belongs to "Konda Kapu" community. Thereafter, respondent No.2 issued a notice on 08.03.1991, asking the petitioner to appear for enquiry with regard to the verification of his caste status. According to the petitioner, he submitted all the details. Subsequently, on 17.03.1994, respondent No.2 issued a show cause notice, asking the petitioner to show cause as to why the caste certificate issued to him on 12.04.1967 should not be cancelled. Questioning the validity of the said show cause notice, dated 17.03.1994, the petitioner filed W.P.No. 12239 of 1994 before this Court. The said writ petition was dismissed on 29.10.1997, keeping it open to the authorities to proceed with the enquiry by duly giving opportunity to the petitioner. Thereafter, respondent No.2 referred the matter for enquiry to the District Level Scrutiny Committee (hereinafter called as "the Committee") under the provisions of the Andhra Pradesh (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 (hereinafter called as "the Act") and the Rules made thereunder. In pursuance of the same, the Committee conducted enquiry and submitted a report. Subsequently, respondent No.2 passed an order, dated 08.11.1999, under Section 5 of the Act, cancelling the Konda Kapu-ST caste certificate issued earlier in favour of the petitioner by respondent No.3 on 12.04.1967. Assailing the said order, the petitioner preferred a statutory appeal before respondent No.1 under Section 7 of the Act on 06.12.1999. Subsequently, respondent No.1 vide G.O.Ms.No.39, Social Welfare (VC.2) Department, dated 30.03.2001, dismissed the said appeal, confirming the order passed by respondent No.2 on 08.11.1999. Challenging the validity of the said order passed by respondent No.1, the petitioner approached this Court by way of W.P.No.8703 of 2001. This Court by way of an order, dated 30.06.2006, disposed of the said writ petition, setting aside the order passed by respondent No.1 vide G.O.Ms. No.39, dated 30.03.2001, and directing respondent No. 1 to pass orders afresh.

4. After the above said remand, respondent No.1 vide G.O.Ms. No.29, dated 23.02.2008, rejected the appeal once again, thereby upholding the orders passed earlier vide G.O.Ms. No.39, dated 30.03.2001, and the orders of respondent No.2, dated 08.11.1999, cancelling the caste certificate of the petitioner.

5. In the above backdrop, challenging the validity and the legal sustainability of the orders passed by respondent No. 1 vide G.O.Ms. No.29, dated 23.02.2008, and the orders of respondent No.2, dated 08.11.1999, the present writ petition came to be filed.

6. This Court, while ordering Rule nisi on 22.04.2008, passed interim order in WPMP No. 11801 of 2008 and while noting the retirement of the petitioner in 2001 itself, directed that the petitioner shall not be subjected to the prosecution pursuant to the impugned order.

7. Responding to the Rule nisi issued by this Court, a counter-affidavit, deposed by respondent No.2 is filed, denying the averments and the allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

Submissions/contentions of the learned Senior Counsel appearing for the petitioner :-

(1) The orders under challenge are highly illegal, arbitrary and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the Act and the Rules made thereunder.

(2) The respondents grossly erred in holding repeated enquiries and the same is violative of Article 14 of the Constitution of India.

(3) Failure on the part of the respondents in furnishing the reports of respondent No.3, on which they placed reliance, is fatal and vitiates the entire proceedings and is a clear violation of the principles of natural justice.

(4) The impugned orders are the result of total non-application of mind, as such, they are untenable.

(5) The findings of the primary and appellate authorities are contrary to the Rules.

(6) The prosecution launched against the petitioner vide C.C. No.498 of 1992 on the file of II Metropolitan Magistrate, Visakhapatnam for the alleged offences punishable under Sections 471,418 s 420 I.P.C. ended in acquittal.

8. To bolster her submissions ai contentions, learned Senior Counsel for petitioner places reliance on the judgment of this Court in Govt. of A.P. by its Secretary v. GAD (Special) Department, Hyderabad R. K. Ragala, Deputy Inspector General of Police (CID) PCR Cell, Hyderabad (1) 1994 (2) ALT 28 (D.B.) and the order, date 10.06.2016, passed in W.P. No.8033 of 2007.

Submissions/contentions of the learnt Government Pleader for Social Welfare for the respondents :-

(1) The orders under challenge are accordance with the Act and the Rules made thereunder and the same do not suffer from any error or infirmity, and in the absence of the same, the impugned orders are not amenable for any judicial review under Article 226 of the Constitution of India.

(2) Only after meticulously and thorough considering the entire material available on record, respondent No.2 passed the impugned orders and respondent No confirmed the same in appeal.

(3) The respondents afforded complete opportunity to the petitioner, as such, the complaint of violation of principles of natural justice is untenable.

(4) The enquiry initiated in the instant case cannot be described as a repeated

enquiry in view of the orders passed by this Court in W.P. No. 12239 of 1994.

(5) Since all the relatives of the petitioner belong to forward caste, the petition cannot claim the status of Scheduled Tribe.

9. In the above backdrop, now the points that boil down for consideration in the present writ petition are:-

(1) Whether the respondents are justified in holding repeated and successive enquiries and whether the said action is sustainable and tenable?

(2) Whether the reports, dated 03.07.1989, 13.06.1990, 23.09.1992 and 06.09.1993, which form the basis for respondent No.2 and the Committee to resort to the impugned action, can be relied upon by the respondents for coming to the impugned conclusion?

(3) Whether the orders impugned are in accordance with the Act and the Rules made thereunder and whether the same are tenable? and

(4) Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India?

10. Point No.1:- The information available before this Court manifestly reveals that earlier in the year 1981, the respondent-authorities initiated enquiry on the basis of a complaint made by the Scheduled Castes and Scheduled Tribes Association and pursuant to the directions of respondent No.2, respondent No.3 submitted a report vide D.Dis. 1757/81, dated 12.06.1981, stating that the petitioner herein belongs to "Konda Kapu" community, a Scheduled Tribe. Subsequently, in the year 1987, once again, the enquiry was initiated and respondent No.3 vide proceedings No.93/ 88D, dated 19.08.1988, submitted a report to respondent No.2 stating that the petitioner belongs to "Konda Kapu" community. A perusal of the said report, dated 19.08.1988, shows that respondent No.3 recorded statements of various persons including the Village Sarpanch and Munsif.

11. After the advent of the present Legislation in the year 1993, once again, the authorities initiated enquiry and respondent No.2 referred the matter to the Committee and basing on the report of the Committee, respondent No.2 cancelled the caste certificate of the petitioner without adhering to the mandatory requirements of Section 5 of the Act, which mandates that if the District Collector is of the opinion that a person fraudulently obtained the certificate, opportunity of making a representation should be given.

12. While referring to the previous enquiries, which went in favour of the petitioner, it is the submission of the learned Senior Counsel for the petitioner that the action of holding repeated and successive enquiries is unsustainable and violative of Article 14 of the Constitution of India and contrary to the law laid down by this Court in the judgment referred to supra and the order, dated 10.06.2016, passed in W.P. No.8033 of 2007.

13. Therefore, it would be appropriate to refer to the said judgments. In the judgment reported in 1994 (2) ALT 28, at paragraphs 9, 15, 16 and 17, the Division Bench held as under:-

"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-Generals 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 Godavari have taken into consideration the report the Inspector-General of Police, before initiating the present proceedings. It is all to be noted that there was no allegation) any fraud played by the first respondent obtaining the social status certificates or in the issuance of enquiry reports of the Revenue Divisional Officer and the Inspector-General of Police.

15. The learned Counsel for the fir respondent contended that the right conferred

on a citizen by Article 21 of 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, referred to Kharak Singh v. State of U.P. The Supreme Court, explaining the scope of Article 21, held as follows:-

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

"We shall now proceed with the examination of the width, scope at content of the expression "personal liberty" in Article 21. We feel unable to hold the term was intended to bear only this narrow interpretation but on the other hand consider that "personal liberty" is used the Article as a compendious term to include within itself all the verities of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes that freedom, "personal liberty- in Article 21 takes in and comprises the residue".

16. In Unni Krishncin v. State of A.P. 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 case (6 supra) 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:-

"Protection 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 v. State of Madras (1950 SCR 88) was departed from in Menaka Gandhi v. Union of India (1978 SC 597). It is now clear that from Article 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 Article 21, we have no hesitation in holding that a citizen is entitled to live with dignity and without being harassed by repealed 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 Scheduled 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 findings thereon, which were legally held and which were based on evidence. The first respondent's father was recorded 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."

Following the above said judgment of the Division Bench of this Court, this Court allowed W.P.No.8033 of 2007 on 10.06.2016.

14. In the instant case also, as mentioned in the preceding portions of this order, the respondent-authorities caused enquiries into the social status of the petitioner twice earlier, one in the year 1981 and another in the year 1987, and the respondent-authorities, after holding the enquiries, categorically found in favour of the petitioner.

15. In view of the law laid down in the judgments referred to above, this Court finds absolutely no justification on the part of the respondents in initiating enquiry once again.

16. The contention of the learned Government Pleader that in view of the order passed by this Court in W.P.No. 12239 of 1994, the enquiry in the instant case cannot be said to be a successive enquiry, in the considered opinion of this Court, is unsustainable and untenable and dismissal of the said writ petition would not debar the petitioner from raising the contention, touching the aspect of holding repeated and successive enquiries as the said writ petition was filed against a show cause notice issued against the petitioner.

17. Therefore, Point No.1 is answered in favour of the petitioner and against the respondents, holding that the very enquiry held against the petitioner for the

third time is unsustainable and untenable in the eye of law.

18. Point No.2:- Though it is the categoric case of the petitioner in the writ affidavit as ground No.9(m) that the enquiry culminated in the reports, dated 03.07.1989, 13.06.1990 and 06.09.1993, was conducted behind the back of the petitioner, the same is not denied by the respondents in their counter-affidavit. A perusal of the order of respondent No.2-1 District Collector shows that he placed reliance on the above reports of respondent No.3-Mandal Revenue Officer, Salur. In the absence of any denial of such statement made in the writ affidavit, the said averments are required to be taken as correct. If that being so, the said action on the part of the respondents is, undoubtedly, fatal to the case of the respondents. The said action, in the considered opinion of this Court, is unhesitatingly a patent violation of the principles of natural justice and the same vitiates the entire proceedings.

19. Therefore, Point No.2 is also answered in favour of the petitioner and against the respondents, holding that the impugned action is violative of the principles of natural justice.

20. Point No.3:- Respondent No.2 in the impugned orders of cancellation observed that the school records need not be considered and the said finding is contrary to Rule 8(d)(5) of the Rules framed under the Act in the year 1997, which mandates the consideration of the school records also during the course of enquiry.

21. Another significant aspect, which needs mention in this context, is that the order of respondent No.2 does not show that he, after submission of the report by the Committee, has afforded opportunity of making representation to the petitioner, as mandated under Section 5 of the Act. Respondent No.2, in fact, ought to have given notice after receipt of the report of the Committee, calling for objections of the petitioner on the report by supplying the same to the petitioner. The order of respondent No.2 does not disclose any sort of exercise in the said direction.

22. A reading of the appellate order passed by respondent No. 1 also shows that the appellate authority did not consider any of the points urged by the petitioner. It is a settled and well established proposition of law that orders of the quasi judicial authorities are required to be supported by valid reasons and in the instant case, the said principle is followed in breach.

23. In view of these aspects and the infirmities pointed out above, this point is also answered in favour of the petitioner and against the respondents, holding that the impugned orders are not in accordance with the Act and the Rules made thereunder and on the other hand, violative of Article 14 of the Constitution of India and the principles of natural justice.

24. Point No.4:- In view of the findings on Point Nos. 1 to 3, this Court is of the considered opinion that the petitioner is certainly entitled for indulgence of this

Court under Article 226 of the Constitution of India.

25. It is also significant to note that as a consequence of the orders of respondent No.2, criminal prosecution was launched against the petitioner vide C.C. No.498 of 1992 on the file of II Metropolitan Magistrate, Visakhapatnam and by way of judgment, dated 26.03.1997, the learned Magistrate acquitted the petitioner of the alleged offences punishable under Sections 471. 418 and 420 I.P.C.

26. For the aforesaid reasons, the writ petition is allowed, setting aside the orders passed by respondent No. 1 -State Government vide G.O.Ms. No.29, Social Welfare (CV.2) Department, dated 23.02.2008, and the proceedings of Respondent No.2-District Collector, Vizianagaram, dated 08.11.1999. There shall be no order as to costs.

27. Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of.