

(2001) 03 AP CK 0097
In the Andhra Pradesh High Court
Case No : WA No. 316 of 2001

M. Balakrishna Rao

APPELLANT

Vs

Joint Collector, Hyderabad-cum-Additional District Magistrate,
Hyderabad

RESPONDENT

Date of Decision : 31-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 3 ALD 363 : (2001) 3 ALT 55

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. Vedula Srinivas, for the Appellant; Government Pleader for Social Welfare, for the Respondent

Judgement

S.B. Sinha, CJ

1. Writ petitioner is the appellant herein. He filed a writ petition being WP No.8025 of 1990 inter alia praying for issuance of a writ of certiorari quashing the order passed by the respondent herein in Proceedings No.D5/ 5345/89 dated 29-5-1990.

2. The aforementioned proceedings were initiated, inter alia, on the ground that the appellant who is working as driver in Hyderabad Urban Development Authority (HUDA) had obtained false caste certificate. In terms of the said proceedings, while cancelling the caste certificate issued to the appellant by the Tahsildar, Secunderabad on 1-2-1980 certifying him as belonging to Manneravarlu community recognised as a Scheduled Tribe, the District Collector, Hyderabad was requested to initiate action against the Tahsildar, Secunderabad who had issued the caste certificate to the appellant without proper enquiry and jurisdiction to the appellant herein who is actually a resident of Kondamadugu, Nalgonda district.

3. The learned single Judge in the impugned judgment, inter alia, held:

"Though the petitioner is not resident of Secunderabad, and though he has not studied in Secunderabad, he has obtained the caste certificate from the Tahsildar, Secunderabad. Primary burden is on him to prove that he belongs to "Mannevarlu" caste (Scheduled Tribe). He has no house or any address at Secunderabad. Admittedly, he belongs to Kondamadugu, Bibingar Mandal, Nalgonda district and he has studied at Bibinagar and Bhongir alone. Even ignoring the enquiry report conducted by the Mandal Revenue Officer, Bibinagar and report of the Collector, Nalgonda district, the petitioner has not discharged his initial burden of proving the certificate obtained by him from the Tahsildar, Secunderabad on 1-1-1980 is genuine and that he belongs to "Mannervarlu" (Scheduled Tribe)".

4. Mr. Srinivas, the learned Counsel appearing on behalf of the appellant, inter alia, submitted that in passing the impugned order, there has been flagrant violation of the principles of natural justice. Our attention in this connection has been drawn to paragraph 4 of the writ affidavit and it was submitted that in the counter-affidavit, the allegations made therein had not been traversed. The averments in para 4 of the writ affidavit read thus:

"I have appeared before the respondent and on 27-3-1989 my statements were recorded. I have stated that I belong to "Manneravarlu" caste of Bibinagar Mandal and that there are only three families of our caste in Kondamadugu village. My wife also belongs to same caste from Medak district. After recording my statement, no further proceedings took place in my presence. Again, another notice dated 20-4-1990 was issued to me summoning me to attend the office of the respondent on 28-4-1990 and to produce my parents and my certificates. I have appeared on 28-4-1990 along with my mother and my certificates. However, no proceedings took place on that day and they were adjourned to 11-5-1990. On 11-5-1990 my statement was again recorded and my mother's statement was not recorded, though she was present on that day also. I have also taken two witnesses to speak the truth of my caste viz., "Manneravarlu" but the statements of those two witnesses Smt Rangamma and Ranadheeva Reddy were also not recorded. It is submitted that in my presence no witnesses were examined nor any reports were furnished to me."

Curiously, enough, the said statements are not verified at all.

5. In the counter-affidavit, it was, inter alia, alleged that the appellant herein categorically stated that he belongs to Nalgonda district and the matter had, therefore, been referred to District Collector, Nalgonda. A field level enquiry through the Mandal Revenue Officer was conducted and it was reported that he belonged to "Velama" caste and not a member of Scheduled Tribe community. He had also recorded the statements of members of various communities and copies of such statements had been furnished by the Collector. It was further stated that on receipt of a report from the District Collector, again a notice had been issued to the appellant calling upon him to appear for a personal hearing on 20-4-1990. On that day, he attended, and the case was adjourned to 28-4-1990.

The case was again adjourned to 11-5-1990. On that day, the statement of the appellant was recorded, whereafter the order impugned in the writ petition had been passed. It was stated that had the appellant been really belonging to Manneravarlu caste, as he proclaims now, he having studied up to 7th standard, ought to have availed of the benefits given to the candidates belonging to Scheduled Tribes, but, he did not adduce any such evidence during the enquiry.

6. It has further been stated at para 11 of the counter-affidavit:

".....it is submitted that the social status of the petitioner has been enquired by the concerned District Magistrate in whose jurisdiction the petitioner was residing. The Mandal Revenue Officer concerned had reported after recording sworn statements of villagers that the petitioner belongs to "Velma" caste and not from Scheduled Tribe caste. The averments of the petitioner that the Mandal Revenue Officer, Bibinagar has recorded that the statements of villagers relatively not old persons is not a matter of concern since they are aged 50, 35, 55, 65 and 52 years. Had the petitioner really belonged to Scheduled Tribe caste he should not have objected about the persons whose statements were recorded. As such depositions recorded in respect of the persons belonging to area are genuine. The petitioner during the enquiry had produced a xerox copy certification made by the Head Master of Zilla Parishad High School, Bibinagar and Sarpanch of Gram Panchayat, Kondamadugu both dated 1-1-1986 and 10-1-1986 respectively. On the certificates, the stamp of their designations shown as Bhongir Taluk. It is construed that the petitioner had secured these certifications fraudulently, as on the date of obtaining certifications, no Taluk officers were in existable. In place of Taluka, Mandals have been formed from 23-5-1985. As such, the certificates produced by the petitioner false and fabricated. The petitioner has been given ample opportunity to produce the documentary evidence in support of his claim. But, he failed to produce the documentary evidence. Therefore, on the basis of the report of the District Collector, Nalgonda and depositions recorded from the villagers it found that the petitioner does not belong to Scheduled Tribe caste and hence the caste certificate obtained by him has been cancelled as per the rules."

7. The contention that the appellant was prejudiced by non-furnishing of copy of the report of the MRO had not been raised before the authority. It does not appear from the writ petition that such a contention had even been raised before the District Collector.

8. It is beyond any cavil of doubt that the initial burden to prove that he belongs to a member of the Scheduled Tribe community was upon the appellant. He failed to discharge the said burden.

9. Furthermore, the appellant had not explained as to how he could procure a certificate from the Tahsildar, Secunderabad when he was a resident of Nalgonda district.

10. The learned single Judge not only considered the affidavits filed by the

parties but also perused the records of the case. From the said records, it appeared that the appellant herein had sought for time to enable him to furnish documentary evidence in support of his claim and, despite adjournments, he did not produce any such evidence. The certificate obtained by him from the Tahsildar, Secunderabad was on the basis of a certificate issued by Sri Machender Rao, MLA, Moulali Constituency and on the basis of the said caste certificate alone, he obtained the job under the quota meant for Scheduled Tribes in the year 1980 as driver in HUDA. Except the said certificate, the appellant had not filed any other document whatsoever in support of his claim that he belongs to Scheduled Tribe community.

11. He thus failed to discharge his initial burden. In Director of Tribunal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, , the Apex Court held:

".....Burden of proof of social status is always on the person who propounds it to seek constitutional socio-economic advantages. It is no part of the duty of the State to disprove or otherwise. The criteria to obtain caste certificate from Nativit Tahsildar/Mandal Revenue Officer /Revenue Divisional Officer is relevant for the reason that Scheduled Tribes generally live in forest areas, mountainous regions and specified; pockets and will be known to local officers or easily accessible for verification. The respondent is not as innocent as the Division Bench appears to have proceeded. It is seen that the father of the respondent deliberately abstained to appear before the Director. The. social status certificate to the daughter was required to be produced from the Tahsildar of native jurisdiction but failed. Though he lived in Malakpet within the jurisdiction of Musheerabad Talisildar, he produced the certificate from Tahsildar, Vallabhnagar in Ranga Reddy District who had no jurisdiction to issue it. Yet he had chosen to obtain from him and the officer was a willing and accommodating one to issue false certificate. When the Principal doubted its correctness and referred the matter to the Director of Tribal Welfare, the father admittedly did not appear to establish the social status. Though respondent, minor appeared before the Director, his statement cannot be used as evidence."

12. Thus, even accepting that a copy of the enquiry report had not been furnished, although such a stand had not been taken by the appellant earlier, evidently, the same cannot be relied upon particularly having regard to the fact that the statements made in paragraph 4 of the writ affidavit have not been verified. It has not been denied that the aforementioned report is based upon the evidence of the villagers Kondamadugu village. The appellant even did not examine his father who, upon investigation, was found to be belonging to Velama caste. The principles of natural justice in a case of this nature, cannot be said to have been violated as ex facie the certificate granted by the Tahsildar could not have been acted upon as the said authority did not have any personal knowledge as regards the fact as to whether the appellant is a member of the Scheduled Tribe or not. In any event, as the appellant had failed to discharge the initial burden, it is not necessary to go into the said question.

13. For the reasons aforementioned, there is no merit in the appeal which is accordingly dismissed. There shall be no order as to costs.