

(2002) 04 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17852 of 1993

Panda Rajyalakshmi

APPELLANT

Vs

District Collector, Srikakulam and Others

RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Citation : (2002) 3 ALD 589 : (2002) 4 ALT 98

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T.S. Anand, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—In this writ petition the petitioner challenges the proceedings of Collector and District Magistrate, Srikakulam in Rc.No.4293/88, B.10, dated 3-11-1993 where under the caste certificate dated 5-7-1983 issued by the Tahsildar, Palakonda to the petitioner was cancelled.

2. In the affidavit filed in support of the writ petition, the petitioner submits that she belongs to Holva community, which is a Schedule Tribe. According to her, her forefathers migrated to Kalahandi area of Orissa State. Her father migrated to Sirusuvada village of Srikakulam District where many people of their tribe were living. She passed S.S.C. Examination in the year 1981 and her caste was recorded as "Oriya Brahmin (Holva)". She was issued a certificate by the Tahsildar Palakonda on 5-7-1983, after conducting enquiry certifying that she belongs to Holva community.

3. In the year 1983-84, she appeared for B.S.R.B examination and was selected for clerical post and was appointed as clerk in Canara Bank, Chettivari Palem, Gajuwaka, Visakhapatnam. When she was working in that post, the Assistant General Manager of Canara Bank, the 4th respondent issued proceedings dated 4-2-1988 calling upon the petitioner to submit explanation since he believed that

the caste certificate submitted by the petitioner was false. Accordingly, the petitioner submitted her explanation on 12-2-1988. Thereafter, the District Collector, the 1st respondent herein issued a show cause notice dated 23-5-1992 calling upon the petitioner to show cause as to why the caste certificate issued to her by the Tahsildar, Palakonda, on 5-7-1983 should not be cancelled. She was also directed to appear before him on 15-6-1992.

4. The petitioner submitted her explanation on 22-6-1992 reiterating her claim that she belongs to Holva community and the certificate dated 5-7-1983 is valid and genuine. Despite the same, the 1st respondent passed the impugned order. Hence the Writ Petition.

5. The 1st respondent filed counter affidavit stating inter alia that the 4th respondent requested the 1st respondent to enquire into the genuineness of the caste certificate of the petitioner. On this the 1st respondent got the matter enquired by the Mandal Revenue Officers of Kotturu and Veeraghattam Mandals. The Mandal Revenue Officer, Kotturu, the 2nd respondent submitted a report to the effect that he enquired with the local persons who revealed that the father of the petitioner belongs to Oriya Brahmin community and not Holva Schedule Tribe community. The 1st respondent has also collected other materials in the form of school record of the petitioner and that of her other family members which revealed that the claim of the petitioner was not genuine. Accordingly a show cause notice was issued calling upon the petitioner to substantiate her plea. The 1st respondent also submitted that though an opportunity was given to the petitioner to appear before him, she did not appear. On the basis of the explanation submitted by her, the matter was considered and the impugned order was passed after discussing each and every aspect of the matter at length and that the proceedings do not suffer from any legal or factual infirmity. The counter affidavit in a way reproduces the entire impugned order.

6. The respondents 3 and 4 who are employers of the petitioner though did not file any counter affidavit have supported the stand of respondents 1 and 2.

7. Sri T.S. Anand, learned counsel for the petitioner, submits that the show cause notice is based upon the enquiry conducted by him. He submits that admittedly the enquiry conducted by the 2nd respondent was without notice to the petitioner. Neither the report filed by the 2nd respondent nor the various statements recorded by him in arriving at the conclusion were furnished to the petitioner. Since the show cause notice as well as impugned order have been based on the enquiry and report of the 2nd respondent, the entire proceedings are vitiated, being violative of the principles of natural justice. He also submits that the relevant certificates clearly establish that the petitioner belongs to Holva community and it is not open to the respondents to place a different interpretation on that.

8. Sri Noushad Ali, learned Government Pleader for respondents 1 and 2, submits that when a doubt is expressed as to the genuineness of the social status

of the petitioner, it is for her to establish beyond doubt that she belongs to Holva community. According to him the petitioner failed to discharge the same. He further submits that the enquiry conducted by the 2nd respondent as well as the report submitted by him were in the form of fact finding so as to enable the 1st respondent whether to initiate the proceedings at all and the actual enquiry has taken place only after the show cause notice was issued. The report of the Mandal Revenue Officer being almost in the form of a preliminary report cannot form part of record and non-furnishing of the same is not detrimental to the interests of the petitioner much less constitutes violation of principles of natural justice.

9. It is his further contention that even otherwise the material portion of the report of the 2nd respondent has been extracted in the show cause notice and the petitioner cannot claim any detriment on account of non-furnishing of the same.

10. He ultimately justifies the impugned order.

11. Sri Deepak Bhattacharjee, learned Standing counsel for respondents 3 and 4, who adopted the arguments of the learned Government Pleader for Social Welfare has also made submissions to the effect that the impugned order does not suffer from any illegality or infirmity.

12. In the proceedings involving adjudication of the genuineness or otherwise of the claim of an individual with reference to a caste, the scope of judicial review is very limited. The Court cannot sit in judgment over the findings recorded by the Competent Authority on the basis of evidence on record. The limited scope of judicial review in such matters is to see whether the proceedings have been conducted in accordance with the principles of natural justice and whether the authority, who has undertaken the enquiry had the competence. Very rarely the decision on merits is interfered where the record discloses that the finding is based on no evidence. In this case the competence of the 1st respondent to initiate the proceedings and to pass the impugned order is not in dispute. The only question that needs to be considered is as to whether there was any procedural lapse in the proceedings.

13. The learned counsel for the petitioner submits that it is evident from the record that the 1st respondent required the 2nd respondent as well as another Mandal Revenue Officer of Veeraghattam to enquire into the matter. The 2nd respondent visited the native place of the petitioner's father and examined several persons and submitted a report. In the show cause notice the following portion of the report of the 2nd respondent was extracted.

" In the local enquiry it is revealed that Sri Panda Bheemachandra Rao, father of Rajyalakshmi resided in his father in la's house (i.e., Simhadri Panigrahi's house) in Sirsuvada village about 40 years ago. It is not known from which place he arrived to Sirsuvada village. He left for Visakhapatnam some 40 years back for his livelihood and he settled at Visakhapatnam. At present he has got no

relative and properties in Sirsuvada village and the father-in-law also expired. In the local enquiry it is revealed that all Oriya speaking people in Sirsuvada village belongs to "Oriya Brahmin" community but not "Holva" (ST) community. As verified from the Birth Registers of 1950 and 1956 the persons who are having the surnames of "Punda", "Palo" and "Patro" belong to "Brahmin" community."

14. It shows that the 1st respondent relied upon the report of the 2nd respondent and the entire proceedings are vitiated since the 2nd respondent did not issue a notice to the petitioner nor the statements recorded by him were furnished. In support of his contention he relied upon the judgment of the Supreme Court reported in STATE OF A.P. Vs. N. CHANDRASEKHARA¹ and judgment of this Court in D. MANIKYAMALA Vs. PRINCIPAL ANDHRA MEDICAL COLLEGE², which was followed in K. ACHA RAO Vs. JOINT COLLECTOR³

15. The learned Government Pleader on the other hand submits that it was not obligatory for the 2nd respondent to issue notice because what was entrusted to him was only a preliminary verification of the matter. So far as non-furnishing of the report and statements recorded by the 2nd respondent are concerned he submits that the 1st respondent is not under an obligation to furnish the same. In support of his contention he relies upon judgments of the Supreme Court in T.V.R.V.R. CHETTIAR Vs. STATE OF TAMIL NADU⁴, DIRECTOR OF TRIBUNAL WELFARE Vs. LAVETI GIRI⁵ and also a judgment of this Court in P. GNANA KUMAR Vs. JOINT COLLECTOR⁶.

16. It is not in dispute that the 1st respondent, on the request of the respondents 3 and 4 got the matter enquired into by the Mandal Revenue Officers of Kotturu and Veeraghattam.

17. In para-2 of the counter affidavit, the 1st respondent stated as under.

" The Assistant General Manager, Canara Bank, Hyderabad requested the Collector, Visakhapatnam to enquire into the caste of Panda Rajyalakshmi (Petitioner) who was recruited as Clerk under reserved quota of Scheduled Tribe community. Since the individual claimed her native place as Sirsuvada village, Kotturu Mandal of Srikakulam District, the Collector, Visakhapatnam referred the case to the Collector, Srikakulam for verification of the Social status of the petitioner. The then Tahsildar, Palakonda issued caste certificate in Rc.No.1232/83,A4/PLK S.No.84/83 dated 5-7-1983 certifying that Panda Rajyalakshmi D/o. P. Bheemachandra Rao, native of Sirsuvada village (of Kotturu Mandal) by then residing at Veeraghattam village of erstwhile Palakonda taluk belongs to "Holuva" (ST) community. The matter was got enquired into by the Mandal Revenue Officer, Kotturu and Veeraghattam."

18. The Mandal Revenue Officer Kotturu, the 2nd respondent submitted a report. The findings of the 2nd respondent in his report were incorporated in the show cause notice. After extracting the finding of the 2nd respondent in the show cause notice, the 1st respondent stated in the show cause notice as under:

" The Mandal Revenue Officer, Kotturu has finally reported that the individual, Panda Rajyalakshmi belongs to "Oriya Brahmin" community but not "Holva" (ST) community. He also stated that she is not a native of Sirasuvada village."

19. Therefore it is clear from the report submitted by the 2nd respondent that he did not issue any notice to the petitioner when he has under taken the enquiry.

20. In STATE OF A.P. Vs. N. CHANDRASEKHARA (1 supra) the Supreme Court was dealing with a case where the social status of a civil servant was got enquired by the State of A.P through its Commissioner of Social Welfare. It was found that the Commissioner did not issue notice to the Civil Servant and accordingly the civil servant had no opportunity to participate in the enquiry. Dealing with the situation, the Supreme Court held as under: " In view of this, it appears to us that the Commissioner clearly violated the terms of the enquiry which have already set out earlier to the effect that while conducting the proceedings of the enquiry, the Enquiry Officer should give notice to Chandrasekhara and should record the statements of persons in his presence. It may further be pointed out that the learned Counsel for the Central Government fairly conceded before the High Court that the enquiry conducted was not fair and proper, as set out in the impugned judgment. In this view of the matter there is no doubt that the aforesaid Order, namely, G.O.Ms.No.51 dated March 20, 1984 is clearly vitiated and the Division Bench of the High Court of Andhra Pradesh was fully justified in setting aside the Order."

21. A Division Bench of this court in S.C. RAILWAY Vs. B. VEERA RAJU⁷ was dealing with a case where the proceedings relating to the cancellation of certificate were initiated by the Additional District Magistrate, but the matter was got enquired through Revenue Divisional Officer. The Revenue Divisional Officer issued notice to the respondent therein but on the ground that the respondent was not apprised of the statements of the witness examined by the Revenue Divisional Officer, the Division Bench annulled the entire proceedings as being violative of principles of natural justice. The relevant portion reads as under:

" The inquiry conducted by the Revenue Divisional Officer regarding the social status of the respondent, in our view, was clearly in breach of principles of natural justice. The Revenue Divisional Officer examined the Village Munsif, Papiraju, and two others viz., K. Sitaramaiah and N.Veeraiah of Yeleswaram village, who stated that the respondent is not a member of a Scheduled Tribe but a Telaga by caste, a forward caste. The transfer certificate issued by the ULCM High School, Peddapuram as also the intermediate admission register of Pithapuram College where the respondent studied contained entries showing the respondent as a Telaga by caste. This evidence constituted chiefly the basis for the Revenue Divisional Officer to hold that the respondent is not a Kondakapu. But, unfortunately, the respondent was not apprised of this evidence; the statements of the witnesses were not furnished to him nor was he given an opportunity to see the two documents. It is, therefore, clear that the finding arrived at by the Revenue Divisional Officer as to the social status of the

respondent was clearly in breach of principles of natural justice."

22. A similar question arose in K. ACHA RAO Vs. JOINT COLLECTOR (3 supra). Following the judgment in S.C. RAILWAY Vs. B. VEERA RAJ (7 supra), the order impugned in the writ petition was set aside.

23. The learned Government Pleader contends that the principle laid down in the above cases does not apply to the facts of this case, inasmuch as the relevant portion of the report of the 2nd respondent was extracted in the show cause notice. He placed reliance upon the judgment of Supreme Court in T.V.R.V.R. CHETTIAR Vs. STATE OF TAMIL NADU (4 supra). In the said case, the Supreme Court was dealing with the case of dissolution of Gram Panchayat.

24. The complaint of the petitioner was that the supporting reports were referred to in the show cause notice, but the reports were not furnished. Dealing with this submission the Supreme Court held that the reports did not have any impact on the matter since what was stated in the show cause notice as to the conducting of meetings etc., was a matter of record. Another material observation is that the appellant was not required to offer any explanation in respect of the report and as such non-furnishing of the said reports was not detrimental. The Supreme Court observed as under:

" Furthermore, it appears that the three grounds related to facts as to whether the budgets were passed, whether meetings were called and whether subjects brought before the meeting were allowed to be passed. These three grounds on which the appellants were asked to show cause were questions of fact. The reports which the appellants asked for had nothing more to do with any of the grounds. The appellants were not asked for had nothing more to do with any of the grounds. The appellants were not asked to give any explanation in respect of any report."

25. Therefore the same has no application to the facts of this case.

26. The learned Government Pleader also submits that the burden of proof in the matter of establishing the civil status is always on the person who sought constitutional protection or advantage. He relies upon judgments of the Supreme Court in DIRECTOR OF TRIBAL WELFARE Vs. LAVETI GIRI (5 supra). To the same effect is the judgment of this court in D. MANIKYAMALA Vs. PRINCIPAL ANDHRA MEDICAL COLLEGE (2 supra). There is absolutely no quarrel with this proposition. Discharge of burden is one thing and following the proper procedure in the proceedings where such burden is to be discharged is another thing. The learned Government Pleader has also drawn the attention of this court to the judgment of this court in P. GNANA KUMAR Vs. JOINT COLLECTOR (6 supra). The issue involved in this case was as to whether it was competent for the Collector to delegate the function of fact finding to the Mandal Revenue Officer. The power of the 1st respondent to get the matter verified and enquired by the 2nd respondent is not at all a question. The issue is as to whether it was competent for the 2nd respondent to embark on such an enquiry behind the petitioner. From

the above discussion it is evident that the enquiry conducted by the 2nd respondent is vitiated for non-observance of and non-compliance with the principles of natural justice. Since the show cause notice was based upon such report the resultant proceedings were also vitiated. There is another aspect of the matter in the show cause notice. The emphasis was as to the genuineness of the caste certificate dated 5-7-1983 issued by the Tahsildar, Palakonda. The petitioner submitted her explanation with reference to the same. In the impugned order extensive discussion is undertaken touching on the aspect whether the petitioner belongs to Holuva or Holva community and whether the caste to which the petitioner belongs is a Scheduled Tribe. This aspect was clearly outside the scope of the show cause notice.

27. The learned counsel for the parties have also addressed as to whether the material on record was sufficient to arrive at the conclusion or whether the caste to which the petitioner belongs was Scheduled Tribe at all. Inasmuch as it is found that the proceedings suffer from procedural infirmity and since the scope of judicial review is very limited, I do not propose to refer to those contentions or record a finding thereon.

28. In the result the impugned proceedings issued by the 1st respondent are set aside. The matter is however remitted back to the 1st respondent for consideration afresh. If the 1st respondent intends to delve into the question as to whether the petitioner belongs to Holuva or Holva community, he shall issue a fresh show cause notice. In case he intends to confine to enquire directly as per the show cause notice issued by him earlier, it shall not be open to him to deal with any other aspect. In either of the cases the 1st respondent shall furnish a copy of the report of the 2nd respondent as well as a copy of statements recorded by him to the petitioner and give an opportunity to explain or contradict the same.

29. The writ petition is accordingly allowed, but there shall be no order as to costs.