

(2011) 07 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No: 18386 of 2008

Smt. B. Suseelamma

APPELLANT

Vs

The Collector and District Magistrate, The General Manager
and Government of Andhra Pradesh

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 10, 11(1), 11(2),
20(1), 5

Citation : (2011) 07 AP CK 0084

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

**Advocate : D. Bala Kishan Rao, for the Appellant; GP for the Respondent Nos. 1
and 3 and B. Devanand, SC, for the Respondent**

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—The Petitioner is one among many persons of her ilk who masquerade as belonging to down-trodden communities and corner the benefits made available for such communities by the; Constitution and the laws obtaining false community certificates.

2. The Petitioner, a native of Kurnool District, claims that she belongs to Kondakapu community, recognized as a Scheduled Tribe. Obviously, while admitting her, the Petitioner's father got the suffix "Konda" added to her community "Kapu" and obtained a school certificate, which obviously was made the basis for the Petitioner obtaining a community certificate on the strength of which she has joined the Telephones Department as a Telephone Operator and climbed up in the rung to reach the stage of Technical Supervisor. When a complaint was received on 23-9-2002 from A.P. Scheduled Tribes Employees Association, Kurnool about the fraudulent claim of the Petitioner, the matter was referred to the District Level Scrutiny Committee (for short "the Committee)

under the provisions of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (for short "the Act") and the Rules made there under (for short "the Rules"). The Committee held enquiry before which a joint statement of the Petitioner and her brother B. Deenadayal Reddy, was recorded. In their statement they have stated that their parents migrated from Agency Area but they do not know from which place of the Agency Area they have migrated. They appear to have also stated that they never visited any Agency Area during their lifetime and that their father late B. Nagi Reddy worked as a Teacher in Kurnool Municipal High School. They have further stated that they are married to the persons of Reddy caste. After a thorough enquiry, the Committee submitted report dated 18-11-2005 to Respondent No. 1. The Committee has concluded that the Petitioner does not belong to Kondakapu community but she belongs to Kapu (OC) caste and it has accordingly recommended cancellation of the community certificate issued in her favour. Respondent No. 1 thereupon issued a show cause notice dated 29-11-2005. After receipt of the show cause notice, the Petitioner submitted her representation dated 15-12-2005 requesting Respondent No. 1 to give a month's time to submit proof in support of her claim. After waiting for the Petitioner to submit her explanation and the material, if any in support thereof, for more than four months, Respondent No. 1 has passed order dated 24-4-2006 cancelling the community certificate. The statutory appeal filed by the Petitioner before Respondent No. 3, having been dismissed, she filed the present Writ Petition.

3. At the hearing, Sri D. Balakishen Rao, learned Counsel for the Petitioner, advanced the following contentions:

(i) The Petitioner was not supplied with a copy of the report of the Committee and therefore the impugned orders are vitiated for violation of principles of natural justice;

(ii) Under Rule 21 of the Rules, the community certificate issued by the competent authority prior to the commencement of the Rules should be treated as a valid certificate: and therefore the Respondents ought not to have cancelled the said certificate; and

(iii) The Petitioner is in service for a number of years and she is on the verge of her retirement and therefore cancellation of the community certificate at this length of time will cause serious prejudice to her interests.

4. The learned Government Pleader for Social Welfare submitted that the Petitioner never requested for a copy of the report of the Committee and has even failed to submit her explanation in spite of Respondent No. 1 waiting for receiving the explanation from her for more than four months and the Petitioner has thus failed to avail the opportunity presented by Respondent No. 1. He further submitted that the Petitioner failed to explain as to how non-supply of the enquiry report has prejudiced her interests. The learned Government Pleader further submitted that the presumption of authenticity of the certificate under

Rule 21 of the Rules is always subject to the provisions of the Act, that Section 20(1) of the Act envisages that a community certificate issued by any authority competent to issue the same prior to the commencement of the Act shall be treated as valid unless it is cancelled under the provisions of the Act and that Respondent No. 1 has the power and authority to examine the community status of the Petitioner and the authenticity of the community certificate obtained by her prior to the commencement of the Act.

5. Sri B. Devanand, learned Counsel for Respondent No. 2, supported the submissions of the learned Government Pleader.

6. I have carefully considered the respective submissions of the learned Counsel for the parties. A perusal of the record shows that the Committee has afforded full opportunity to the Petitioner to participate in the enquiry and submit relevant material in support of her claim that she belongs to Kondakapu community. The Petitioner along with her brother, attended the enquiry on 13-2-2004 and made a joint statement in which, as noted above, they failed to even indicate as to the Agency Area from which their forefathers have come. Barring the Transfer Certificate and community certificate obtained by her prior to her joining the employment, the Petitioner has not produced any evidence whatsoever to prove that she belongs to Kondakapu community. As rightly pointed out by the learned Government Pleader, u/s 6 of the Act, the burden lies on the person to prove that he or she belongs to such Caste, Tribe or Class, in support of which the community certificate was issued in his or her favour. The Petitioner failed to discharge this statutory burden placed on her to show that she belongs to Kondakapu community. Respondent No. 1 is therefore wholly justified in holding that the Petitioner does not belong to Kondakapu community.

7. As regards the submission of the learned Counsel for the Petitioner that the enquiry report was not furnished to the Petitioner, a perusal of the order of Respondent No. 1 shows that even though show cause notice dated 29-11-2005 was received by the Petitioner and she has made a representation on 15-12-2005 requesting for a month's time to produce necessary material, she has not even filed her explanation, let alone producing the material in proof of her claim that she belongs to Kondakapu community. It is not even the pleaded case of the Petitioner that she made a request for supply of a copy of the enquiry report. While in ordinary course, it would have been proper for Respondent No. 1 to have furnished a copy of the enquiry report to the Petitioner along with the show cause notice, the law is well settled that mere non-supply of the enquiry report will not vitiate the decision making unless the person who complains of such non-supply of the material is able to establish that it has caused prejudice to his interests. (See: Managing Director, ECIL v. B. Karunakar¹, Haryana Financial Corporation v. Kailash Chandra Ahuja² and Sarv U.P. Gram in Bank v. Manoj Kumar Sinha³).

8. In the instant case, the Petitioner has not even requested for supply of a copy of the enquiry report. She has not pleaded as to how her interests are prejudiced

by non-supply of the enquiry report. As the Petitioner has no material whatsoever to prove her community, mere supply of a copy of the enquiry report would not have improved her case. I am therefore of the opinion that no prejudice is caused to the Petitioner on account of non-supply of the enquiry report.

9. As respects the submission of the learned Counsel that under Rule 21 of the Rules, the community certificate issued by the competent authority prior to the commencement of the Rules should be treated as a valid certificate, the same is wholly misplaced. Section 5 of the Act provides that where before or after the commencement of the Act, a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false community certificate, the District Collector is empowered to suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall by notification, cancel the certificate after giving the person concerned, an opportunity of making a representation. In the face of this provision which specifically empowers Respondent No. 1 to cancel the community certificate issued before the commencement of the Act, placing reliance on Rule 21 of the Rules does not advance the cause of the Petitioner. As noted above, u/s 20(1) of the Act, a community certificate issued by the competent authority prior to the commencement of the Act shall be valid and deemed to have been issued under the Act, unless the same is cancelled under the provisions of the Act. The above mentioned provisions empower the competent authority to examine the correctness of the community certificate issued in favour of any person and cancel the same in the event it is satisfied that such a certificate is obtained by making a false claim.

10. As regards the third submission of the learned Counsel, this Court cannot be guided by misplaced sympathies. It is a matter of grave concern that scores of people who belong to upper strata of the society have been indulging in gross misuse of the community certificates obtained by playing fraud, depriving the people belonging to the oppressed and under-privileged communities of their due share of reservation in educational institutions and public employment. In the considered opinion of this Court, such people do not deserve any sympathies whatsoever. Not only that the fake community certificates obtained by the persons making fraudulent claims should be cancelled, they have to be severely punished by handing-out appropriate punishment in terms of Section 10 of the Act. The Petitioner, thanks to the bogus community certificate and the interim orders obtained by her after the cancellation of the community certificate by Respondent No. 1, has successfully secured and managed to continue in the employment, for more than three decades. Thus far, and no further.

11. For the above mentioned reasons, the Writ Petition is dismissed with costs of Rs. 25,000/- (Rupees Twenty Five thousand only). Respondent No. 1 is directed to initiate prosecution forthwith against the Petitioner in terms of Section 10 of

the Act. Respondent No. 2 is directed to initiate appropriate steps against the Petitioner for withdrawal of the benefits secured by her and also recovery of such benefits in accordance with Sub-sections (1) and (2) of Section 11 of the Act.

12. As a sequel, interim order dated 25-8-2008 is vacated and WPMP No. 23936/2008 and WVMP No. 3697/2009 are disposed of as infructuous.

MEMORANDUM OF COSTS

Respondents ()Costs

Rs.

Ps.

Stamp for Vakalatnama Respondents Costs as fees by Court Translation and Printing Charges

25,000

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