

(1999) 08 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12302 of 1991

V. Srirama Murthy

APPELLANT

Vs

Government of Andhra Pradesh, General Administration
Department, Hyderabad and others

RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 5 ALD 7 : (1999) 4 ALT 399 : (1999) 2 APLJ 103

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. P. Gangaiah Naidu for Duba V. Nagarjuna Babu, for the Appellant; Government Pleader for Social Welfare and Mr. Bathula Venkateswara Rao, for the Respondent

Judgement

1. The petitioner in the instant writ petition invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a writ of mandamus declaring the order passed by the third respondent in R.Dis. No.B2/16194/89, dated nil-8-1991, as illegal, arbitrary, erroneous, void and without jurisdiction. The petitioner accordingly prays to set aside the said order. The said order hereinafter shall be referred to as the impugned order.

2. The facts leading to the filing of this writ petition may briefly be noticed, so far as they are relevant for the disposal of this writ petition. The petitioner as at present is working as Grade-I Assistant in Food Corporation of India (for short "FCI"). He was originally appointed as Grade-111 Assistant on 8-1-1976 under the quota reserved for Scheduled Tribes (for short "STs") at Visakhapatnam. The petitioner claims that he belongs to "Kotiya Benthoriya" community, which is recognised as ST. There is no dispute and controversy whatsoever that the petitioner secured employment in FCI under the quota reserved for STs. The petitioner produced Caste Certificate issued by the then Tahsildar, Rajahmundry showing the community of the petitioner as "Kotiya Benthoriya", which was

issued on 21-8-1974. The petitioner was once again required to produce the community certificate in the year] 980 in the prescribed proforma when his case come up for consideration for promotion to Gr.II Assistant. The petitioner again obtained the community certificate in the prescribed proforma from the-then Tahsildar, Visakhapatnam on 31-10-1980. However, at the time of petitioner"s further promotion to Grade-I Assistant the FCI referred the matter to the Director of Tribal Welfare for ascertainment about the social status of the petitioner. Pending report from the Director of Tribal Welfare, the petitioner was promoted to Gr.I Assistant Post on 31-12-1984. The petitioner was further promoted as Assistant Manager on 13-12-1989 and was subsequently reverted as Grade-I Assistant on 11-10-1990. The petitioner was reverted on the ground that he belongs to "Oriya Sisthi Karnam" and cannot be treated as "Kotiya Benthoriya" which is recognised as ST. The petitioner, however, questioned the order of reversion in WPNo.16301 of 1990 and the same was dismissed at the admission stage on the ground of alternative remedy. The fourth respondent herein directed the petitioner, by his Memo dated 19-6-1990 to appear in person before the Mandal Revenue Officer, Rajahmundry on or before 30-6-1990 with all the evidence to establish his social status along with the questionnaire enclosed thereto. The petitioner questioned the same by way of another writ petition - WP No.11135 of 1990 and this Court by order dated 8-8-1990 dismissed the writ petition with the observation that the petitioner can take all the pleas raised by him in the writ petition before the Mandal Revenue Officer. The petitioner claims to have appeared before the Mandal Revenue Officer and requested him to furnish copies of "some documents" (that is how it is stated in the affidavit filed by the petitioner) and to grant one month"s time to give all the details of his ancestors, as his parents were away on pilgrimage for quite a long time. While the matter stood thus, the third respondent herein issued the show-cause notice dated 14-12-1990 requiring the petitioner to show-cause as to why he should not be treated as "Oriya Sisthi Karnam" but not a member of "Kotiya Benthoriya". The petitioner was required to submit his explanation on or before 27-12-1990 and appear in person, if he so desires, on 28-12-1990. In effect, the third respondent proposed to cancel the earlier certificate issued by the-then Tahsildars certifying the social status of the petitioner as ST, belonging to "Kotiya Benthoriya". It is not necessary to advert and refer in detail to the allegations levelled against the petitioner in that show-cause notice. Suffice it to notice that it is the case of the third respondent that the petitioner mislead this Court, as well as the authorities in claiming that he belongs to "Kotiya Benthoriya". It is alleged that the petitioner furnished false information to the Officers and obtained the social status certificate in the year 1974 and 1980.

3. The petitioner claims to have appeared before the Joint Collector, Kakinada, third respondent herein on 28-12-1990 and addressed various letters on 23-2-1991, 21-3-1991 and 3-4-1991 to supply certain documents. The third respondent through proceedings dated 18-12-1991 refused to furnish those documents for the reasons stated therein. Thereafter the impugned order is

passed on dated Nil-8-1991 cancelling the community certificate of the petitioner and the petitioner claims to have received the said order on 6-9-1991. It is that order which is impugned in this writ petition.

4. The impugned order is mainly challenged on the ground of violation of principles of Natural Justice. The petitioner, however, asserts that he belongs to "Kotiya Benthoriya" community. It is urged that the third respondent had proceeded with a pre-determination to cancel the social status certificate of the petitioner without there being any material or without conducting any enquiry fairly in accordance with the rule of law. It is asserted by the petitioner that he does not belong to "Oriya Sisti Karnam" and, in fact, there is no such caste independently recorded or enumerated in the list of castes or tribes in the State of Andhra Pradesh. It is the case of the petitioner that the report sent by the Commissioner of Tribal Welfare is obtained behind his back and he was not given any opportunity whatsoever before preparing the said report and as such, the said report cannot be relied upon by the third respondent for passing the impugned order.

5. In the counter-affidavit filed by the Joint Collector, it is stated that number of opportunities have been given to the individual to establish his social status as "Kotiya Benthoriya". Relevant copies of the documents were also supplied to him. The petitioner failed to produce the relevant documents in support of his social status. He has not produced, any information regarding his relationship with other "Kotiya Benthoriya" tribals. The Commissioner of Tribal Welfare has already sent a report to the Senior Regional Manager, FCI, wherein it was reported that basing on the information available, it is revealed that the petitioner does not belong to "Kotiya Benthoriya", but, belongs to "Oriya Sisti Karnam" which is not declared as ST in the State of Andhra Pradesh.

6. It is also stated that the Mandal Revenue Officer provided number of opportunities to the petitioner, but he failed to utilise the said opportunities to establish his case by leading any evidence. The Mandal Revenue Officer (MRO), accordingly submitted report to the Joint Collector stating that the petitioner has not produced any material before him and accordingly a show-cause notice has been issued to the petitioner requiring his explanation in the matter.

7. Before advert to the question that may fall for consideration, it may be appropriate to bear in mind that the petitioner failed to submit any explanation to the show-cause notice, but, went on requesting the third respondent to furnish certain documents. It is also evident from the record that the third respondent herein rejected the request of the petitioner for supply of those documents on the ground that some of the documents required by the petitioner are not available in the office. However, the report submitted by the Commissioner of Tribal Welfare was not made available to the petitioner and the petitioner was finally required to appear on 27-12-1990 along with his explanation. The petitioner appeared along with his Advocate on 28-12-1990 and raised certain preliminary objections which were dealt with by the third

respondent.

8. Sri P. Gangaiah Naidu, learned Counsel appearing for the petitioner strenuously contends that the impugned order suffers from incurable infirmities. It is submitted that the impugned order is to be declared as void for the reason that it has been passed in contravention of the principle of natural justice. Non supply of the documents required by the petitioner disabled the petitioner in submitting his reply. The impugned order has been passed without providing adequate opportunity to the petitioner to meet the averments made in the show-cause notice, as it was passed without any explanation from the petitioner. The petitioner could not submit his explanation in the absence of supply of the documents as requested by him.

9. Learned Government Pleader for Social Welfare submits that the petitioner went on dragging the matter for years together and failed to utilise the reasonable opportunity provided to him by the respondents. The petitioner played fraud and obtained the social status certificate by furnishing false declaration before the-then Tahsildars, in the years 1974 and 1980. The said certificates have been rightly cancelled. The learned Government Pleader also would urge that the burden is on the petitioner to establish that he belongs to "Kotiya Benthoriya" which is recognised as ST and the petitioner miserably failed to establish his case.

10. The questions that fall for consideration is whether the impugned order is liable to be declared void for the reasons of non-compliance of principles of natural justice and whether there is any breach of principles of natural justice.

11. It is not possible for this Court to adjudicate as to whether the petitioner belongs to "Kotiya Benthoriya". It has to be decided by the competent authority on the basis of the evidence and material available on record. But one aspect, may, perhaps to be borne in mind that the petitioner had already obtained Caste Certificates in the years 1974 and 1980 and on the basis of the said certificates, he was initially recruited into service and promoted thereafter. Those certificates are the subject matter of controversy and the real question that was required to be adjudicated by the competent authority was - whether those certificates have to be cancelled on the ground that the petitioner played fraud and obtained those certificates. Of course, incidentally, the question - whether the petitioner belongs to "Kotiya Benthoriya" caste may have to be adjudicated, as those certificates could be cancelled on reaching the conclusion that the petitioner does not belong to "Kotiya Benthoriya" community, but obtained certificates from the competent authority as if he belongs to "Kotiya Benthoriya" community.

12. I am not inclined to accede to the submission made by the learned Counsel for the petitioner that the petitioner is entitled for the copies of those documents required by him, as stated in his letters dated 23-2-1991; 21-3-1991 and 3-4-1991. The petitioner cannot insist for the supply of documents which are not

in the possession of the respondents. However, the third respondent had supplied a copy of the report submitted by the Commissioner of Tribal Welfare in which it is held that the petitioner does not belong to "Koliya Benthoriya" community. The petitioner is not entitled to ask for the copies of the complaint upon which the entire action is initiated against him. The authorities are entitled to receive information from whatever source. The petitioner cannot insist for an opportunity to cross examine the complainants. The competent authority has the power to determine whether the petitioner belongs to that particular community as claimed by him. The petitioner cannot insist the authorities to disclose from where they have received information about his social status. It is not as if, the competent authority is required to prove that he does not belong to "Koliya Benthoriya" community. But, it is true that if the certificates earlier obtained by him are to be cancelled, it has to be established that those certificates were obtained by playing fraud and mis-representation or making false representation. The petitioner is entitled for only such documents upon which reliance is placed by the competent authority for setting the proceedings in motion. It means that the petitioner is entitled for copies of those documents which are referred to in the show-cause notice and such other documents upon which the competent authority may place reliance for determining the issue. The petitioner is not entitled for any other documents nor the respondents are bound to supply those documents to enable the petitioner to establish his case.

13. It is for the petitioner to obtain such documents, upon which he wants to place reliance to establish his case that he belongs to "Koliya Benthoriya" community, as claimed by him. The respondents cannot be compelled to establish his case.

14. Learned Government Pleader, however, vehemently submits that in the instant case, the burden is completely on the petitioner to establish that he belongs to "Koliya Benthoriya" community. In support to his contention he placed reliance on the following decisions :

(i) B. Venkata Rao and Another Vs. Principal, Andhra Medical College, Visakhapatnam and Another, .

(ii) Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, .

(iii) Director of Tribal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, .

15. The decisions upon which the learned Government Pleader placed reliance would not support the submissions made by him that the burden is always upon the person to establish that he has not played any fraud and obtained the Caste Certificate. The sum and substance of the judgments upon which learned Government Pleader placed reliance is that the burden is always upon the applicant to establish that he belongs to a particular community as claimed and the applicant is bound to discharge that burden for obtaining the certificate. The

burden is on the applicant to establish his case for obtaining such certificates. But, when such certificates are sought to be cancelled on the ground of fraud or misrepresentation, the burden to some extent would shift upon the authority which makes such allegations and such authority is bound to disclose the reasons for arriving at such conclusion and to put the concerned person on notice. Even in cases where the certificates earlier obtained by a person are sought to be cancelled, the entire burden cannot be thrown on the person, who obtained such certificates. Of course, once the initial burden is discharged, it is for the person concerned to establish that the certificates have been granted to him properly and not based on any mis-representation. In that process, it is for the concerned person to establish that he belongs to that particular community as claimed. In *Director of Tribal Welfare's case* (supra) the Supreme Court laid down the procedure for issuing social status certificates, their scrutiny and approval by the authorities. The said judgment does not say under what circumstances, the burden is upon the person concerned to establish that he is not guilty of any misrepresentation.

16. It is true that determination of a person's social status and cancellation of the social status certificates is fraught with serious consequences. Civil Societies' interest at large is involved in such matters. Securing public employment or any other benefit under the reservation quota on the strength of a false and fabricated social status certificate would result in deprivation of employment or such other benefit to the people belonging to the reserved categories to that extent. Securing any such benefit on the basis of such false certificates would amount to securing the benefit of reservation illegally by a person who is not entitled for such benefit. Correspondingly, the legitimate and constitutionally guaranteed right of the people belonging to reserved categories would stand defeated.

17. Applications for grant of social status certificates may have to be scrutinised by exercising due care and caution. Of course, now, the entire procedure is regulated, at least, in this State, by the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, and the Rules framed thereunder. The said Rules declare that it is the responsibility of the applicant to produce necessary evidence/documents while applying for grant of certificate, to the competent authority. Thus, the burden is upon the applicant to establish that he belongs to a particular community. The Rules also provide the procedure for making an inquiry into the fraudulent cases. The District Collector is required to decide whether the Certificate holder is a genuine one or fraudulent and in case of his coming to the conclusion that the certificate holder obtained the certificate fraudulently, the District Collector shall pass an order cancelling the certificate issued after receiving the findings of the scrutiny committee. Of course, neither the Act nor the Rules were in force as on the date of initiation of action against the petitioner in this case, nor on the date of passing of the impugned order.

18. In the same manner, no genuine person belonging to a reserved class/ community can be deprived of his legitimate right to apply for, obtain and retain social status certificate. Any denial to grant certificate may amount to deprivation of constitutionally guaranteed rights. Therefore, an order cancelling such certificate may have to be passed only on the evidence and material available on record. Reasonable opportunity shall have to be provided to such a person against whom the action is sought to be initiated for cancelling the certificate. The order to be passed by the competent authority and the conclusions reached requires to be supported by reasons. Such orders passed in breach of principles of natural justice may have to be declared void. Neither granting, nor cancellation thereof can be a routine or mechanical affair. The order should disclose intense application of mind by the competent authority.

19. In the instant case, the petitioner obtained the certificate in his favour in the year 1974, upon which he secured employment in FCI and got promoted on the basis of the revised certificate issued in his favour in the year 1980. An order cancelling the said certificate may amount to depriving the very employment of the petitioner. Any such decision cancelling the certificates would result in serious civil consequences.

20. Can it be said that the impugned order passed by the Joint Collector satisfies the legal requirement ? Does it reveal any application of mind ? Whether the conclusions reached are supported by any reasons ? In nut shell, whether there is any breach of principles of natural justice.

21. The impugned order makes a very interesting reading. While adverting to the objections raised by the petitioner regarding the jurisdiction of the Mandal Revenue Officer to make inquiry about the caste of the applicant, the Joint Collector observes:

"It is nothing but a fun to state that the Mandal Revenue Officer who has got powers to issue the Caste Certificates, does not have powers to inquire into the matters pertaining to the Caste. The conclusion of the Director of Tribal Welfare Report, has been intimated to them in the show-cause notice. Apart from that, thereafter a copy of the Report of the Director of Tribal Welfare, has been forwarded to them. And it is not possible to cross examine the officers in the "Quasi Judicial". The matter has been pointed out in various decisions in the High Court. What would be the consequences if the Caste Certificates are cancelled. The individual has to face it because of getting the duplicate Caste Certificates. Without having the proof of the Caste of the individual right from his fore-father's period, does not help in co-operating at the time of enquiry.

(5) You have had stated that in the absence of clear cut directions of the Director : Tribal Welfare, with regard to issue of "Bentho Oriya" Caste Certificates, especially the Collector, Srikakulam District is not issuing the Caste Certificates.

(6) You have stated that there had been continuous application of letter

correspondence between the Collector, Srikakulam District and the Government about the issue of "Bentho Oriya" Caste Certificate and you can bear the responsibility in proving it and can even present one or two individuals who are fighting for the same."

22. While advertng to the objections raised by the petitioner that relevant files have not been perused by the Joint Collector-cum-Additional District Magistrate, before issuing the show-cause notice and the show-cause notice itself is based on certain false information, the Joint Collector observed that:

"FCI Officers have forwarded only the copies of the Photostat of the Caste Certificates in respect of the individual. Therefore, it is quite clear that the individual has been issued with the Caste Certificate without sufficient proof. Otherwise, had the Caste Certificate has been issued to the individual after conducting an enquiry by getting certainof the proofs from the person in question, in the file the number might have been given to the Caste Certificates over it definitely. If the claim of the person is genuine and real, he would have attended to the inquiry and should have proved with full proof right from their forefathers about his Caste, had he really submitted the information fully well to the Tahsildar, Rajahmundry; at the time of issue of the Caste Certificate to him. But the activities of the individual are in contradiction to this.

And you have requested the Joint Collector for one month time to produce the copies of your paternal Uncles's Caste as "Bentho Oriya" as per the High Court of Madras issued in their orders on 28-12-1990 duly obtaining from them. And accordingly, the time limit has been granted to you upto 28-1-1991. But you stated in your telegram dated 22-1-1991 informing that the judgment copy has not been issued, the same is available with the Mandal Revenue Officer, Rajahmundry, and you have requested for production of a copy. That is why, the individual has been advised to be present with what all the proof that is available with him as per his records on 15-2-1991. On the basis of the application of the individual dated 28-1-1991; Sri V. Srirama Murthy has been intimated to give his explanation after getting the copies of the information pertaining to him which is available in this office; and to that effect, he has been advised to apply for it. Afterwards, the individual has applied for want of five other documents apart from the report of the Director of Tribal Welfare which do not pertain to this office. Since the individual did not attend to the inquiry many a number of times, on the basis of the inquiry report of the Director of Tribal Welfare, it has been intimated to the person in question that the show-cause notice has been issued to him."

23. Elsewhere it is observed in the order of the Joint Collector that in case any individual claims himself that he belongs to Girijana Caste, the proving responsibility of the same lies over the shoulders of the individual..... even though the individual has been given the opportunity to prove his caste, many a number of times, with some sort of lame excuse or the other, the individual did not avail the chance and bluntly escaped from the inquiry. "Evidently, the

competent authority never adverted to the question as to whether the petitioner herein obtained certificates in the year 1974 and 1980 by playing fraud or misrepresentation. It is very difficult to discern as to what exactly the authority intended to say.

24. It is well settled that a party has a right to know not only the result of the enquiry, but also the reasons in support of the decision. Giving of reasons in support of the conclusions is now accepted to be one of the principles of natural justice. Speaking orders are necessary to enable the party affected to know why and on what grounds an order is passed against him. A speaking order means an order speaking for itself. Speaking order which contains reasons introduces clarity and excludes arbitrariness. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter of a decision (See Union of India (UOI) Vs. Mohan Lal Capoor and Others, . In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , the Supreme Court observed that "the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law." In Breen v. Amalgamated Engineering Union, (1971) 1 All ER 1148, Lord Denning observed, "the giving of reasons is one of the fundamentals of good administration, (emphasis is mine).

25. An order or decision which is vague can never be a reasoned decision. An order without clarity can never reflect application of mind. Such an order cannot be a reasoned order. The Court does not expect orders from the administrative or quasi judicial authority as that from a law Court. It is not as if those authorities are required to pass judgments as the ordinary law Courts, as there is essentially distinction between a Court and an administrative authority. But the Rule requiring reasons to be given in support of an order is indispensable. The condition to record reasons introduces clarity and excludes arbitrariness.

26. Leave alone the structure of the order, the order impugned is totally unintelligible. An un-intelligible order can never be considered as a reasoned order. The portions of the order referred to herein above in un-mistakable terms would reveal lack of clarity. It is difficult to discern the reasons in support of the conclusions. The order is not in accordance with the requirements of the principles of natural justice. It is liable to be set aside and it is accordingly set aside.

27. The matter is remitted for fresh consideration by the third respondent. The third respondent now, shall make available copies of the documents upon which reliance is placed in the show-cause notice. The petitioner is entitled to have copies of only those documents and not all the documents as sought for by him. The copy of the report submitted by the Commissioner of Tribal Welfare need not be given to the petitioner, as the same had already been made available to him.

Copies of such of those documents upon which reliance is placed in the show-cause notice shall be made available to the petitioner within eight weeks from the date of receipt of a copy of this order. They shall be sent under Registered post acknowledgment due to the petitioner. Thereafter the petitioner shall file his explanation/representation, if any, within four weeks from the date of receipt of the said documents. The petitioner shall not make any attempt whatsoever to refuse or evade to acknowledge the postal cover. Any such attempt on his part shall be deemed, as if the respondents have served copies of those documents upon the petitioner on the date of despatch of the postal cover to the petitioner's place of work. The Registered post shall be sent to the petitioner at the following address:

House Address Office Address _____

V. Srirama Murthy, V. Sri Rama Murthy, LBF Colony, Grade-I Assistant, 12-14-18/8, Food Corporation of Srikakulam. India, Srikakulam.

The Inquiry shall be completed within three months from the date of submission of explanation, if any, by the petitioner, within time, as indicated supra. The petitioner shall not ask for any adjournment or postponement of the hearing, except on the ground of ill-health and if any such plea of ill-health shall be supported by the medical evidence/certificate to be produced by him to the satisfaction of the third respondent. It is needless to direct the third respondent, Joint Collector-cum-Additional District Magistrate, East Godavari at Kakinada, to pass an appropriate order on "merit, as this Court has not expressed any opinion whatsoever on the merits of the case.

29. The writ petition is accordingly allowed to the extent indicated. There shall be no order as to costs.