HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition Nos.9190 & 9555 of 2002

COMMON ORDER:

The petitioners are different in these two writ petitions. The writ petitions are filed assailing the proceedings in Rc.No.D3 (D6)4770/99 dated 29.04.2000 and G.O.Ms.No.21, Tribal Welfare Department, dated 05.03.2002, as illegal, arbitrary and unconstitutional. The writ petitions are being disposed of by this common order.

2. The issue for decision arises under the Andhra Pradesh (SCs, STs & BCs) Regulation of Issue of Community Certificates Act, 1993 and the Andhra Pradesh (SCs, STs & BCs) Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short 'the Act and Rules 1997').

3. With a view to codify and regulate the issue of community certificates to the persons belonging to the Scheduled Caste, Scheduled Tribe and Backward Classes and the matters connected there with, the Act has been enacted and Rules are made for proper implementation of the objects of the Act.

4. The procedure either for obtaining a social status or for continuing to enjoy the benefits available to SC, ST and BCs, a person is required to have certificate issued by the Competent Authority under the Act.

5. It is regrettable to note that one of the objects of the Act is to take action against false and ineligible claims/certificates and prevent such false claims from enjoying various benefits under reservation. Either on account of disregard to the scheme of the Act or by choice to meet the exigencies, the orders for cancellation of social status are passed by the competent authorities in a perfunctory and laconic

manner. The social status of a person has different shades of value and utility. The cancellation orders are subjected to judicial scrutiny under Article 226 of the Constitution of India and are miserably failing in the limited judicial review available in such circumstances. The case on hand is a classic example of arbitrary and illegal exercise of powers under the Act by the respondents.

6. This Court directed the respondents to produce the original file in Proceeding No.D3 (D6)4770/99 and also from the 1st respondent the file in G.O.Ms.No.21 dated 05.03.2002. Learned Government Pleader has placed the record for perusal and the learned counsel appearing for the petitioners are permitted by the Court to peruse the original records. Having regard to the details as borne out from the original record and keeping in mind the legal grounds urged by the learned counsel appearing for the parties, the writ petitions are disposed of by considering the principal objection raised by petitioners against the orders impugned.

7. "Sections 5 and 6 of the Act read as follows:

> 5. Cancellation of the false community certificate:- (1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled castes, Scheduled Tribes or Backward Classes has obtained a false community certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the district Collector may either *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:
>
> Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.
>
> (2) The powers of the nature referred to in sub-section

(1) may also be exercised by the Government.

6. Burden of Proof:- Where an application is made to the competent authority under Section 3 of the issue of a community certificate in respect of Scheduled Castes, Scheduled Tribes or Backward Classes or in any enquiry conducted by the competent authority or the authority empowered to cancel the community certificate or the appellate authority under this Act or in any trial or offence under this Act, the burden of proving that he belongs to such Caste, Tribe or Class shall be on the claimant."

8. Rules 5 and 8 of the rules, 1997 read as follows:

"Rule 5.Procedure for verification:-

(a) On receipt of the application, the Competent Authority or any officer authorised by him in this regard shall ensure that the applicant has furnished complete information in all the columns of Form I/II and, shall then give the acknowledgment slip as appended to Form I/II, in token of having received the application. The Competent Authority shall then verify the information/documents/ evidence furnished by the applicant /parent/guardian in form I/II. If the Competent authority is satisfied with the correctness of the information/documents/evidence furnished by the applicant/parent/ guardian, he shall issue the Community, Nativity and Date of Birth Certificates in Form III within 30 (thirty) days of the receipt of the application in Form I/II. The Competent Authority shall specify in Form III the sub-caste of the SC claimant and the sub-tribe/sub-group of the ST claimant assisted out in Annexure-I appended to these Rules.

(b) If the Competent Authority feels that further enquiry is necessary, he shall then examine the school records, birth registration certificate, if any, and also examine the parent/guardian or applicant, in relation to his/her/their community. He may examine any other person who has the knowledge of the social status of the applicant/parent/guardian, as the case may be. He shall take into account, in the case of Scheduled Tribes, their anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., before issuing the Community, Nativity and Date of Birth Certificates. The Competent Authority shall have power to call for further information and/or collect such evidence/document and also conduct such enquiry as specified in the Form-IV, if deemed necessary. Notice in form IV should be issued to the parent/guardian, in case the applicant is a minor, to appear before the competent Authority.

(c) The notice as specified in Form IV should give clear 15 (fifteen) days, from the date of the receipt of the notice by the parent/applicant/guardian, to attend the enquiry. In no case, not

more than 30 (thirty) days from the date of the receipt of the notice, should be allowed.

(d) Where the person on whom a notice in form IV is served by the Competent Authority fails to respond on the date mentioned therein, the Competent Authority may reject or confirm the claim of the person based on the document/evidence available with the Competent Authority (furnished while applying in Form I/II). He may also take into account any other material/evidence/documents gathered by him in that particular case. The Competent authority shall case enquiry, following due process of law, to verify the genuineness or otherwise of the information/evidence/documents furnished or recorded, from such persons as called for the enquiry specified in Form IV. He may also cause to collect any other documentary or related evidence about the genuineness or otherwise of the information furnished by the persons called for in the enquiry.

(e) The Competent Authority should give reasonable opportunity to the applicant/parent/guardian to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode may be published in the village or locality to which the applicant/parent/guardian belongs. If any person or association oppose such a claim, opportunity to produce the evidence in person before the competent Authority may be given to him or her. After giving such an opportunity to that person or association the Competent Authority may make such enquiry as it deems expedient and consider claims of the applicant/guardian/parent vis-à-vis the objections raised by his/her/their opponent.

(f) The Competent Authority shall requisition the services of the Mandal Revenue Inspector, Village Development Officer, Village Administrative officer or such other persons as deemed necessary, to assist him in the enquiry to verify the veracity or otherwise of the community claims made by the applicant/parent/guardian. However the responsibility for issue or rejection of the claim shall rest on the competent Authority only.

(g) In respect of the tribal communities who are not “traditional inhabitants” of the area of territorial jurisdiction of the “Competent Authority”, as specified in column 3 of Annexure-I appended to these Rules, the Competent Authority shall make a reference to the District Tribunal Welfare Officer concerned to provide such professional assistance available with him or with the Tribal Cultural Research Institute, Hyderabad, to confirm or reject the claim of the applicant.

(h) the Competent Authority shall confirm or reject the claim for the Community, Nativity and Date of Birth Certificate, after conducting the enquiry as mentioned in the paras above, within a

period not exceeding 60 (sixty) days from the date of receipt of the application by him in Form I/II.

(i) The Competent authority, in the cases of doubtful claims, shall refer the matter to the Chairman of the Scrutiny Committee formed at the District level under Rule 8 i.e., Joint Collector of the District, for the recommendations of the Committee, with regard to the issue of the community, Nativity and Date of Birth certificate as applied for by the applications. On receipt of the recommendations of the Scrutiny Committee, the Competent Authority shall accordingly confirm or reject the claims of the applicants.

Rule 8. Scrutiny Committee (District Level):-

(a) In every District, a Scrutiny Committee shall be constituted with the following officers:-

(1) Joint Collector - Chairman

(2) District Revenue Officer - Member (Convener)

(3) Deputy Director (Social Welfare)/ - Member
Deputy Director (Tribal Welfare)/
District Tribal Welfare Officer
Deputy Director (Backward Classes Welfare)/
District Backward Classes Welfare Officer - Member

(4) Officer of the Research Organisation in the – Member
Commissionerate of SW/TW nominated by the
concerned Heads of the Departments

(5) Officer representing the PCR/
Vigilance Cell in the District - Member

(b) The Scrutiny Committee shall meet at least once in a month or as often, depending on the cases referred to it,

(c) Presence of three members will form the required quorum for the meetings of the Committee.

(d)(1) The Scrutiny Committee, on receipt of the cases referred to it by the Competent Authority under Rule 5(i), shall conduct enquiry regarding the doubtful claims, by giving notice in Form VI to the applicant, within the period specified in the notice. This period should not be less than 15 (fifteen) days from the date of service of the notice on the applicant and in case on request, more than 30 (thirty) days should be allowed. This notice shall be served on the applicant through the Competent Authority who referred the case to the Committee.

(2) The notice referred to in Form V shall be served on the parent/guardian in case the applicant is a minor.

(3) Where the person on whom a notice in Form-V is served by the Scrutiny Committee fails to respond on the date mentioned in the notice, the Scrutiny Committee may finalise its recommendations based on the material/documents/ evidence made available to the Committee by the Competent Authority.

(4) The Scrutiny Committee shall cause enquiry, following the due process of law to verify the genuineness or otherwise of the information furnished or recorded from such persons as called in the enquiry as per Form V. It shall also cause to collect documentary evidence or any other related evidence about the correctness or otherwise of the information furnished or objections raised by any person during the enquiry.

(5) The Scrutiny Committee shall examine the school records, birth registration certificates, if any, furnished by the persons during the enquiry. It may also examine any other person who may have knowledge of the community of the appellant. With reference to the claims of Scheduled Tribes, it may examine the anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc. on that particular tribe, to finalise its recommendations to the Competent Authority.

(6) The Scrutiny Committee should give reasonable opportunity to the applicant to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode, may be published in the village or locality of the applicant and if any person or association oppose such a claim, opportunity to produce the evidence in person before the Committee may be given to him or her. After giving such an opportunity to that person, the Committee may make such enquiry as it deems expedient and finalise its recommendations, with brief reasons in support thereof, to the Competent Authority.

(7) The Scrutiny Committee shall examine the report of enquiry conducted by the Revenue Department furnished to it by the Competent Authority. It may also expert opinion from the Commissionerate of Social Welfare/Tribal Welfare through the officers of the Research organisations of these Commissionerates who are the members of the Scrutiny Committee, if deemed necessary. These enquiry reports may be compared and then recommendations of the Scrutiny Committee may be finalised as to whether the community claim of that applicant is found to be false or genuine.

(e) The Chairman of the Scrutiny Committee i.e., Joint Collector of the District, shall send the recommendations of the Committee to the Competent Authority stating clearly whether the community claim of the person in question or his or her children, is genuine or false with reasons thereof, within 45 days from the date of the receipt of the case referred to it by the Competent Authority."

9. The requirement of law and the consequence of breach of the statutory safeguard is no more *res integra.* The scheme of Act is

considered in the following decisions.

10. In '***K.Suraj Singh vs. Collector & District Magistrate, Kadapa***[1] this Court held as follows:

> "Para 6. Dehors the statutory mandate, the requirement of hearing, as an integral part of principle of natural justice, is laid down in a plethora of judgments by the English and Indian Courts. The recent judgment of the Supreme Court in **Radhy Shyam Vs. State of Uttar Pradesh[1]** has elucidated the case law on this aspect. This Court can do no better than reproducing the relevant portion (paras 40 to 48) of the judgment:
>
> > "40. Before adverting to the precedents in which Section 5A has been interpreted by this Court, it will be useful to notice development of the law relating to the rule of hearing. In the celebrated case of **Cooper v. Wandsworth Board of Works - (1863) 14 CB (NS) 180: 143 ER 414 -** the principle was stated thus: (ER p.420) "... even God himself did not pass (a) sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?"
> >
> > Therein the District Board had brought down the house of the Plaintiff's (Cooper), because he had failed to comply with the Metropolis Local Management Act. The Act required the plaintiff to notify the Board seven days before starting to build the house. Cooper argued that even though the Board had the legal authority to tear his house down, no person should be deprived of their property without notice. In spite of no express words in the statute the Court recognized the right of hearing before the plaintiff's house built without permission was demolished in the exercise of statutory powers. Byles, J stated:
> >
> > " ... although there are not positive words in a statute requiring that the party shall be heard, yet the justice of the common law (shall) supply the omission of the legislature".
> >
> > 41. Perhaps the best known statement on the right to be heard has come from Lord Loreburn, L.C. in **Board of Education v. Rice - 1911 AC 179 (HL)**, where he observed: (AC p.182)
> >
> > "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or

determining questions of various kinds. ... In such cases ... they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. ... They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial in their view".

42. In **Ridge v. Baldwin** - **1964 AC 40** - Lord Reid emphasized on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In **O'Reilly v. Mackman – 1983 2 AC 237 -** Lord Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement.

43. In **Lloyd v. Mcmahon** - **1987 AC 625 -** Lord Bridge said:
(AC pp.702 H-703 B)

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well- established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

44. In the United States, principles of natural justice usually find support from the due process clause of the Constitution. The extent of due process protection required is determined by a number of factors; first the private interest that will be affected by

the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail.

45. The amplitude, ambit and width of the rule of *audi alteram partem* was lucidly stated by the three-Judge bench in **Sayeedur Rehman v. State of Bihar** - **(1973) 3 SCC 333 –** in the following words: (SCC p.338, para 11)

"11. ...This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.

46. In **Mohinder Singh Gill v. Chief Election Commissioner** - **(1978) 1 SCC 405** - Krishna Iyer J. speaking for himself, Beg, C.J. and Bhagwati,J. highlighted the importance of rule of hearing in the following words: (SCC pp 432-34, paras 43 & 48)

"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognized from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam - and of Kautilya's Arthasastra - the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

....

48. Once we understand the soul of the rule as fair play in action - and it is so - we must hold that it

extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more - but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation".

47. In **Maneka Gandhi v. Union of India - (1978) 1 SCC 248** Bhagwati, J. speaking for himself and Untwalia and Fazal **Alijj** J. observed: (SCC p.291, para 14)

"14. ...The *audi alteram partem* rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *audi alteram partem* rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralyzing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should

be avoided, but that does not mean that merely because the traditional methodology of a formalized hearing may have the effect of stultifying the exercise of the statutory power, the *audi alteram partem* should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that 'natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances'. The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. (Emphasis supplied)

48. In Swadeshi Cotton Mills v. Union of India - (1981) 1 SCC 664 - the majority of the three-Judge Bench held that rule of *audi alteram partem* must be complied with even when the Government exercises power under Section 18-AA of the Industries (Development and Regulation) Act, 1951 which empowers the Central Government to authorize taking over of the management of industrial undertaking. Sarkaria,J. speaking for himself and Desai,J. referred to the development of law relating to applicability of the rule of *audi alteram partem* to administrative actions, noticed the judgments in Ridge v. Baldwin (supra), A.K. Kraipak v. Union of India - (1969) 2 SCC 262 - Mohinder Singh Gill v. Union of India (supra), Maneka Gandhi v. Union of India (supra) and State of Orissa v. Dr. Bina Pani Dei – (1967) 2 SCR 625=AIR 1967 SC 1269 - and quashed the order passed by the Central Government for taking over the management of the industrial undertaking of the appellant on the ground that opportunity of hearing has not been given to the owner of the undertaking and remanded the matter for fresh consideration and compliance with the rule of *audi alteram partem*".

"Para 7: On the undisputed facts of the case, the conclusion is inescapable that respondent No.1 failed to follow the procedure envisaged under Section 5 of the Act and Rule 9(7) of the Rules. On this short ground, the impugned orders of respondent Nos.1 and 2 are quashed. Respondent No.1 is directed to issue a notice to the petitioner and after considering

the explanation if any submitted by the latter, he shall pass a speaking order within a period of one month from the date of receipt of this order."

11. In '***U.Sanyasi Rao v. Government of Andhra Pradesh & others***[2]', this Court held as follows, at paras 9 and 11:

"9. Section 5 of the Act adumbrates that the District Collector may cancel a community certificate issued prior to the commencement of the Act which was obtained on false representation. Rule 9 of the Rules referred to the enquiry into fraudulent claims and the cancellation of the community certificates. Rule 2 (b) of the Rules makes it clear that the Rules are framed with reference to the Act. Thus, the Act and Rules envisaged procedure for the cancellation of the community certificate which was issued prior to the commencement of the Act or the Rules. The Rule 21 is a saving provision only. It merely envisages that a person, who has already obtained a community certificate before the commencement of the Rules need not obtain community certificate afresh by no stretch of imagination. Thus, Rule 21 holds that no enquiry can be conducted in respect of community certificate issued prior to the commencement of the Rules. I, therefore, do not agree with the contention of the learned counsel for the petitioner that in view of Rule 21, the very proceedings in respect of the community of the petitioner shall be considered to be bad. Section 5 of the Act controls Rule 21 of the Rules. The merits of the case of the petitioner, therefore, deserve to be examined.

....

11. Both the views of the revenue authorities are not acceptable. The community of a one cannot be decided on the strength of the name of the street in which one has been residing. There shall be an independent enquiry before the community of an individual is decided. I, therefore, readily hold that the finding of the Revenue Divisional Officer, Vizianagaram that the petitioner is a boya by community by virtue of the fact that he has been residing in Boya Street cannot be accepted. The community of the petitioner shall be determined on independent evidence."

12. The factual matrix of the instant case is considered in the light of settled legal position.

Bejjani Syama Sunder Rao, petitioner in WP No.9190 of 2002, claims the social status of 'Kondakapu' (ST). The petitioner refers to

the enquiry and the issuance of certificate in the year 1954 by the then Deputy Tahsildar, Nugur of Khammam District. On 23.12.1954, a certificate showing the social status of the petitioner's father as 'Kondakapu' was issued by the Dy.Tahsildar. The petitioner's father joined in the Agricultural Department and retired from service on 30.06.1989. The service register of the petitioner's father bears an entry on the social status of his family as 'kondakapu'. In continuation of the existing entries, the petitioner claims that he joined the school, completed his education and on 06.09.1989 he joined as Special Teacher in Zilla Parishad, Khammam under the quota meant for ST candidates. The petitioner is continuing in service as teacher.

13. J Venkateswara Rao and J Nageswara Rao, petitioners in WP No.9555 of 2002 are working as teacher in ITDA School and an employee in Oriental Insurance Company, respectively. The case of the petitioners is that they belong to 'kondakapu' community. The Competent Authority issued social status certificates dated 12.09.1986 and 04.07.1986 in favour of petitioners, respectively. The petitioners claim that their forefathers have migrated from Sueroncha Village of Maharashtra State and settled in Venkatapuram village of Khammam District. The grievance is that the case of the petitioners cannot be considered with reference to their present residence or stay. The respondents ought to have examined the pedigree and different places of residence of petitioners' father and place of origin. The petitioners complain statutory deviations in the conduct of enquiry. The petitioners filed third party affidavits in support of their case but the affidavits of caste elders are not considered by the respondents.

14. The original record evidences following details.

The first respondent issued Memo No.12945/J2/90-1, dt. 09.05.1990 calling upon the Commissioner of Tribal Welfare, to enquire into the claims of the following persons;

1. Jakkula Venkateswara Rao S/o Mallaiah} (Petitioners in

2. Jakkula Nageswara Rao S/o Mallaiah } WP 9555/02)
3. Jakkula Madhusudan Rao S/o Mallaiah
4. Jakkula Sammaiah S.o Mallaiah
5. Bejjani Syamsundar S/o Narasaiah (Petitioner in WP 9190/02)
6. Neelarapu Narsima Rao
7. Kusam Krishna Murthy"

15. On receiving further instructions from the Commissioner of Tribal Welfare, the 1st respondent has initiated enquiry into the social status of the petitioners. The 1st respondent has secured preliminary report from the Revenue Divisional Officer, Bhadrachalam. The report is to the effect that the above individuals do not belong to 'kondakapu'. The 1st respondent on the strength of the preliminary enquiry report and the instructions of the Government in Memo dated 09.09.1990 and the Commissioner of Tribal Welfare, entrusted the case for enquiry by the District Level Scrutiny Committee. The District Level Scrutiny Committee has issued notices to the individuals referred to above, including the petitioners. The matter underwent several adjournments. Final notices were issued by the 1st respondent on 13.02.2000 and 03.03.2000. These two dates have importance in appreciating the legality of the order of the 1st respondent dated 29.04.2000.

"Dated 06.02.2000 –

Ref: Director (TW), Hyd. Lr.No.28/87/TR I/VC-7 dt. 17.1.2000

***

Kindly peruse the ref. cited. The Director (TW) has issued clarification sought by this office vide Lr.Dt. 22.12.1999.

According to it, the caste certificates (ST) of all the individuals covered in this case have to be cancelled & action is to be initiated against the officers who have issued false caste certificates.

As such, if pleased to agree, the individuals may be summoned for personal appearance on 21.2.2000 (FN) before the DLSC Committee, to hear them before cancelling the certificates.

2. A report may be called for from the MRO, Venkatapuram to furnish the names of the Officers, who have issued false (ST) caste certificates.

Submitted for kind perusal & orders, please.

May be approved – Yes.

Sd/- Collector."

16. The District Level Scrutiny Committee on the strength of the available material processed the file to the District Collector/1st respondent with the following endorsement.

"On 08.02.2000:- The Joint Collector, who is the Chairman of the District Level Scrutiny Committee, has approved the recommendations."

On 29.02.2000:- The file was again moved for obtaining final orders from the Joint Collector and for forwarding the same to the 1st respondent for a final decision in the matter. The relevant portion of note file dated 06.02.2000 read as under:

"Dated: 28.02.2000 - No.D3/4770/92

Submitted Sir,

The notices dated 13.2.2000 have been served on the individuals/family members by the MRO, Venkatapauram and submitted the served copies. The served copies may kindly be perused from P.531 onwards.

Out of seven members, the following individuals have appeared before the DLSC on 21.2.2000 and filed their written explanations. No evidence other than earlier explanation was filed by the individuals.

1. Sri Bejjani Syamsunder Rao
2. Jakkula Sammaiah
3. Sri Jakkula Venkateswara Rao.

All the seven members covered by this case are from one family only.

As such, if pleased to agree, that pro.of cancellation of false ST (Kondakapu) certificates held by all seven members will be submitted.

For orders of the J.C., please.

Sd/- dated 28.2.2000

'If pleases one more opportunity may be given to remaining four individuals before cancellation – id/- 29/2

Yes. Final –

Sd/- Jt. Collector, 1/3

17. What is required to be noted from the above notings is that the Chairman/Joint Collector, District Level Scrutiny Committee without preparing a report as contemplated by Rule 8 of Rules 1997, recommended for cancellation of the social status of the petitioners. The same is approved by the 1st respondent on 29.04.2000, resulting in issuance of proceedings No.D3(D6)-4770/92 dated 29.04.2000. The proceedings do not show that reasonable and fair opportunity to the petitioners was afforded before a final decision is taken by 1st respondent. Final notices were issued on 27.03.2000.

18. The point that arises for consideration from the above admitted circumstances/notings in the file is whether the District Level Scrutiny Committee prepared a report and sent the report to 1st respondent? If so, whether the 1st respondent has violated the requirements of issuing notices to the petitioners before cancelling social status claimed by the petitioners?

19. The reiteration of the dates and events is required by reference to the material available on record to arrive at a finding the issue for consideration.

20. The District Level Scrutiny Committee admittedly was ceased of the matter even as late as on 08.02.2000. The effort of the Chairman, District Level Scrutiny Committee to serve notices on all the individuals referred to above were not successful and further fresh notices were issued to the objectors who were not served earlier. From the material it is clear that these notices were served on the remaining objectors for enquiry before the District Level Scrutiny Committee. The individuals have filed statements in assertion of their social status. It is at this stage of the matter, by considering the material available on record, the District Level Scrutiny Committee prepares a report with its recommendations. In the case on hand, firstly, there is no report

prepared and forwarded by the Chairman, District Level Scrutiny Committee to the 1st respondent and the decision to cancel the social status of the petitioners is approved on the endorsement of the Chairman of the District Level Scrutiny Committee in the note file. Reference to these details is sufficient to note that at the crucial stage of the matter, there is apparent error and illegality in the decision making process of the respondents.

21. Had it been a case where there is a report and thereafter, a notice was issued by the 1st respondent, the respondents can reasonably contend that the requirement of Section 5 of the Act and Rule 8 of the Rules, 1997 is sufficiently complied with. In the absence of such compliance, the respondents by referring to the place from where the notice was issued to the petitioners, namely from the office of the District Collector, Khammam, contend before this court that there is due compliance with the requirements of Section 5 of the Act. The conclusion arrived at by the 1st respondent is not reflecting in the final decision taken on 29.04.2000. Further, it appears from the material available on record that the 1st respondent cancelled the social status of the petitioners on the strength of Memo dated 09.05.1990 on the recommendations of the Commissioner, Tribal Welfare. These two circumstances, at best can only be referred by the District Collector, Khammam/1st respondent for initiating action or enquiry into the social status of the charge sheeted individuals. But that ought not to become the primary or sole basis for cancellation of the social status of persons whose social status was enquired into by him under the provisions of the Act. As noted above, the Act is a self-contained enactment in the matter of regulation of issuance of caste certificates in the categories referred to above. It is needless to observe that a deserving person should not be denied the benefit of the social status and at the same time undeserving person should not be enjoying the benefits of reservation. If the issue of cancellation of certificates is considered and

decided in complete ignorance of the law, the respondents, in other way are encouraging the undeserving persons to avail the benefits and deny the benefits to deserving persons.

22. For the reasons recorded above, the proceeding dated 29.04.2000 is vitiated for not following the requirements of Section 5 of the Act and Rule 8 of the Rules 1997. As this Court is not prepared to accept the conclusions arrived at by the 1st respondent, the impugned proceedings are set aside. The case is remanded for fresh consideration to the Chairman, District Level Scrutiny Committee from the stage of the explanations submitted by the concerned, to the 1st respondent and on receipt of such report from the Chairman, District Level Scrutiny Committee, the first respondent shall issue notices to the petitioners and after giving reasonable opportunity, as per the ratio laid down by this Court in the reported decisions referred to above, pass final orders. The matter has been pending quite long time and this Court is conscious of one of the observations that made in the instant order, definite time frame is stipulated to prevent further delay in the matter and it shall be the responsibility of the 1st respondent to ensure adherence to the time limit prescribed by this Court. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

23. The writ petitions are allowed accordingly. No order as to costs. Miscellaneous petitions, if any, pending in these two writ petitions shall stand closed in consequence.

_____

S.V.BHATT, J

Date: 31.10.2014
BSS

HON'BLE SRI JUSTICE S.V. BHATT

-
-

188

Writ Petition Nos.9190 & 9555 of 2002

Date: 31.10.2014

BSS

---

[1] 2011(6) ALD 193

[2] 2011 (3) ALD 217