

K. Sreerama Murthy Vs. University of Health Sciences and ors.

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Court : Andhra Pradesh

Decided On : Nov-25-1991

Reported in : 1992(2)ALT221

Judge : Jagannadha Raju, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 454 of 1991

Appellant : K. Sreerama Murthy

Respondent : University of Health Sciences and ors.

Advocate for Def. : P. Ramakrishna Raju, S.C. for Respondent No. 1 and ;Govt. Pleader for Social Welfare for Respondent No. 2

Advocate for Pet/Ap. : G. Vedantha Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Jagannadha Raju, J.

1. This writ petition is filed by an aspirant who seeks admission to the I year M.B.B.S. Course for the year 1990-91 claiming that he belongs to Kammara caste

which is a Scheduled Tribe. He seeks the relief of a writ of certiorari to quash the Notice No. 1801/EA1/90, dated 19-12-1990 and the report of the Commissioner for Scheduled Tribes who enquired into his claim as a Scheduled tribe candidate. He claims the proceedings of the Commissioner, Tribal Welfare, dated 23-11-1990 and the consequential proceedings of the University of Health Science should be quashed.

2. In the affidavit, he claims that he is Kammara by caste and that his caste is one of the Scheduled Tribes. He claims that his school record speaks volumes and that he is consistently regarded as Kammara, a Scheduled Tribe. He appeared in the EAMCET examination of 1990. He secured Rank No. 11051. He was allotted to Venkateswara University and the Principal of the Sri Venkateswara Medical College informed him that he should get clear from the Director of Tribal Welfare for his claim as a Scheduled Tribe candidate. The Commissioner, Tribal Welfare, conducted an enquiry behind the petitioner's back and on the basis of the material gathered in that enquiry, the petitioner was asked to submit his explanation without supplying him a copy of the report of the enquiry. After petitioner submitted an explanation, some sort of oral enquiry was held and ultimately on 23-11-1990, the Commissioner passed orders that the petitioner does not belong to Kammara caste and that he is not eligible for admission into M.B.B.S. Course under the Scheduled Tribe quota. Consequently the Registrar of the University of Health Science and issued the impugned notice dated 19-12-1990. This notice is an empty formality because the Commissioner, Tribal Welfare, had already given his findings to the effect that the petitioner does not belong to the Scheduled Tribe. To challenge the findings of the Commissioner and the notice, the present writ petition is filed.

3. The impugned notice and the Commissioner's findings are mainly lacked on the following grounds. The enquiry conducted by the Commissioner is an ex parte enquiry. That enquiry violates the principles of natural justice. The Commissioner is not justified in stating that Kammaras are not a Scheduled Tribe throughout the State and that they are Scheduled Tribe only in the districts of Srikakulam, Vijayanagaram, Visakhapatnam and East Godavari districts. The proceedings of the Commissioner and his findings are unconstitutional, without jurisdiction and

they are perverse. Because of his findings, the petitioner is denied admission to the I Year M.B.B.S. Course. Hence the records relating to the enquiry conducted by the Commissioner may be called for, the finding arrived at by the Commissioner may be quashed, and the notice dated 19-12-1990 issued by the Registrar of the University of Health Sciences as a sequel to the Commissioner's report should also be quashed and consequently a direction should be issued to admit the petitioner in the First Year M.B.B.S. Course for the year 1990-91.

4. This writ petition is resisted on the following grounds: The petitioner applied for a seat in the medical college claiming to be a Scheduled Tribe candidate. Under Rule 8(D) of the Admission Rules, the petitioner's case was referred to the Commissioner of Tribal Welfare for verification of the community claim. After giving opportunity to the petitioner and his father to substantiate their claim and following the principles of natural justice, orders were passed regarding the social status claim of the petitioner. The orders passed on 23-11-1990 by the Commissioner of Tribal Welfare are passed duly following the principles of natural justice. Such an enquiry is contemplated under Rule 8-D. Rule 8-D provides that the decision of the Director of Tribal Welfare is final and binding on the candidate. Hence the petitioner is not entitled to challenge the decision of the Director of Tribal Welfare. The caste of petitioner is not actually Kammara. He does not belong to the Scheduled Tribe. On the basis of the information furnished by petitioner himself, his caste is Kammari. As can be seen from records of Upper Primary School where, he studied I standard to VII Standard. In the Z.P. High School, Karimalla, his caste was mentioned as Kammari. Therefore, the petitioner's allegation that he belongs to Kammara Scheduled Tribe is not correct. The T.C. issued by S.K.R. Govt. Junior College, Udayagiri, does not indicate that he belongs to Scheduled Tribe. Column No. 5 in the T.C. which is meant to indicate whether he belongs to Scheduled caste or Scheduled Tribe, is left blank. The claim of the petitioner that he is selected under the Scheduled Tribe quota is not correct. The Registrar of the University of Health Science referred his claim for verification to the Tribal Welfare Department. A quasi-judicial enquiry was conducted and after considering the explanation and all the material furnished by the petitioner, the Commissioner passed his orders dated 23-11-1990. This procedure of conducting enquiries has been upheld by this court in W.P. No. 15017 of 1986. The petitioner was given

opportunity to substantiate his claim with oral and documentary evidence. Only after considering the material provided by him, the orders have been passed. All the principles of natural justice have been followed. A copy of the proceedings dated 23-11-1990 was furnished to the petitioner. When the Registrar gave him another opportunity to explain his case and substantiate his claim, instead of doing so, he approached the court by way of this writ petition. The petitioner is not entitled to approach the court without substantiating his claim. In this connection, it may be submitted that the petitioner belongs to Kammari caste which is also known as Bytakammari or Bytakammara which is a sub-group of the Viswabrahmin community. The claim of the petitioner is mostly based upon the confusion between two identical names Kammara and Kammari. Taking advantage of the almost identical names, the petitioner is now trying to make a false claim to the effect that he belongs to Scheduled Tribe. The writ petition is devoid of merits and it is liable to be dismissed.

5. This writ petition was originally heard on 19-10-1991 and on that occasion, after hearing the arguments made by Sri G. Vedantha Rao,, and after going through the list of the Scheduled Tribes as per the Scheduled Tribes Order, 1950 and lists of the backward classes given in the State and Subordinate Service Rules as all the documents now produced by the petitioner relate to the period after he entered the college studies, the court directed the senior counsel to produce documents from 1971 to 1985 which indicated that the petitioner has been treated as a Scheduled Tribe candidate with the caste Kammara and that he enjoyed Scholarships or fee concessions as a Scheduled Tribe candidate. Sri Vedantha Rao, undertook to produce the document and took two or three adjournments. On 16-11-1991 as the petitioner's Counsel failed to produce any documentary evidence, an elaborate order was passed by this court. That order reads as follows:

In spite of the petitioner's advocate taking time to produce the documents to indicate that prior to 1985, the petitioner was considered as a Scheduled Tribe candidate, the petitioner has not been able to produce any material. Obviously there are no documents which indicate the petitioner as belonging to a Scheduled Tribe, namely, Kammara in the earlier years. For the writ petition for dismissal on 19-11-1991.

On 19-11-1991, Sri Vedantha Rao did not appear and one of his juniors who is on record as an advocate for the petitioner, produced four papers. The first document is dated 27-6-1990 it is a certificate issue' by the Mandal Revenue Officer. The Mandal Revenue Officer certified that the petitioner belongs to Kammara. The certificate nowhere mentions as to what is the material which he has verified and on that basis, he has issued this certificate. The second a certificate issued on 13-11-91 by the Principal of She S.K.R. Government College Gudur. This certificate indicates that the petitioner studied Intermediate and Senior from 28-8-1986 to 16-10-1987 in the college according to the transfer Certificate issued by the Principal of Jawahar Bharti, Kavali, he belongs to Kammara Scheduled Tribe. The T.C. No. is also mentioned. The third document is a xerox copy of the Transfer Certificate issued by the Principal, Jawahar Bharati, Kavali. This shows the petitioner as Scheduled Tribe. It does not indicate his caste or community. The fourth document is a certificate from the Mandal Prajaparishad Elementary School, Dungidam. It is dated 18-10-1991 and it is to the effect that the records of the school are not available and that the school records have been destroyed due to the damage caused to the building in the cyclones of 1986 and 1987. Hence no record is available. On 19-11-1991, after making an elaborate note about the documents produced, the arguments were heard and the matter was posted for judgment.

6. It is quite clear that in spite of the opportunities given, no documents are produced by the petitioner to prove that between the years 1971 to 1985, he was considered to be Scheduled Tribe candidate and that he belongs to Kammara tribe. Obviously the records available are suppressed because we have material in the report of the Commissioner of Scheduled Tribes to the effect that in the enquiry a lot of material was produced and that material showed that he was never considered as a person belonging to Kammara caste, a Scheduled Tribe, but he was shown as Kammari sub-sect of Viswabrahmin community. A perusal of the Commissioner's report dated 2-11-1990, clearly shows that the Commissioner of Tribal Welfare and his departmental officials have made a thorough and detailed enquiry and investigated the entire past of the petitioner, his ancestors, relations, and all the members of his father's family. Their traditional occupation is blacksmithy. That means they are Kammari a subgroup of Viswabrahmins. His brother K. Ravindra Rao was shown in the school record as B. Kammari i.e.,

Bytakammari. That means blacksmiths who do work in the open area. It is common knowledge that normally blacksmiths do their work under the shade of a tree near a small shed. The enquiry conducted indicated that the family of the petitioner is related to various families who are all Kammaris by caste. His another brother K. Hazarath was also shown in the elementary school records as Bytakammari. Several of the relations of the petitioner were shown as kammari by caste i.e., sub-group of Viswabrahmin caste. Paragraph 4 of the Commissioner's report clearly shows that full opportunity was given to the petitioner to substantiate his claim by producing documentary evidence and by furnishing his explanation. He furnished an explanation on 24-9-1990 and he along with his elder brother appeared for the personal hearing on 28-9-1990. After having participated in the enquiry proceedings, they walked away and they refused to sign in the record of the enquiry conducted. They walked away saying that they would return after consulting somebody, but they did not come back. A second opportunity was given and the hearing was fixed for 10-10-1990. Then again, the petitioner and his elder brother attended the enquiry and they requested the Commissioner to take a decision on the explanation already furnished. After a very elaborate enquiry and a very detailed consideration, the Commissioner- found that the petitioner's claim that he belongs to Kammara Scheduled Tribe is not correct and that he is actually a Kammari, a sub-caste of the Viswabrahmins.

7. If we examine the entire record, we find that prior to the petitioner coming to the college, there is no evidence of his ever being considered as a Scheduled Tribe candidate. Obviously after he was admitted in the Intermediate Course, efforts were made and for the first time, in the records of the Jawahar Bharti at Kavali, the caste was indicated as Kammara taking advantage of the fact that Kammara is shown as a Scheduled Tribe in the Scheduled Tribes Order of 1950 and that the petitioner tried to convert his caste Kammari to one of Kammara to derive the advantages meant for Scheduled Tribe candidates. The Commissioner gave ample opportunity to the petitioner to produce evidence of his being treated as Scheduled tribe candidate. He has not been able to produce any material prior to 1985 showing that he is treated as a Scheduled Tribe candidate. On the other hand, the material produced and the material which came to light during the enquiry conducted by the department clearly shows that he is a Bytakammari, a

person doing blacksmith work. He is certainly a backward class candidate. In the High Court, when opportunity was given to produce certificates or documents prior to 1985 to show that he belongs to Scheduled Tribe, he miserably failed to produce them. Obviously no such documents exist.

8. The report of the Commissioner of Scheduled Tribes is attacked on the ground that he went into various extraneous matters and that he wrote it more like a thesis rather than a factual enquiry report. We can ignore the irrelevant portion, but the sum and substance of the report is that the petitioner is a Kammari by caste and he is now making effort to pass off as a Scheduled Tribe candidate by slight alteration of the name of his caste from Kammari to Kammara. The evidence produced before the Commissioner clinchingly establishes that the petitioner and his family are Kammaris, a sect of the Viswabrahmin community. The Commissioner's report is perfectly justified. In this connection, it may be pointed out that, apart from the department gathering a lot of material, it gave ample opportunity to the petitioner to give his explanation and substantiate his claim. He failed to do it. It is a strange coincidence that during the course of the enquiry, halfway through, the petitioner and his brother walked out refusing to sign in the record. Obviously they realised they were caught. The same performance is repeated during the course of arguments in this writ petition. I am fully convinced that this is a case where, taking advantage of the close resemblance of the words 'Kammara' and 'Kammari' communities, a blacksmith who belongs to the backward class, is trying to pass off as Kammara, a Scheduled Tribe, and claimed the benefits meant for the Scheduled Tribe candidates. This sort of false caste certificate claim are on the increase during the last one decade or so. Unless the Government takes stringent action against such candidates, this evil cannot be curtailed. In my opinion, in this case, the petitioner should thank his stars for his not being presented prosecuted for the false claim he has made. The Commissioner's proceedings dated 23-11-1990 is perfectly justified and his conclusions are fully supported by the material available on record. The Registrar of the University of Health Science is perfectly justified in issuing the impugned notice dated 19-12-1990. The petitioner cannot be considered as Scheduled Tribe candidate. He can only be considered as a backward class candidate. The Writ Petition is devoid of merits and it is accordingly dismissed with costs. Advocate's

fee fixed at Rs. 500/-.

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