

Kottu Acharao Vs. Joint Collector and Additional District Magistrate and anr.

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Court : Andhra Pradesh

Decided On : Dec-15-1998

Reported in : 1999(3)ALT48

Judge : G. Bikshapathy, J.

Appeal No. : Writ Petition No. 17220 of 1989

Appellant : Kottu Acharao

Respondent : Joint Collector and Additional District Magistrate and anr.

Advocate for Def. : Govt. Pleader for Social Welfare for Respondent No. 1

Advocate for Pet/Ap. : Duba V. Nagarjuna Babu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G. Bikshapathy, J.

1. The order of the first respondent the Joint Collector and Addl. District Magistrate, East Godavari at Kakinada cancelling the Certificate of Social Status of the petitioner is assailed in this writ petition.

2. According to the petitioner, he belongs to Kondakapu, which is recognised as Scheduled Tribe. However, the first respondent issued an order dated 30-11-1989 cancelling the certificate of social status and hence this writ petition.

3. In the counter it is stated that a show-cause notice was issued to the petitioner on 9-8-1989 to which he submitted his explanation on 17-8-1989 and thereafter enquiry was conducted on various dates but the petitioner did not appear before the authorities along with the relevant documents but requested to permit him to represent his case through advocate and thus he was given an opportunity to submit his explanation and to appear through his Advocate on 23-9-1989. It is further stated that even on that day the petitioner neither appeared himself or through his advocate nor produced any recorded evidence and therefore the impugned order was passed keeping in view various orders passed by this Court in similar matters.

4. The learned Counsel for the petitioner submits that proper opportunity was not given to the petitioner and the impugned order is in gross violation of the principles of natural justice. It is also his case that the first respondent relying on the reports of the Mandal Revenue Officer, Addattegala and Sub-Collector, Rampachodavaram, the copies of which were not furnished to the petitioner, passed the impugned order. It is his further case that the impugned order is liable to be set aside in view of the decision of this Court in S.C. Railway v. B. Veera Raju, : 1991(3)ALT252 (D.B.) and the decision of the learned single Judge in W.P. No. 4522 of 1998 dated 13-8-1998. 1998 (3) An. Wr. 594 (A. Nageswara Rao v. Dt. Collectore, E.G.)

5. The learned Government Pleader, however, submits that the burden lies on the petitioner to prove that he belongs to Scheduled Tribe and that sufficient opportunity was given to the petitioner to adduce evidence and also to be represented through an advocate but the petitioner failed to avail such opportunities and therefore the petition is wholly unsustainable and as such the same is liable to be dismissed.

6. I have given my serious consideration to the respective contentions of the learned Counsel for the petitioner and the learned Government Pleader. There is

no dispute that the petitioner failed to attend before the first respondent on various dates either for submitting explanation or to be represented by an advocate. It is clear from the record that the show-cause notice was issued on the basis of the reports of the said two officers. It is noticed on a perusal of the show-cause notice that the Sub-Collector and the Mandal Revenue Officer have also recorded the statements of the concerned persons in the village. Admittedly, these documents were never furnished to the petitioner either along with the show-cause notice or on any subsequent date. Thus, this Court has to necessarily hold that fair opportunity was not given to the petitioner during the enquiry. Similar issue was considered by a Division Bench of this Court in S.C. Railway's case (cited 1 supra) wherein it was held at para 12 as under:

'The enquiry conducted by the R.D.O. regarding the social status of the respondent, in our view, was clearly in breach of principles of natural justice. The R.D.O. examined the Village Munsif, Papiraju, and two others viz., K. Sitaramaiah and N. Veeraiah of Yeleswaram village, who stated that the respondent is not a member of a Scheduled Tribe but a Telaga by caste, a forward caste. The Transfer Certificate issued by the ULCM High School, Peddapuram as also the Intermediate admission register of Pithapuram College where the respondent studied contained entries showing the respondent as a Telaga by caste. This evidence constituted chiefly the basis for the R.D.O. to hold that the respondent is not a Kondakapu. But, unfortunately, the respondent was not apprised of this evidence; the statements of the witnesses were not furnished to him, nor was he given an opportunity to see the two documents. It is, therefore, clear that the finding arrived at by the R.D.O. as to the social status of the respondent was clearly in breach of principles of natural justice. The contention advanced by Sri S.R. Ashok, learned Counsel for the Railway administration, is that even if those documents are excluded, still it could be said that the respondent is not a member of a Scheduled Tribe. We are not inclined to accept this. The report of the Revenue Divisional Officer clearly shows that the finding was grounded largely on the basis of the aforesaid two documents and the statements of the witnesses. Therefore, we agree with the learned single Judge only to the extent that the finding recorded by R.D.O. was vitiated because of breach of principles of natural justice.'

Keeping in view the principles laid down by the Division Bench in the aforementioned case, I am of the view that the impugned order is not sustainable and the same is in violation of the principles of natural justice.

7. In the circumstances, the impugned order is set aside and the matter is remitted back to the first respondent for fresh consideration after giving opportunity to the petitioner and also furnishing the reports of the M.R.O. and the Sub-Collector referred to above. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order and it is made clear that if the petitioner failed to attend the enquiry and avail the opportunity extended by the first respondent, it is open for the first respondent to proceed with the matter in accordance with law.

8. The writ petition is accordingly allowed. No costs.

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