

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.7158 OF 2013

Between:

Smt Jadhav Surekha

... Petitioner

And

Govt. of A.P. & others

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

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... **Petitioner**

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... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioners : Mr Jogaram Tejavath

^ Counsel for the Respondents : G.P. for Social Welfare
G.P. for Revenue

? **Cases Referred:**

(2021) 11 SCC 401

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.7158 OF 2013

ORDER:

Heard Sri Jogram Tejavath, the learned counsel appearing on behalf of the Petitioner, learned Government Pleader for Social Welfare appearing on behalf of respondent Nos.1 to 3 and learned Government Pleader for Revenue appearing on behalf of respondent No.4.

2. The petitioner approached the Court seeking prayer as under:

"to issue an opportunity writ order or direction more particularly one in the nature of writ of Mandamus declaring the action of respondent authority cancelling the agency area certificate of the petitioner herein vide Proc. No. C3/5044/2010-4 dated 09.04.2012 is illegal arbitrary unconstitutional discriminatory and in violation of Article 14, 16, 21 and 335 of the Constitution of India and set aside the above proceedings vide Proc. No. C3/5044/20104 dated 09.04.2012 of the Respondent No.2 and consequently direct the respondents to appoint the petitioner herein to the post of Teacher as per the selection list of DSC 2008 for the above post....."

PERUSED THE RECORD :

**3. Counter affidavit filed by the Respondent No.2,
and in particular Para Nos.4 and 7 read as under :**

"4. Further, the District Level Scrutiny Committee along with the two study teams who were deputed from TCR & IT, Hyderabad to Adilabad District for verification of Local Scheduled Tribe status claim of the petitioner have conducted a detailed enquiry and reported that "The Candidate obtained Local Scheduled Tribe Certificate by producing fabricated documents. As per Rule 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Issue of Community, Nativity and Date of Birth Certificate Rules 1997, the burden of proof lies with candidate. The candidate failed to substantiate her or her parent's continuous residence in Scheduled areas since 26.01.1950".

In view of the above the then District Collector, Adilabad has cancelled the Local Scheduled Tribe Area certificate No. D/14/2009, Dt: 12.01.2009 issued by the Tahsildar, Sirpur-U to the petitioner after giving an opportunity to the petitioner.

7. In reply to para 6 of the petitioner's affidavit, it is submitted that, at present, detailed guidelines are issued for issuance of Agency area Local scheduled Tribe Certificates to the Local scheduled Tribes vide G.O.Ms.No.24, TW (LTR.I) Dept., Dt: 12.06.2018 and as

per para (14), J, K in G.O.MsNo.24, TW (LTR.I) Dept.,
Dt: 12.06.2018-

j) The Committee shall also inquire into false claims and make recommendations to the District Collector for cancellation as in the case of District Level Scrutiny Committee under Act No.16/1993.

k) The parties aggrieved on the orders passed by the District Collector can file an appeal before the Government, instead of this she has again Fraudulently obtained LST certificates from the Tahsildars of Sirpur(U) and Lingapur as briefed in para No. 5 above by suppressing the facts of cancellation of her LST certificate No. D/14/2009, Dt: 12.01.2009 by the District Collector, Adilabad vide Proc. No. C3/5044/2010-4, Dated: 09.04.2012 which is illegal, on the part of the petitioner.

4. The case of the Petitioner in brief as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition is as under :

i) The petitioner belongs to Schedule Tribe and hails from Agency area since a very long time and Petitioner's forefathers also hail from the same area for the past 75 years. The pahani pattas, land documents, voter list reveals that the Petitioners are the continuing residents of the Agency area as

per G.O.Ms.No.3 issued by the Government of A.P. The Petitioner applied for DSC 2008 and the Petitioner was provisionally selected for the post of the SGT Teachers in the Agency area as per the DSC 2008. Some failed candidates complained against the selected candidates in DSC 2008 without verifying the genuineness of the Agency Area Certificate. The scrutiny committee headed by the District Collector and Chairman DSC 2008 without applying its mind and without proper enquiry cancelled the Agency Area Certificate which was issued in the year 2009.

ii) The Petitioner along with other Petitioners on an earlier occasion approached the APAT vide OA No.95 of 2010 and OA No.112 of 2010 and the said OAs were allowed vide Orders of the APAT dated 05.05.2010 directing the Respondents to appoint the Petitioners against the post of DSC 2008, but Respondents have not complied with the orders of the APAT and Petitioner was constrained to file Contempt Application in CA No.1215/2008 and RDO had cancelled the Agency Area Certificate of the Petitioner. Aggrieved by the same Petitioner approached the Court by filing W.P.No.16160 of 2010 and the same was disposed on 02.11.2011 with observation that the

cancellation orders issued by the RDO, Utnoor is not sustainable on the ground that no opportunity was given to the Petitioner prior to the passing of order of cancellation, and the District Collector was given liberty to initiate proceedings under the Rules and accordingly the issue was referred to the District Level Scrutiny Committee for enquiry and the District Level Committee has taken the enquiry and the Petitioner attended before the Committee on 25.11.2011 and submitted the copy of the voter list for the year 1971 and a copy of pahani of Kotapalli-C village of Sirpur-U Mandal for the year 1964-65 in support of Petitioner's claim.

iii) It is further the case of the Petitioner that the Chairman, District Level Scrutiny Committee and Members felt the said documents submitted by the Petitioner as not satisfactory since the Petitioner had not produced any documentary evidences in support of Petitioner's claim to prove the residence in Agency area since 26.01.1950 till to date, hence the Agency Area Certificate issued to the candidate by the Tahsildar, Sirpur-U vide No.D/14/2009, dated 12.01.2009 was held to be not genuine and the

certificate liable to be cancelled and recommended for cancellation.

iv) It is further the case of the Petitioner that Petitioner received a Notice to attend hearing on 07.04.2012 at 12.00 Noon for producing the documentary evidences to prove Petitioner's continuous residence since 26.01.1950 till to date in Agency Area, and the Notices were issued and served to the candidate vide Letter No.C3/5044/2010, dated 03.04.2012 and in compliance to the Notice, the Petitioner herein had attended the hearing on 07.04.2012 and submitted a copy of pahani of Kothapalli-C village of Sirpur-U Mandal, for the year 1964-65 and copy of voter list of the year 1971, in support of Petitioner's claim, but however, on the ground that Petitioner failed to prove Petitioner's residence in the Agency area since 26.01.1950 till to date as per G.O.Ms.No.3 SW (T.W.EDN.II) Department, dated 10.01.2000, the Tahsildar, Sirpur-U has enquired into the matter and reported that the Local Schedule Tribe Area Certificate issued to the candidate vide No.D/14/2009, dated 12.01.2009 is not genuine and accordingly vide the impugned proceedings dated 09.04.2012 vide Proceedings

No.C3/5044/2010-4 of the Collector and District Magistrate, Adilabad, the 2nd Respondent herein, the local Schedule Tribe Area Certificate issued by the Tahsildar, Sirpur-U vide No.D/14/2009, dated 12.01.2009 of the Petitioner had been cancelled and it had been declared vide the said impugned proceedings dated 09.04.2012 of the 2nd Respondent herein that the Petitioner does not belong to Agency Area. Hence, the present Writ Petition.

5. The learned counsel appearing on behalf of the Petitioner mainly puts-forth the following submissions.

- i) The Tahsildar had issued certificate dated 12.11.2012 and certificate dated 12.06.2018 which clearly indicates that the order impugned dated 09.04.2012 of the 2nd Respondent is illegal.
- ii) The Petitioner never forged any certificate and hence the District Collector was not correct to use the term 'bogus' in the order impugned pertaining to the certificate dated 12.01.2009 issued by the Tahsildar in favour of the Petitioner.

iii) The 2nd Respondent in the counter affidavit at para No. 4 stated that the Petitioner obtained Local Schedule Tribe Certificate by producing fabricated documents and the said plea is without any basis.

iv) The order impugned is not in proper appreciation on material on record and hence needs to be set aside.

On the basis of the aforesaid submissions the learned Counsel for the Petitioner contended that the writ petition has to be allowed as prayed for.

6. The learned Government Pleader appearing on behalf of Respondent No.2, on the other hand, put-forth the following submissions :

i) That Petitioner has a remedy of filing an Appeal/Revision to the Government, but however, instead of approaching the Government, the Petitioner approached the Court by filing the present writ petition.

ii) The certificates dated 12.11.2012, 23.12.2016 and 05.08.2023 relied upon by the Petitioner are all certificates issued by the Tahsildar in pursuance to the impugned

proceedings dated 09.04.2012 passed by the 2nd Respondent and therefore the same cannot be looked into since the order impugned dated 09.04.2012 had been passed after conducting a full-pledge enquiry.

iii) As per G.O.Ms.No.24, dated 12.06.2018, the Petitioner ought to have approached the Government and instead the Petitioner again secured LST Certificates from the Tahsildars of Sirpur(U) and Lingapur fraudulently.

On the basis of the aforesaid submissions the learned Counsel appearing on behalf of the Respondents contended that the writ petition has to be dismissed.

DISCUSSION AND CONCLUSION:

7. A bare perusal of the docket sheet indicates that though the writ petition pertains to the year 2013, it is only in pursuance to the orders of this Court dated 15.12.2023 that a counter affidavit has been filed by the Respondent No.2.

8 A bare perusal of the Certificate dated 12.11.2012 issued by the Tahsildar in favour of the Petitioner vide

D/2112/2012 clearly indicates that it had been certified that the Petitioner belongs to ST Sub-Caste Lambadies and is presently residing as resident of Kothapalli Village of Sirpur-U Mandal and Petitioner's grandfather is late Jadhav Dhuma, S/o. Muniya as per the Revenue records issued by Deputy Tahsildar, Utnoor, Chimmanayak Thanda, Hamlet of Nagapur Village of Utnoor Mandal, Adilabad District, Andhra Pradesh State which falls in Scheduled Area i.e., from 26th day of January 1950.

9. The Petitioner also relies upon a recent certificate dated 05.08.2023 vide Letter No.C/29/2023 issued by the Tahsildar, Lingapur, and a bare perusal of the same indicates that vide the said certificate the Petitioner had been certified as belonging to Lambadies-28 Scheduled Tribe community and further that Petitioner's parents had been continuously residing at Kothapalli-C village of Lingapur Mandal till to date which is a notified schedule village as per scheduled areas (Part-B States) Order, 1950.

10. When the order impugned is dated 09.04.2012 passed by the 2nd Respondent herein vide Proceedings

No.C3/5044/2010-4, it is not known how the Petitioner subsequent to 09.04.2012, obtained certificates dated 12.11.2012, 23.12.2016 and 05.08.2023 in favour of the Petitioner from the concerned Tahsildars, this Court opines that the 2nd Respondent except stating in the counter affidavit that the said certificates are invalid since the concerned Tahsildars have no competency to issue the said certificates when the District Collector had already cancelled the Local Schedule Tribe Certificate issued by the Tahsildar, Sirpur-U, vide No.D/14/2009, dated 12.01.2009, vide the impugned proceedings dated 09.04.2012, No.C3/5044/2010-4 of the 2nd Respondent herein, and the 2nd Respondent however in the counter affidavit filed on 09.01.2024, did not explain through reasons on the said issue.

11. Paragraph No.6 of the counter affidavit filed by Respondent No.2 on 09.01.2024 and in particular paragraph No. 6 reads as under :

"6. In reply to para 5 of the petitioner's affidavit, it is submitted that, as per G.O.Ms No. 03/SW/Dept, Dated: 10-01-2000 the Local Scheduled Tribe means the candidate belonging to the Schedule Tribes notified and as such under article-342 of the constitution of India

and the candidates themselves or their parents have been continuously residing in the scheduled areas of the district in which they are residents till to date since 26.01.1950 and further all the posts of the Teachers in the schools situated in scheduled area shall be filled by local scheduled tribe candidates only. In view of the above facts the Petitioner is not eligible for selection/Appointment against the School Assistant (Social Studies) in scheduled area posts notified in DSC-2008 in Adilabad District as her Local Schedule Area certificate status is found not genuine during the enquiry/verification made by the District Level Scrutiny Committee based on which her Local Schedule Area certificate has been cancelled by declaring that the petitioner does not belong to the Agency Area vide Proc. No.C3/5044/2010-4, Dt: 09.04.2012. However, if the petitioner thinks, that she is eligible for the appointment against the School Asset (Social Studies) in scheduled area posts she could have been filed an appeal before the Government if the parties aggrieved on the orders posed by the District Collector, but the petitioner has not used the opportunity to approach the Government for filing an appeal/revision, and instead approached the Hon'ble High Court by filing a W.P.No. 7158/2013.

The petitioner wilfully approached the Tahsildar and obtained LST certificate dated 12.11.2012 which is invalid in the eyes of law because the District Collector

has already cancelled the LST certificate vide Proc.No. C3/3044/2010-4, Dated: 09.04.2012, after conducting full pledged enquiry, subsequently the Tahsildar has no competency to issue the LST certificates D/2112/2012, Dated: 12.11.2012, No.C/27/2016, Dt: 23.12.2016 & Certificate No.C/29/2023, Dt: 05.08.2023 which are itself invalid.

12. The Judgment of the Apex Court dated 22.04.2020 in Chebrolu Leela Prasad Rao & Others Vs. State of Andhra Pradesh and Others reported in (2021) 11 SCC 401 and in particular, para Nos. 153, 154, 158 and 159, read as under :

"153. It has been provided in the notification that the local scheduled tribe's candidates have been defined to be scheduled tribes notified as under Article 342 of the Constitution of India, if the candidates of scheduled tribes themselves or their parents have been continuously residing in the scheduled areas of the district in which they are residing from the date i.e., 26th January 1950.

154. The condition of continuously residing in the district is ex facie arbitrary. Article 15(1) of the Constitution provides that State shall not discriminate inter alia on the ground of place of birth, however, under Article 15(4), it is provided that reservation can be made in favour of citizens of backward classes i.e.

Scheduled Castes and Scheduled Tribes and special provision can be carved out for their advancement. It is also open to prescribe for conditions of eligibility on the ground of residence in a particular area as well as on the educational requirements but that cannot be fixed arbitrarily and irrationally.

158. The G.O. in question requires candidate or the parents to reside in the area continuously w.e.f. 26.1.1950 to date. There is no rhyme or reason to require continuous residence for last 50 years or more. It overlooks the rights of various other persons who might have settled decades together in the area in question. It is discriminatory visàvis to the scheduled tribes also settled in the area and it has no purpose to be achieved and imposes restriction which was not even provided in the Presidential Order issued under Article 371D of the Constitution of India with respect to residential or educational requirements. Thus, it does not lay down valid conditions. The same is fixed in highly unreasonable and arbitrary manner and limits zone of consideration to miniscule where an opportunity for public employment has to be afforded to all concerned with reasonable rights.

159. Public employment envisages opportunity to all, who have been provided reservation is by way of exception to do the compensatory jobs. The condition above deprives the scheduled tribes who are permanent residents of the areas and have settled after the said

cut off date. Thus, the classification created is illegal, unreasonable, and arbitrary. Making such a provision that a person should be a resident on or before 26th January 1950 to date is discriminatory and has the effect of exceeding the purpose of providing the reservation. It defeats the rights of other similar tribes who might have settled after 26th January 1950 in the area taken care of in the Presidential Order under Article 371D. It is violative of Articles 14, [15\(1\)](#) and [16](#) of the Constitution and has no rationale with the purpose sought to be achieved. It creates a class within a class, and the classification made failed to qualify the parameters of Articles 14, 15 and [16](#) of the Constitution of India.

13. Taking into consideration the aforesaid facts and circumstances of the case and the averments made in the counter affidavit at Para No. 6 (referred to and extracted above) and duly taking into consideration the observations of the Apex Court reported in (2021) 11 SCC 401, dated 22.04.2020 in Chebrolu Leela Prasad Rao & Others Vs. State of Andhra Pradesh and Others at Para Nos. 153, 154, 158 and 159 (referred to and extracted above), in view of the fact that the Apex Court held the very conditions of eligibility, i.e., the

origin and the cut-off date to avail the benefit of reservation as unreasonable holding that such a provision that a person should be a resident on or before 26.01.1950 to date is discriminatory and the said classification itself failed to qualify the parameters of Article 14, 15 and 16 of the Constitution of India, this Court opines that the 2nd Respondent is duty bound to reconsider the impugned decision vide proceedings No.C3/1544/2010-4, dated 09.04.2012 cancelling the agency area certificate of the petitioner, in the light of the observations of the Apex Court referred to and extracted above duly considering the entire material on record within a period of four (04) weeks from the date of receipt of the copy of the order by giving due notice and opportunity to the Petitioner and all concerned in conformity with the principles of natural justice and pass appropriate reasoned orders duly taking a decision in the matter and duly communicate the decision to the petitioner.

14. With these observations the Writ Petition is disposed of.

Miscellaneous petitions, if any, pending in this Writ
Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Dated 03.06.2024

Note: L.R. copy to be marked

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yvkr/ktm

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Dated:03.06.2024

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