

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993

ANDHRA PRADESH

India

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Act 16 of 1993

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Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 Act No. 16 of 1993 The following Act of the Andhra Pradesh Legislative Assembly which was reserved by the Governor on the 28th January, 1993 for the consideration and assent of the President, received the assent of the President on the 4th September, 1993 and the said assent is hereby first published on the 8th September, 1993 in the A.P. Gazette Part IV-B (Extraordinary) for general information:- An Act to consolidate the issue of Community Certificates relating to persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and matters connected therewith or incidental thereto. Whereas, it has been brought to the notice of the Government that candidates who seek employment in Government Departments, Public Sector Undertakings and such other organisations and candidates seeking admission into educational institutions, against the vacancies or, as the case may be, the seats reserved for the Scheduled Castes, Scheduled Tribes and Backward Classes are producing false community certificates and securing employment or seats, as the case may be; And whereas, by securing such employment or admission on the basis of false community certificates the benefits of special provisions made for the advancement of the Scheduled Castes, Scheduled Tribes and Backward Classes in the matter of public employment and educational opportunities are not reaching such Castes, Tribes and Classes; And whereas, the Government have decided to curb effectively the evil practice of producing false community certificates by devising a strict procedure for the issue of such certificates and prescribing deterrent punishment to those who produce false community certificates; Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty-Third year of the Republic of India, as follows:-

1. Short title extent and commencement:

(1) This Act may be called the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993. (2) It extends to the whole of the State of Andhra Pradesh. (3) It shall come into force on such date [as the Government may, by notification, appoint.] [w.e.f. 15-5-1997 (Vide G.O.Ms. No. 57, S.w W.(J), dated 8-5-1997).]

2. Definitions:

- In this Act, unless the context otherwise requires, - (a) "backward classes" means any socially and educationally backward classes of citizens recognised by the Government for purposes of Clause (4) of Article 15 of the Constitution of India; (b) "community certificate" means the certificate issued by the competent authority indicating therein the Scheduled Castes, Scheduled Tribes and Backward Class, as the case may be, to which the person belongs; (c) "competent authority" means, any officer or authority authorised by the Government by notification to perform the functions of the competent authority under this Act, for such area or for such purposes as may be specified in the notification; (d) "educational institutions" means any School, Junior College, Degree College, College of Education, Polytechnic College, Industrial Training Institute, College of Fine Arts and Architecture, College of Music and Dance, Engineering College, Medical College, Ayurvedic College, Homeopathic College, Unani College, Dental College, College of Nursing, Nurses Training School, Health Visitors Training School, Colleges under the control of Andhra Pradesh Agricultural University and various colleges under the control of any University established by an Act of the State Legislature and such other institutions imparting education as may be notified from time to time; (e) "Government" means the State Government of Andhra Pradesh; (f) "local authority" means in relation to local areas comprised within the jurisdiction of a Municipal Corporation, the concerned Municipal Corporation and in relation to any other local area in the State, the concerned Municipal Council, Zilla Parishad, Mandal Parishad, Gram Panchayat or township having jurisdiction over such local area; (g) "notification" means, a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly; (h) "prescribed" means, prescribed by rules made by the Government under this Act; (i) "scheduled castes and scheduled tribes" shall have the meanings respectively assigned to them in Clause (24) and Clause (25) of Article 366 of the Constitution of India.

3. Application for a Community Certificate:

(1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes and Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under Clause (4) of Article 15 of the Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the Competent Authority for the issue of a Community Certificate. (2) Any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or

regulation made under the Fifth Schedule to the Constitution of India or under any Act, Rule, Regulation or Order for the time being in force in the Scheduled Areas, make an application in such form and in such manner as may be prescribed to the Competent Authority for the issue of Community Certificate. Explanation: - For the purposes of this section and Section 13, "Scheduled Areas" means the areas as defined in paragraph 6 to the Fifth Schedule to the Constitution.

4. Community Certificate to be issued by Competent Authority:

(1) The Competent Authority may, on an application made to it under Section 3, satisfy itself about the genuineness or otherwise of the claim made therein and thereafter issue a Community Certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer or authority other than the Competent Authority shall be invalid. (2) Before the issue or rejection of a certificate under sub-section (1) the Competent Authority shall follow such procedure as may be prescribed.

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 and 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 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 for 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.

7. Appeal and review:

(1) Any person aggrieved by an order passed under sub-section (1) of Section 4 by the Competent Authority rejecting an application made to it under Section 3, may within thirty days from the date

of receipt of such order, appeal to the District Collector and the District Collector may after giving the appellant an opportunity of being heard either confirm the order appealed against or set aside the said order and direct the Competent Authority to issue a Community Certificate.(2)Any person aggrieved by an order passed under Section 5, by the District Collector may, within thirty days from the date of publication of such order in the Andhra Pradesh Gazette, appeal to the Government and the Government may, after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed, confirm or set aside the order appealed against.(3)The Government may, on an application received from any person aggrieved by an order passed by the Government under sub-section (2) of Section 5, within thirty days of the publication of that order in the Andhra Pradesh Gazette, review any such order if it was passed by them under any mistake, whether of fact or law or in ignorance of any material fact.(4)Pending disposal of an appeal under sub-section (2) or review under sub-section (3), it shall be competent for the Government to stay the operation of the order against which an appeal or review, as the case may be, is filed.

8. Power of revision by Government:

(1)The Government may, at any time, either suo motu or on an application made to them within the prescribed period, call for and examine the record, relating to any decision made or order passed by any person, officer or authority subordinate to them for the purpose of satisfying themselves as to the legality, regularity or propriety of such decision or order and if, in any case it appears to the Government that any such decision or order/should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.(2)The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

9. Competent Authority to exercise the powers of the Civil Courts:

- The competent authority shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-(a)summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of any document;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any Court or Office; and(e)issuing commissions for the examinations of witnesses or documents.

10. Penalties:

- Whoever obtains a community certificate by,-(a)furnishing false information; or(b)filing a false statement; or(c)any other fraudulent means;shall, on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees:Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a lesser term or fine.

11. Benefits secured on the basis of false Community Certificate to be withdrawn:

(1)Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures admission in any educational institution against a seat reserved for such Castes, Tribes or Classes or secures any appointment in the Government, local authority or in any other company or corporation owned or controlled by the Government or in any aided institution against post reserved for such Castes, Tribes or Classes or enjoys any other benefit intended exclusively for such Castes, Tribes or Classes, by producing a false community certificate shall, on cancellation of the false community certificate, be liable to be debarred from the concerned educational institution or as the case may be, discharged from the said service forthwith and any other benefit enjoyed by him as aforesaid shall be withdrawn forthwith.(2)Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered as an arrear of land revenue.(3)Any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him.(4)Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes secures any benefit reserved for Scheduled Castes, Scheduled Tribes or Backward Classes other than those mentioned in Section 12 by producing a false community certificate shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees:Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a lesser term or fine.

12. Penalty for securing on appointment or election to political offices etc., on the basis of false community certificates:

(1)Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Classes secures an appointment in Government or other institutions referred to in Section 11 against the posts reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes or is elected to any of the elective offices of any local authority or cooperative society against the offices reserved for such Castes, Tribes or Classes on the basis of a false community certificate, shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees:Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a lesser term or fine.(2)Whoever not being a person belonging to a Scheduled Tribe secures any benefit or protection intended for a member of a Scheduled Tribe under a notification; direction or regulation made under the Fifth Schedule to the Constitution of India or under any other law in force in the Scheduled Areas on the basis of a false community certificate shall, on conviction be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which

13. Penalty for issuing a false Community Certificate:

(1) Any person or authority performing the functions of competent authority under this Act, who intentionally issues a false community certificate, shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and also with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a lesser term or fine. (2) No Court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.

14. Penalty for abettors:

- Whoever abets any offence punishable under this Act shall be punished with the punishment provided for in this Act for such offence.

15. Offences to be tried summarily:

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act II of 1974), any offence punishable under Sections 10, 11 and 12 of this Act may be tried summarily by a Magistrate of the First Class.

16. Offences under the Act to be cognizable:

- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act II of 1974), all offences under this Act, shall be cognizable and non-bailable.

17. Bar of Jurisdiction of Civil Courts:

- No Civil Court shall have jurisdiction in respect of any order passed by any officer or authority under this Act and no stay or injunction shall be granted by a Court in respect of any action taken or to be taken by such officer or authority under this Act in pursuance of any power conferred by or under this Act.

18. Protection of acts done in good faith:

- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or the Rules made thereunder.

19. Act to override other laws:

- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time-being in force.

20. Power to make rules:

- The Government may by notification make rules for carrying out all or any of the purposes of this Act.(2)Every rule made under this Act shall immediately after it is made be laid before the legislative Assembly of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. Transitional Provisions:

- A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act, shall, unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.