

State Of Andhra Pradesh And Others vs Nagam Chandrasekhara Lingam And Others on 4 May, 1988

Equivalent citations: AIR1988SC1309, JT1988(2)SC577, 1989LABLC249, 1988(1)SCALE1183, (1988)3SCC534, 1988(2)UJ246(SC), AIR 1988 SUPREME COURT 1309, 1988 SCC 822, 1989 LAB IC 249, (1988) 2 SCJ 643, 1988 UJ(SC) 2 246, (1988) 2 CURLR 51, (1988) 7 ATC 764, (1988) 2 LAB LN 565, 1988 (3) SCC 534, (1988) 2 JT 577 (SC), (1988) 57 FACLR 823, 1988 SCC (L&S) 822, (1988) 2 APLJ 1

Bench: K.N. Singh, M.H. Kania

JUDGMENT

M.H. Kania, JJ

1. These Appeals are directed against the judgment of a Division Bench of the Andhra Pradesh High Court disposing of a number of writ petitions, being Writ Petitions Nos. 7548 of 1983, 7356 of 1984 and 10320 of 1984. Civil Appeals Nos. 2306-2308 of 1985 are filed by the State of Andhra Pradesh and others, Civil Appeals Nos. Nos. 2309-10 of 1985 are filed by the Andhra Pradesh State Scheduled Castes Welfare Association and Civil Appeals Nos. 2518-2519 of 1985 are filed by the Union of India.

2. As the controversy before us is very limited, we propose to set out only the short facts necessary for the appreciation of the contentions raised before us.

3. The Respondent No. 1, Nagam Chandrasekhara Lingam (referred to hereinafter as "Chandrasekhara") was selected in 1981 by the Union Public Service Commission for appointment in the Indian Administrative Service (IAS) against a vacancy reserved for a Scheduled Caste candidate. This was done on the basis of a social status certificate produced by him which was issued to him on October 27, 1980, certifying that he belonged to the Beda Jangam Community, a Scheduled Caste. Under the Scheduled Castes and Scheduled Tribes (Modification) Order, 1956, Beda Jangam Community in the Telangana region was enumerated as a Scheduled Caste. In 1976 the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 was enacted whereby the area restriction imposed under the aforesaid Order of 1956 in respect of the Beda Jangam castes was removed and that caste was declared as a Scheduled Caste throughout the State of Andhra Pradesh. By an Order, being Order No. G.O.Ms. No. 838 dated December 12, 1977 issued by the Governor of Andhra Pradesh, the Andhra Pradesh State and Subordinate Service Rules were amended with effect from July 27, 1977 and by these amendments Beda Jangam : Community inter alia was notified as a Scheduled Caste throughout the State of Andhra Pradesh. Thereafter, Chandrasekhara obtained the aforesaid social status certificate from the Tahsildar, Ongole. He enclosed this certificate along with his application for selection to the Indian Administrative Service and he was selected in a reserved

post as stated above. Thereafter, a Representation was made in writing to the Central Government by one Vijaya Kumar, President, Ambedkar Mission, Vishakhapatnam, alleging that Chandrasekhara belonged to the Jangam Caste which was a backward caste in the State of Andhra Pradesh but was not a Scheduled Caste. That Representation was forwarded by the Central Government to the State Government for taking appropriate action. The State Government directed the Collector, Prakasam District, to enquire into the matter and submit a Report as to whether Chandrasekhara belonged to Beda Jangam Community. Pursuant to the Report made by the Collector in the enquiry, the Secretary to the Government of India was informed that Chandrasekhara belonged to the Beda Jangam Community which was a Schedule Caste throughout the State of Andhra Pradesh. A further Representation was made to the Central Government by the Andhra Pradesh Scheduled Castes Welfare Association to the effect that some persons belonging to the Jangam Community in the district of Prakasam had obtained false certificates to the effect that they belonged to the Beda Jangam Community which is a Scheduled Caste in the State of Andhra Pradesh and Chandrasekhara had produced one such false certificate and got qualified in the Indian Administrative Service on that basis. The Central Government forwarded that Representation to the State of Andhra Pradesh and requested them to conduct a thorough enquiry into the matter. The State Government appointed T. Munivenkatappa, the then Commissioner of Welfare, Social Welfare Department of the State Government to conduct a de nova enquiry and submit a Report. The terms of enquiry which have been set out by the High Court in the impugned judgment are as follows :

- (i) Whether Sri Lingam, his parents, the members of his family and near relatives are treated as untouchables by the caste Hindus;
- (ii) In what village or villages his parents, members of his family and near relatives are living;
- (iii) Whether all of them in that village are living in a separate colony along with the other scheduled castes;
- (iv) Whether they along with the other sections in the colony are drawing water from their own wells or drawing water from the wells situated in the caste Hindu locality;
- (v) Whether they are prohibited from entering or permitted to enter into temples and coffee hotels;
- (vi) The enquiry officer should record the statements of the near relatives and neighbours and others living in the locality or in the colony;
- (vii) When the enquiry officer proceeds for enquiry he should give notice to Sri Chandrasekhara Lingam and he should record the statements of the persons in his presence. He should also be asked to produce the persons whom he desires to be examined.

The Commissioner conducted an enquiry commencing from March 7, 1984 and submitted his Report dated March 18, 1984 to the State Government stating that the Jangam Community in the Prakasam district did not have the disability of untouchability and the Jangamas of that district are not Beda Jangamas. The Report also stated that Chandrasekhara did not belong to the Scheduled Caste of Beda Jangam and as such the social status certificate issued to him deserved to be cancelled. On the basis of this Report, the State Government of Andhra Pradesh issued an Order Being G.O.Ms, 51, Social Welfare (J) Department dated March 20, 1984, cancelling the social status certificate issued on October 27, 1980 in favour of Chandrasekhara. The State Government also directed the Revenue and Social Welfare authorities in the district to cancel the false certificates obtained by Jangamas to the effect that they belonged to Beda Jangam Community and take certain consequential steps. In these circumstances, although Chandrasekhara was selected, he was not called for training along with other selected candidates.

4. Writ Petition No. 7548 of 1983 was filed by Chandrasekhara seeing a declaration that he was entitled to be sent for training. Writ Petition No. 7356 of 1984 was filed by him questioning the validity of the aforesaid Order, being G.O.Ms. 51 dated March 20, 1984 cancelling the social status certificate. The other orders issued by the State Government pursuant to the aforesaid Report of the Commissioner were also challenged by Chandrasekhara. The Andhra Pradesh High Court considered the entire matter somewhat exhaustively in the impugned judgment and came to the conclusion that since a number of persons were examined and their statements recorded behind the back of an affected party, namely, Chandrasekhara, and as he had not been given an opportunity to cross-examine such persons, the enquiry held by the Commissioner of Welfare, Social Welfare Department was vitiated and invalid and the High Court set aside the aforesaid Order, G.O.Ms. 51 dated March 20, 1984 and the consequential Memorandum dated April 3, 1984 issued by the Government of Andhra Pradesh. The Division Bench of the High Court also held that in view of the complicated nature of the matter and rights of the persons likely to be affected, the enquiry about the position of persons including the Appellant, claiming to belong to the Beda Jangam Community should be conducted by a Commission headed preferably by a Judicial Officer of the rank of a District Judge. The Division Bench of the High Court directed the Government of India to send Chandrasekhara for training for the Indian Administrative Service but further directed that he should not be appointed pending the completion of the enquiry into his social status and that the enquiry should be completed within four months from the receipt of the judgment. The State of Andhra Pradesh as well as the Government of India filed the aforesaid Appeals in this Court challenging the decision of the High Court.

5. In our view, the Appeals can be disposed of on a short point. It is evident from the aforesaid Order, G.O.Ms. 51 dated March 20, 1984 that in the course of the enquiry, the Commissioner of Welfare, Social Welfare Department, went into the social and economic status of Chandrasekhara, his parents and other members of his family and the question whether they were regarded as untouchables by the caste Hindus of the area. The Commissioner of Social Welfare examined : exhaustively the question whether any disability or untouchability was suffered by Chandrasekhara and members of his family and by others belonging to the Jangam Community in the district concerned. The Commissioner came to the conclusion that Beda Jangamas properly called were hunters of small jungle animals, fowlers and also cultivators whereas Jangamas in the area

concerned did not suffer from any social disability at all but were regarded as a part of the comparatively advanced classes. What is material is that this Order itself shows that the Enquiry Officer made enquires from several persons and recorded thier statements without any notice to Chandrasekhara so that he could remain present and ask for permission to cross-examine these witnesses. In view of this, it appears to us that the Commissioner clearly violated the terms of the enquiry which have already set out earlier to the effect that while conducting the proceedings of the enquiry, the Enquiry Officer should give notice to Chandrasekhara and should record the statements of persons in his presence. It may further be pointed out that the learned Counsel for the Central Government fairly conceded before the High Court that the enquiry conducted was not fair and proper, as set out in the impugned judgment. In this view of the matter there is no doubt that the aforesaid Order, namely, G.O.Ms. 51 dated March 20, 1984 is clearly vitiated and the Division Bench of the High Court of Andhra Pradesh was fully justified in setting aside the Order.

6. It was urged by Krishnamurthi Iyer, learned Counsel for the Appellant, the State of Andhra Pradesh, that, in spite of the aforesaid error committed by the Commissioner of Social Welfare in conducting the enquiry in the present case, the aforesaid Order G.O.Ms. No. 51 dated March 20, 1984 ought not to be set aside in view of the conduct of Chandrasekhara who, even long after 1976 when the caste Beda Jangam was recognised as a Scheduled Caste throughout the State of Andhra Pradesh, never claimed the benefit of having belonged to that Community and proceeded on the footing that he was a candidate belonging to the General Category. In our view, this submission cannot be upheld because the said Order G.O.Ms. No. 51 dated March 20, 1984 is clearly based on the Report of the Social Welfare Commissioner and not on any conduct of the Appellant. We may mention that it was further contended before us by learned Counsel appearing for Chandrasekhara, the contesting Respondent before us, that the Report of the Social Welfare Commissioner was also vitiated because out of 49 witnesses he desired to be called only a few were called by the Commissioner to give evidence. We may make it clear that we do not feel we are called upon to examine the correctness of this contention because, in our view, the Report of the Social Welfare Commissioner is vitiated on the ground set out earlier. We may, however, point out that in an enquiry like the one in question, it may not be necessary for the Enquiry Officer to call in evidence all the witnesses who the party concerned may desire to be called. He would be perfectly justified in declining to call any witness whose evidence in his view was bound to be merely repetitive or irrelevant and not of any assistance. We may further point out that it might be open to the Enquiry Officer to limit the right of cross-examination where he feels that it is not required for compliance with the principles of natural justice. The Commissioner must, however, observe the conditions in the terms of the enquiry which we have set out earlier and must also see to it that the principles of natural justice and fairplay are observed.

7. In view of the facts and circumstances of the case, we feel that it is not correct to say that a District Judge or a Judicial Officer is better qualified to conduct an enquiry of this type and it may, in fact, be better to have the enquiry conducted by an officer who is well conversant with the matters in question. In view of this, we direct that the enquiry should be conducted, preferably by the present Commissioner of Social Welfare of the State of Andhra Pradesh. However, if the person holding that position is the very same person who conducted the aforesaid enquiry; we feel that, in the interest of justice, the enquiry should be conducted not by him but by some other suitable officer nominated by

the State of Andhra Pradesh for conducting the enquiry keeping in view what we have stated earlier. The enquiry should be completed as early as possible, preferably within four months of the receipt of a copy of this judgment.

8. In the result, the Appeals are dismissed save and except for the directions given by us as stated above.

9. There will be no order as to costs of these Appeals.