

Director Of Tribal Welfare, Government ... vs Laveti Giri And Another on 18 April, 1995

Equivalent citations: 1995 AIR 1506, 1995 SCC (4) 32, AIR 1995 SUPREME COURT 1506, 1995 (4) SCC 32, 1995 AIR SCW 2289, (1995) 2 ANDHWR 44, (1995) 2 MAD LJ 30, (1995) 3 SCT 118, 1995 SCC (L&S) 914, (1995) 2 SERVLR 595, (1995) 3 SCR 430 (SC), (1995) 30 ATC 166, (1995) 3 JT 684 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, N Venkatachala

PETITIONER:

DIRECTOR OF TRIBAL WELFARE, GOVERNMENT OF ANDHRA PRADESH

Vs.

RESPONDENT:

LAVETI GIRI AND ANOTHER

DATE OF JUDGMENT 18/04/1995

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 AIR 1506

1995 SCC (4) 32

JT 1995 (3) 684

1995 SCALE (2) 815

ACT:

HEADNOTE:

JUDGMENT:

K. RAMASWAMY, J.:

1. Leave granted.

2.This appeal by special leave arises from the judgment and order of the High Court of Andhra Pradesh dated January 16, 1984 made in Writ Appeal No. 1040 of 1983. This is a second case after Madhuri's case in which this Court noticed fraud upon the Constitution played by the plainman to wear the mask of false social status to come the Constitutional benefits of reservation of admission into professional course under Art. 15(4), an integral scheme of socio-

economic justice conferred on the disadvantage Scheduled Tribes. The Government of Andhra Pradesh stated in G.O.Ms. Nos. 245 dated June 30, 1977 and reiterated in G.O. No.289 dated November 28, 1986 of the Social Welfare Department of the Andhra Pradesh Government, that it is notorious to secure false caste/community certificates that "a very numerous applications are received from spurious candidates claiming and projecting privileges exclusively provided to Scheduled Tribes candidates with the help of false certificates relying in not only dilution but also denial of benefits to Scheduled Tribes candidates." It would be thus an undeniable fact that to secure false social status as a Scheduled Tribes or Scheduled Castes, the plainman play fraud on the Constitution to secure admission in the professional courses or appointment to a post or office under the State or its instrumentalities. The Division Bench put a premium on fraud on the Constitution by its traditional treatment to the burning malady.

3. The respondent is son of one L. Hanumantha Rao, a Government servant in Engineering Department of State Government. The admitted facts are that their nativity though initially was Amadalavalas in Srikamulam Dist. settled down in Satyavedu in Eluru Taluk of West Godavari District. By appointment and transfer the respondent's father, while working in Hyderabad was staying in Malakpot within the jurisdiction of the Tehsildar Musheerabad, Hyderabad District. For admission into Engineering course, he obtained caste certificate from Tehsildar Vallabhnagar, Ranga Reddy Dist. that he belongs to Kondakapu community a notified Scheduled Tribe. While provisionally admitting the respondent into first year course of B.E., the Principal, Osmania University, Engineering College referred the matter to the Director, Tribal Welfare for confirmation of the social status of the respondent. On receipt thereof the latter issued notice to the respondent to appear before him with all necessary certificates along with an adult male member who would answer the questions. Though the appellant had appeared with photostat copies of the certificates before the Director on July 21, 1983, the adult member, in other words, is father L. Hanumantha Rao had not appeared. In spite of giving time for his appearance, the Director having found that the respondent's father did not appear, considered the certificates produced by the respondent and concluded that since Tehsildar Vallabhnagar was not competent to issue the social status certificate, it was found to be without jurisdiction. In the school certificate of the father of the respondent, it was recorded that he was "Kapu" which would mean that respondent and his father do not belong to Kondakapu community, Scheduled Tribe. Calling in question of the order of the Director dated August 20, 1993, the respon-

dent filed Writ Petition No. 7134/83. The learned Single Judge by his order dated October 22, 1983 dismissed the Writ Petition. On appeal the Division Bench reversed the order of the Single Judge primarily on three grounds, firstly, that the admission brochure of the Osmania University indicates that a Tehsildar is competent to issue the certificate. Since Tehsildar Vallabhnagar is a competent

officer and the certificate issued by him was valid in law. It was also held that the father of the respondent was in service of State Government and his service records and the educational certificates established him to be a Scheduled Tribe. Therefore, the respondent is entitled to enter the status as Scheduled Tribe. The Director rejected the claim of the respondent on assumptions and surmises.

4. It is contended by Sri Prabhakar, learned counsel for the appellants that the High Court was not right in relying on the documents produced by the respondent without any proof. The father did not appear to explain the circumstances under which he had the status of Scheduled Tribe. The certificate from Tehsildar of the nativity criteria is discernible from the brochure of the University. University is required to call upon the candidate to produce the required social status certificate, when a candidate's claim is founded upon such a social status. Relevant rules or orders issued by the Government in Social Welfare Department prescribed the procedure in that behalf. The High Court in its traditional would wrongly caused the burden of proof on the Department when it squarely rests upon the candidate to prove his caste/tribe according to the procedure prescribed under the rules. It is the duty of the certificate issuing authority to satisfy himself after due verification whether the candidates belong to Scheduled Caste or Scheduled Tribe, satisfies the criteria prescribed by the Government. Though the father managed to gain falsely social status as Tribe and wrongfully and unconstitutionally is in enjoyment of the benefit of employment as a tribe, it is not conclusive. It is not uncommon to come such benefits with connivance of officers and it is known facts that a strong bureaucrat lobby successfully prevent either proof of falsity or its suppression. The learned Single Judge has rightly taken the relevant factors into consideration to dismiss the Writ petition. We find force in the contention. Shri Y. Prabhakar Rao, the learned counsel for the respondent vehemently contended that the view of the Division Bench of the High Court is quite legal and justifiable on the facts. The candidate does not know from which officer he has to obtain the social status certificate. The brochure indicates that the certificate from a Tehsildar is sufficient. It does not show that the Tehsildar of the nativity was required to issue the certificate. The father of the respondent having already in enjoyment of the status as Kondakapu in Government Service, it is a great material conclusive fact to decide the issue. The Director, therefore, was not correct in rejecting the social status. The Single Judge had committed error in relying upon the report of the Director. Having given our anxious consideration, we are of the view that the Division Bench has put premium on fraud played by the respondent and his father to secure false social status as Kondakapu while they are Kapus by caste, a forward caste in Andhra Pradesh,

5. The Presidential notification clearly mentions that Konda Kapus and Konda Reddies are Scheduled Tribes in Andhra Pradesh. Kapus and Reddies are plain People who are forward caste from the main stream of the society and are of upper social strata. The endemic characteristic of Scheduled Tribes and plain people are distinct, different and never in common. Konda Kapu and Konda Reddies live in tribal areas of forest, mountainous tracks and shifting cultivation and gathering minor forest produce are their main avocation. The Totamics clearly differentiate and demarcates them from the plain people of Kapus and Reddies. Their customs, marriages are different. The Government in G.O.Ms. No. 147 dated April 27, 1977 of Social Welfare Department clearly mentioned that the Tehsildar or Revenue Divisional Officer or Assistant Collector or Sub Collector of the Taluk or Divisional Districts in respect of which the members claim nativity are

competent to issue social status certificate. In the same G.O. Kapus and Reddies have been enumerated to be a Scheduled Tribes. In G.O.Ms. No. 245 dated June 30, 1977 Social Welfare Department enumerated the distinct groups of tribes different from plains. Kapus and Reddies do not have any similarity in their habits culture. There was no common social or economic patterns. In order to establish whether a particular candidate belong to any of the Scheduled Tribe/group diverse ethnic or cultural identities were mentioned. In Annexure 1 of the G.O. the candidates are required to furnish the particulars prescribed therein. The competent officer was to verify and satisfy himself of the true social status, of the candidate before issuing the social status certificate. The same was further enumerated and elaborated in G.O.Ms. No. 289 dated November 26, 1986, after the dispute in this case had arisen with which we are not concerned in this appeal. The orders also specifically say that who ever was given or taken false caste certificate are liable to be prosecuted. The officer be penalised in Departmental proceedings for dereliction the duty including dismissal from service when found that officer deliberately issued false certificate.

6.The learned Single Judge has pointed out that in Writ Petition No. 9071/ 82 filed by the sister of the respondent, the father of the respondent and his sister were called upon to produce the social status certificate from the native Tehsildar or the Revenue Divisional Officer but they failed to produce the same. It was also noted that Vasudeva Rao brother of Hanumantha Rao has a son by name Ravi Kumar. He also claimed social status as a Konda Kapu for admission into M.B.B.S. Course. His Writ Petition No.6637/79 was disposed of on November 3, 1979 finding that L. Ravi Kumar's claim for social status as Konda Kapu was doubted. The matter was referred to the Director wherein it was held that Ravi Kumar was not Konda Kapu. We agree with the learned counsel for the appellant that the High Court adopted its traditional approach of placing burden of proof of social status founded on the entries in Government record etc. and called upon the State to rebut it on the touch-stone of Evidence Act. We are unable to appreciate the view taken by the Division Bench. Burden of proof of social status is always on the person who profound it to seek constitutional socioeconomic advantages. It is no part of the duty of the State to disprove or its reverse. The criteria to obtain caste certificate from Native Tahsildar/Mandal Revenue Officer/ Revenue Divisional Officer is relevant for the reason that Scheduled Tribes generally live in forest areas, mountainous regions and specified ;pockets and will be known to local officers or easily accessible for verification. The respondent is not as innocent as the Division Bench appears to have proceeded. It is seen that the father of the respondent deliberately abstained to appear before the Director. The social status to the daughter was required to be produced from the Tahsildar of the native jurisdiction but failed. Though he lived in Malakpet within the jurisdiction of Musheerabad Tahsildar, he produced the certificate from Tehsildar, Vallabhnagar in Ranga Reddy District who had no jurisdiction to issue it. Yet he had chosen to obtain from him and the officer was a willing and accommodating one to issue false certificate. When the Principal doubted its correctness and referred the matter to the Director of Tribal Welfare, the father admittedly did not appear to establish the social status. Though respondent, minor appeared before the Director, his statement cannot be used as evidence. His father is a Government servant. He knows the consequences and so he deliberately absented from being present before Director. Instead he chose to send his son with records. The Director considered the record and concluded that the respondent is not a Scheduled Tribe but he is a "Kapu" by caste as evidenced by the school certificate of his father declared to be a Kapu. It bears evidentiary value and relevant material evidence. The subsequent record

manufactured by his father and his continuance in service on that basis, even If it is accepted by the Department, is not conclusive and cannot be implicitly relied as gospel truth. The totamic characteristic are required to be satisfied as noted in detail in the Annexure 1 f the G.O. referred herein before. They had not satisfied the Director by furnishing those characteristic for verification and to take a decision thereon. The Division Bench had totally omitted to consider all these aspects and characterised the finding of the Director to be based on conjectures and surmises. It is an accepted position that the Director, Tribal Department established a research wing and made scientific study of the, endemic characteristic, cultural moorings habits, their modes of marriages customs etc. of different particular tribal community. The questionnaire was prepared as per the Annexure in the G.O. obviously. Knowing that he cannot satisfy the required features the father of respondent deliberately abstained to appear before the Director, Tribal Welfare. Instead he got filed the writ petition in the High Court put the burden of proof on the State that the Court relieved the father of proving the status of his son's claim to be not a Scheduled Tribe. This Court while considering the similar claims and school register of the father of Madhuri and Saritha in *Kumari Madhuri Patil & Anr. v. Addl. Commissioner, Tribal Development and Ors.*, (1994) 6 SCC 24 1, held that the entry in the school certificate of the caste of the father bears relevance and would prove to be false claim as Scheduled Tribe. This Court has laid guidelines how the matter required to be dealt with and stated in paragraph 13 thereof.

7.The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates envisaged of the benefits conferred on them by the Constitu- tion. By reason thereof the genuine candi-

dates would be denied admission to professional courses etc. or appointments to office or posts under a State instrumen- talities. More often they arc denied social status certificates while ineligible or spurious persons easily would secure them. After falsely gaining entry, resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is the parent or the guardian who may play fraud claiming false status certificate to his child. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:-

- 1.The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than by the Officer like Taluk or Mandal level.

- 2.The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3.Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4.All the State Governments shall constitute a Committee of three officers, namely, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (11) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (111) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5.Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims, The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any., He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6.The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-

cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/ guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it.

After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or nonofficial and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article

136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission of the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

8. While reiterating the above guidelines to be workable principles, it is high time that the Government of India would have the matter examined in greater detail and bring about a uniform legislation with necessary guidelines and rules prescribing penal consequences on persons who flout the Constitution and come to the benefits reserved for the real tribals etc. etc., so that the menace of fabricating the false records and to gain unconstitutional advantages by plain/spurious persons could be prevented. Lest they would defeat the Constitutional objective of rendering socio-economic justice envisaged under Article 46 in the Preamble of the Constitution under Articles 14, 15, 16, 38 and 39.

9. By orders of the High Court the respondent had already completed his engineering course, though he played fraud on the Constitution depriving the real tribal of the benefit of the education as an engineer. He was minor at the relevant time. So nothing can be done except declaring that he is not a tribe and that he is not entitled to any employment or any other advantage on the basis of his false status as Scheduled Tribe, namely, Kondakapu. His father did not appear before the Director and he is not before this Court to direct the Govt. to lay prosecution. Accordingly the appeal is allowed with costs quantified at Rs.25,000/- to defray the amount spent on the respondent.