Anatha Udaya Bhaskar Rao Vs Election Commission of India and Others

Election Petition No. 15 of 2009

Court: Andhra Pradesh High Court

Date of Decision: Sept. 20, 2013

Citation: (2014) 2 ALD 499 : (2014) 3 ALT 119

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: E. Madan Mohan Rao, for the Appellant; N.P. Anjanadevi for Respondents 6 to 15, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Kantha Rao, J.
Brief averments of the election petition are that the election to the Rampachodavaram Assembly Constituency No. 172

in East Godavari District was held on 16.04.2009. The said assembly constituency was reserved for Scheduled Tribe candidates. The petitioner

filed nomination as an independent candidate along with a community certificate stating that he belongs to Konda Kapu Community, a Scheduled

Tribe. The nomination was objected to by the 6th respondent, the returned candidate on the ground that the petitioner does not belong to

Scheduled Tribe and he belongs to Kapu community which is a forward caste. The Returning Officer rejected the nomination holding that the

petitioner does not belong to Scheduled Tribe. The petitioner filed the present election petition to declare the order passed by the 4th respondent,

Returning Officer, rejecting his nomination as illegal, arbitrary and unjust, prompted by mala fides and also contrary to Section 21 of the Andhra

Pradesh (SCs, STs and BCs) Regulation of Issue of Community, Nativity and Date of Birth Certificates Act, 1993 read with Rule 21 of the of the

Andhra Pradesh (SCs, STs and BCs) Regulation of Issue of Community, Nativity and Date of Birth Certificates Rules 1997 and in violation of

orders, dated 29.12.2009 passed by the High Court of Andhra Pradesh in Writ Petition No. 28299 of 2008 and to declare the election of the 6th

respondent to the Rampachodavaram Assembly Constituency No. 172 in East Godavari District as void.

2. He submitted that he belongs to Konda Kapu community which is a listed Scheduled Tribe in the Presidential Order. His family members have

been residing in Agency Tracts of Godavari District from times immemorial and they have been recognized as members belonging to Konda Kapu

community, Scheduled Tribe. His father late Anantha Chakra Rao was very active and renowned politician in the locality, he was elected as the

President, Panchayat Samithi, Addateegala and later as President, Mandal Praja Parishad, Addateegala as member belonging to Scheduled Tribe

community. His paternal grand-father late Anantha Veera Raju was elected as Samithi President of Addateegala, which was reserved for

Scheduled Tribe. His maternal great grandfather late Padala Veeraraju was elected thrice as the Samithi President of Addateegala Panchayat

Samithi as Scheduled Tribe candidate.

3. He further submitted that even earlier there were several objections made by the opponents about the social status of the family members of the

petitioner. The State Government made several enquiries and ultimately confirmed that his family members belong to Konda Kapu Community.

The Land transfer proceedings under the provisions of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959, were initiated many times

against their family members. In all those proceedings, it was held that his family members belong to Konda Kapu community. The petitioner also

referred to some other proceedings relating to certain issues at various points of time in favour of his family members stating that they belong to

Konda Kapu community.

4. According to the petitioner, ignoring all the previous proceedings and certificates, the District Collector, East Godavari passed an order in

reference No. C5/2386-B/98, dated 17.05.2005 on an erroneous view of the matter declaring the social status of his mother, his paternal uncle,

Anantha Eswar Rao and his wife Anantha Mangatayaru stating therein that they did not belong to Konda Kapu Community. The said proceedings

were never communicated to them and never published in the Andhra Pradesh Gazetee. However, on coming to know about the proceedings, the

aforesaid three individuals preferred an appeal before the Government of Andhra Pradesh, Social Welfare (CV-II) Department u/s 7 of the

Andhra Pradesh (SCs, STs and BCs) Regulation of Issue of Community, Nativity and Date of Birth Certificates Act, 1993, but the Government of

Andhra Pradesh, Social Welfare Department dismissed the said appeal as time barred. Challenging the above mentioned proceedings of the

Government and the District Collector, East Godavari, they filed W.P. No. 18536 of 2006 in the High Court of Andhra Pradesh, the writ petition

was admitted and the same is pending. The version of the petitioner is that the District Collector, East Godavari, passed the aforesaid order solely

placing reliance on the order dated 27.11.1987 in O.P. No. 32 of 1987 passed by the Agency Divisional Officer and Special Assistant Agent to

the Government, Rampachodavaram, wherein the election of the petitioner as President, Mandal Praja Parishad, Addateegala was invalidated on

the ground that he belongs to Kapu/Telaga community. The said proceedings were initiated during the lifetime of his father, later his father was

murdered by the naxalites on 19.03.1987 and subsequent to his father''s murder, the order in O.P. was passed. Challenging the said order, the

petitioner, his mother and his paternal uncle, filed W.P. No. 672 of 1989 and the said writ petition was allowed by the High Court of Andhra

Pradesh on 27.11.1997 on the ground that the order in the O.P. came to be passed after the death of the father of the petitioner and observing that

any findings given in the order in O.P. No. 32 of 1987 with regard to the social status of the petitioner''s family shall not be taken as final word.

The petitioner contends that contrary to the orders passed by the Andhra Pradesh High Court in the above writ petition, the District Collector,

East Godavari by placing reliance on the Judgment in O.P. No. 2 of 1987 passed the order declaring his mother, his paternal uncle and his wife as

belonging to Kapu community.

5. Nextly, it is submitted that the petitioner was also issued a community certificate dated 12.02.2005 by the then Tahsildar of Addateegala

Mandal, East Godavari District. Subsequent to that, he was elected as a Member of Doramamidi/Konalova Mandal Parishad Territorial

Constituency and subsequently as President of Mandal Praja Parishad, Addateegala which seat was reserved for scheduled tribe community.

6. It is further submitted that the Executive Officer, Zilla Parishad, East Godavari District issued show cause notice, dated 10.06.2008 to the

petitioner as to why he shall not be ceased to hold the office of the MPTC and President Mandal Praja Parishad on the ground that the social

status of his mother and paternal uncle is held to be Kapu, a forward community. The petitioner challenged the said show cause notice in W.P. No.

14149 of 2008. The High Court of Andhra Pradesh suspended the order pending the writ petition and the said writ petition is still pending.

According to the petitioner, in violation of the aforesaid order passed in the writ petition, the third respondent, District Collector, East Godavari

passed an order on 01.07.2008 ante-dating the proceedings dated 01.07.2008. Challenging the said proceedings, the petitioner filed Writ Petition

No. 15136 of 2008. The High Court of Andhra Pradesh admitted the writ petition and passed an interim order suspending the above proceedings

of the third respondent, District Collector. Subsequently, the proceedings were published in the District Gazetee, East Godavari to the effect that

the Government of Andhra Pradesh, Social Welfare Department directed the third respondent to issue a fresh notification cancelling the caste

certificate. Basing on the orders, dated 17.05.2005, wherein, the social status of his paternal uncle and his mother was decided and in view of the

same, the third respondent cancelled the caste certificate of the petitioner. Challenging the said proceedings, the third respondent filed W.P. No.

28299 of 2008 before the High Court of Andhra Pradesh and the High Court by order dated 29.12.2008 suspended the proceedings of the third

respondent and the said writ petition is still pending.

7. It is further submitted that along with his nomination papers, he filed a valid caste certificate issued by the Tahsildar, Addateegala Mandal, East

Godavari District which was cancelled by the third respondent in his proceedings dated 09.09.2008. The proceedings of the third respondent were

suspended by the High Court of Andhra Pradesh in the above mentioned writ petition. In that view of the matter, according to the petitioner, the

4th respondent, Returning Officer ought not to have rejected his nomination inasmuch as by virtue of the interim order granted by the High Court of

Andhra Pradesh, he is entitled to be treated as member belonging to the Scheduled Tribe community for all purposes. The petitioner''s version is

that the Returning Officer ingeniously mentioned in his order dated 31.03.2009 that he called for a report from the Tahsildar and basing on the

report of the Tahsildar stating that the petitioner does not belong to Konda Kapu Community, a Scheduled Tribe, rejected the nomination. The

petitioner questioned the orders passed by the 4th respondent, Returning Officer rejecting his nomination in W.P. No. 6987 of 2009 and the High

Court of Andhra Pradesh in its order dated 02.04.2009 dismissed the writ petition observing that an efficacious remedy is available to the

petitioner by means of an election petition under the Representation of the People Act, 1951.

8. On the aforesaid grounds, the petitioner filed the present petition to declare the order passed by the 4th respondent, Returning Officer rejecting

his nomination as illegal and void and also to declare the election of the second respondent for the Assembly Constituency of 172-

Rampachodavaram (S.T.) of East Godavari District as void.

9. In his counter, the 6th respondent specifically denied all the material averments in the election petition. It is contended by him that even as stated

by the petitioner in his petition, the appeal filed by him before the Government of Andhra Pradesh, Social Welfare Department was dismissed,

against which he preferred Writ Petition No. 18536 of 2006, but no interim orders were passed in the said writ petition suspending the orders of

the District Collector. According to the 6th respondent, the caste of the petitioner and his family members is in dispute till today. The writ petitions

filed by the petitioners are still pending and even according to the petitioner, till date he has not been declared as belonging to Scheduled Tribe.

Since the caste of the petitioner is in dispute, he cannot claim that he belongs to Scheduled Tribe and as such, he is not eligible for contesting as

member of the Legislative Assembly, which was reserved for Scheduled Tribe and his nomination was rightly rejected by the 4th respondent. He

submitted that as per the order of the 4th respondent, the Assistant Returning Officer, and Tahsildar, Addateegala Mandal, East Godavari District

has submitted that as per the instructions issued by the Collector, Kakinada, dated 18.01.2000, the then Mandal Revenue Officer Addateegala

had submitted a report to the Collector, Kakinada stating that Sri Anantha Chakra Rao and his wife Anantha Mangaratnam belong to Kapu (OC)

by caste and they do not belong to Konda Kapu (ST) by caste. The then Revenue Divisional Officer, Rampachodavaram, has submitted a letter

dated 04.01.2001 confirming the report of the Tahsildar, Addateegala Mandal and submitted a report to the Collector, Kakinada and thereafter,

the Collector, Kakinada in his reference No. C5/2386-B/98 dated 20.10.2001 observed that the District Level Scrutiny Committee held that Sri

Anantha Eswar Rao, Manga Tayaru and Manga Ratanam belong to Kapu Community (OC) and cancelled their Konda Kapu caste certificates

issued to them previously. It is further observed in the said order that the petitioner had obtained a permanent caste certificate from the In-charge

Tahsildar, Mr. A. Mohan on 12.02.2005 by which time the certificate issued to the family members of the petitioner were cancelled and they were

declared as belonging to Kapu community (OC) and not Konda Kapu community (ST). According to the 6th respondent, the Tahsildar-In-charge

by overlooking the previous records issued the petitioner a caste certificate as he belongs to Konda Kapu community, though the petitioner and his

family members in fact, belong to Kapu (OC) community. It is asserted by the 6th respondent that at the time of issuance of permanent caste

certificate to the petitioner, the family status of the petitioner was pending before the Collector and consequently, the caste certificate issued by the

Tahsildar, In-charge is not valid.

10. It is further contended by him that as per the order dated 09.09.2008 the caste certificate of the petitioner was cancelled by the District

Collector, East Godavari. Notification was also issued, which is filed by the petitioner along with the election petition. The community certificates

as well as the other documents filed by the petitioner are bogus, false and created. He asserted that since the District Collector had already

cancelled the caste certificate of the petitioner and the same was published in the official gazetee, the petitioner has never been declared as

belonging to Scheduled Tribe by the Competent Court, more particularly by the High Court of Andhra Pradesh, his caste is still in dispute, and

therefore, he was not eligible to contest for the Rampachodavaram Legislative Assembly constituency, which was reserved for Scheduled Tribes.

Thus, according to the 6th respondent, the order passed by the 4th respondent, Returning Officer rejecting the nomination of the petitioner is

perfectly valid and legal. It is further contended by the petitioner that the order of rejecting the nomination of the petitioner was passed on

31.03.2009. The petitioner has to file election petition as per Section 81 of the Representation of People Act, 1951 within 45 days from the date

of rejection of the nomination, the election petition is filed in June, 2009, therefore, the election petition is barred by limitation.

11. Contending as above, the 6th respondent sought to dismiss the election petition.

12. Basing on the above pleadings, the following issues have been framed:

1. Whether the rejection of nomination of the petitioner by the 4th respondent vide order dated 31.3.2009 is correct or not?

2. Whether the steps taken by the 4th respondent in rejecting the nomination of the petitioner ignoring the stay orders of the High Court in W.P.

No. 28299 of 2008 are correct?

3. Whether the petitioner is a schedule tribe?

4. Whether the petitioner is entitled for declaration as prayed for?

5. Whether the petition is barred by limitation?

6. Whether the petitioner has complied with the security contemplated u/s 117 of the Representation of the People Act, 1951?

7. Whether the family members of the petitioners are declared as non-tribals earlier to the declaration of the petitioner?

13. ISSUE Nos. 3 & 7: The petitioner who was an independent candidate in the election to the Rampachodavaram Assembly Constituency in East

Godavari District held on 16.04.2009 contends that he belongs to Konda Kapu Community, a schedule tribe and his nomination was improperly

rejected by the returning officer despite his producing a community certificate in his favour issued by the Tahsildar. On the other hand, the

contention of the 6th respondent, the returning candidate is that the petitioner belongs to Kapu/Telaga community which is a forward caste, the

community certificate produced by the petitioner along with his nomination papers was improperly obtained by him from the Tahsildar in-charge

who was not competent to issue the community certificate and it was also obtained by playing fraud and therefore, the rejection of nomination of

the petitioner by the returning officer is proper.

14. Admittedly, the Collector, East Godavari District by his order and Gazette Notification dated 09.09.2008 under Exs. P-5 and P-6 cancelled

the caste certificate of the petitioner. Against the said order, the petitioner filed W.P. No. 28299 of 2008 questioning the cancellation of his caste

certificate by the District Collector before this Court and this Court granted interim suspension of the order. The main contention of the petitioner is

that in view of the order of interim suspension granted by the trial Court, the caste certificate issued to him by the Tahsildar was on the crucial date

deemed to be in existence and therefore, the returning officer improperly rejected his nomination. Whether the rejection of nomination by the

returning officer is improper or not, will be dealt with little later while dealing with issues 1 and 2. Firstly, it has to be understood whether the social

status of the petitioner can be gone into and decided in the present election petition and also whether the possession of a community certificate

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

1993 by the candidate would preclude the election Tribunal to examine the social status of the candidate.

15. This question was dealt with and decided by the Hon''ble Supreme Court in Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others,

. The Supreme Court held as follows:

The validity of the certificate issued under Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of

Community Certificates Act, 1993 (Act 16/93) is confined to election to local authorities and co-operative institutions, it does not embrace an

election to the Legislative Assembly or to Parliament. The High Court exercising jurisdiction under the Representation of the People Act in an

election petition is not precluded from going into the question of social status of a candidate or from making an independent inquiry into that

question in spite of production of a certificate under 1993 Act.

16. In view of the ratio laid down in the aforesaid case, basing on the contention urged by the petitioner in the election petition that he belongs to

Scheduled Tribe, but his nomination was improperly rejected by the returning officer, this Court has to necessarily examine the issue as to whether

the petitioner in fact belongs to scheduled tribe. For that purpose, this Court has to make an independent enquiry into the question as to whether

the petitioner belongs to scheduled tribe, notwithstanding the fact that he produced a community certificate before the returning officer along with

his nomination.

17. In an election trial, the burden to raise necessary pleadings and to prove the said pleadings by adducing satisfactory evidence is on the election

petitioner. In Nandiesha Reddy Vs. Mrs. Kavitha Mahesh, the Supreme Court held that if the election petitioner wants to put-forth a plea that a

nomination was improperly rejected to declare an election to be void, it is necessary to set out the averments for making out the said ground. The

reason given by the returning officer for refusal to accept the nomination and the facts necessary to show that the refusal was improper is required

to be set out in the election petition. In the absence of necessary averments, it cannot be said that the election petition contains the material facts to

make out a cause of action. In Narender Singh Vs. Mala Ram and Another, the Supreme Court held that the onus to prove the essential facts

which constitute the cause of action in an election petition upon the person making it, namely, the election petitioner, in election disputes emotions

of the public are raised and opinions are sharply divided between groups. In such circumstances oral testimony in favour of one or the other party

is easy to be adduced but the same will have to be critically examined and, therefore, oral evidence is to be assessed with a great deal of care.

What evidence would be sufficient to prove a particular fact depends upon the circumstances of each case. When the evidence adduced is capable

of drawing an inference either way, the view that is favourable to the returned candidate will have to be preferred.

18. Now, it is to be seen whether the election petitioner pleaded material facts to constitute the cause of action, and proved the essential facts by

adducing the required evidence. Pleading material facts constituting cause of action in an election petition obviously is altogether a different question

whether they have been proved by the petitioner, who asserted those material facts. In the present case the specific contention of the petitioner is

that the members of his family from the time of their ancestors have been residing in Agency tracts of Godavari Districts from times immemorial and

they belong to Konda Kapu community, a scheduled tribe. He asserted that he, his father and close relatives contested in the elections from the

reserved constituency claiming themselves to be scheduled tribes belonging to Konda Kapu Community and their political opponents raised the

issue that they do not belong to Konda Kapu community and resultantly, the question of their caste became the subject matter in certain

proceedings before the authorities. He also specifically pleaded that his school records and various other proceedings disclose that he belong to

Konda Kapu Community. His main contention is that he produced a community certificate issued by the Tahsildar, which is to the effect that he

belongs to Konda Kapu community along with his nomination paper, but his nomination was improperly rejected. Asserting the aforesaid facts, he

sought to declare the election of the sixth respondent as illegal and void on the sole ground that his nomination was improperly rejected. Therefore,

in the instant case, it cannot be said that the material facts constituting cause of action have not been pleaded by the petitioner.

19. However, now it is to be considered whether the petitioner could be able to establish the material facts and material particulars stated by him in

the election petition in support of his contention. Since the crucial issue in the election petition is whether the petitioner belongs to Konda Kapu

community, a scheduled tribe, the burden to prove the said fact is entirely on the petitioner. It is obligatory on the part of the petitioner to adduce

satisfactory evidence to prove that he belongs to Konda Kapu community which is a scheduled tribe.

20. I would like to refer to the evidence adduced by the sixth respondent in the first instance to establish that the petitioner belongs to Kapu

community a forward caste, but does not belong to Konda Kapu community, a scheduled tribe. The sixth respondent himself is examined as RW.

1 and examined RWs. 2 to 6 on his behalf. Exs. R. 1 to R. 15 and Exs. X. 1 to X. 17 were marked on his behalf.

21. The 6th respondent as RW 1 deposed that the petitioner belongs to Kapu/Telaga community which is a forward caste, his fore-fathers were

natives of plain area and at a later point of time, they migrated from Eleshwaram plain area to the Yellavaram agency area. He stated that all the

marriages of the family members of the petitioner are with the persons of Kapu Community from plain areas and not even a single marriage in their

family was performed with person of Konda Kapu community which is a scheduled tribe from agency area. He also marked certain documents

which are ancient, in which the ancestors of the petitioner were described as belonging to Kapu/Telaga, a forward caste, but not belonging to

Konda Kapu, a scheduled tribe. They are; Ex. R2 the registration extract of sale deed dated 23.05.1939 executed by Gurayya @ Musalayya in

favour of Padala Veerraju, Ex. R. 3 the registration extract of sale deed dated 23.05.1939 executed by Pyla Munayya and others in favour of

Padala Veerraju, Ex. R. 4 the registration extract of sale deed dated 22.04.1936 executed by Peketi Suryudu in favour of Padala Veerraju, Ex. R.

5 the registration extract of sale deed dated 19.04.1948 executed by Pagadala Swamy in favour of Padala Veerraju, Ex. R. 6 the registration

extract of sale deed dated 04.04.1935 executed by Batchu Papayya and others in favour of Padala Veerraju, Ex. R. 7 the registration extract of

sale deed dated 06.06.1935 executed by Vellubanti Kondayya in favour of Padala Veerraju, Ex. R. 8 the registration extract of sale deed dated

10.02.1936 executed by Padala Veerraju in favour of Garisetty Rattamma, Ex. R. 9 the registration extract of sale deed dated 29.05.1949

executed by Padala Veerraju in favour of Vaddadi Sommanna, Ex. R. 10 the registration extract of sale deed dated 29.05.1949 executed by

Padala Veerraju in favour of Menta Chenchayya and others, Ex. R. 11 the registration extract of sale deed, dated 31.08.1936 executed by Padala

Veerraju in favour of Badireddy Veeranna, Ex. R. 12 the registration extract of sale deed, dated 09.08.1948 executed by A. Appalaswamy and

others in favour of Anantha Veerraju, Ex. R. 13 the registration extract of sale deed, dated 17.04.1950 executed by Velugubanti Kondayya and

others in favour of Anantha Veerraju and Ex. R. 14 the registration extract of sale deed, dated 01.05.1959 executed by Kambham Venkanna in

favour of Anantha Chakrarao.

22. Among the persons referred in the aforesaid documents, Padala Veerraju is admittedly the maternal great grandfather of the petitioner.

Anantha Veerraju is the paternal grandfather of the petitioner. Anantha Chakrarao is the father of the petitioner. All the above said documents are

ancient documents and were executed when no litigation as to the caste of the family members of the petitioner was even contemplated. Since

neither the parties to the documents nor the scribe or attestors of the documents are no more, It could not be possible for the sixth respondent to

examine those persons. The sixth respondent obtained the certified copies of all the documents from the Sub-registrar office, Prathipadu, East

Godavari District and filed them into the Court. These documents being ancient and more than 30 years old, they can be read in evidence without

formal proof as presumption can be drawn about the execution by the persons mentioned in the documents as laid down in Section 90 of the

Evidence Act. Moreover, the assertion made by 6th respondent is only in relation to the community of the petitioner''s fore-fathers and not as to

the genuineness of the contents of the aforesaid documents. Therefore, those documents can be safely relied upon as piece of evidence in proof of

the caste of the fore-fathers of the petitioner.

23. The 6th respondent also filed Ex. R. 15, birth extract of Anantha Eswar Rao dated 10.04.1959, and in the said document the caste of the

Anantha Eswar Rao, junior paternal uncle of the petitioner is mentioned as Kapu. Ex. R. 15 is issued by the Tahsildar, Addateegala Mandal, East

Godavari District. When Anantha Eswar Rao, junior paternal uncle of the petitioner belongs to Kapu community, it cannot be said that the

petitioner belongs to Konda Kapu community which is a different caste.

24. RW. 2 is the Secretary of Konda Kapu Sankshema Sangham, East Godavari District. He stated in his evidence that the petitioner and his

family members do not belong to Kondakapu community and they belong to Kapu community. According to this witness, they are migrants from

plain areas and the surname Anantha is not in the Kondakapu community. He filed Ex. X. 1 to show that Kondakapu Sankshema Sangham is the

registered society. He filed Ex. X. 2, the community certificate to show that he belongs to Kondakapu community. He filed his Adhar card, voter''s

identity card and household supply card, which are marked as Exs. X. 3 to 5 to show his residence. He also filed Ex. X. 8, the copy of the list of

the executive members issued by the President of the society in which at Sl. No. 3 his name is mentioned as Secretary of the society. When the

petitioner disputed the authenticity of Ex. X. 8, RW. 2 filed Ex. X. 16, certified copy of the list of the office bearers of the society from the year

2009 to 2012 and in the said document RW. 2 is shown as the Secretary of the society at Sl. No. 3 in the list of office bearers.

25. The founder President of Kondakapu Sankshema Sangham is examined as RW. 3. He stated in his evidence that he belongs to Kondakapu

community, the petitioner does not belong to Kondakapu community, and he is Kapu by caste. The community certificate of RW. 3 is marked as

Ex. X. 9. Ex. X. 17 is the certified copy of the list of the office bearers of the said society for the year 1994 issued by the Registrar.

26. Therefore, the witnesses from Kondakapu community, who are the office bearers of Kondakapu Sankshema Sangham, East Godavari District

have categorically deposed to the effect that the petitioner does not belong to Kondakapu community and he is a person belonging to Kapu

community which is a forward caste. This apart, in the evidence of RW. 2 ethnographic report issued by the Director of Tribal Welfare is marked

as Ex. X. 6.

27. Foremost among the contentions raised by the 6th respondent is that the surname Anantha is not in Kondakapu community. This fact has been

deposed too by RWs. 2 and 3. In Ex. X. 6 report, the surnames of Kondakapu people, their traditions, their form of marriages, festivals etc. have

been mentioned. The report was prepared after conducting research. In Ex. X. 6, the surname Anantha is not mentioned for Kondakapu people.

When the petitioner disputed the genuineness of Ex. X. 6, the 6th respondent took summons to the Director of the Tribal Welfare and he was

examined as RW. 6. RW. 6 categorically deposed that Ex. X. 6 is the certified copy issued by them and it is a genuine document. He also stated

the particulars of the surnames of Kondakapu people were given in the said report. RW. 6 was not cross-examined by the petitioner. Therefore,

by adducing satisfactory evidence, the 6th respondent could be able to establish that Anantha surname is not in the Kondakapu community and

therefore, proved his contention that the petitioner having the surname Anantha does not belong to Kondakapu community.

28. Further, RWs. 2 to 5 have stated in their evidence that the family members of the petitioner including the petitioner married only Kapu persons

from plain areas. Ex. X. 7 is the wedding invitation card marked in the evidence of RW. 2 which shows that the petitioner married one Lakshmi

Durga, daughter of Yerla Rambabu of Uttarakanchi Village on 27.02.2009 and the marriage was performed in Yeleshwaram. The petitioner has

not disputed Ex. X. 7 which shows that he married a Kapu person from plain area and the marriage was also performed in Yeleshwaram which is

a plain area and also the place, where the petitioner hails from. RW. 4 is a resident of Yeleshwaram village where the petitioner hails from. He had

categorically stated in his deposition that the petitioner is not kondakapu and also that there are no Kondakapu people in Yeleshwaram village. On

those aspects, same is the evidence of RW. 2 and RW. 3. To prove his identity, Ex. X. 10, copy of the voters" identity card and Ex. X. 11 copy

of the household card are marked in his evidence.

29. RW. 5 belongs to Kondakamara community, a scheduled tribe. He corroborated the evidence of RWs. 1 to 4 and stated in his deposition that

his father Bhoomula Dharmaraju fled election O.P. against the father of the petitioner Anantha Chakrarao before Agency Divisional Officer,

Rampachodavaram in the year 1987 contending that he does not belong to scheduled tribe and the Tribunal decided that the father of the petitioner

is not scheduled tribe and consequently, set aside his election. The said judgment is marked as Ex. X. 15 in the evidence of RW. 5. In this

document, it requires to be noticed that the said judgment was reversed vide Ex. P. 13 judgment on the sole ground that it was delivered after the

death of the father of the petitioner Anantha Chakra Rao i.e. on a dead person without impleading his legal representatives and therefore is not

sustainable in law. Ex. X. 12 is the community certificate of RW. 5 and Ex. X. 13 and X. 14 are Aadhar card and voters identity card of RW. 5.

30. Therefore, all the witnesses examined on behalf of the 6th respondent, who belong to Kondakapu community, a scheduled tribe have

categorically deposed to the fact by referring to the aforesaid details that the petitioner belongs to Kapu community which is a forward caste, but

he does not belong to Kondakapu community which is a scheduled tribe.

31. Coming to the evidence of the petitioner he stated in his chief affidavit that he belongs to Konda Kapu community which is a scheduled tribe.

His paternal grand father late Anantha Veera Raju possessed certificate issued by the Collector, East Godavari which shows that he belongs to

Konda Kapu community. Late Anantha Veera Raju was elected as Samithi President of Addateegala, which was reserved for schedule tribe

community. His maternal great grand father late Padala Veeraju was elected thrice as the Samithi President of Addateegala Panchayat Samithi as

Schedule Tribe candidate. His father late Anantha Chakra Rao was renowned politician in the locality and was elected as the President, Mandal

Praja Parishad, Addateegala as member belonging to the schedule tribe community. He also deposed to the fact that the Agency Divisional Officer

in O.P. No. 32 of 1987 which was filed by his father''s opponent questioning his election on the ground that his father does not belong to Schedule

Tribe set aside the election of his father. In this context, it is stated by PW. 1 that his father was assassinated by naxalites on 19.03.1988 and the

election petition was decided on 12.04.1989. Against which, W.P. No. 6720 of 1989 was filed before the High Court and in the said writ petition

the High Court of Andhra Pradesh set aside the order passed by the Agency Divisional Officer on the ground that the order in O.P. came to be

passed after the death of the father of the petitioner and therefore, any finding recorded in the OP with regard to the social status of the petitioner''s

family shall not be taken into consideration.

32. The petitioner also stated that he was elected as member of Mandal Parishad Territorial Constituency (MPTC) of Doramamidi (Konalova)

Mandal in Addateegala for the seat reserved for Scheduled Tribe candidate in the year 2006, when the Chief Executive Officer, Zilla Parishad,

East Godavari District issued a show cause notice dated 10.06.2008 to him stating that why he shall not be seized to hold office as MPTC and

President, Mandal Parishad Territory Constituency on the ground that the social status of his paternal uncle was held to be of Kapu community

which is a forward caste, he challenged the said show cause notice in the Writ Petition No. 14149 of 2008 and the High Court suspended the

order in W.P.M.P. No. 18257 of 2008 and the said writ petition is still pending before the High Court. He further stated that when the third

respondent, Collector, East Godavari District issued proceedings 09.09.2008 cancelling the caste certificate, he filed writ petition No. 28299 of

2008 before the High Court and the High Court in the said writ petition passed an interim order suspending the proceedings of the third respondent

by which his caste certificate was cancelled.

33. He asserted in the chief affidavit that since the High Court passed interim order suspending the proceedings of the Collector cancelling his caste

certificate, rejection of his nomination in spite of the orders of the High Court is illegal as the Returning Officer cannot go into the validity of the

caste certificate.

34. He marked Exs. P. 1 to P. 16 on his behalf. Among the documents filed by him, Ex. P. 4 dated 12.02.2005 is the community, nativity and date

of birth certificate issued by the Tahsildar, Addateegala to the petitioner. Ex. P. 5 dated 09.09.2008 is the proceedings of the Collector, East

Godavari District cancelling the caste certificate of the petitioner. Ex. P. 8, dated 13.07.2011 is the study certificate of the petitioner issued by the

Head Master, MPP School, Yellavaram. The other documents do not assume much importance, because admittedly the proceedings whereunder

the community certificate of the petitioner was cancelled by the Collector, East Godavari District were suspended by the High Court in W.P. No.

28299 of 2008.

35. Basic contention of the petitioner therefore, appears to be that since the proceedings cancelling his caste certificate issued by the District

Collector were suspended by the High Court in the writ petition, the Returning Officer ignoring the orders of the High Court cannot go into the

validity of the caste certificate while scrutinising his nomination. This question would be dealt with a little later while dealing with the other issues

touching those aspects and the validity of the order passed by the Returning Officer, rejecting the nomination of the petitioner.

36. As regards these two issues, when the 6th respondent challenged that the petitioner does not belong to Konda Kapu community, which is a

scheduled tribe, but he belongs to Kapu/Telaga community, which is a forward caste, the burden is on the petitioner to establish that he belongs to

Konda Kapu community, a scheduled tribe. From the evidence let in by both the parties, it has to be clearly understood that the community of the

petitioner was seriously in dispute, several proceedings were initiated by the opponents questioning the community of the petitioner and his fore-

fathers on the ground that they do not belong to scheduled tribe. As stated hereinabove, some orders were passed holding that the close relatives

of the petitioner including his mother do not belong to Konda Kapu community, but they belong to Kapu/Telaga community, which is a forward

caste. The question is pending consideration in some writ petitions before the High Court of Andhra Pradesh. Despite the said fact, since in this

election petition, the question as to whether the petitioner belongs to Konda Kapu community, which is a scheduled tribe arose for consideration

and came to be decided as the principal issue, it is obligatory on the part of the petitioner to prove in this election petition that he belongs to Konda

Kapu community. As rightly contended by the 6th respondent, the order passed by the High Court in the writ petition suspending the order passed

by the District Collector, cancelling the caste certificate of the petitioner by itself does not prove that the petitioner belongs to scheduled tribe. The

petitioner has to independently establish by adducing cogent evidence before this Court in this election petition that he belongs to Konda Kapu

community. The petitioner relied on Ex. P. 4 community, nativity and date of birth certificate dated 12.02.2005 issued by the Tahsildar-in-charge,

Addateegala. The contention of the 6th respondent is that the Tahsildar, In-charge is not competent to issue the caste certificate and the regular

Tahsildar is only competent to issue the caste certificate. The said caste certificate however, was subsequently cancelled by the District Collector

on the face of Ex. P. 4 it shows that it was issued by the Tahsildar, In-charge. Ex. P. 1 proceedings issued by the office of the Returning Officer

dated 31.03.2009 show that no file regarding the application of the petitioner for issuing the caste certificate is available as disclosed from the

report of the present Tahsildar.

37. Non-availability of the file relating to the issuance of caste certificate to the petitioner by the in-charge Tahsildar lend support to the contention

of the 6th respondent that the certificate has been issued by the Tahsildar in-charge without verifying the true facts and without following the

procedure prescribed under the 1993 Act and 1997 Rules. In his counter and the cross examination, the 6th respondent seriously disputed the

genuineness by Ex. P. 4, caste certificate and his contention is that the Tahsildar, In-charge was not competent to issue the caste certificate and that

the petitioner obtained the caste certificate by playing fraud on the Tahsildar, In-charge. Specific question was put to PW-1 in the cross

examination as to whether he would examine the Tahsildar on his behalf in the election petition. In response, he stated that he would examine

Tahsildar, but he did not examine Tahsildar, Addateegala as a witness on his behalf. In the wake of serious challenge to Ex. P. 4, caste certificate

and the non availability of the record concerning his application for issuance of caste certificate, non examination of the Tahsildar is certainly fatal to

the case of the petitioner. Because of failure by the petitioner to examine Tahsildar concerned, it has to be held that the petitioner failed to prove

the authenticity and validity of Ex. P. 4 caste certificate. Ex. P. 8 dated 13.07.2011, which is the study certificate of the petitioner issued by the

Head Master, MPP School, Yellavaram, Addateegala, Mandal, East Godavari District. It was issued on 13.07.2011 and shows that the petitioner

belongs to Konda Kapu community (ST) as per school records. The genuineness of the certificate is seriously disputed by the 6th respondent.

According to the 6th respondent, the said certificate is not genuine one and is created for the purpose of the present case. In the normal course, the

caste need not be mentioned in the Study Certificate. But, Ex. P. 8 shows that the Head Master mentioned the caste of the petitioner in study

certificate. When the 6th respondent contended that Ex. P. 8 Study Certificate is not genuine one, it is obligatory on the part of the petitioner to

examine the Head Master, who issued the certificate, but the petitioner did not examine the Head Master or any person working in the school.

Therefore, no reliance can be placed on Ex. P. 8 study certificate.

38. The contention of the 6th respondent is that the petitioner''s forefathers originally natives of Yeleshwaram, a plain area in East Godavari

District, they belong to Kapu community and subsequently they migrated to Yellavaram and after migration they started themselves styling as

belonging to Konda Kapu community, a scheduled tribe. On the other hand, the version of the petitioner is that they belong to Konda Kapu

community, but the fact of migration from Yeleshwaram to Yellavaram is admitted by the petitioner.

39. Relying on Beni Prasad and Another v. Narbada Prasad : 1997 (9) SCC 631 the petitioner contents that merely because they migrated from a

plain area to hill area, it cannot be said that their family members do not belong to Konda Kapu community.

40. The judgment relied on by the petitioner, the question was whether the respondent in that case belongs to Scheduled Caste i.e. Kumhar in

Shahdole District in M.P. In that case the High Court considering the evidence forthcoming on behalf of the respondent found that whether the

respondent was a Kumhar was not the question, since in appeal proceedings after elaborate enquiry, the Assistant Registration Officer found that

the respondent''s ancestors had been originally residing in Shahdole District till 1952 when the family shifted to neighbouring Narsinghpur area

where the respondent had born, where the respondent had shifted to Shahdol District in the year 1969 and his name has been entered into voters

list in the year 1985 and he has been residing there since then and had also contested the elections in earlier point of time. The Supreme Court held

on facts that the situation reveals that the respondent was an ordinary resident of Shahdole District and repelled the contention that the respondent

should have been a Kumhar in Shahdole District in 1952 when the presidential notification was issued.

41. The facts of the present case are entirely different from the facts of the case before the Supreme Court. In this case, the basic contention of the

6th respondent is that the petitioner has never been an individual of Konda Kapu community, which is a scheduled tribe. He was born as a person

of Kapu/Telaga community and shifted from a plain area to tribal area. In the instant case, therefore, according to the 6th respondent, the origin of

the petitioner''s is that of Kapu/Telaga community, a forward caste, but at no point of time he had been Konda Kapu community, a scheduled

tribe. The contention of the 6th respondent is that the ancestors of the petitioner migrated from Yeleshwaram to Yellavaram, started styling

themselves as belonging to Konda Kapu community and there has been a serious dispute as to their social status from the beginning and the same

has been questioned in various proceedings, which have been referred to herein before. Therefore, the decision relied on by the petitioner being

rendered with reference to altogether different set of facts, is not applicable to the facts of the present case and is not helpful to the petitioner.

42. The 6th respondent produced various certified copies of documents wherein the ancestors of the petitioner were referred to as belonging to

Kapu/Telaga, a forward caste. In the cross examination, the petitioner only stated that he does not know as to whether such a reference was made

in the said documents. But did not try to explain as to why his ancestors were referred to as belonging to Kapu/Telaga community, which is a

forward caste in the said documents. The 6th respondent examined the persons belonging to Konda Kapu community to establish that the

petitioner and his family members do not belongs to Konda Kapu community. All the witnesses have stated that the petitioner and his family

members do not belong to Konda Kapu community, but they belong to Kapu community, which is a forward caste. The petitioner, on whom the

burden lies to prove that he belongs to Konda Kapu community did not examine even a single individual from Konda Kapu community, who can

testify that the petitioner belongs to Konda Kapu community. This is a significant factor, which has to be taken into consideration by this Court

while adjudicating upon the issue of the caste of the petitioner. Because, if really, the petitioner belongs to Konda Kapu community at least one

individual would have come forward to speak before this Court that the petitioner belongs to Konda Kapu community. As the petitioner was

unable to examine anybody from Konda Kapu community to say that the petitioner belongs to Konda Kapu community, this Court is of the view

that as the petitioner really does not belongs to Konda Kapu community, no body came forward to give evidence that the petitioner belongs to

Konda Kapu community. It is not enough on the part of the petitioner to produce the caste certificate before this Court showing that he belongs to

Konda Kapu community. Apart from producing the caste certificate, the petitioner has to adduce other evidence to prove the validity and

genuineness of the certificate and also the other evidence showing that he in fact, belongs to Konda Kapu community. The petitioner not only failed

to prove Ex. P. 4 and P. 8 certificates, but also to adduce any other evidence showing that he belongs to Konda Kapu community. Except the self

serving testimony of petitioner, there is no other evidence forthcoming in this case showing that the petitioner belongs to Konda Kapu community a

scheduled tribe. This Court therefore, holds that the petitioner does not belong to Konda Kapu community and, he is not a scheduled tribe. Issues

3 and 7 are accordingly answered against the petitioner and in favour of the 6th respondent.

43. ISSUE NO. 5: This issue relates to the question as to whether the election petition is barred by limitation, Section 81 of the Representation of

the People Act, 1951 lays down that an election petition calling in question any election may be presented to the High Court by any candidate

within 45 days, but not earlier than the date of election of the returned candidate. In the instant case, the petitioner filed his nomination on

03.03.2009 and it was scrutinized and rejected on 31.03.2009. Election was held on 16.04.2009. The election petition was filed on 30.06.2009.

The contention of the 6th respondent is that since the election petition was presented to this Court beyond 45 days specified u/s 81 of the Act, the

election petition is barred by limitation. In the instant case, the petitioner questioned the order passed by the 4th respondent, Returning Officer

rejecting his nomination in W.P. No. 6987 of 2009 and the High Court in its order dated 02.04.2009 dismissed the writ petition observing that

efficacious remedy is available to the petitioner by means of election petition under the Representation of the People Act, 1951. The time spent by

the petitioner in prosecuting the W.P. No. 6987 of 2009 has to be excluded while computing the limitation for filing the present election petition. If

so excluded, the election petition filed on 30.06.2009 is within the limitation and therefore, it cannot be said that the election petition is barred by

limitation. The issue is answered in favour of the petitioner.

44. ISSUE NO. 6: In the course of the trial or in the arguments, the 6th respondent does not seriously dispute about the issue as to whether the

petitioner has complied with the security contemplated u/s 117 of the Representation of People Act, 1951. This question was raised in a routine

manner. Further, this Court also found that the petitioner has complied with the requirement u/s 117 of the Act and therefore, this issue is answered

in favour of the petitioner.

45. ISSUES 1 & 2: These two issues relate to the question as to whether the order passed by the returning officer rejecting the nomination of the

petitioner on the ground that he does not belong to scheduled tribe, despite the order passed by this Court in W.P. No. 28293 of 2009 suspending

the proceedings of the District Collector canceling the caste certificate of the petitioner is valid and correct. Learned counsel appearing for the

petitioner would submit that the petitioner filed a valid nomination as required u/s 33 of the Representation of the People Act, 1951 claiming to be

an individual belonging to Konda Kapu community, a scheduled tribe, enclosed a community certificate Ex. P-4 to the said nomination and also

produced Ex. P-1 order passed in W.P. No. 28293 of 2009 by this Court suspending the order of the Collector whereunder he cancelled the

caste certificate of the petitioner, the returning officer is not supposed to call for the report of the Tahsildar and is not correct in rejecting the

nomination basing on the report of the Tahsildar holding that the petitioner does not belong to scheduled tribe. According to the learned counsel u/s

36 of the Representation of the People Act, 1951, the returning officer is only expected to conduct a summary enquiry. But, in this case, he

indulged in examining a totally extraneous issue by going into the validity of the caste certificate produced by the petitioner and improperly rejected

the nomination of the petitioner. u/s 36 of the Representation of the People Act, 1951 when the objection about the validity of the nomination is

raised, the returning officer either on such objection or on his own motion has to conduct summary enquiry into the objection. Merely because a

community certificate is produced by the petitioner, it is wrong to presume that while acting u/s 36 of the Act, the returning officer is not competent

to go into the question of validity of the community certificate produced by the petitioner. The returning officer while scrutinizing the nomination is

not expected to mechanically accept the community certificate produced by the candidate for the reserved constituency without examining its

validity.

46. Learned counsel appearing for the petitioner vehemently contended that this Court in its order in W.P. No. 28299 of 2008 suspended the

proceedings of the District Collector whereunder he cancelled the caste certificate and therefore, in view of the order of suspension passed by this

Court, the returning officer transgressed his limits in going into the validity of Ex. P-4 caste certificate and community certificate produced by the

petitioner. As to this, I would like to state that in view of the order passed by this Court in W.P. No. 28299 of 2008, the proceedings whereby the

community certificate was cancelled by the District Collector were only suspended. It does not mean that the community certificate produced by

the petitioner is valid and therefore, the returning officer is precluded from going into the question of the validity of the caste certificate when an

objection was raised by the opponent to the effect that the petitioner does not belong to Konda Kapu community which is a scheduled tribe.

Strong reliance has been placed by the learned counsel on Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, In the said case, ""the

order of Speaker that an M.L.A. has incurred disqualification on the ground defection was stayed by the High Court, the Supreme Court said that

the effect of the stay order is that the order of the Speaker does not remain operative. According to the Supreme Court when a declaration is filed

before the Speaker alleging that there is a split in a political party and that some MLAs of that party have constituted themselves in a separate

group and if the declaration alleging split bears the signature of the disqualified MLA, the Speaker could not ignore him for the purpose of

computing whether the number of MLAs who have formed a separate group constitute one-third of the members of that party as required under

paragraphs. In view of the stay order the Speaker could not treat him as disqualified. The Speaker could not refuse to give effect to the stay order

passed by the High Court on ground that the stay order came after the order of disqualification was issued by him. Since the stay order was

passed in a writ petition challenging the validity of disqualification passed by the Speaker it, obviously, had to come after the order of

disqualification was issued by the Speaker. The stay order passed by the High Court could not also be ignored by the Speaker on the view that his

order could not be a subject matter of court proceedings and his decision was final. It is settled law that an order, even though interim in nature, is

binding till it is set aside by a competent court and it cannot be ignored on the ground that the Court which passed the order had no jurisdiction to

pass the same.

47. The aforesaid judgment relied on by the learned counsel appearing for the petitioner is not applicable to the facts of the case. In this case, the

returning officer did not ignore the order passed by this Court in the writ petition suspending the proceedings of the District Collector. What the

returning officer did was that on the objection raised by the 6th respondent, he examined the validity of the community certificate produced by the

petitioner and passed a detailed order as to the validity of the community certificate and consequently on being satisfied that the community

certificate produced by the petitioner is not genuine and valid, rejected the nomination of the petitioner. In Ex. P-1 order passed by him, the

returning officer mentioned about the Election Commission''s instructions as to the role of the returning officer whereunder it is stated that in the

case of an allegation/suspicion about the genuineness of the certificate, the returning officer should get the position cross checked with the authority

which purportedly issued the SC/ST certificate in question before deciding the validity of the nomination paper of the candidate concerned. The

order further shows that basing on the aforesaid instructions, the returning officer addressed the Tahsildar, Addateegala who is the competent

authority to issue caste certificate and directed him to submit his remarks on the caste certificate submitted by the petitioner along with his

nomination. It would be appropriate to extract the report submitted by the Tahsildar, Addateegala to the returning officer which is as under:

As per the instructions issued by the Collector, Kakinada in Ref. C5/2386/1998, dated 18.01.2000 the then Mandal Revenue Officer,

Addateegala has submitted a report to the Collector, Kakinada stating that Sri Anantha Chakra Rao and his wife Smt. Anantha Manga Ratnam

belong to Kapu (OC) by caste and did not belong to Konda Kapu (ST) by caste. The then Revenue Divisional Officer, Rampachodavaram has

submitted vide reference E. 1715/1999, dated 04.01.2001 has confirmed the Tahsildar, Addateegala report and submitted the same to the

Collector, Kakinada, thereafter, the Collector, Kakinda in reference No. C5/2386-B/98, dated 20.10.2001 has observed the District Level

Scrutiny Committee that Sri Anantha Eswara Rao, Mangatayaru and Mangaratnam belong to Kapu (OC) by caste and cancelled their Konda

Kapu (ST) caste certificate previously.

While the matter stood thus, Sri Anantha Satya Udaya Bhasker son of Late Chakra Rao has obtained a permanent caste certificate from the then

MRO (incharge) Sri A. Mohan on 12.02.2005 who was incharge Tahsildar at that time and the certificates issued to the family members of Sri

Ananta Satya Udaya Bhaker were already declared as Kapu (OC) and not Konda Kapu by District Level Scrutiny Committee and pending

Collector''s order for gazette notification.

The then incharge MRO was not competent to issue any permanent caste certificate as the Tahsildar who is said to have issued the certificates was

never a Tahsildar of Addateegala mandal and he was just holding incharge of Addateegala mandal for executing current duties. While being an

incharge Tahsildar, he has issued a certificate for which he is not competent by overlooking all previous records as stated above which clearly said

that the individual''s family belong to Kapu (OC) community. Even at the time of issuance of the said certificate, the family''s caste status was

pending before the Collector, East Godavari. So the act of Tahsildar (incharge) in issuing a permanent caste certificate is to be treated as a

certificate issued by an incompetent authority.

Moreover, on 16.02.2008 the then Tahsildar, Addateegala has reported that the record of enquiry relating to issue of certificate on 12.02.2005 is

not traced in his office. Thus, basing on the report of Tahsildar, Addateegala, the returning officer, 172-Rampachodavaram Assembly Constituency

rejected the nomination papers filed by Sri Ananta Satya Udaya Bhasker, the petitioner herein.

48. Thus, on the basis of the report submitted by Tahsildar, Addateegala, the returning officer thoroughly satisfied that the M.R.O., incharge of

Tahsildar is not competent to issue the caste certificate, Ex. P-4 to the petitioner and on the date of issuing said certificate, the caste certificate

issued to the close relatives of the petitioner including that of the mother of the petitioner were cancelled by the District Level Scrutiny Committee.

While scrutinizing the nomination of the petitioner in the light of the objection raised by the 6th respondent, the returning officer reached an

appropriate conclusion that the caste certificate Ex. P-4 produced by the petitioner is not genuine and valid and was obtained improperly. The

scrutiny conducted by the returning officer cannot therefore be said to be in contravention of the order passed by this Court in the writ petition

suspending the order of the Collector canceling the caste certificate of the petitioner. The returning officer conducted scrutiny of the nomination as

provided u/s 36 of the Representation of the People Act and also in accordance with the instructions issued by the Election Commission to the

returning officers for scrutinizing the nominations. This Court cannot accede to the submission made by the learned counsel appearing for the

petitioner that the returning officer exceeded the authority conferred on him u/s 36 of the Representation of the People Act, 1951. According to

me, in response to the objection raised by the 6th respondent, the returning officer took appropriate steps to find out the genuineness and validity

of the caste certificate produced by the petitioner and rightly rejected the nomination filed by the petitioner basing on the report submitted by the

Tahsildar, Addateegala bringing into the notice of the returning officer about the events preceding issuance of the caste certificate by the M.R.O.

incharge of the Tahsildar to the petitioner. Moreover, this Court while trying an election petition, apart from considering the propriety and

correctness of the order passed by the returning officer in rejecting the nomination of the petitioner, is not precluded from going into the question of

social status of the petitioner. Since the social status of the petitioner is the principal issue in the election petition, this Court has to conduct an

independent enquiry into the social status of the petitioner despite the production of the caste certificate by the petitioner. This Court tried the issue

relating to the social status of the petitioner elaborately and found that the petitioner does not belong to Konda Kapu community which is

scheduled tribe, but, he belongs to Kapu/Telaga community which is a forward caste. Basing on the facts and circumstances of the case and taking

into consideration the evidence adduced by both parties, this Court recorded the aforesaid finding. In Harikrishna Lal Vs. Babu Lal Marandi, the

Supreme Court held that ""acceptance or rejection of the nomination paper by the returning officer shall depend on his forming an opinion as to

whether the defect is of a non-substantial character or of a substantial character. A statutory duty is cast on the returning officer to scrutinize the

nomination papers on the appointed date without adjourning the proceedings. If the returning officer finds any irregularity or defect in the

nomination paper, he may hold an enquiry suo motu affording the candidate, whose nomination is under scrutiny, an opportunity to satisfy the

returning officer that no such defect or irregularity exists. An objection may be raised by any other person and in that case also the candidate

concerned may be allowed time to rebut the objection. Within the meaning of the proviso to sub-section (5) of Section 36 the returning officer has

to record his decision by way of acceptance or rejection of the nomination paper. If the nomination paper is rejected, a brief statement of his

reasons for such rejection has to be recorded in writing.

49. In the instant case, on account of the objection raised by the 6th respondent as to the social status of the petitioner, a question of substantial

character fell for consideration before the returning officer and the returning officer scrutinized the nomination filed by the petitioner by conducting a

summary enquiry and the petitioner was unable to satisfy the returning officer that he had enough material or evidence showing that he belongs to

Konda Kapu (Scheduled Caste) community whereupon the returning officer passed a reasoned order assigning brief statement of his reasons and

rejected the nomination of the petitioner. Therefore, it cannot be said that the order passed by the returning officer in rejecting the nomination of the

petitioner is either improper or invalid.

50. In this context, it would be relevant to refer to the judgment relied on by the learned counsel for the 6th respondent in Desh Raj Vs. Bodh Raj,

. In the said case before the Supreme Court, the question was the respondent (an elected candidate) belonged to a schedule caste and

consequently his election from the constituency reserved for scheduled caste was valid, witnesses examined by the appellant-election petitioner

belonged to the same village to which the respondent belonged. All the witnesses stated that they knew the respondent and his family well and that

the respondent belonged to "Tarkhan" caste (which was not a scheduled caste) and nothing significant brought out by cross-examination of these

witnesses to disbelieve their evidence.

51. The Supreme Court held as follows:

What emerges from the aforesaid oral evidence is that while the witnesses examined by the appellant (PWs. 7, 8, 9 and 10), who all belonged to

Mohtli village to which the respondent belonged. Insofar as the caste certificate issued by the Executive Magistrate relied on by the respondent, is

concerned, it has to be observed that such caste certificates are not given after a thorough investigation. When the caste of the respondent is in

issue and when primary evidence regarding caste is led by the appellant, and the attempt of the respondent to claim to be a ""Lohar"" (Scheduled

Caste) from 1990 is evident, the caste certificate issued by the Executive Magistrate on 01.12.1991 cannot be taken as evidence to prove the

caste of the respondent.

52. Similarly, in the present case also, the witnesses examined by the 6th respondent who belonged to Konda Kapu community have stated in one

voice that the petitioner belongs to Kapu/Telaga community which is a forward caste, but he does not belong to Konda Kapu community, a

Scheduled Tribe. There is other evidence which is referred to hereinabove adduced by the 6th respondent, clinchingly shows that the petitioner and

his ancestors belonged to Kapu/Telaga community which is a forward caste. The petitioner could not examine even a single individual from Konda

Kapu community to show that he belongs to Konda Kapu community. Under these circumstances, the caste certificate Ex. P-4 produced by the

petitioner cannot be taken as evidence to prove his caste.

53. ISSUE NO. 4: Section 100(1)(c) of the Representation of the People Act, 1951 lays down that if any nomination has been improperly

rejected, it materially affects the election and the election of the returned candidate is liable to be set aside. It has been laid down by the Hon''ble

Supreme Court in Jeet Mohinder Singh v. Harminder Singh Jassi that ""the success of a candidate who has won at an election should not be lightly

interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election

process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing

corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also

for the public at large inasmuch as re-election involves an enormous load on the public and administration.

54. In the present case, though the petitioner came forward with a plea that his nomination was improperly rejected by the returning officer, he

could not be able to prove it by adducing any satisfactory evidence. In the trial of the present election petition where the principal issue is whether

the petitioner belongs to Konda Kapu community, a Scheduled Tribe, the petitioner except producing Ex. P-4 community certificate and Ex. P-8

study certificate containing his date of birth, nativity and community which were not proved coupled with his self-serving testimony did not adduce

any evidence worth consideration.

55. On the other hand, the respondent produced voluminous evidence showing that the petitioner does not belong to Konda Kapu community, a

scheduled tribe and that he belongs to Kapu/Telaga community which is a forward caste. This Court on facts and evidence found that the rejection

of nomination by the returning officer is proper and on appreciating the evidence relating to the social status of the petitioner adduced at the trial

recorded a specific finding that the petitioner does not belong to Konda Kapu community which is a Scheduled Tribe. Therefore, there are

absolutely no grounds to set aside the election of the 6th respondent who is a returned candidate in the election to the Rampachodavaram

Assembly Constituency No. 172 in East Godavari District held on 16.04.2009. For the foregoing reasons, the Election Petition is dismissed

without any order as to costs.