
W.S.V. Satyanarayana Vs Director of Tribal Welfare and Others

Writ Petition No. 11020 of 1992

Court: Andhra Pradesh High Court

Date of Decision: Jan. 16, 1996

Acts Referred:

Constitution of India, 1950 – Article 341, 341(1), 342

Citation: (1996) 1 ALT 170

Hon'ble Judges: Motilal B. Naik, J

Bench: Single Bench

Advocate: Nayani Krishna Murthy, for the Appellant; Govt. Pleader for Social Welfare for Respondent Nos. 1, 2 and 4 and K. Sesharajyam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Motilal B. Naik, J.

Petitioner who is a student of II Year MBA Course in Nagarjuna University, Guntur is before this Court. Petitioner

states that he secured a seat in I year MBA Course for the academic year 1990-91 in the month of July, 1990, in a seat reserved for S.T.

Community on the basis of his claim that he belongs to Konda Kapu Community which is recognised as Scheduled Tribe as per the Presidential

Order. His claim that he belongs to Scheduled Tribe is based on his further claim that his mother belongs to Konda Kapu Community from

Bodlanka (Agency area) of Addateegala Mandal in East Godavari District. He claims that his father, a retired Excise Inspector belongs to Baliya

community, and married his mother Satyavathi who is stated to be from Kondakapu community from Agency area. Basing on his claim that though

his father is from Baliya community, on account of his mother being a Konda Kapu, he is entitled to be treated as Scheduled Tribe in terms of

G.O.Ms. No. 371, dated 13-4-1976, issued by the Government of Andhra Pradesh, he has been granted admission into I year MBA course on a

caste certificate issued by the M.R.O., Ongole to the effect that the petitioner is a Konda Kapu, in a seat reserved for S.T. candidate.

2. According to the petitioner, his maternal grand father is one Sri Nukaraju who is a Konda Kapu, which is recognised as Scheduled Tribe. His

mother being the eldest daughter of said Nukaraju and also her mother's two sisters and brothers have all been recognised as Scheduled Tribe

community members and have secured admissions in various schools under Scheduled Tribe quota. It is stated by the petitioner that his father Mr.

Venkateswarlu married his mother somewhere in the year 1965. His parents have two sons including the petitioner. He started his school

education in Kovuru and later studied in Christian High School at Machilipatnam, Krishna District. He has studied from 6th to 9th class in St.

Theresa High School, Ongole. He completed his X class in P.V.R.M. High School, Ongole during the academic year 1983-84, two years

Intermediate and also three years B.Com. in CSRS Sharma College, Ongole during the academic years 1984-85 to 1989-90. It is stated by the

petitioner that having succeeded in the entrance examination for the MBA course held in the year 1990, he secured admission in MBA course in

Nagarjuna University in July, 1990. According to the petitioner on account of the marriage of his father -Venkateswarlu who is a Balija with his

mother Satyavathi - who is a Konda Kapu which is recognised as Scheduled Tribe, in the light of G.O.Ms. No. 371, dated 13-4-1976, he is

entitled to be treated as Scheduled Tribe and he is entitled for all the benefits reserved for Schedule Tribes.

3. Petitioner had no problem in obtaining certificates to indicate that he belongs to Schedule Tribe on the strength of the certificates issued by the

then Tahasildar, Ongole to the effect that the petitioner belongs to Konda Kapu community on the basis of the certificates issued by the Tahsildar,

Yellavaram, Addateegal Mandal for the two sisters of his mother. The father of the petitioner has also declared his two children as Scheduled

Tribe members and has obtained certificates to that effect way back in the year 1990 in terms of G.O.Ms. No. 371, dated 13-4-1976. Petitioner

claims that he is entitled to claim the social status of Konda Kapu on the basis of his mother being Konda Kapu, in terms of G.O.Ms. No. 371,

dated 13-4-1976.

4. Instances are glaring despite measures being taken by Universities at the time of admission into professional courses, to weed out the bogus

claims, have not yielded the desired results, with the result, the benefits meant for Scheduled Castes and Scheduled Tribes are being knocked

away by unscrupulous means by the infiltrators.

5. As per the guidelines and instructions issued by the respective Universities for admission into Professional Courses, a candidate seeking

admission in a particular course on the basis of his social status claim, has to necessarily get his social status claim cleared by the concerned

Directorate. For this purpose, the candidate has to undergo enquiry before the respective Directorate. At the stage of enquiry by the respective

Directorate, a beneficiary who has obtained a seat on his claim to belong to a particular category, fails to face the enquiry which is contemplated by

the respective Directorate on being informed of the admission granted by the respective college, approaches either the High Court under Article

226 by way of Writ Petition or by way of filing civil suits in civil Courts. At the threshold, such type of candidates obtain interim direction which

enables them to continue the course for which admission has already been granted to them provisionally. The beneficiaries make false allegations in

their writ petitions as well as in the civil suits and obtain interim orders. At times, the beneficiaries fail to make the respective Director as a

necessary party in the litigation with the sole intention to keep the respective Directorates in dark about the orders that are likely to be obtained by

them. By the time the respective Directorates knew about the interim orders obtained by the said candidate and when steps are being taken to

vacate it, it becomes a stupendous task for such Directorates, as it would be too late to set the mischief done. At that stage, unfounded sympathies

are invoked in Courts and the Courts also take a liberal view on the ground that the party has already completed the course and allow them to

enjoy the booty. The resultant effect in all these cases is the genuine beneficiaries are denied their seats, thereby the constitutional scheme is

frustrated.

6. The modus-operandi of such poachers to knock away the benefits meant for these sections vary from person to person. Some claim that though

a particular community is recognised as Scheduled caste or Scheduled Tribe, their names being similar to the name indicated in the Presidential

order, and claim that they are entitled to be treated as Scheduled Caste or Scheduled Tribe. To narrate an incident, Bariki community is

recognised as Scheduled Caste. Taking political affinity of Bariki, Barikas - a backward class are seeking to snatch away the benefits of

Scheduled Caste. This apart, few claim to belong to Scheduled Caste or Scheduled Tribe on the ground that their mothers belong to Scheduled

Caste or Scheduled Tribe and seek benefits under G.O.Ms. No. 371, dated 13-4-1976.

7. There are instances, in few cases, it is claimed that a particular sub-caste is synonymous of a major caste and seek to claim benefit as if they are

part and parcel of the major caste notified in the Presidential Order for the purpose of recognising them either S.Cs. or S.Ts. For instance,

Lambadi/Sugali community is recognised as Scheduled Tribe in the State of Andhra Pradesh by the Presidential Order, 1976. Few persons who

belong to Vanjari, Wanjara community also claim that they are entitled to the benefit along with Lambadi/Sugali as their groups are synonymous to

Lambadi/Sugali community. Though the Presidential Order recognises Lambadi/Sugali as S.T. and yet many persons claiming to be Vanjaris and

Wanjaras obtain S.T. Status certificates from concerned authorities and knock away the benefits meant for S.T. Few executive orders, for

instance, G.O.Ms. No. 371, dated 13-4-76 and other guidelines issued by the Government from time to time to the concerned authorities to be

followed at the time of issuance of caste certificates, say G.O.Ms. No. 245, dated 30-6-1977 and annexures thereto, opportunists exploit the

situation and obtain S.C./S.T. certificates and knock away the posts meant for S.Cs. and S.Ts. By the time the mischief is detected, substantial

damage is done to these sections. The Constitutional Scheme meant to assist these S.Cs. and S.Ts. gets bogged down in the mist of manipulation.

8. This is yet another case where the benefits meant for Scheduled Tribe is being knocked away by the petitioner very intelligently by adopting a

different modus-operandi. In this case, the petitioner admits that his father is a Balija community member which is not recognised as Scheduled

Tribe. However, he claims that his mother is a Konda Kapu hailing from the Agency area of East Godavari District and as such, being the child

born out of the said wed-lock, is entitled to get Scheduled Tribe Certificate. He further claims that his mother's two sisters were given certificates

as Scheduled Tribe and basing on these certificates, he has obtained certificates as to belong to Scheduled Tribe from the then Tahasildar, Ongole

and M.R.O., Ongole also.

9. It may be true that the petitioner's mother belongs to Konda Kapa Community. It may also be true that his mother's sisters obtained certificates

that they belong to Scheduled Tribe. But the petitioner, in my view, is not entitled to claim the benefit as if he belongs to Scheduled Tribes.

G.O.Ms. No. 371, dated 13-4-1976 contains administrative instructions. The benevolence of the Government though laudable, but the said G.O.

cannot extend benefits to such sections which are not recognised by the Presidential Order. If the Government desires to extend benefit to these

categories as envisaged in G.O.Ms. No. 371, it is open to it, to create separate categories and keep certain percentage of seats for these

categories. But it is not permissible to allocate certain seats from the seats meant for S.Cs. and S.Ts. The Government has no such authority to do

so, as long as there is no change in the tenure of Presidential Order while notifying certain communities as S.Cs. and S.Ts. The said G.O.Ms. No.

371, Employment and Social Welfare Department, dated 13-4-1976 has been considered by K. Ramaswamy, J. (as he then was) in W.P. No.

14875/85 dated 19-2-1986 and held that the said G.O. runs contrary to the constitutional scheme and it is ultra-vires of the executive powers and

of the Constitution. I respectfully agree with the view expressed by K. Ramaswamy, J. The scheme formulated under the said G.O. tries to extend

benefits to the children born to the couple of inter-caste marriages, mother being either S.C., S.T., or B.C. This G.O. runs contrary to the

Constitutional Scheme.

10. Article 366(25) of the Constitution of India defines ""Scheduled Tribes"" which means such tribes or tribal communities or parts of or groups

within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. Article 342

of the Constitution of India postulates that the President after consultation with the Governor by public notification specify the tribes or tribal

communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled

Tribes in relation to that State. Thus, by a Presidential notification, 33 communities have been recognised as Scheduled Tribes in the State of

Andhra Pradesh.

11. It is no doubt true that Konda Kapu is recognised as a Scheduled Tribe. But the petitioner is born to a Balija father. Indian Society recognises

birth for the purpose of declaring one's social status. Father is the centre of the family. The social status of the father automatically devolves on the

child irrespective of whether the mother of the said child is either S.C. S.T., or B.C. For instance, if a Brahmin marries a Scheduled Caste woman,

the child born out of the said wed-lock would be treated as a Brahmin only. Therefore, the rationale behind the claim of the petitioner that he is

entitled to be treated as Scheduled Tribe on the basis of his mother being from Scheduled Tribe community is not acceptable. G.O.Ms. No. 371

dated 13-4-1976 is in the nature of administrative instructions which is ultra-vires the powers of the executive and the said G.O. cannot extend

benefits to the children of such couple which are not recognised in the Presidential Order. The said G.O., by all means, cannot over-ride the

Presidential Order. As discussed by me above, in W.P. No. 14875/85, K. Ramaswamy, J. (as he then was) has held that the said G.O. is ultra-

vires to the powers of the executive and runs contrary to the Constitution, by an order dated 19-2-1986. Therefore, the petitioner's claim that he

is entitled to get the benefit under the said G.O. is meaningless as the said G.O. has been held as ultra-vires by this Court way back in the year

1986.

12. Petitioner had secured admission in the 1 year MBA course on the basis of his claim that he belongs to Scheduled Tribe Community. No

doubt, he has obtained certificates from the M.R.O., Ongole in the year 1990 on the basis of G.O.Ms. No. 371, which is held to be ultra-vires by

this Court in the year 1986 itself. Therefore, when once a G.O. is held to be ultra-vires, no benefit could be available from such an executive order.

13. Individual claims of social status have to be necessarily verified and cleared by the respective Directorates. As long as the Social status of the

candidates is not cleared, their admissions are only provisional. As per the procedure, the third respondent intimated the first respondent as to the

grant of admission to the petitioner in MBA Course and further sought clearance of the social status of the petitioner from the first respondent. The

first respondent by letter dated 13-5-92 has informed the second respondent under intimation to the third respondent that the social status

certificate issued by the fourth respondent to the petitioner is not in accordance with G.O.Ms. No. 289, Social Welfare Department, dated 28-11-

1986 and as such the petitioner cannot get the benefit as to be treated as Scheduled Tribe. Basing on the intimation dated 13-5-1992, the third

respondent has issued the impugned memo dated 9-6-1992 seeking explanation of the petitioner as to why the admission granted to him in a seat

meant for Scheduled Tribe candidate shall not be cancelled. However, the petitioner without submitting any explanation to the said memo,

straightaway approached this Court by way of the present writ petition and obtained interim suspension of the memo dated 9-6-1992. The

petitioner then moved this Court by various miscellaneous applications in the year 1993 seeking a direction to the third respondent to issue his

transfer certificate without insisting payment of tuition fees as by that time he had completed his two years Course. The Court by an order dated

27-4-1994 granted interim direction also. Thus, the petitioner has succeeded in completing his MBA Course and has obtained his transfer

certificate for reaping further benefits without clearing dues to the third respondent, even though he is not entitled to get a seat in I year MBA

against S.T. seat.

14. This is one such effort made by the non-tribal candidate to reap the benefits, snatching a seat meant for genuine Scheduled Tribe candidate. As

discussed by me, unscrupulous methods adopted by the infiltrators vary from person to person to deny the benefits meant for S.Cs. and S.Ts.

Unfounded sympathies are evoked from this Court on the ground that the petitioner has already completed his course and shall be left free. I am

clear in my mind that unfounded sympathies cannot be extended in each and every case, thus making the Constitutional Scheme a misnomer. This

Court is conscious of the fact that Courts must function within the framework of the Constitution. Unfounded sympathies cannot be invoked to

harm the interests of Dalits. It is the endeavour of the Constitution to protect the weak. It shall always be borne in mind that a benefit which has not

been granted by the Constitution, the same cannot be granted by the Courts also.

15. Sri Nayani Krishna Murthy, learned Counsel for the petitioner pleaded for taking a sympathetic view. I am afraid, this Court cannot assist such

person who has not approached this Court with clean hands. Admittedly, the petitioner is born to a Balija father. Whether his mother belongs

either to S.C., S.T. or B.C. does not matter as in my view, social status of the children will go with the social status of the father but not with the

mother. It may be true that the husband and wife being one, that concept cannot be extended for secular purposes. Wife becoming on her

husband's death, a surviving half of her husband and her becoming the sapinda of her husband is based on spiritual and not on secular

considerations. Thus, the off-spring born out of the wed-lock of inter-caste marriages cannot claim the social status of the mother. As held by the

Supreme Court in *Bhaiyalal Vs. Harikishan Singh and Others*, , in order to determine whether or not a particular caste is a Scheduled Caste within

the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. Any person who claims that he belongs

to the same status by reason of the fact that he belongs to a particular caste which is a sub-caste of the caste declared by the President cannot be

accepted unless it is expressly mentioned in the public notification under Article 341(1). An enquiry of this kind would not be permissible having

regard to the provisions contained in Article 341.

16. Thus, it is clear that persons belonging to categories of caste indicated under Articles 341 and 342 alone are to be recognised as Scheduled

Caste or Scheduled Tribe, No claim from persons of third categories as provided by the Government of Andhra Pradesh in G.O.Ms. No. 371

dated 13-4-1976 be accepted for the purpose of granting benefits to the children born out of the inter-caste marriages from out of the quota meant

for either S.C., S.T. or B.Cs.

17. Having regard to the above discussion, I hold that the petitioner is not entitled to be treated as "Konda Kapu" and he is also not entitled to the

benefits meant for Scheduled Tribe candidates. The third respondent shall issue notification withdrawing the M.B.A. Certificate issued to the

petitioner, if the said certificate is already issued. The petitioner is not entitled to use the educational certificates obtained on the basis of his

admission to colleges in a seat meant for Scheduled Tribe candidate pursuant to G.O.Ms. No. 371 dated 13-4-1976 for the purpose of

employment or for any other purposes intended to get benefits which are exclusively meant for Scheduled Tribes.

18. In the result, I do not find any merits in the writ petition and the same is accordingly dismissed. No costs.