

PETITIONER:
THE DIRECTOR OF TRIBAL WELFARE

Vs.

RESPONDENT:
LAVETI GIRI & ORS.

DATE OF JUDGMENT: 10/03/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

In Kumar Madhuri Patil v. Addl. Commissioner, Tribal Development[(1964) 6SCC 241], this Court had issued guidelines for the officers to issue caste certificates to the scheduled Castes and scheduled Tribes for the purpose of admission to educational institutions and also employment to a post or office under the state. When the similar matter, viz, Director of Tribal Welfare, Government of A.P v. Laveti Giri & Anr. [(1995) 4 sec 32] had come up before the Court, this court reiterated the guidelines in paragraph 7 indicating the manner in which the applications were required to be disposed of. In paragraph 8, also it was indicated that the Government of India would come forward with uniform legislation and necessary guidelines prescribing penal action against persons who violate such guidelines or obtain false caste certificates, which is a fraud on the constitution and defeat the constitutional objectives.

The Andhra Pradesh State Legislature has enacted the Andhra Pradesh(scheduled Castes Scheduled Tribes and Backward Classes) Regulation of Issue of Community-Certificates Act, 1993 (16 of 1993) (for short, the 'Act') which came into force with effect from September 8, 1993. The above Act came to be made pursuant to a direction issued by the Andhra Pradesh High Court. The Act regulates issuance of community certificates to the Scheduled Castes, Scheduled Tribes and Backward Classes (for short, the 'Dalits', 'Tribes' and 'OBC'). Section 3 prescribes procedure for making application. Section 4 prescribes competent authority to issue such certificates, section 5 prescribes procedure for cancellation of the false certificates. Section 6 lays the burden of proof of status of caste on the claimant. Section 7 provides for right of appeal and review. Section 8 gives power of revision to the Government in the prescribed manner. Section 9 gives power to the competent authority to avail the appropriate provisions in C.P.C while conducting the enquiry. Sections 10 to 16 deal with the penalties, offences and also the trial and consequent punishment etc. thereof. Section 17 bars the jurisdiction of the Civil Court to take cognizance of the matters coming

under the Act or the power to issue any injunction in that respect. Section 18 protects the officers who act in good faith. Section 19 gives overriding power over other laws and section 20 gives the rule making power to the state Government.

The petitioner has filed the present application for directions or clarifications, since, according to the petitioner, the guidelines issued by this court are required to be worked out within the framework of the above Act. Accordingly, by order dated August 20, 1996, this Court directed the state Government to make rules in conformity with the Act and the guidelines issued by this Court, as far as possible, they need to be in line therewith. If they are not in conformity, then the matter can be looked into after the rules are made part of the record. In furtherance thereof, the A.P. Scheduled Castes, Scheduled Tribes and Backward classes Rules for Issue of Community Certificates, 1997 (Draft Rules) have been made. Rules 1 to 19 deal with the manner, method and issuance of the certificates, cancellation of false certificates, cancellation of false certificates, procedure for verification, burden of proof of the claims, scrutiny and review by the committees. Rules 7 and 8 are relevant for this purpose.

Rule 7 provides for constitution of Scrutiny and Review Committee at the State level and Rule 8 deals with Scrutiny Committee at the District Level.

They are as under:

"7. Scrutiny and Review Committee (state level):

A Scrutiny and Review Committee shall be constituted at the stated level with the following officers:

- a). 1) Principal secretary to Government -- Chairman
- 2) Commissioner, social Welfare -- Member
- 3) Commissioner, Tribal welfare -- Member
- 4) Commissioner, Welfare of Backward Classes -- Member
- 5) Inspector General of police, C.B.C.I.D. (P.C.R & Vigilance Cell) -- Member
- 6) Additional Secretary / Joint Secretary/ Deputy Secretary to the Government social welfare Department - Member
- b). This Scrutiny and Review Committee shall meet once in three months or as often, depending on the necessity.
- c). Presence of three members will form the required quorum for the meeting of the Committee.
- d). This Committee shall review and monitor the functioning of the Scrutiny Committees at the District level (constituted under Rule 8), it shall render necessary advice to the Government on various policy decisions to be taken for streamlining the procedures or on any other issues related to the issuing of Community Certificates as Per Act 16 Of 1993.
- e). The Committee may also render necessary guidance and advice to the Government on cases referred to it, where divergent and conflicting enquiry reports are received by the Government, in respect of the community claims.

8. SCRUTINY COMMITTEE (DISTRICT LEVEL)

- a). In every District, a Scrutiny Committee shall be constituted with the following officers:-
 1. Joint collector -- Chairman
 2. District Revenue Officer -- Member (Convenor)
 3. Deputy Director (social Welfare) -- Member
 - Deputy Director

(Tribal Welfare)/ District Tribal Welfare officer.

Deputy Director

-- Member

(Backward Classes welfare)/ District Backward Classes Welfare officer

4. Officer of the Research

-- Member

Organisation in the

Commissionerate of SW/TW

nominated by the concerned

Heads of the Department.

5. Officer representing the PCR/ -- Member

Vigilance Cell in the District

(b) The Scrutiny Committee shall meet at least once in a month or as often, depending the case referred to it.

(c) Presence of three members will from the required quorum for the meeting of the committee.

(d) (1) The Scrutiny Committee, on receipt of the cases referred to it by the Competent Authority under Rule 5(i), shall conduct enquiry regarding the doubtful within the period specified in the notice. This period should not be less than 15 (fifteen) days from the date of service of the notice on the applicant and in no case, on request, more than 30 (thirty) days should be allowed. This notice shall be served on the applicant through the Competent Authority who referred the case to the committee.

(2) The notice referred to in Form - V shall be served on the parent/guardian in case the applicant is a minor.

(3) Where the person on whom a notice in Form-V is served by the scrutiny Committee fails to respond on the data mentioned in the notice, the Scrutiny Committee May finalise its recommendations based on the material/documents/evidence made available to the Committee by the Competent Authority.

(4) The Scrutiny Committee shall cause enquiry, following the due process of law, to verify the genuineness or otherwise of the information furnished or recorded from such persons as called in enquiry as per Form V. It shall also cause to collect documentary evidence/ or any other related evidence about the correctness or otherwise of the information furnished or objections raised by any person during the enquiry.

(5) The Scrutiny Committee may examine the school records, birth registration certificates, if any, furnished by the persons during the enquiry. It may also examine any other person who may have knowledge of the community of the applicant. With reference to the claims of Scheduled Tribes, it may examine the anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies/method of burial of dead bodies etc., of that particular tribe, to finalise its recommendations to the Competent Authority.

(6) The Scrutiny Committee should give reasonable opportunity to the applicant to produce evidence in support of their claim. A public notice by the beat of drum or any other convenient mode, may be published in the village or locality of the applicant and if any person or association, opposes such a claim, opportunity produce evidence in person before the committee may be given to him or her. After giving such an opportunity to that person, the Committee may made such enquiry as it deems expedient and finalise its recommendations, with brief reasons in support thereof, to the Competent Authority.

(7) The Scrutiny Committee may examine the report of enquiry conducted by the Revenue Department furnished to it by the Competent Authority. it may also obtain expert

opinion from the Commissionerate if SW/TW through the officers of the Research organisations of these Commissionerates who are the members of the Scrutiny Committee, if deemed necessary. These enquiry reports may be compared and then recommendations of the Scrutiny Committee may be finalised as to whether the community claim of that applicant is found to be false or genuine.

e) The Chairman of the Scrutiny Committee claim of the person in question or his or her children, is genuine or false with reasons thereof, within 45 days from the date of the receipt of the case referred to it by the Competent Authority."

Provisions have been made for appeals and review etc. Rule 15 Prescribes action in case of false claims. Validity of Integrated Community Certificate has been dealt with in Rule 16. In case of loss of the original, Rule 17 empowers the officers to issue duplicate caste certificate. Rule 19 deals with Provisional admission or appointment pending the issuance of the caste certificates. Rule 20 repeals the existing Rules. Rule 21 saves the action taken etc. Schedules have been appended to supplement the rules.

A reading of the Rules would indicate that except some variation, in the matter of the constitution of Committees, in Rules 7 & 6 from the guidelines issued, all other provisions are in conformity with the guidelines issued by this court.

Though Shri Rao seeks to contend that notice may be issued to the central Government and other state Governments to make rules on par with above for finalisation of the rules so as to be uniformly applicable throughout the country, we think that we need not undertake such exercises. It would be for the Central Government to appropriately deal with the matter by giving some leverage to the State Government to modulate the rules conformable to the above law and the guidelines, as far as possible, to suit the conditions prevailing the state concerned so that they could be worked out in systematic manner without any difficulty in implementation.

Under the circumstances, we are of the view that the draft rules placed before us are substantially conformable to the directions issued by this Court. We, therefore, direct the State Government to have them published in the State Gazette and enforce the Act and the Rules in the light of the law laid down by this Court.

The application is accordingly ordered.