

HIGH COURT OF KARNATAKA

SINGLE BENCH: Justice M. Nagaprasanna

Date of Decision: 28th May 2024

GENERAL MISCELLANEOUS JURISDICTION

WRIT PETITION No. 8039 of 2021 (GM - CC)

B. GURUPRASAD ...PETITIONER(S)

VERSUS

ASSISTANT COMMISSIONER BENGALURU NORTH AND OTHERS

...RESPONDENT(S)

Legislation:

Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment Etc.) Act, 1990

Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment Etc.) Rules, 1992

Sections 4A, 4B, 4D of the Act

Subject: Writ petition challenging the proceedings before the Assistant Commissioner, Bengaluru North, on the grounds of coram non-judice in relation to the cancellation and subsequent appellate review of a caste certificate issued to the fifth respondent for election purposes.

Headnotes:

Jurisdiction - Coram Non-Judice - Caste Certificate Cancellation:

Proceedings before the Assistant Commissioner were deemed coram non-judice as he lacked the authority to review an order that was essentially an implementation of a superior officer's directive. The Tahsildar's cancellation of the caste certificate was based on the Committee's decision, and the Assistant Commissioner, a subordinate officer, could not act as an appellate authority over such a decision. The appeal should have been made to the appropriate appellate authority as defined by the relevant legislation. [Paras 12-14]

Power of Tahsildar - Scope of Jurisdiction:

The Court clarified that the Tahsildar's role under Section 4A of the Act is limited to issuing or rejecting caste certificates based on applications. The Tahsildar does not have the authority to cancel a caste certificate independently, especially when acting on the directives of the Caste Verification Committee. The correct appellate process involves appealing to higher authorities designated under the Act. [Paras 13-14]

Role of Committee - Caste Certificate for Election Purposes-The Caste Verification Committee's jurisdiction extends to caste certificates used for election purposes, contrary to its earlier erroneous decision. The Supreme Court in *Bharati Reddy v. State of Karnataka* had established that such committees have the authority to review caste certificates issued for elections. The Committee's decision to dismiss the complaint on jurisdictional grounds was incorrect. [Para 15]

Decision: The writ petition was allowed, and the proceedings before the Assistant Commissioner in MSC/CR/113/20-21 were annulled. The parties were given the liberty to pursue any remedies available under the law. The Court also left open all contentions not addressed in this decision. [Para 16]

Referred Cases:

- Bharati Reddy v. State of Karnataka, (2018) 6 SCC 162
- Hasham Abbas Sayyad v. Usman Abbas Sayyad, (2007) 2 SCC 355
- Dhananjaya Riddy v. State of Karnataka, (2001) 4 SCC 9
- Sri. Chikkanna v. District Social Welfare Officer, W.P. No. 13173/2008 (GM-CC)
- Smt. Sangeetha v. Deputy Commissioner and Chairman, DLCVC, W.P. No. 63482/2019

Representing Advocates:

- **Smt. Sadhana Desai for the petitioner**
- **Sri C. Jagadish for respondents 1 to 4**
- **Sri R.B. Sadasivappa for respondent No.5**

ORDER

M. Nagaprasanna, J. - The petitioner is before this Court calling in question entire proceedings before the 1st respondent/Assistant Commissioner, Bengaluru Sub-Division, Bengaluru pending in file No.MSC/CR/ 113/20-21 as coram non-judice.

2. Heard Smt. Sadhana Desai, learned counsel appearing for the petitioner, Sri C.Jagadish, learned counsel appearing for respondents 1 to 4 and Sri R.B. Sadasivappa, learned counsel appearing for respondent No.5.

3. The facts adumbrated are as follows:-

The issue revolves round the 5th respondent and her caste certificate. On 30-06-2015 a caste certificate is issued by the Tahsildar, Bengaluru North Taluk on an application filed by the 5th respondent that she belongs to Nayaka community, a Scheduled Tribe. On the strength of the caste certificate, it appears that the 5th respondent contested election to Councillor of Bruhat Bengaluru Mahanagara Palike ('BBMP' for short). On 05-09-2015, the petitioner registers a complaint before the Directorate of Civil Rights Enforcement complaining that the 5th respondent had obtained a Scheduled Tribe certificate fraudulently. The said complaint was transferred by the Directorate of Civil Rights Enforcement to the District Caste Verification Committee, Bangalore Urban District (hereinafter referred to as 'the Committee' for short), the 4th respondent, Chairman of which is the Deputy Commissioner. After long drawn proceedings, the Committee cancels the caste certificate issued in favour of the 5th respondent on 26-06-2018.

4. The 5th respondent prefers an appeal before the 3rd respondent/ Scheduled Tribe Welfare and Appellate Authority ('Appellate Authority' for short), which by its order dated 15-09-2018 sets aside the order passed by the Committee dated 26-06-2018 and remits the matter back to the Committee. After the said remand, the Committee upholds the caste certificate issued to the 5th respondent depicting her to be belonging to Nayaka community, a Scheduled Tribe. This order is challenged by the petitioner before the Appellate Authority. The Appellate Authority in terms

of its order dated 19-09-2019 sets aside the order of the Committee directing the Committee to furnish reports upon which the earlier order was passed to both the parties and decide the matter afresh. After the said remand by the Appellate Authority, the Committee by its order dated 05-08-2020 directs that the complaint could not be entertained before the Committee, as the caste certificate was issued for election purpose which was not covered under the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment Etc.) Act, 1990 and the Rules framed thereunder in the year 1992 (hereinafter referred to as 'the Act' and 'the Rules' for short). The complaint thus comes to be dismissed. This order has become final.

5. The 2nd respondent/Tahsildar, in terms of order of the Committee dated 26-06-2018, cancels the caste certificate issued to the 5th respondent in terms of his order dated 23-09-2020. The 5th respondent challenges the said order of the Tahsildar by filing an appeal before the 1st respondent/Assistant Commissioner. These proceedings are challenged by the petitioner in this writ petition.

6. The learned counsel appearing for the petitioner Smt. Sadhana Desai would vehemently contend that the proceedings before the 1st respondent/Assistant Commissioner are coram non-judice, as he has no authority to consider the appeal. It is her further submission that the caste certificate issued in favour of the 5th respondent comes to be cancelled by the Tahsildar not on independent inquiry conducted by him but only following the order of the Deputy Commissioner and Chairman of the Committee dated 26-06-2018. Therefore, if it is following the order of the Deputy Commissioner, the Assistant Commissioner, a subordinate officer cannot and will not sit as an Appellate Authority over the order of a superior officer. It is her submission that it is coram non-judice. Elaborating the said submission, the learned counsel would contend that the appeal is

preferred under Section 4B of the Act as against the order of the Tahsildar passed under Section 4A. The Tahsildar has, in fact, not exercised his jurisdiction under Section 4A, but only implemented the order of the Committee. Therefore, the appeal under Section 4B is unavailable to the 5th respondent, as the Tahsildar has no jurisdiction to cancel the caste certificate. He can only accept an application, grant the caste certificate or reject the application. He has no power to cancel a caste certificate already issued.

7. The learned counsel Sri C.Jagadish representing respondents 1 to 4 would toe the lines of the petitioner in contending that the Tahsildar had only implemented the order passed by the Committee. Therefore, the appeal would not lie to the 1st respondent/Assistant Commissioner. It was appropriately directed to be considered by the Committee. The Committee erroneously holds that it has no jurisdiction to consider the caste certificate issued for election purposes under the Act. The learned counsel would submit that the issue as to whether the Committee has jurisdiction to consider caste certificate issued for election purposes is completely answered holding that the Committee has jurisdiction by the Apex Court in the case of **Bharati Reddy vs. State of Karnataka, (2018) 6 SCC 162**. The learned counsel submits that since the 5th respondent has not challenged the order of the Committee which sets aside the order of the Tahsildar dated 30-06-2015, the plea of the 5th respondent cannot be considered by this Court.

8. The learned counsel for the 5th respondent would though at the initial stage vehemently refutes these submissions, but would boil down his submissions to the fact of grant of liberty to challenge the order passed in the year 05-08-2020 by the Committee declining to entertain the petition before it on the score that the caste certificate issued for election purposes is not covered under the Act. He would contend that the caste certificate

was appropriately granted on genuine documents submitted and it was not a fraud played by the 5th respondent. He would further contend that the 5th respondent does belong to Scheduled Tribe - Nayaka community and there has been no determination by any Authority appropriately. Therefore, liberty be reserved to the 5th respondent to knock at the doors of the Appropriate Authority is his submission.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. To resolve the conundrum of jugglery of orders and jurisdiction in the case at hand, it becomes germane to notice the Act and the Rules. Section 4A of the Act deals with issuance of caste certificate and income and caste certificate. Section 4B deals appeal against the order under Section 4A. Section 4D deals with appeal against an order passed by the Committee. These sections read as follows:

4A. Issue of caste certificate and income and caste certificate.- (1)

Any candidate or his parent or guardian belonging to the Scheduled Castes or the Scheduled Tribes may, in order to claim benefit of reservation under section 4, either for appointment to any service or post or for admission to a course of study in a university or any educational institution, make an application to the Tahasildar in such form and in such manner as may be prescribed for issue of a caste certificate.

(2) Any candidate or his parent or guardian belonging to other Backward Classes may, in order to claim benefit of reservation under section 4 either for appointment to any service or post or for admission to a course of study in a university or any educational Institution, make an application to the Tahasildar in such form and in such manner as may be prescribed for issue of an income and caste certificate.

(3) The Tahasildar may, on receipt of an application under sub-section (1) or (2), and after holding such enquiry as he deems fit and satisfying himself regarding the genuineness of the claim made by applicant pass an order issuing a caste certificate or, as the case may be, an income and caste certificate in such form as may be prescribed, or rejecting the application.

(4) The Tahasildar shall follow such procedure as may be prescribed before passing the order under sub-section (3).

(5) The burden of proving that the candidate or his parent or guardian belongs to Scheduled Castes, Scheduled Tribes or other Backward Classes shall be on the applicant.

4B. Appeal against order under section 4A.- (1) Any person aggrieved by an order of the Tahasildar under section 4A may, within thirty days from the date of receipt of the order prefer an appeal to Assistant Commissioner of the revenue subdivision.

(2) The Assistant Commissioner of the revenue subdivision may after giving both parties an opportunity of being heard pass orders allowing or dismissing the appeal and in appropriate cases directing issue of a caste certificate or as the case may be, an income and caste certificate to the applicant.

4D. Appeal.- (1) Any person aggrieved by an order passed by the Verification Committee under section 4C may, within thirty days from the date of receipt of the order appeal,-

(i) to the Commissioner/Director, Social Welfare in case the verification certificate relates to a person belonging to the Scheduled Castes;

(ii) to the Director, Tribal Welfare in case the verification certificate relates to a person belonging to the Scheduled Tribes;

(iii) to the Director, Backward classes Department, in case the verification certificate relates to a person belonging to other Backward Classes; in such form and in such manner and on payment of such fee as may be prescribed.

(2) The Appellate Authority shall after giving to both the parties an opportunity of being heard pass such order in appeal as it deems fit."

In exercise of the powers conferred under Section 13(1) of the Act, Government has notified the Rules. Rule 2 deals with definitions. Sub-rule (4) of Rule 2 defines 'Caste Verification Committee' meaning a committee constituted under Rule 4. A 'Caste and Income Verification Committee' is defined under sub-rule (5) of Rule 2. The said sub-rules read as follows:

"4) "Caste verification Committee" means "a committee and an Additional Committee constituted under Rule 4;

5) "Caste and Income Verification Committee" means "a Committee and an Additional Committee constituted under Rule 5;"

Rule 4 deals with constitution of 'Caste Verification Committee' and reads as follows:

"4. Caste Verification Committee:- (1) There shall be a committee called the Caste Verification Committee for each district to verify the caste certificate issued in respect of the persons belonging to Scheduled Castes and Scheduled Tribes. The committee shall consist of the following members namely:-

(1) The Deputy Commissioner of the District who shall be the Chairman;

(2) The Deputy Secretary (Administration) of the Zilla Panchayat;

(3) The Tahsildar of Taluk;

(4) The District Social welfare officer who shall be the Member Secretary.

Provided that the State Government may constitute an additional Caste Verification Committee for any district to verify the caste certificate issued in respect of the persons belonging to Scheduled Castes or Scheduled Tribes which shall consist of the following members, namely.

(i) An officer not below the rank of Special Deputy Commissioner appointed by the State Government. Chairman

(ii) The Assistant Commissioner of the Sub-Division. Member

(iii) The Tahsildar of the Taluk. Member

(iv) The District of Social Welfare Officer Member

Rule 5 deals with constitution of 'Caste and Income Verification Committee' and reads as follows:

"5. Caste and Income Verification Committee:- There shall be a committee called a Caste and Income Verification Committee in respect of each district to verify the caste and income certificate issued in respect of the Other Backward Classes. The committee shall consist of the following members, namely.

(i) The Deputy Commissioner of the District who shall be the Chairman;

(ii) The Deputy Secretary (Administration) of the Zilla Panchayat;

(iii) The concerned Tahsildar of the Taluk;

(iv) The District Backward Classes and Minorities officer who shall be the member secretary.

Provided that the State Government may constitute an additional Caste and Income Verification Committee for any district to verify the income and

caste certificate issued in respect of persons belonging to other Backward Classes, which shall consist of the following members namely:

- | | | |
|-------|-------------------------------------------------------------------------------------------------|-------------------|
| (i) | An officer not below the rank of Special Deputy Commissioner appointed by the State Government. | Chairman |
| (ii) | The Assistant Commissioner of the Sub-Division. | Member |
| (iii) | The Tahsildar of the Taluk. | Member |
| (iv) | The District Backward Classes and Minorities Officer | Member-Secretary" |

It is on the afore-quoted Act and the Rules, the issue in the lis needs consideration.

11. The genesis of the problem is when the 5th respondent secures a caste certificate as belonging to Scheduled Tribe -Nayaka Community from the office of the Tahsildar by making an application under the Act, it is the Tahsildar who is empowered to accept the application, issue caste certificate or reject it. His role ends there. A complaint is registered by the petitioner before the Directorate of Civil Rights Enforcement alleging securing of false caste certificate by the 5th respondent and as necessary the Directorate refers the matter to the 4th respondent Committee to enquire into the allegations made by the petitioner. The Committee in terms of its proceedings dated 26-06-2018 sets aside the caste certificate issued to the 5th respondent arriving at a conclusion that it was based upon concocted documents. The 5th respondent challenges the said order

before the 3rd respondent/Appellate Authority. After hearing the parties, the Appellate Authority on 15-09-2018 passes the following order:

"ORDER

The impugned order dated: 26.06.2018 vide No. passed in No.G.SA.KA.A(Na)/japa/CR-112/2015-16 as per ANNEXURE-A passed by the Respondent No.2 is hereby set aside. The matter is remitted back to the Respondent No.2. The Respondent no.2 is hereby directed to constitute the Committee strictly in accordance with Rule 4 of the Karnataka Scheduled Castes, Scheduled Tribes & Other Backward Classes (Reservation of Appointments, etc.)Rules, 1993 and pass appropriate order in accordance with law, the appellant and Respondent No.1 are directed to appear before the Respondent No.2 on 29.09.2018 without expecting any notice from the respondent No.2. Thereafter, the Respondent No.2 is directed to pass appropriate order within 45 days. All other contentions of both the parties are kept open. It is made clear that while passing the order all the Committee members including the Chairman should sign the order.

This order is pronounced in the open Court on 15th day of September 2018.

Sd/- 15/9/18 (Sangappa) Appellate Authority and Director, Scheduled Tribal Welfare Department Bangalore." (Emphasis added)

The matter was remitted back to the 4th respondent/Committee.

The Committee again takes up the proceedings and after a long drawn proceeding on 12-02-2019 passes the following order:

"No.GSKAA(NA)/JAPA/CR-112/15-16 Dated: 12.02.2019

ORDER

For the reasons stated above, we are resolved that Smt.M.Gayathri, City Corporator, Ward No.122, Kempapura Agrahara Ward, BBMP, Vijayanagara Assembly Constituency, Bengaluru, is originally a Nayaka Caste and the Caste Certificate dated 30.06.2015 issued by the Tahasildar, Bengaluru North Taluk, in her favour as a Nayaka Caste is in accordance with law.

(Order pronounced in the Open Court on this 12th day of February 2019)."
(Emphasis added)

The order was that the caste certificate issued to the 5th respondent is in accordance with law. This comes to be challenged by the petitioner again in appeal before the Appellate Authority in Appeal No.24 of 2019. The Appellate Authority passes the following order on 19-09-2019:

"ORDER

The appeal is allowed in part. The impugned order dated 12.02.2019 passed by the respondent No.2 is hereby set aside.

The matter is remanded back to the respondent No.2 herein to proceed further after furnishing copies of the report dated 05.02.2019 by the respondent No.3 and the report dated 11.02.2019 by the Deputy Director of Public Instructions, Bengaluru, to both the appellant as well as the respondent No.2, by providing an opportunity of hearing as well as providing an opportunity to file their objections to the said reports. Thereafter, the respondent no.2 is directed to pass appropriate order within 45 days. All other contentions of both the parties are kept open.

This order is pronounced in the open Court on the 19.09.2019." (Emphasis added)

The appeal filed by the petitioner was allowed in part and the order of the Committee dated 12-02-2019 holding that the caste certificate was issued

in accordance with law was set aside. The matter was remitted back to the hands of the Committee to proceed further after furnishing copies of the report that led to passing of the order impugned before it. The matter again goes to the doors of the Committee and the Committee after considering the issues in terms of its detailed reasoned order passes the following on 05-08-2020:

".

Now considering all these aspect and also the contention raised by the learned counsel for the respondent no.1, this committee is of the opinion that, without going into the merit of the case whether the complaint filed by the complainant is maintainable or not? As already stated above, the respondent no. 1 has made use of the said caste certificate for the purpose of contesting election. In the instant case the complaint filed by the complainant before this authority is under the Karnataka Scheduled Caste, Scheduled Tribe and Other Backward Classes [Reservation of Appointment Etc.,] Act, 1990. Admittedly, the said act and rules are enacted for the purpose of issuing caste certificate or validity certificate only for appointment or for getting admission to educational institution. In the instant case, the respondent no. 1 has not made use of the caste certificate either for appointment in the state or central government or for admission in educational institution. On the other hand, she has made use of the caste certificate for contesting Municipal Elections to support her contention that she belongs to Scheduled Tribe at the time of filing nomination paper to reserved constituency. Therefore such cases are not covered under this act. In fact the Hon'ble High Court of Karnataka in the case of Sri. Chikkanna V/s. District Social Welfare Officer and another in W.P. No. 13173/2008 [GM-CC] and also in the case of Smt. Sangeetha V/s. Deputy Commissioner and Chairman, DLCVC and others in W.P. No.

63482/2019 has held that, the District Caste Verification Committee has no jurisdiction to deal with the matter.

Apart from the above fact, Rule 6 of the Karnataka Scheduled Caste, Scheduled Tribes and Other Backward Classes [Reservation of Appointment Etc.,] Rules 1992, which reads as follows:

'Every person claiming reservation for appointment, shall submit an application in Form No. 1 for verification of caste or caste and income claim'. Thereafter this committee would come to picture for issue of validity certificate under rule 7. In the instant case as already narrated above, the caste certificate obtained is for the purpose of contesting the elections. Therefore, there is no provision under the Act or under the Rules made thereunder to entertain the instant complaint filed by the complainant.

Further the Hon'ble Supreme Court in the case of **Dhananjaya Riddy V/s. State of Karnataka, reported in 2001 Vol. 4 SCC Page 9** at Para 26 has held as follows:

'If a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it is necessarily prohibits the doing of act in any other mariner than what which has been prescribed.'

In the light of the law laid down by the Hon'ble Supreme Court and also the law laid down by the Hon'ble High Court of Karnataka referred supra, the complaint filed by the complainant is not maintainable and this committee has no jurisdiction to entertain the complaint. Accordingly, the committee proceed to pass the following order.

No. GS/KAA(NA)/JAPA/CR-112/15-16 Date: 05.08.2020

ORDER

For the reasons and circumstances narrated above the complaint filed by the complainant is not maintainable. This committee has no jurisdiction to entertain the complaint. However, it is made clear that this authority has not gone into the merit of the case, it has only dealt with regard to the jurisdiction of this committee to entertain the complaint. All the contentions of both the parties are kept open.

Dictated and Pronounced in the open court on 05.08.2020." (Emphasis added)

This order is not challenged and has thus become final. The effect of non-challenge of the said order is that the existence of an order of the Appellate Authority which sets aside the affirmation of the caste certificate issued to the 5th respondent. Therefore, as on today there is no caste certificate that is held to be in favour of the 5th respondent.

12. Certain strikingly outlandish proceedings take place later.

As observed hereinabove, the Committee headed by the Deputy Commissioner had cancelled the caste certificate issued to the 5th respondent on 26-06-2018. The Tahsildar following the said dictate cancels the caste certificate of the 5th respondent by an order dated 23-09-2020. The order reads as follows:

“ಪ್ರಸ್ತಾವನೆ:-

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಶ್ರೀಮತಿ ಎಂ.ಗಾಯತ್ರಿ, ಬಿ.ಬಿ.ಎಂ.ಪಿ ಸದಸ್ಯರು, ಕೆಂಪಾಪುರ ಅಗ್ರಹಾರ, ಬೆಂಗಳೂರು ರವರು “ನಾಯಕ” ಜಾತಿ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಪಡೆದಿದ್ದು, ಜಾತಿ ಪ್ರಮಾಣ ಪತ್ರ ಕುರಿತು ನಾಗರಿಕ ಹಕ್ಕು ಜಾರಿ ನಿರ್ದೇಶನಾಲಯದ ಅಧಿಕಾರಿಗಳು ತನಿಖಾ ಸಮಯದಲ್ಲಿ ಸಂಗ್ರಹಿಸಿರುವ ದಾಖಲಾತಿ ಸಾಕ್ಷಾಧಾರಗಳನ್ನು, ಸಾಕ್ಷಿಗಳನ್ನು, ಹೇಳಿಕೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ಎಂ.ಗಾಯತ್ರಿ ರವರ ಪರಿಶಿಷ್ಟ ಪಂಗಡ “ನಾಯಕ” ಜಾತಿಪ್ರಮಾಣ ಪತ್ರವನ್ನು ರದ್ದುಪಡಿಸಲು ಆದೇಶಿಸಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

ಶ್ರೀಮತಿ ಎಂ.ಗಾಯತ್ರಿ, ಬಿ.ಬಿ.ಎಂ.ಪಿ ಸದಸ್ಯರು, ಕೆಂಪಾಪುರ ಅಗ್ರಹಾರ, ಬೆಂಗಳೂರು ರವರ ನಾಯಕ ಜಾತಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸರಿಯಾದ ದಾಖಲೆಗಳು ಇಲ್ಲವಾದ್ದರಿಂದ ಮಾನ್ಯ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಹಾಗೂ ಅಧ್ಯಕ್ಷರು ರವರ ನಡವಳಿ ಆದೇಶದ ಜಿಸಕಆ(ನ)/ಜಾಪ/ಸಿಆರ್/112/2015-16 ದಿನಾಂಕ:26/06/2018 ರ ಆದೇಶದಲ್ಲಿ ತಿಳಿದುಬಂದಿದ್ದು, ಸದರಿಯವರಿಗೆ ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು ಕಛೇರಿಯಲ್ಲಿ ದಿನಾಂಕ:30/06/2015 ರಂದು ನೀಡಿರುವ ಪರಿಶಿಷ್ಟ ಪಂಗಡ “ನಾಯಕ” ಜಾತಿಪ್ರಮಾಣ ಪತ್ರವನ್ನು ರದ್ದುಪಡಿಸಿದೆ.

ಸಹಿ/-
ತಹಶೀಲ್ದಾರ್ (ಗ್ರೇಡ್-2)
ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು
ಬೆಂಗಳೂರು.”

(Emphasis added)

In the aforequoted order, the Tahsildar implements the order of the Committee, Chairman of which is the Deputy Commissioner and cancels the caste certificate. Against the said cancellation, the 5th respondent prefers an appeal before the 1st respondent. The 1st respondent is the Assistant Commissioner. As noted hereinabove, the Tahsildar only implements the order of the Deputy Commissioner. Now the appeal, in effect, is filed against the order of the Deputy Commissioner, before the Assistant Commissioner, who is an officer subordinate to the Deputy Commissioner and cannot be Appellate Authority to an order passed on the direction of the Deputy Commissioner. The appeal ought to have been preferred before the 3rd respondent/Appellate Authority, which admittedly is not done.

13. The submission of the learned counsel Smt. Sadhana Desai appearing for petitioner merits acceptance, as the Tahsildar has no power to cancel a caste certificate. He can either accept or reject the application.

Cancellation of caste certificate is the power vested with the Committee. The Tahsildar only implements the direction of the Committee. An appeal to the Assistant Commissioner/1st respondent would lie under the Act, if the Tahsildar has on independent application of mind rejected the application for issuance of caste certificate and not cancellation of a caste certificate on the directions of the Committee. Admittedly, the Tahsildar has not passed any order under Section 4A of the Act, as Section 4A supra empowers the Tahsildar to issue caste certificate or caste and income certificate as the case would be. Appeal to the Assistant Commissioner would lie under Section 4B against the order passed by the Tahsildar under Section 4A, which is either accepting or rejecting the application seeking issuance of caste certificate, as Section 4A deals with only issuance of caste certificate and Section 4B deals with appeal against an action on such issuance or non-issuance.

14. Therefore, the appeal in the case at hand, before the Assistant Commissioner, is undoubtedly an appeal before a forum, which is coram non-judice. It becomes apposite to refer to the judgment of the Apex Court in the case of **Hasham Abbas Sayyad v. Usman Abbas Sayyad, (2007)2 SCC 355** wherein the Apex Court holds as follows:

".....

"21. A contention was raised that having regard to the conduct of the appellant, we should not interfere, but the appellant herein has raised a jurisdictional question. However, the appellant can be put to terms.

22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/court which has no authority in that

behalf. Any order passed by a court without jurisdiction would be coram non judge, being a nullity, the same ordinarily should not be given effect to. [See **Chief Justice of A.P. v. L.V.A. Dixitulu [(1979) 2 SCC 34 : 1979 SCC (L&S) 99 : AIR 1979 SC 193]** and **MD, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. [(2004) 9 SCC 619]**] (Emphasis supplied)

The Apex Court holds that any order passed by a Court which has no jurisdiction is coram non-judice. If the finding of the Apex Court is paraphrased to any proceeding, preceding passage of an order would also be a proceeding, which would be coram non-judice. The proceeding before the 1st respondent is undoubtedly de hors jurisdiction and is now trite that, any proceeding or an order which is without jurisdiction is coram non-judice, resultantly, a nullity in law. Therefore, the very proceeding before the 1st respondent is contrary to law.

15. The order of the 4th respondent/Committee rejecting entire proceedings as not maintainable is again erroneous, as the Apex Court in the case of **Bharati Reddy** (supra) has held as follows:

".....

21. The concurrent finding recorded by the learned Single Judge and the Division Bench of the High Court is that the process of issuance of the certificate to the appellant by the jurisdictional authority was done in a mortal hurry. This inference has been drawn by the High Court in the light of the facts revealed from the original official file - that the appellant purchased stamp paper for preparing affidavit at 5.27 p.m. on 26-4-2016 and used the same for notarisation and also submitted it to Respondent 5, who then issued the caste certificate on the same day i.e. 26-4-2016. The Court has also noted that there was some overwriting in relation to the date.

After advertng to these circumstances, the High Court opined that there was something seriously wrong about the process adopted by Respondent 5 for issuance of caste certificate, which was obviously done to favour the appellant who could then contest the election. The High Court also noted that Respondent 5 who had issued the stated certificate was later on suspended, pending departmental enquiry against him in reference to the self-same certificate issued to the appellant. Additionally, the High Court has found that there was discrepancy in the two affidavits filed by the appellant, which is in the nature of suppression and non-disclosure of material financial information. Finally, the High Court concluded that since the issue regarding the validity of income and caste certificate was pending before the Caste Verification Committee, which was a fact-finding Committee, the Committee would decide the same on its own merits. Notably, the High Court did not quash the caste certificate as being void but left it open to the Caste Verification Committee to proceed in accordance with law.

25. Indubitably, both these aspects will be the subject-matter of the enquiry before the Caste Verification Committee, being intrinsically mixed with the question of validity of the stated certificate. The appellant had offered explanation on both these matters. Regarding the factum of mortal hurry allegedly displayed by Respondent 5 in issuing the caste certificate, she contends that it was not issued on the same day as alleged but after due enquiry. That is evinced from the original official file produced before the Court. In that, the application was made on 22-4-2016 whence the process commenced and then concluded on 26-4-2016. The process was required to be completed expeditiously as the certificate was required for contesting the impending election of Adhyaksha scheduled on 29-4-2016. This explanation certainly will have to be examined by the Caste Verification Committee, before invalidating the caste certificate on the ground that

proper procedure was not followed. For the present, suffice it to observe that the mere fact that the certificate was issued in a short span of five days from the date of the application, per se, does not lead to an inference that the required procedure has not been followed." (Emphasis supplied)

The Apex Court holds that the caste certificate issued for the purpose of election which was the subject matter in **Bharati Reddy's** case (supra) was based on a disputed question of fact which would require evidence and accordingly directed the Committee to conclude the proceedings in a time bound manner. The caste certificate in the case before the Apex Court had been issued for election purpose. Therefore, I leave the issue open to the parties to avail all such remedy as is available in law.

16. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed and the proceedings in MSC/CR/113/20-21 before the 1st respondent/ Assistant Commissioner stand obliterated.

(ii) The parties are left with liberty to avail all such remedy as is available in law.

(iii) All other contentions other than the ones considered in the case at hand, shall remain open.

Consequently, I.A.No.1 of 2023 also stands disposed.

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