

ANDHRA PRADESH HIGH COURT

N.B. Rao

Vs.

Principal, Osmania Medical College

Writ Petn. No. 11707 of 1985

(K. Ramaswamy, J.)

23.12.1985

ORDER

K. Ramaswamy, J.

1. This case demonstrates to the tilt of several shortcomings as to how, despite conclusive facts, when persons unfamiliar with legal process were called upon to adjudicate the claims entwined with legal issues would falter in the performance thereof and how due to notorious red-tapism the benign constitutional distributive justice would be defeated due to procrastination calling utmost expeditious attention to remedy the acute evils at the highest State level.

2. Before pointing them out and elaboration thereof, it is necessary to state the material facts in extenso. The petitioner, Nadimpally Bhuvanewara Rao, son of Tirupathirao, resident of Namnoor in Luxsettipet Taluk of Adilabad District. obtained a social status certificate based on the recommendation made by the Sarpanch and the Patwari of that village that he belongs to "Koppula Velma" community which is recognised by the State Government as Backward Class 'D' Group. On the basis thereof, he sought admission into the First Year M.B.B.S. Course for 1981-82 and was provisionally selected on Sept. 31, 1981 and he was admitted on Oct.14, 1981. By letter dated Oct. 24, 1981, the respondent promptly has written to the Director of Backward Classes for confirmation of the social status of the petitioner to be belonging to Koppula Velma caste. The Director, in his turn, leisurely after five months, by letter dated Mar. 16, 1982, wrote to the District Collector, Adilabad who in turn transmitted to the Tahsildar, Luxsettipet for report. After expiry of seven months, viz., on Oct. 12, 1983, the Tahsildar has written that the petitioner is a Velma by caste; that he does not belong to Koppula Velma, even that caste is not existing in Luxsettipet taluk; his father is the patel of Namnoor village; he had Ac.5415 guntas of dry land and Ac.1.27 guntas of wet land and he belongs to a well-to-do family. The District Collector, in turn, after two months, by letter dated Dec. 8, 1983, transmitted to the Director. By letter dated Dec. 26, 1983, the Director wrote to the respondent that the petitioner does not lifelong to Koppula Velma and so he is not Backward Class person. By notice dated Jan.11, 1984, the Principal detailed the circumstances referred to earlier and enclosed the certificates of the Tahsildar, the District Collector and the Director and called upon the petitioner to show cause as to why this admission should not be cancelled. From the date of admission till date in initiation

of action to cancel the admission, two years and three months have passed by. The petitioner promptly filed Writ Petition No. 1371/84 and this Court, expecting to be further delayed, at the admission stage dismissed it holding that the respondent would conduct an enquiry independently without relying upon the opinion expressed by the Director of Backward Classes. Pursuant thereto, the petitioner has submitted his explanation dated Feb. 1, 1984. Thereafter, the respondent being the senior Professor in Medical field and who is expected to devote his time and attention to the teaching as well as hospital duties, was baffled with quasi-judicial process of conducting an enquiry. In his righteous thinking that he would be needlessly entangled with the process of conducting an enquiry, sought the opinions from the Director of Medical Services, the Govt. and the Govt. Pleader, respectively. In that process considerable time had lapsed. Ultimately when he was advised to proceed with the enquiry he issued a notice to the petitioner on June 25, 1985 to attend to the enquiry on July 85 1985. The petitioner accordingly attended. The Principal, in right earnestness, questioned the petitioner putting relevant questions and ascertained whether he would examine his father and his uncle, Mukunda Rao. He also asked the petitioner whether the tahsildar, Luxsettipet and the Director of Backward Classes have any personal hostility against him since he expressed apprehension that the former were hostile to him. The petitioner made a frank admission that the authorities have no personal hostility, but he reiterated his unfounded apprehension. When he persistently pointed out the need to examine his father and the uncle to get the truth of his caste, the petitioner Declined to examine them on the plea that they are of old age. As a fact, he did not examine any witnesses in support thereof except filing yet another certificate issued to a relation of his, stating that his relation also is claimed to be Koppula Velma. Thereon, the respondent in his letter dated Aug. 29, 1985, wrote to the Director of Backward Classes that on the basis of the certificate produced by the petitioner regarding the social status of a relation of his, he was of opinion that the petitioner belongs to Backward Class and yet he sought further opinion from the Director. The Director in his reply dated Sept. 5, 1985, while reiterating that the petitioner is only of Velma community but not Koppula Velma, he forwarded a copy of the Anantharaman Commission's report regarding Koppula Velma. Basing upon the above material and consideration of the record, the respondent has paused the impugned order dated Oct. 3, 1986 cancelling the admission of the petitioner holding that the petitioner is Velma by caste and not Koppula Velma and therefore he does not belong to the Backward Class, Group 'D'. Assailing the legality therefore, this writ petition has been filed and this Court, by interim order dated Oct. 11, 1985, suspended the operation of the impugned order. When the WPMP came up for final orders, I heard both the Counsel on merits and accordingly, the Writ Petition is to be disposed of.

3. Sri Pratap Reddy, learned counsel for the petitioner contends that the social status certificate issued by the Tahsildar, Luxsettipet, dated Oct. 17, 1980 that the petitioner is a Koppula Velma by caste, is conclusive. Based thereon, the petitioner was admitted though provisionally but an enquiry is sought to be made. There is no material placed to conclusively establish that the certificate issued by the Tahsildar is false; the opinion of the Director is not evidence and it cannot be relied upon. Despite the direction given by this Court no independent enquiry was conducted by the respondent. Even after holding the so-called enquiry, the respondent sought further opinion and advice from the Director of Backward Classes and the material supplied by the latter was relied on without giving a further opportunity to the petitioner. By letter dated Aug. 29, 1985, the respondent came to a positive conclusion that the petitioner belongs to a Backward Class. Having come to that conclusion, he cannot pass an order relying on the opinion of the Director of Backward Classes, without affording a further opportunity on the new material on

which the respondent sought to rely on. Therefore the order is vitiated by violation of the principles of natural justice. Without applying his mind independently to the record, the respondent came to the conclusion that the petitioner is not a Koppula Velma but is a Velma by caste. He relied on *Krishnan v. Kurukshetra University*¹ and *R. K. Srinivasulu v. Principal ESC Govt. Polytechnic, Nandyal*,² V for the doctrine of promissory estoppel. The learned Government Pleader, on the other hand, contended that the statutory rules prescribe that the admission of the petitioner is provisional subject to the opinion given by the Director of Backward Classes; the rules prescribed that the competent authority to give opinion can social status is the Director of Backward Classes; accordingly the opinion was sought for. Such an opinion is conclusive as against the petitioner. The petitioner was supplied with the report submitted against him and an opportunity was also given. He was called upon to examine his witness, but he chose not to examine any witnesses except reiterating his stand in the reply to the show cause notice. There is no further material relied on by the Director except the official report of the Anantharaman Commission and it is a public document but not a secret material. In view of the conclusiveness of the opinion of the . Director of Backward Classes, the petitioner cannot have any grievance to rely on the opinion expressed by the Director. The doctrine of promissory estoppel has no application to the facts in this case.

4. The respective contentions give rise to a primary question whether the petitioner is a Koppula Velam a Backward Class, Group 'D' and whether the principles of natural justice have been offender in this case and the doctrine of promissory estoppel could be extended?

5. Before considering these questions, it is necessary to record on the basis of the material on record the finding whether the petitioner is a Koppula Velma by caste. The respondent in the impugned order recorded as a fact that the petitioner is not a genuine candidate of Koppula Velma community under Backward Class, Group 'D'. The explanation offered by the petitioner dated Feb. 1, 1984 is not satisfactory. The Anantharaman Commission found that Koppula Velma community is in Srikakulam, Visakhapatnam, East Godavari, West Godavari and Krishna Districts. Their traditional occupation is agriculture; most of them are agricultural labourers or coolies. The community, as a whole, is poor; they live in huts and thatched sheds; both men and women work in the fields; their education is very low; due to poverty and unclean occupation, the student population is low. Therefore it was identified to be socially and educationally very backward. The Tahsildar, after enquiry, in his report dated Oct. 12, 1983. copy thereof was supplied to the petitioner' stated that in the entire Luxsettipet Taluk, no people belonging to Koppula Velma caste are residing. The petitioner's father Tirupathi Rao is the patel of Namnoor village. They are Velma by caste which is a forward class. He hails from a well to-do family. In the enquiry held by the Principal on July 8, 1985, the petitioner was unable to name any other relatives from Koppula Velma. The petitioner further stated that neither his father nor his uncle will be able to come to Hyderabad to give evidence, as they are old. Thus, it is clear that except examining himself, he did not produce any other material evidence in the

¹ AIR 1976 SC 376

²(1983) 1 APLJ (HC) 25

enquiry to establish that he is Koppula Velma by caste. When the petitioner claims his social status as backward Class, Group 'D', viz., Koppula Velma caste, the burden is on him to establish that he in fact belongs to Koppula Velma caste. No doubt, the certificate issued by the Tahsildar, so long as it is not impugned, is prima facie, a valid certificate. But when the very right is under cloud, the petitioner is to conclusively establish that he belongs to Koppula Velma by

caste. He did not examine either his father or uncle or any of his relations. They are the best persons to speak of the social status. He deliberately withheld them from being examined. The record establishes that he is Velma a forward caste. He is therefore not a Koppula Velma by caste. The finding of the respondent that the petitioner is not a genuine candidate of Koppula caste is well supported by evidence on record.

6. From these facts, the next question is whether the order impugned is vitiated by error apparent on the face of the record warranting interference by this Court. Before consideration thereof, it is necessary to adumbrate the background under which the reservation for admission into professional courses came to be made. The Constitution assures to every citizen justice social, economic and political and equality of status and of opportunity to promote among them fraternity assuring the dignity of individual and ultimately the unity and integrity of the nation. The Indian society is steeped in caste system by hierarchical gradation and centuries of continued suppression, poverty, primitive caste customs and social sanctions have rendered them social and educational backwards be they Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens. Yet another inhibiting factor for the Dalits is the continued practice from centuries of the monstrous untouchability denuding them caste (Sic) and cultural pursuits. Though it is abolished under Article 17 of the Constitution and its practice in any form is declared to be a constitutional offence punishable under Civil Rights Protection Act, 1955, it is relentlessly being practiced till date remorselessly and the person exercising the right to equality are becoming target of attack and mass murders. Persons unable to bear the ignominy are taking refuge in religious conversion rocking the foundation for solidarity and dignity of person. The founding fathers of the Constitution having realised these stark facts, enjoined the State under Article 46 of the Constitution to promote with special care, the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Article 29(2) assures that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 15(1) equally prohibits discrimination by the State against any citizen on grounds of only religion, race, caste, sex, place of birth or any of them. Article 14(4) provides that nothing in Article 15 or of Article 29(2) shall prevent the State from making any special provision for the Advancement of any socially and educationally backward classes of citizens" or for the Scheduled Castes or Scheduled Tribes. Thereby the Constitution has envisaged to provide special provisions for the advancement of the Scheduled Castes or Scheduled Tribes, now called "Dalits", or socially and educationally backward classes of citizens. i.e., Backward Classes, in the matter of admission into any educational institutions maintained by the State or receiving aid out of the State funds.

7. In *K. C. Vasanth Kumar v. State of Karnataka*³, Chinnappa Reddy, J. poignantly

³ AIR 1985 SC 1495 at p.1508

portrayed the social malady and remedy thus:

"Ours is a country of great economic, social and cultural diversity. Often we take great pride in the country's cultural diversity. While cultural diversity adds to the splendour of India, the others add to our sorrow and shame. The social and economic disparities are indeed despairingly vast. The Scheduled Castes, the Scheduled Tribes and other socially

and educationally backward classes, all of whom have been compendiously described as the weaker sections of the people, have long journeys to make society. They need aid; they need facility; they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not philanthropy. They ask for parity, and not charity. The days of Dronacharya and Ekalayya are over. They claim their constitutional right to equality of status and of opportunity and economic and social justice. Several bridges have to be erected, so that they may cross the Rubicon. Professional education and employment under the State are thought to be two such bridges. Hence the special provision for advancement and for reservation under Articles 15(4) and 16(4) of the Constitution. (Emphasis supplied)

It is held that right to equality to Dalits and Backward Classes is a constitutional right. The learned Judge, with his keen insight, with all humility in my respectful view, has correctly diagnosed the social malignity. E.S. Venkatramaiah, J. in his article "Some Thoughts of Social Justice", says that "social justice measures which are introduced to reduce the effect of centuries old social injustice include abolition of untouchability, reservation of seats in educational institutions and of posts in Government employment, reservation of seats in elected bodies and certain other positive measures such as financial assistance given to socially and educationally backward people in order to ameliorate their conditions."

(1983 Journal of the Indian Law Institute, pages 289 at 293).

8. The Dalits and Backward Classes, have fundamental right to equality of opportunity and status in an unequal society. Social Justice in establishing egalitarian society is the creed of the Constitution and distributive justice is a facet thereof. The benign "equalitarian guarantee" i.e., 'reservation' is thus an integral facet of equal justice under Article 14 of the Constitution. It is a fundamental right flowing from Articles 14, 15(1) and 16(1); Articles 15(4) and 16(4) are integral parts of Articles 15(1) and 16 (1' as Article 14 is the genus and Articles 15 and 16 are its species. The word "Compensatory discrimination" as some writers described, connotes willingness on the part of the others to part with by one and to be shared by others, viz., advantaged giving a charity-to the disadvantaged. As held by Chinnappa Reddy, J. in Vasanth Kumar's case, (supra) it is not a charity. Nor it is a favoured principle as others call it. It is not a bounty but the birth right of the Dalits and Backward Classes as citizens of India. It may not be a "Competing equality" as mildly put by Mare Galanter in a lesser degree in his book, "Competing Equality and the Law of the Backward Classes in India '.

9. In the onward march to make these rights meaningful and a reality to them, education and employment under the State are two projects selected by the State in which equalitarian doctrine is to operate. Under the relevant statutory provisions or executive power, the State Governments issued rules regulating appointment to any posts or offices under the State or admission in educational institutions providing "equalitarian guarantee" to Dalits and Backward Classes at a prescribed percentage. To enjoy the right thereof, they are required to produce what is known as "Social Status Certificate" from the competent authority. The Government of Andhra Pradesh issued executive instructions in this regard directing the Tahsildars (now termed as Mandal

Revenue Officers' or the Revenue Divisional Officers as the case may be to issue the Certificates after due verification. The Central Government prescribed to obtain them from Executive Magistrates. It is a known fact that normally the Officers would rely upon the endorsements made by the village officers and non-officials Sarpanch, M.L.A., etc. for granting such a certificate. Though the instructions require to make prior independent enquiry, the officials seldom make enquiry in this regard. It is needless to emphasise that it is a sacred duty of the officials as part of the constitutional scheme. But if the candidate is close to the power sources or official blocks the road to get the social status certificates is smooth and effortless. But to a genuine and needy one, it is often a tortious rough weather and many a time, teasing and frustrating.

10. It is already found that the petitioner is a Velma by caste and thereby he is ineligible for admission under Backward Class. But the certificate of the Tahsildar is that he is a Backward Class. What does it mean? Does it mean that the Tahsildar made an independent enquiry and satisfied himself that the petitioner is a Backward Class citizen or does he merely rely on the recommendation made by the Sarpanch and Patwari and has given the certificate that the petitioner belongs to Backward Class? The question then is, can this certificate get primacy? On a totality of consideration of the facts and circumstances, I am of the opinion that the certificate is nothing but a false certificate and therefore it is of little validity.

11. The next question is whether the admission given to the petitioner is liable to be set aside. As seen, the contention of the petitioner is that the order is vitiated by violation of the principles of natural justice. If a positive finding is recorded in this regard, it is needless to go into other questions. The main ground on which the petitioner rests his case is that in the letter dated Aug.29, 1985 the Principal has written to the Director of Backward Classes that on the basis of yet another certificate produced by the petitioner, of his relation, he had concluded that the petitioner too is a Backward Class; therefore it cannot be given a go-by. I am unable to agree. This is only a tentative finding recorded by the Principal. As already indicated in the preface to the judgment that the Principal is unfamiliar with quasi-judicial process and it is foreign to him as to how an enquiry to be conducted and as to what is the material on which he has to rely on. It is an admitted fact, the rules of admission show that the opinion of the Director concerned is conclusive as against the petitioner. Obviously under that impression the Principal sought further guidance from the Director of Backward Classes. Then what is the material which was supplied by the Director in this regard? It is already seen that the adverse report of the Tahsildar and the recommendation of the Director of Backward Classes, the basis for the action initiated, were already supplied to the petitioner. The only further material that was given in the opinion recorded by Anantharaman Commission' a public document; which it is not a material adverse to the petitioner. It only amplified the conditions prevailing among the Koppula Velma caste but not with reference to the petitioner as such. Therefore there is no obvious need to furnish to the petitioner of the latter report. If it were really a case where material adverse to the petitioner was collected behind the petitioner's back and relied on without supplying the same, certainly the petitioner is entitled to the supply thereof and naturally such a decision gets vitiated by offending fair play in action. As seen, such is not the course adopted in this case. Therefore the order is not vitiated for the non-observance of the principles of natural justice.

12. The next string from the petitioner's bow is the doctrine of equitable estoppel. The question is whether the petitioner can fall back upon it. He who taps the door of equity must touch it with

unpolluted hands. In other words, a person with clean hands alone can enter into equitable domain. Moreover, the admission given to the petitioner is a provisional one in terms of admission rules, subject to further verification. It is not a case that the petitioner is given an unqualified admission. There is no unequivocal assurance given to the petitioner that his admission is conclusive and final. The petitioner claims his status to be a Backward Class and he sought for and was admitted on that basis. The doctrine of Equitable Estoppel applies to a case where a person is given an unequivocal assurance and on the faith thereof, he acted detrimental to his interest and he suffered an irretrievable injury in that pursuit. In such an event, having made such a promise, the maker thereof is precluded to resile therefrom and pass an order detrimental to the interest of the person who believed the promise; placed reliance thereof; acted on that basis to his detriment and he cannot adequately be compensated. The question is whether the case comes within the fold of this principle. As stated earlier, the admission of the petitioner is not unequivocal. The social status certificate was verified by the Principal and prima facie, he concluded that the petitioner is a Backward Class Group 'D' and he was given admission provisionally on that basis. Thereby the petitioner induced the respondent to believe that he is a Backward Class. But it is subject to final decision and now after the enquiry it is found to be a false certificate. The mere fact that the petitioner had the advantage of studying for four years subsequent thereto cannot be a ground to say that he acted to his detriment. At no point of time, the respondent acquiesced to the continuance of the pursuit of study by the petitioner as a Backward Class student. It is not open to the petitioner to blow hot and cold to plead that the respondent is estopped to cancel the provisional admission, The decision in Shri Krishnan's case AIR 1976 SC 376 (supra) has no application to the facts in this case. In that case, the admission was given without verification of the record and the appellant therein was a part time employee and he was duly certified by the employer. Thereafter, the admission was sought to be set at naught. Under those circumstances it was held that the doctrine of equitable estoppel would apply. In R. K. Srinivasulu's case (1983) 1 APLJ (HC) 250 (supra) relied on by the petitioner, in fact, my learned brother, Rama Rao, J. held thus :

"The fraudulent action or representation on the basis of which action is taken does not have the cushion of doctrine of equitable estoppel. The reasonable time for initiating action should be considered from the date of detection of fraud. When the fraud is impenetrable or marked and did not come to light for a considerable period it is not possible to take action within the 'reasonable period'. The relevance of reasonable period is appropriate from the date when the fraud is discovered."

Thereby it is clear that the learned Judge did not accept the application of the principle of the doctrine of equitable estoppel in toto. Therefore, from a totality of consideration of the facts in this case, I have no hesitation to hold that the doctrine of equitable estoppel has no application to the facts in, this case.

13. The next question is whether the petitioner is entitled to the relief on the ground of delay in the enquiry and his completion of four years course, i.e., in the last lap of the terminus. From the facts it is clear that the petitioner is not entitled to admission as a Backward Class person. Thereby he played fraud on the Constitution and fraudulently denied admission to a legitimate person belonging to the Backward Class Group 'D' and had unjust benefit of the study of the Medical Course for four years. Normally such a person is disentitled to a relief under Article 226 of the Constitution, lest it may aid impetus to do fraudulent acts and knock off the ill-gotton

body's (booty?) i.e., admission. Yet the Court cannot lose sight of the reality. By cancellation of the admission of the petitioner, what is the result that would ensue is the realistic question. The petitioner is in mid-day practically on the last lap of completing the course. The contributory factor is the laches on, the part of the executive and there are no traces that the petitioner is a privy to the delay. A really deserving and deprived Backward Class 'D' Group person who is entitled to admission in 1981-82 now cannot be put in the shoes of the petitioner. The State had already expended public money on the petitioner for four years. Under those circumstances, the cancellation serves merely as a disabling factor to complete the balance course of study by the petitioner but to no practical avail. If it were encase that the petitioner is responsible for the delay, the result would be different.

14. But this is not an end in itself. We have already seen that this disastrous consequence is sequel to the notorious red-tapism in getting the petitioner's social status investigated and non-furnishing of the information to the respondent Principal at the earliest. Then what is the remedy? It is a historical fact which the Court could take notice that the appalling poverty, continued practice of untouchability and cultural backwardness make the Dalits and Backward Classes to march miles crossing several bridges to reach the periphery of the main stream of the society and the recent violent agitation in Bihar and Gujarat States are barometers signalling that the people belonging to higher strata of the society are not restive to continue the enjoyment of the benign equalitarian guarantees. In Vasanth Humans case (AIR 1985 SC 1495) (supra), two of the learned Judges suggested time schedule. In view of the persisting glaring inequalities, the said suggestion rightly was not shared by the other learned Judges and though it is not binding on the political executive, in some quarter, it may become an itching point. It is common knowledge that countless attempts are being made in obtaining false social certificates grabbing the seats for admission in the education field or posts reserved for the disadvantaged by the persons having capacity to manoeuvre with the executive and thereby the very object of ameliorating the Dalits and Backward Classes from their social and economic backwardness is being frustrated. This is yet another pernicious Corn of exploitation within the meaning of Article 46 and the State is to put an end expeditiously. The State is not a helpless spectator. The political executive is always pragmatic in extending the distributive justice to the Dalits and Backward Classes in their thrust to assimilate them in the main stream of Society but the executive, at the implementation stage, may be, due to either having been engaged in other duties or apathy or in some cases, in active collusion with the persons concerned, casually issue certificates or delay expeditious investigation in this regard. But the consequence is that the ameliorative constitutional schemes are deliberately flouted and frustrated. The State has got wide powers under the relevant Articles and items of Schedule VII and under Article 309 of the Constitution, to meet the acute evil by making law; impose personal responsibility on the candidate or guardian to disclose in the pro forma full and complete material facts; prescribe special offences for obtaining false certificate like disqualification for further studies in any faculty or disqualification for any job under the State or private agency or elective post in addition to prosecution for offences under the Penal Code; the officer to maintain triplicate certificates and to forward duplicate copy immediately to the State level authority like Directorate; the Directorate to have a vigilance cell with adequate police machinery of higher cadre to investigate into doubtful certificate within a maximum of three months and the investigating officer shall be personally held responsible for the report with penal consequences like dismissal from service; to conduct an enquiry into *prima facie* false certificates by an independent body with simplified procedure, within a time bound frame say maximum period of four to six months to complete the enquiry after due notice and opportunity

of representation; to summarily dismiss a candidate from service or cancellation of provisional admission and the order to be final and conclusive excluding the jurisdiction of the Civil Court, etc. If the built-in procedure and penalties are provided there will be deterrence on the circumventors successful to prevent saboteurs to snatch away the constitutional benefits and the gains of the schemes would enure and be enjoyed by the needy.

15. Considered from this perspective, though I have no hesitation to hold that the petitioner has committed fraud on the Constitution and is not entitled to continue his course of study as a Backward Class Group 'D' but in view of the fact that he has already completed four years of study, it is inexpedient in the circumstances as a special case to cancel his admission. But however, it does not preclude the authorities concerned, if they are so advised, to take appropriate action against the persons concerned for giving false certificates or using fabricated documents. Under these circumstances, I have, most reluctantly, come to the conclusion that the writ petition is to be allowed and the order dt. Oct. 3, 1985 is to be quashed.

16. The writ petition is accordingly allowed, but in, the circumstances, without costs. Advocate's fee : Rs. 250/-.
Petition allowed.