



**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE FIFTEENTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY ONE

**PRESENT**

**THE HONOURABLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**  
**WRIT PETITION NO: 38026 OF 2015**

**Between:**

1. Smt. Nannagaram Praveena,  
D/o. Krishnaiah, Aged 37 years,  
Rio. D.No. 23/464, Poosalavari Street,  
Fathekhanpet, Nellore - 524 003

**...PETITIONER(S)**

**AND:**

1. State of Andhra Pradesh,  
Rep. by its Secretary to Government,  
Social Welfare Department, A.P. Secretariat, Hyderabad.
2. The Collector & District Magistrate, Nellore, S.P.S.R. Nellore District.
3. The District Level Scrutiny Committee, Collector & District Magistrate,  
Nellore, S.P.S.R. Nellore District.
4. The Revenue Divisional. Officer, State of Andhra Pradesh, Naidupet,  
Nellore District.
5. The Tahasildar,  
Naidupet Mandal, Nellore District.
6. M.SUJATHA W/O S.VEERA SWAMY R,/O D.NO. 6-8-6,  
Agraharam,Naidupet Town and Mandal,  
R6 is impleaded as per C.O.dt 28/11/18 in I.A. 1/16 (WPMP 54244/16)

**...RESPONDENTS**

**Counsel for the Petitioner(s): K UDAYA SRI**

**Counsel for the Respondents: GP FOR SOCIAL WELFARE (AP)**

**The Court made the following: ORDER**


**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

\* \* \* \*

**Writ Petition No.38026 of 2015**

Between:

 Smt. Nannagaram Praveena  
 D/o Krishnaiah, aged 37 years  
 R/o D.No.23/464, Poosalavari Street  
 Fathekhanpet, Nellore-524003

..Writ Petitioner

And

 State of Andhra Pradesh, rep. By its  
 Secretary to Government,  
 Social Welfare Depart, A.P. Secretariat  
 Hyderabad & 5 others

..Respondents

DATE OF JUDGMENT PRONOUNCED: 15.12.2021

SUBMITTED FOR APPROVAL:
**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgment? : Yes/No
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals : Yes/No
3. Whether Your Lordships wish to  
see the fair copy of the Judgment? : Yes/No

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**KONGARA VIJAYA LAKSHMI, J**



\*HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

+ W.P. No.38026 of 2015

%15.12.2021

Between:

Smt. Nannagaram Praveena  
 D/o Krishnaiah, aged 37 years  
 R/o D.No.23/464, Posalavari Street  
 Fathekhanpet, Nellore-524003

..Appellant

And

State of Andhra Pradesh, rep. By its  
 Secretary to Government,  
 Social Welfare Depart, A.P. Secretariat  
 Hyderabad & 5 others

..Respondents

! Counsel for Petitioner : Sri V Surender Rao, learned senior counsel

^Counsel for Respondent No.1 : learned Government Pleader for Revenue

Counsel for Respondent Nos.2 to 5: learned Government Pleader  
 for Social Welfare Department

Counsel for Respondent No.6: Sri C. Srinivasa Baba

< Gist:

> Head Note:

? Cases referred:

1. 2011 (6) ALD 193
2. 2009(2) ALD 296
3. (2011) 5 SCC 553
4. 2003 (6) ALT 133
5. 2001 (1) ALT 688
6. 2001(6) ALD 691 (DB)
7. 2011 Law Suit (SC) 1268



**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Petition No.38026 of 2015**

**ORDER:**

This writ petition is filed 'to declare the proceedings of the Collector & District Magistrate, Nellore District dated 03.11.2015 and the Notification dated 03.11.2015, cancelling the caste certificate of the petitioner, as illegal and arbitrary and in violation of principles of natural justice and contrary to Rule 9(7) of the A.P. (SC. ST. & BC) Issue of Community, Nativity and Date of Birth Certificate Rules, 1997 read with Act 16 of 1993'.

2. Case of the petitioner is that, (i) she belongs to 'Agamudi Mudaliar' (Thuluva Vellalas) community and there has been a representation to include 'Agamudi Mudaliar' (Thuluva Vellalas) caste as one of the backward class in the State of Andhra Pradesh, pursuant to which, the A.P. Commission for Backward Class conducted an enquiry and came to a conclusion that 'Aghamudian, Aghamudiar, Agamudivellalar and Agamudi mudaliar (including Thuluva Vellalas)' are socially and educationally backward and included in the list of backward classes under Group-D at Sl.No.39 in so far as those who are living in Chittoor, Nellore, Kurnool, Anantapur, Hyderabad and Ranga Reddy districts.

ii) Pursuant to the said recommendation, Government of Andhra Pradesh issued G.O.Ms.No.20, Backward Classes Welfare (C2) Department dated 04.07.2008, including the caste of 'Agamudi Mudaliar' (Thuluva Vellalas) in the list of BC under Group-D for the purpose of Article 15(4) and 16(4) of the Constitution of India; prior to inclusion of the above caste in BC-D, petitioner and others were considered under open category; pursuant to the said G.O., petitioner made an application to the Tahsildar, Naidupet Mandal for issuance of BC-D certificate and after verification, he issued BC-D certificate on 02.09.2008 in favour of the petitioner; while so, pursuant



to the notification dated 07.12.2008, petitioner applied to the post of Telugu Pandit Grade-II in SPSR Nellore District and she was selected under BC-D quota and joined the service on 22.10.2009.

iii) One S.Veerawamy, alleged to have made a complaint, before the Collector on 10.10.2011 alleging that the petitioner produced a false certificate, due to which his wife was not selected for the said post; pursuant to the said complaint, the Sub Collector, directed the Tahsildar to cause an enquiry with regard to the caste certificate of the petitioner and the Tahsildar enquired into the matter and issued proceedings dated 05.12.2011, stating that the certificate of the petitioner issued by the then Tahsildar is genuine; thereafter, the Collector issued proceedings dated 20.12.2013 directing the Revenue Divisional Officer to make an enquiry; the Revenue Divisional Officer after conducting enquiry issued proceedings dated 27.12.2013 stating that the claim of the petitioner is genuine; wife of the said Veeraswamy, who is the 6<sup>th</sup> respondent herein filed WP No.22891 of 2014 alleging that she made a complaint before the District Collector on 27.05.2011 and that the same was not looked into, pursuant to which, the Revenue Divisional Officer again directed the petitioner to attend the enquiry on 24.01.2015 and the Revenue Divisional Officer submitted a report on 05.02.2015 stating that Mudaliar is not listed in backward classes and that the petitioner do not belong to 'Agamudi Mudaliar' (Thuluva Vellalas) and hence, petitioner's case was placed before the District Level Scrutiny Committee; the District Level Scrutiny Committee issued notice in Form-VI to the petitioner on 10.03.2015 requiring her to attend for enquiry on 24.03.2015; except recording the statement of the petitioner, no further proceedings were held in her presence; the District Collector, Nellore issued proceedings dated 03.11.2015 under Section 5(1) of the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act (for short 'Act 16 of 1993') read with Rule 9(7) of AP (SC, ST & BC) Issue of Community, Nativity



and Date of Birth Certificate Rules, 1997 (for short 'Rules, 1997') observing that the District Level Scrutiny Committee submitted its findings dated 09.10.2015 stating that the petitioner does not belong to 'Agamudi Mudaliar' BC-D community and hence, caste certificate of the petitioner was cancelled; the Tahsildar was also directed to file a criminal case against the petitioner; before taking into consideration of the findings of the District Level Scrutiny Committee, the petitioner was not given any opportunity to submit her objections and the copy of the report of the Committee was also not given to the petitioner. Pursuant to the said proceedings, a notification was also issued on 03.11.2015. Aggrieved by the said proceedings dated 03.11.2015 and the notification dated 03.11.2015, present writ petition is filed.

3. When the writ petition came up for admission on 23.11.2015, this Court granted an interim direction suspending the impugned proceedings.

4. The 2<sup>nd</sup> respondent-District Collector filed counter-affidavit stating *inter-alia* that prior to issuance of G.O.Ms.No.20 BC Welfare (C2) Department, dated 04.07.2008, petitioner's caste was recorded as Modaliar; petitioner availed the benefits of reservation by obtaining caste certificate from the Tahsildar showing her caste as 'Agamudi Mudaliar'; the District Level Scrutiny Committee has gone through the material available on record and opined that the petitioner has failed to prove that she belongs to Agamudi Modaliar; petitioner and her siblings have pursued their studies under OC (Modaliar) category; petitioner's father's caste is not recorded as either 'Thuluva vellala' or 'Agamudi Modaliar'; if she really belongs to Agamudi Modaliar caste, she ought to have registered her caste as agamudi modaliar in her school records instead of modaliar and prayed for dismissal of the writ petition.



5. Reply-affidavit is filed by the petitioner to the counter-affidavit of the 2<sup>nd</sup> respondent stating *inter-alia* that the petitioner belongs to Agamudi Modaliar; the Revenue Divisional Officer submitted enquiry report on 27.12.2013 stating that the petitioner's mother's caste was mentioned as 'Thuluva vellala' and that the petitioner may be treated as agamudi modaliar and the modaliar caste cannot be treated as different from agamudi modaliar; the enquiry as contemplated under rule 9(3)(4) of the Rules, 1997 was not conducted.

6. Heard the learned senior counsel representing Smt. K. Udaya Sri, learned counsel for the petitioner, learned Government Pleader for respondents 1 to 5 and Sri C.Srinivasa Baba, learned counsel for the 6<sup>th</sup> respondent. Perused the record.

7. Sri V Surender Rao, learned senior counsel appearing for the petitioner contends that the District Collector has to decide whether the certificate is genuine or not under Rule 9(7) of the Rules of 1997 and before taking a decision, she should give a reasonable opportunity to the petitioner by giving a copy of the District Level Scrutiny Committee report to the petitioner and inviting objections from her. He further submits that Rule 9(7) of the Rules, 1997 came up for consideration before this Court in '*K.Suraj Singh vs. The Collector & District Magistrate, Kadapa*<sup>1</sup>', wherein it was held that 'before taking a decision under Rule 9(7) of the Rules, the District Collector has to give an opportunity to the affected persons against whom the cancellation of the certificate is contemplated'. He also relies upon the judgment of this Court in '*Jadhav Rekoba vs. Government of Andhra Pradesh*<sup>2</sup>' and submits that the report of the Scrutiny Committee has to be furnished to the aggrieved party before passing the orders under Section 5 of the Act 16 of 1993.

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<sup>1</sup> 2011(6) ALD 193

<sup>2</sup> 2009(2) ALD 296



8. Sri C. Srinivasa Baba, learned counsel appearing for the 6<sup>th</sup> respondent filed a memo along with some papers said to have secured by the 6<sup>th</sup> respondent under Right to Information Act and basing on the said documents, he submitted that the petitioner belongs to Modaliar community and not agamudi modaliar community and hence, the proceedings of the District Collector dated 03.11.2015 and the consequential notification, needs no interference by this Court.

9. The impugned notification dated 03.11.2015 issued by the District Collector under Section 5(1) of the Act 16 of 1993, reads as follows:

“D.Dis.C5(M) 1802/2011 Collector’s office, Nellore, dated 03.11.2015.

**NOTIFICATION**

In accordance with Sec.5(1) of the AP (SC, ST & BCs) Regulation of issue of Community Certificates Act, 16 of 1993, read with Rule 9(7) of AP (SC, ST & BCs) issue of Community, Nativity and Date of Birth Certificate Rules, 1997, communicated in G.O.Ms.No.58, Social Welfare Department, dated 12/5/1997, the agamudi Modaliar (BC) community certificates of Smt. Nannagaram Praveena, D/o Krishnaiah, Naidupet Town and Mandal, Sri Potti Sriramulu Nellore Dist. issued by the then Tahsildar, Naidupet in Cr.No.3711/2008, dt.02.09.2008 and CGCO81195402, dated 15.08.2012 are hereby cancelled.”

10. Section 5 of Act 16 of 1993 deals with cancellation of the false community certificate. The said section reads as follows:

“5. Cancellation of the false community certificate - (1)  
 Where, before, or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo-motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making representation: Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and





is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section.

(2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government.”

11. As seen from the said section the District Collector either *suo motu* or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he/she is of the opinion that the certificate was obtained fraudulently, he/she shall issue a notification and cancel the certificate after giving the person opportunity of making representation. The word used in the section is ‘shall’. The District Collector after enquiry if he/she comes to an opinion that the certificate was obtained fraudulently, he/she has to give the person concerned an opportunity of making a representation and then issue a notification cancelling the said certificate. But the grievance of the petitioner in the present case is that the District Collector enquired into the correctness of the certificate and she came to an opinion that the certificate was obtained fraudulently but without giving any opportunity of making a representation, she cancelled the certificate by issuing the impugned notification. It is the admitted case of the respondents that no such opportunity of making a representation was given to the petitioner before issuing such a notification. The Rules were also issued which are called ‘Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes - Issue of Community, Nativity and Date of Birth Certificates Rules, 1997’ in exercises of the powers conferred by sub-section (1) of Section 20 of Act 16 of 1993.

12. Rule 9 of the said rules of 1997 deals with ‘fraudulent claims’ and the same reads as follows:

“9. Fraudulent claims. - (1) Where the District Collector receives a written complaint from any person or has otherwise reason to believe that a person not belonging to Scheduled Caste or Scheduled Tribe or Backward Class has



obtained a false Community, Nativity and Date of Birth Certificate to the effect that either himself/herself/or his/her children belong to such a Scheduled Caste/Scheduled Tribe/Backward Class, the District Collector shall refer the case to the Chairman, Scrutiny Committee i.e., Joint Collector of the District (formed under Rule 8, to enquire into such cases and send its findings to the District Collector.

(2) The Scrutiny Committee on receipt of such cases referred to it by the District Collector, shall follow the procedure as listed in Rule 8(d), (1) to (7) except that it shall serve the notice in Form VI on the person involved in the case.

(3) The Scrutiny Committee shall in such cases cause enquiry by the protection of Civil Rights/Vigilance Cell also i.e. through the officer representing the Protection of Civil Rights/Vigilance Cell as the member of the Committee. The protection of Civil Rights/Vigilance Cell should investigate the social status claimed by the person by sending the Inspector of Police to the local place of residence of that person and where he/she usually resides or in case of migration, to the town or city from which he/she originally hailed from. The Inspector should personally verify and collect all the facts, about the community claim of the person or the guardian or the parent, as the case may be.

(4) Where the person on whom a notice served in Form VI fails to respond to the notice within the period specified in the notice, the Scrutiny Committee may finalise its findings based on the material made available by the District Collector i.e., enquiry report of the Revenue Department, enquiry report of the Protection of Civil Rights/Vigilance cell and the reports of the expert/Officer of the Research Organisation of the Commissionerate of Social Welfare/Tribal Welfare.

(5) The Scrutiny Committee shall compare the enquiry reports of the Revenue Department furnished by the District Collector, the reports of the Protection of Civil Rights/Vigilance Cell and the reports of the Expert or officer of the Research Organisation of the Commissionerate of Social Welfare/Tribal Welfare and then finalise its findings whether the Community, Nativity and Date of Birth Certificate given to the person or his/her children is genuine or otherwise.

(6) The Scrutiny Committee shall furnish its findings to the District Collector within 60 days from the date of the receipt of the reference from the District Collector.

(7) The District Collector shall then decide whether the certificate holder is genuine or fraudulent and in case of his having obtained a Community, Nativity and Date of Birth Certificate fraudulently, the District Collector shall pass an order cancelling the certificate issued, within one month from the date of receipt of the findings of the Scrutiny Committee and shall issue notification to that effect, to be published in the District Gazette. The District Collector shall also take necessary steps to initiate action against the Competent Authority who issued the Community, Nativity and Date of Birth Certificate to the wrong person, besides taking other specified in Rule 15. He shall communicate the cancellation of the certificate to the educational institution/ employer/appointing authority as the case may be forthwith.

(8) In respect of the Bariki SC Community, such written complaints if received by the Collector shall be referred by him to the Government, for necessary enquiry and final action to cancel the certificate, since the District Collector is the Competent Authority to issue the Community, Nativity and Date of Birth Certificate for this community.



(9) The Collector or Government, either *suo motu* or on a written complaint by any person or on request by an employer/educational institution/appointing authority, shall enquire into the correctness of any Community, Nativity and Date of Birth Certificate already issued and if it is found that the certificate is obtained fraudulently, then the District Collector or the Government, as the case may be, shall cancel the certificate as per Section 5 of the Act.

[(10) In respect of Tribals, [the Commissioner of Tribal Welfare/Director of Tribal Welfare], either *suo motu* or on a written complaint by any person or on request made by an employer/educational Institution/appointing authority, shall enquire into the correctness of any community, nativity and date of birth certificate already issued and if it is found that the said certificate is obtained fraudulently, shall refer the case to concerned Collector or the Government for its cancellation as per the procedure laid down Section 5 of the Act.]”

13. As seen from Rule 9, where the District Collector receives a written complaint from any person, he shall refer the case to the Chairman, Scrutiny Committee i.e., Joint Collector of the District (formed under Rule (8), to enquire into such cases and send its findings to the District Collector. According to sub-rule (7) of Rule 9, the District Collector after receipt of the findings from the Scrutiny Committee, shall decide whether the certificate is genuine or fraudulent and if it is found that it is a fraudulent certificate, the District Collector shall pass an order cancelling the same and issue a notification to that effect. The word used in sub-rule (7) of Rule 9 is that the District Collector **shall** decide after the report is received from the Scrutiny Committee. The word ‘decide’ denotes the decision making process by the District Collector and not an unilateral conclusion on the basis of the Committee report i.e., decision making process necessarily includes a notice to the person, who is likely to be affected and an opportunity of being heard.

14. The Hon’ble Supreme Court in ‘*Radhy Shyam vs. State of UP*<sup>3</sup>’, held as follows:

“Before advertng to the precedents in which [Section 5A](#) has been interpreted by this Court, it will be useful to notice development of the law relating to the rule of hearing. In the celebrated case of

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<sup>3</sup> (2011) 5 SCC 553



Cooper v. Wandsworth Board of Works (1863) 143 ER 414, the principle was stated thus:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence." Adam says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".

Therein the District Board had brought down the house of the plaintiff's (Cooper), because he had failed to comply with The Metropolis Local Management Act. [The Act](#) required the plaintiff to notify the board seven days before starting to build the house. Cooper argued that even though the board had the legal authority to tear his house down, no person should be deprived of their property without notice. In spite of no express words in the statute the court recognized the right of hearing before the plaintiff's house built without permission was demolished in the exercise of statutory powers. Byles J stated:

'Although there are not positive words in a statute requiring that the party shall be heard, yet the justice of the common law shall supply the omission of the legislature'.

Perhaps the best known statement on the right to be heard has come from Lord Loreburn, L.C. in [Board of Education v. Rice](#) (1911 AC 179 at 182), where he observed:

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds...In such cases... they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such questions as though it were a trial ...they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial in their view."

In [Ridge v. Baldwin](#) 1964 AC 40 Lord Reid emphasized on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In [O'Reilly v. Mackman](#) 1983 2 AC 237, Lord Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement.

In [Lloyd v. McMahon](#) 1987 AC 625 Lord Bridge said:



"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

In the United States, principles of natural justice usually find support from the Due Process clause of the Constitution. The extent of due process protection required is determined by a number of factors; first the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail.

The amplitude, ambit and width of the rule of *audi alteram partem* was lucidly stated by the three-Judge bench in [Sayeedur Rehman v. State of Bihar](#) (1973) 3 SCC 333 in the following words:

"11.....This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties."

In [Mohinder Singh Gill v. Chief Election Commissioner](#) (1978) 1 SCC 405, Krishna Iyer J. speaking for himself, Beg CJ and Bhagwati J. highlighted the importance of rule of hearing in the following words:

"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has, many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam -- and of Kautilya's Arthashastra -- the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

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48. Once we understand the soul of the rule as fair play in action -- and it is so -- we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more -- but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

In [Maneka Gandhi v. Union of India](#) (1978) 1 SCC 248, Bhagwati J. speaking for himself and Untwalia and Fazal Ali JJ. observed:

"14. ....The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law "lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation". Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(emphasis supplied)

In [Swadeshi Cotton Mills v. Union of India](#) (1981) 1 SCC 664 the majority of the three Judge Bench held that rule of audi alteram partem must be complied with even when the Government exercises power under [Section 18AA](#) of the Industries (Development & Regulation) Act, 1951 which empowers the Central Government to authorise taking over of the management of industrial undertaking.



Sarkaria J. speaking for himself and Desai J. referred to the development of law relating to applicability of the rule of audi alteram partem to administrative actions, noticed the judgments in Ridge v. Baldwin (supra), [A.K. Kraipak vs. Union of India](#) (1969) 2 SCC 262, [Mohinder Singh Gill v. Union of India](#) (supra), [Maneka Gandhi v. Union of India](#) (supra) and State of Orissa v Dr. Bina Pani Dei 1967 (2) SCR 625 and quashed the order passed by the Central Government for taking over the management of the industrial undertaking of the appellant on the ground that opportunity of hearing has not been given to the owner of the undertaking and remanded the matter for fresh consideration and compliance of the rule of *audi alteram partem*.”

15. Admittedly, in the present case, the District Collector did not issue any notice to the petitioner after receipt of the report and before taking a decision and did not issue any notice to the petitioner to make a representation before issuing notification cancelling the caste certificate. It is also the case of the petitioner that the District Collector’s orders cancelling the caste certificate of the petitioner was passed, based on the report of the District Level Scrutiny Committee and the copy of the same was not furnished to the petitioner. The said contention is also not denied in the counter-affidavit by the respondents.

16. In ‘*Bhakhavathsala Sukumar vs. M/s Hindustan Petroleum Corporation*<sup>4</sup>’, it was held that ‘when the enquiry authority relying on a document records a finding, such authority has to furnish such document to the delinquent to offer his remarks and non-supply of such copy would amount to violation of principles of natural justice.’

17. In ‘*M. Karunakar vs. State of A.P.*,<sup>5</sup>’ a question arose as to whether the report of the District Scrutiny Committee should be furnished by the District Collector before issuing a notification under Section 5 of the Act 1993, cancelling the caste certificate and it was held that ‘the District

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<sup>4</sup> 2003(6) ALT 133

<sup>5</sup> 2001(1) ALT 688



Collector has to furnish a copy of the findings of the Scrutiny Committee to the concerned person and give him an opportunity of making representation.’

18. In the present case, the District Collector did not furnish the copy of the report of the Scrutiny Committee to the petitioner. Without giving opportunity to the petitioner to file her objections to the same, the District Collector decided the matter. It cannot be denied that, with the issuance of the caste certificate, certain rights accrued to the petitioner and if the certificate has to be cancelled on the basis of some enquiry, it is incumbent on the part of the District Collector, keeping in view the principles of natural justice to give a copy of the said report and to call for objections before deciding the issue. Even if allegations of fraud or misrepresentation are made, principles of natural justice have to be followed.

19. Learned Government Pleader appearing for the official respondents, relied upon the judgment of the Division Bench of this Court in ‘*Bokkam Ramam vs. District Collector, Visakhapatnam*<sup>6</sup>’, that is the case where the appellant before the Division Bench, whose caste certificate has been cancelled, himself admitted that he produced a false certificate that he belongs to backward class. In view of his admission, it was held ‘that the cancellation of caste certificate cannot be faulted.’ As the facts of the said case are entirely different, the said judgment does not apply to the facts of the present case.

20. He also relied upon the judgment of the Hon’ble Supreme Court in ‘*Anjan Kumar vs. Union of India*’ in Appeal (Civil) No.6445 of 2000 dated 14.02.2006, wherein, it was held ‘the condition precedent for granting tribe certificate being that one must suffer disabilities wherefrom one belongs and that a person not belonging to the scheduled castes or scheduled tribes

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<sup>6</sup> 2001(6) ALD 691 (DB)





claiming himself to be a member of such caste by procuring a bogus caste certificate is a fraud under Constitution and that it would be violative of the mandate of Articles 14 and 21 of the Constitution of India.’

21. The said judgment does not apply to the facts of the present case, on two grounds. Firstly, the present case is not being decided on the merits of the claim of the petitioner. Secondly, the issue in the present case is, whether the procedure contemplated under the Act and the Rules is followed or not and whether an opportunity of making a representation before issuing notification under Section 5 of the Act is given or not to the petitioner and as to whether copy of the enquiry report is furnished to the petitioner to enable her to take effective defence.

22. Learned Government Pleader also relied upon the judgment of the Hon’ble Supreme Court reported in ‘*Bharati Balkrishna Dhongade vs. State of Maharashtra*<sup>7</sup>’ wherein it was held that ‘onus of proof is on the person who claims to belong to that caste and if there is no specific evidence let in to discharge the proof, no interference can be called for.’ To discharge that onus, petitioner ought to be given sufficient opportunity. In the present case no such opportunity was given to her. Hence, this Court cannot come to a conclusion, as to whether the petitioner has discharged her onus of proof.

23. According to section 5 of Act 16 of 1993, if the authority comes to an opinion that the certificate was obtained fraudulently (after giving opportunity), the authority shall before issuing the notification give the person an opportunity of making a representation.

24. In view of the facts and circumstances, as the procedure contemplated under Act 16 of 1993 and the Rules of 1997 are not followed, the impugned proceedings of the Collector cancelling the caste certificate

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<sup>7</sup> 2011 Law Suit (SC) 1268



dated 03.11.2015, and the impugned notification dated 03.11.2015 are liable to be set aside and the same are accordingly set aside and the matter is remitted back to the 2<sup>nd</sup> respondent to decide the matter afresh after giving copy of the report of the Scrutiny Committee to the petitioner and giving opportunity to submit her explanation. After receipt of the explanation from the petitioner, if the District Collector comes to an opinion that the certificate was obtained fraudulently, he/she shall give the petitioner an opportunity of making a representation before issuing a notification cancelling the community certificate. The entire exercise has to be completed as expeditiously as possible and preferably within a period of four (4) months from the date of receipt of the order.

25. The writ petition is, accordingly, allowed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

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**KONGARA VIJAYA LAKSHMI, J**

Date: 15.12.2021  
Note: L.R. copy to be marked.  
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BSS



**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Petition No.38026 of 2015**

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**Date: 15.12.2021**

BSS