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F. No. 12014/1/08-C&LM-I
Government of India
Ministry of Tribal Affairs
(C&LM Division)

Shastri Bhawan, New Delhi-115

Dated: 19th February, 2009

To,

The Secretary,
National Commission for Scheduled Tribes,
Lok Nayak Bhawan,
New Delhi-03.


Subject: Comments on the Draft of a 'Bill to regulate the issue of community certificate to persons belonging to SCs/STs/OBCs - as per direction of the Supreme Court in C.A. No. 4545 of 1994 (in the matter of Director of Tribal Welfare, Government of Andhra Pradesh V/s Lavette Giri and Anothers).

Sir,

I am directed to enclose a copy of the draft of a Bill received from the Ministry of Social Justice & Empowerment on the subject cited above and to say that the Ministry of Social Justice & Empowerment has requested this Ministry, the comments/views of the NCST may also be obtained in the matter.

The NCST is requested to send the comments/views on the draft Bill early to the Ministry so as to enable it to send the consolidated views in the matter to the Ministry of Social Justice & Empowerment for appropriate action.

Yours faithfully,


(Dr. N.K. Ghatak),
Joint Director,
Telefax. 23383965.

Dir. 2009
S. K. Ghatak
For 702/09
25/2/09
Dir. (P. & S.)

A BILL
TO REGULATE THE ISSUE OF COMMUNITY CERTIFICATES
RELATING TO PERSONS BELONGING TO THE SCHEDULED
CASTES, SCHEDULED TRIBES AND OTHER BACKWARD
CLASSES AND MATTERS CONNECTED THEREWITH OR
INCIDENTAL THERETO.

SHORT TITLE,
 EXTENT AND
 COMMENCEMENT

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Scheduled Castes, Scheduled Tribes and Other Backward Classes Regulation of Issue of Community Certificate Act, 1995.

(2) It extends to the whole of the country.

(3) It shall come into force on such date as the Government may, by notification, appoint.

DEFINITIONS

2. In this Act, unless the context otherwise requires:-

(a) Other Backward Classes means any Socially and Educationally Backward Classes of citizens recognised by the Government for purposes of Constitution of India;

(b) 'Community Certificate' means the certificate issued by the competent authority indicating therein the Scheduled Caste, the Scheduled Tribe or the Other Backward Class, as the case may be, to which the person belongs;

(c) 'Competent Authority' means, any officer or authority authorised by the Government by notification to perform the functions of the competent authority under this Act, for such area or for such purposes as may be specified by the notification;

(d) 'Educational Institutes' means any School, Junior Collete, Degree College, College of Education, Polytechnic College, Industrial Training Institute, College of Fine Arts and Architecture, College of Music and Dance, Engineering College, Medical College,

Ayurvedic College, Homeopathic College, Unani College, Dental College, College of Nursing, Nurses Training School, Health Visitors Training School, various colleges under the control of any University established by an Act of the Parliament or State Legislature and such institutions imparting education as may be notified from time to time;

(e) 'Scrutiny Committee' means the Committee constituted by the concerned State Government or U.T. Administration by notification to perform the functions of the Scrutiny Committee under this Act for such area or for such purposes as may be specified in the notification;

(f) 'Government' means the Central Government or State Government or Union Territory Administration;

(g) 'Local Authority' means in relation to local areas comprised within the jurisdiction of a Municipal Corporation, the concerned Municipal Corporation and in relation to any other local area in the State, the concerned Municipal Council, Zilla Parishad, Block Samiti/Parishad, Gram Panchayat or township having jurisdiction over such local area;

(h) 'Notification' means, a notification published in the Gazettee of India or Gazettee of State or Gazettee of UT and the word 'notified' shall be construed accordingly;

(i) 'Prescribed' means, prescribed by rules made by the Government under this Act;

(j) 'Scheduled Castes and Scheduled Tribes' shall have the meanings respectively assigned to them in clause (24) and Clause (25) of Article 366 of the Constitution of India.

3. (1) Any person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes

VERIFICATION
OF A COMMUNITY
CERTIFICATE

may, in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes, either for any public appointment or for admission into any educational institution, or any other benefit under any special provisions made under clause (4) of article 15 of the Constitution of India or for the purpose of contesting for elective posts in any local authority or in the Cooperative Institutions, make an application in such form and in such manner as may be prescribed, to the competent authority for the issue of a community certificate.

(2) Any person belonging to a Scheduled Tribe may for the purpose of claiming any benefit or protection meant for Scheduled Tribes under any notification, direction or regulation made under the Fifth Schedule or Sixth Schedule to the Constitution of India or under any Act, rule, regulation or order for the time being in force in the Scheduled Areas or Tribal Areas made an application in such form and in such manner as may be prescribed to the competent authority for the issue of community certificate.

EXPLANATION: For the purposes of this section and Section 13, 'Scheduled Areas' means the areas as defined in paragraph 6 to the Fifth Schedule to the Constitution and 'Tribal Areas' means the areas as defined in paragraph 20 of the Sixth Scheduled to the Constitution.

COMMUNITY
CERTIFICATE TO
BE ISSUED
BY COMPETENT
AUTHORITY

4. (1) The competent authority may on an application made to it under Section 3, satisfy itself about the genuineness of the claim made therein and thereafter issue a community certificate in such form as may be prescribed and a community certificate issued by any person, officer or authority other than the competent authority shall be invalid.

(2) Before the issue of a certificate under Sub Section (1), the competent authority shall follow such procedure as may be prescribed.

VERIFICATION
OF COMMUNITY
CERTIFICATES
BY THE SCRUTINY
COMMITTEE

5. Each State or UT shall constitute a Scrutiny Committee for verification of Community Certificates.

Any person belonging to Scheduled Caste or Scheduled Tribe or Other Backward Class or appointing authority of the Central or State and or Union Territory or local body or head of educational institution may make an application in such form and in such manner as may be prescribed by the Scrutiny Committee for the verification of Community Certificates.

CANCELLATION
OF FALSE
COMMUNITY
CERTIFICATES

6. Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes, has obtained a false Community Certificate to the effect that either himself or his children belong to such Castes, Tribes or Classes, the Scrutiny Committee may, either suo moto or on a written complaint by any person, call for the record and enquire into the correctness of such certificate was obtained fraudulently, it shall, by an order cancel the certificate after giving the person concerned an opportunity of making a representation. The Scrutiny Committee, while performing its functions for verification and cancellation of Community Certificate, shall follow such procedure as may be prescribed.

BURDEN OF
PROOF

7 (A) Where an application is made to the competent authority under Section 3 for the issue of caste certificate in respect of SC, ST or OBC the burden of proof that the applicant belongs to such caste/tribe/class shall be on the applicant.

(B) Where a complaint is received by the competent authority or the Scrutiny Committee against a person who has secured a caste/tribe or class certificate, the burden of proof shall be on the complainant.

APPEAL

8 (A) Each State will constitute a Scrutiny Committee in every District to be headed by an officer to be decided by the State Government. Any person aggrieved by an order passed under Section 6 by the Scrutiny Committee may, within 30 days of the date of receipt of such order may appeal to the District Magistrate who will dispose of the case within three months.

(B) An appeal against the order of District Magistrate shall lie before the High Court and the High Court will dispose of the case as expeditiously as possible within a period of three months.

POWER OF REVISION BY SCRUTINY COMMITTEE

9. (1) The Scrutiny Committee, may, at any time, either suo moto or on an application made to them within the prescribed period, call for an examine the record, relating to any decision made or order passed by any person, officer or authority subordinate to them for the purpose of sartisfying themselves as to the legality, regularity or propriety of such decision or order and if, in any case, it appears to the Committee that any such decision or order shall be modified, annulled, reversed or remitted or reconsideration, they may pass orders accordingly; provided that the Committee shall not pass any order prejudicial to any party under such party has been given an opportunity of making a representation or being heard.

(2) The Committee may stay the execution of any such decision or order pending exercise of their powers under sub-section (1) in respect thereof.

PENALITIES

10. Whoever obtains a community certificate by:-

- (a) furnishing false information; or
- (b) filing a false statement; or
- (c) by any other fraudulent means

shall, on conviction, be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend upto five years and with fine which shall not be less than five thousand rupees but which may extend upto ten thousand rupees.

BENEFITS SECURED ON THE BASIS OF FALSE COMMUNITY CERTIFICATE To

11. (1) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes secures admission in any educational

institution against a seat reserved for such Castes, Tribes or Classes or secures any appointment or any benefit in the Government, local authority or in any company or corporation, owned or controlled by the Government or in any aided institution against a post reserved for such Castes, Tribes or Classes by producing a false Community Certificate shall on cancellation of the false Community Certificate be liable to be debarred from the concerned educational institution, or as the case may be, discharged from the said service forthwith and any other benefit enjoyed by him as aforesaid shall be withdrawn forthwith.

(2) Any amount paid, to such person by the Government or any other agency by way of scholarship, grant, allowance or other financial benefit shall be recovered as an arrear of land revenue.

(3) Any Degree, Diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him.

(4) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes secures any benefit reserved for Scheduled Castes, Scheduled Tribes or Other Backward Classes other than those mentioned in section 12 by producing a false community certificate shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend upto 5 years and with fine which shall not be less than five thousand rupees but which may extend upto ten thousand rupees.

(5) Whoever not being a person belonging to any of the Scheduled Castes, Scheduled Tribes or Other Backward Classes secures an appointment in Government or other institutions referred to in Section 11(1) against the posts reserved for the Scheduled Castes,

Scheduled Tribes or Other Backward Classes shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend upto five years, and with fine which shall not be less than five thousand rupees but which may extend upto ten thousand rupees.

PENALTY FOR
SECURING AN
APPOINTMENT OF
ELECTION TO
POLITICAL
OFFICES ETC. ON
THE BASIS OF
FALSE COMMUNITY
CERTIFICATES

12. Whoever not being a person belonging to any of the Scheduled Caste, Scheduled Tribe or Other Backward Classes is elected to any of the elective offices or any local authority reserved for Caste or Tribe on the basis of a false certificate should be punishable with rigorous imprisonment or a term which shall not be less than two years but which may extend upto five years and with fine which shall not be less than five thousand rupees which may extend to ten thousand rupees. Further election of such person shall be deemed to have been void/terminated forthwith. Any assets created with the Government assistance shall be forfeited. A person found guilty as above shall be debarred from contesting any election upto a period of 6 years from the date of conviction.

13. Whoever not being a person belonging to Scheduled Tribe secures any benefit or protection into for a member of a Scheduled Tribe under a notification, direction or regulation made under the Fifth Scheduled or Sixth Schedule to the Constitution of India or under any other law in force in the Scheduled Areas or Tribal Areas on the basis of a false community certificate shall, on conviction be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend upto five years and with fine which shall not be less than five thousand rupees but which may extend upto ten thousand rupees.

PENALTY FOR
ISSUING A
FALSE COMMUNITY
CERTIFICATE

14. (1) Any person or authority performing the functions of competent authority under this Act, who intentionally, knowing full well that the person claiming the certificate does not belong to such Scheduled Caste, Scheduled Tribe or Other Backward Classes, issues a false community certificate shall o

conviction will be punished with rigorous imprisonment for a term which will not be less than two years but which may extend upto five years and also with fine which will not be less than five thousand rupees but which may extend upto ten thousand rupees.

14. (2) Whoever intentionally gives false information or evidence before the competent authority or Scrutiny Committee, knowing full well that the person claiming the certificate does not belong to such Scheduled Caste, Scheduled Tribe or Other Backward Classes shall be punished with imprisonment provided in those for such offences.

14. (3) No Court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government.

PENALTY FOR ABETTERS.

15. ~~Whoever abets any offence punishable under this Act shall be punished with the punishment provided for in this Act for such offences.~~

POWER TO TRY OFFENCES SUMMARILY

15. Every offence punishable under this Act, shall be tried by a Magistrate of First Class in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code of Criminal Procedure, 1973 shall be applied to such trial.

OFFENCES UNDER THE ACT TO BE COGNIZABLE

16. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, shall be cognizable and non-bailable.

BAR OF JURISDICTION OF COURTS

17. (1) No order passed or proceeding taken by any officer or authority under this Act, shall be called in question in any court of law lower than the District and Session Courts.

(2) No Civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order, if the claim involved in such suit or proceeding, or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

PROTECTION FOR ACTS DONE IN GOOD FAITH

18. No suit, prosecution or other legal proceedings shall lie against any person for anything which is

done in good faith or intended to be done in pursuance of this Act or the rules made thereunder.

POWER TO
MAKE RULE

19. (1) The Government may, by notification, make rules carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall immediately after it is made, be laid before the Parliament if it is in session and if it is not in session, in the session immediately following.

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