

(1984) 11 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 4896 of 1983-J

A.K. Thevan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-1984

Acts Referred:

Constitution of India, 1950 — Article 341(2)

Citation : AIR 1986 Ker 15

Hon'ble Judges : P.C. Balakrishna Menon, J

Bench : Single Bench

Advocate : V.N. Achutha Kurup, for the Appellant; Central Govt. Standing Counsel and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—By this writ petition the petitioner seeks a declaration that the Pulaya caste in Kerala falls under Entry 54 in the list of Scheduled Castes in Kerala appended to the Constitution (Scheduled Castes) Order, 1950, as amended by Central Act 108 of 1976.

2. The petitioner is a member of the Pulaya Community belonging to the erstwhile Travancore-Cochin area of the Kerala State. He is presently working as Supervisor in the Posts and Telegraphs Department in the Cochin Foreign Post Office. He is also the Vice President of the Kerala Harijan Federation and the President of the All India Scheduled Castes/Tribes Federation of Post and Telegraph Employees, Kerala Circle.

3. After the amendment of the Constitution (Scheduled Castes) Order, 1950 by Act 108 of 1976, the 4th respondent issued a circular letter requiring all officials belonging to Scheduled Castes and Scheduled Tribes, working in the Department to produce caste certificates. As per orders issued by the State Government, Tahsildars are empowered to issue such certificates in respect of persons residing within the local area of their jurisdiction. Persons belonging to scheduled castes

were required to produce caste certificates issued by the competent authority to prove their eligibility for certain reservations in the matter of promotion to higher grades and posts in service. The certificates produced by the members of the Pulaya Community were not accepted for the reason that "Pulaya" is not one of the castes included in the Scheduled Castes Order issued by the President of India. SL No. 54 in the schedule attached to the Presidential Order as amended is "Pulayan, Cheraman". The stand taken by the Department is that Pulaya is not the same as "Pulayan" notified as a scheduled caste under the Presidential Order as amended in 1976. Since there was large scale rejection of such certificates the Government of Kerala by letter dt. 24-9-1980 produced as Ext. P 1 informed the 4th respondent the Post Master General Kerala Circle, as follows :

"Pulaya is only an anglicised version of "Pulayan" which is included as item No. 54 in the list of Scheduled Castes/Scheduled Tribes Orders (Amendment) Act 1976. Hence Pulaya and Pulayan are one and the same community and those who are having community certificates as Pulaya are also eligible for all concessions and benefits admissible to scheduled castes/scheduled tribes."

4. In the meanwhile one Sri. K. Raghavan, a member of the Pulaya Community employed as a Sorter in the Posts and Telegraphs Department claimed the benefits of the reservation quota for promotion due to scheduled castes/scheduled tribes on the basis that "Pulaya" is a scheduled caste under the Presidential Order. The 4th respondent the Post Master General referred the question to the 3rd respondent the Director General of Posts and Telegraphs, New Delhi bringing to his notice also the stand taken by the State Government as per its letter Ext. P 1. The 3rd respondent by letter Ext. P2 dt. 27-1-1983 informed the 4th respondent that the Ministry of Home Affairs is of the view that "Pulaya" is not the same as "Pulayan" and the State Government is not entitled to alter the list of Scheduled Castes and Scheduled Tribes notified under the Presidential Order. The letter concludes by saying :

"The Ministry of Home Affairs have further stated that in view of the position explained above, persons belonging to Pulaya Community in Kerala cannot be issued certificates to the effect that they belong to SC/ST."

The Government of Kerala had on representations submitted by interested persons and association considered the question and passed an order G. O. Ms. 139/80-DD dt. 27-11-1980, a copy of which is produced as Ext. P 3. The relevant portion of Ext. P 3 is extracted below :

"It is common knowledge that Pulayan, Pulayar and Pulaya have the same meaning.

Pulaya denotes the name of the Community, Pulayan is a member of the Pulaya Community and Pulayar is the plural of Pulayan, This analogy is equally applicable to (1) Cherama, Cheraman and Cheramar, (2) Paraya, Parayan and Parayar (3) Sambava, Sambavan and Sambavar. It is also seen that the same is the case with Kuravan which is included as item No. 34. Kurava and Kuravar, the

derivations of the word Kuravan, denote the same community as Kuravan."

In spite of Exts. P 1 and P 3, the Posts and Telegraphs Department has taken the stand that "Pulaya" is not the same as "Pulayan" included in the list of scheduled castes appended to the Presidential order. It is under these circumstances that the petitioner representing his community and in his capacity as an office-bearer of the two organisations referred to above, has filed this writ petition.

5. Article 46 of the Constitution directs the State 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 the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. It is in pursuance to this direction contained in the Constitution that reservations have been made in favour of Scheduled Castes and Scheduled Tribes in the matter of employment and promotion in Government service. The Constitution (Scheduled Castes) Order 1950 was issued by the President of India in virtue of the powers conferred on him under Clause (1) of Article 341 of the Constitution. As per Clause (2), it is only the Parliament that is empowered to alter or amend the Presidential Order issued under Clause (1). The Amendment Acts of 1950 and 1976 were passed by Parliament in exercise of its powers under Clause (2) of Article 341. A schedule containing the scheduled castes in various States is appended to the Presidential Order as provided for in Clause 2 thereof. Entry 54 in the schedule relating to the State of Kerala in the Presidential Order as amended is "Pulayan, Cheraman".

6. An entry in the Presidential Order relating to a Scheduled Caste can be interpreted to understand its coverage admits of no doubt in view of the decisions of the Supreme Court in B. Basavalingappa Vs. D. Munichinnappa, and Bhaiya Ram Munda Vs. Anirudh Patar and Others, Both these cases arose out of election disputes in respect of constituencies reserved for scheduled castes/scheduled tribes. In the decision in B. Basavalingappa Vs. D. Munichinnappa, , it is stated at page 1271 :

"The difficulty in the present case arises from the fact (which was not disputed before the High Court) that in the Mysore State as it was before the re-organisation of 1956 there was no caste known as Bhovi at all. The order refers to a scheduled caste known as Bhovi in the Mysore State as it was before 1956 and, therefore, it must be accepted that there was some caste which the President intended to include after consultation with the Rajpramukh in the Order, when the Order mentions the caste Bhovi as a scheduled caste. It cannot be accepted that the President included the caste Bhovi in the Order though there was no such caste at all in the Mysore State as it existed before 1956. But when it is not disputed that there was no caste specifically known as Bhovi in the Mysore State before 1956, the only course open to Courts to find out which caste was meant by Bhovi is to take evidence in that behalf. If there was a caste known as Bhovi as such in the Mysore State as it existed before 1956, evidence could not be given to prove that any other caste was included in the Bhovi caste. But when the undisputed fact is that there was no caste specifically known as

Bhovi in the Mysore State as it existed before 1956 and one finds a caste mentioned as Bhovi in the Order, one has to determine which was the caste which was meant by that word on its inclusion in the Order. It is this peculiar circumstance, therefore, which necessitated the taking of evidence to determine which was the caste which was meant by the word "Bhovi" used in the Order, when no caste was specifically known as Bhovi in the Mysore State before the re-organisation of 1956."

In *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, , the Supreme Court following its earlier decision in *Dina v. Narayan Singh* (C. A. No. 1622 of 1967) : (reported in (1968) ELR (SC) 212, held as follows :

"The decision clearly decides that the name by which a tribe or sub-tribe is known is not decisive. Even if the tribe of a person is different from the name included in the Order issued by the President, it may be shown that the name included in the Order is a general name applicable to sub-tribes."

In the Travancore State Manual 1906 by V. Nagam Aiya, it is stated at page 403 of Vol. 2 :--

"Pulayas. Origin and designation. The word Pulaya means a polluted man. In British Malabar and Cochin the Pulayas are known as Cherumas. They are an aboriginal race peculiar to Malabar and are found distributed all over Travancore, north of Nanjanad, but are scarce in the Tamil taluqs of the south. Their number, according to the Census of 1901, was 206503."

In the Travancore State Manual by T.K. Velu Pillai Pulaya is dealt with at page 861 of Vol. 1 as follows :

"The Pulayas are agricultural labourers. The name Pulaya is disliked by a large section of the community, particularly the converts to Christianity, who are adopting the name Cheramar, but many adhere to the old practice of calling themselves Pulayas. There are different accounts regarding the origin of the Pulayas. They are supposed by some to be the descendants of the aborigines who preferred slavery in the plains to freedom with starvation in the jungles. Others say that they were Dravidian immigrants. The tradition current among the Pulayas themselves points to their having been an influential community in the distant past."

It is again stated at page 862 :

"Pulayas are for the most part labourers and invariably stick to the estates on which they labour. With the help of the Government and of several prominent men of the advanced communities, they have been able to organise associations, such as the Sadhujana Paripalana Sangham, the Central Travancore Pulaya Samajam and the Cheramar Mahajana Sangham, to look after their common interests."

7. Exhibits P1 and P3 proceedings of the Government of Kerala have clearly

declared that "Pulaya" is the same as "Pulayan" notified as a Scheduled Caste under the Presidential Order. Both the names are only synonyms and the distinction sought to be made out is without any difference. There will therefore be a declaration that "Pulaya" is a scheduled caste within the meaning of Entry 54 in the list of Scheduled Castes in Kerala appended to the Constitution (Scheduled Castes) Order, 1950 as amended by Central Act 108 of 1976.

This original petition is allowed as indicated above. There will be no order as to costs.