
(2010) 10 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 1819 of 2010

C. Dorali and Others

APPELLANT

Vs

Union of India (UOI) and State of Tamil Nadu

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 341, 341(1), 342, 342(1)

Citation : (2011) 2 MLJ 183

Hon'ble Judges : M.Y. Eqbal, C.J.;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; J. Ravindran, Asst. Solicitor General of India for Respondents 1 to 3 and J. Raja Kalifulla, Govt. Pleader assisted by M. Sneha, Government Advocate for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—In this writ petition, the Petitioner has prayed for the issue of a Writ of Certiorarified Mandamus for quashing the order bearing F. No. 12016/6/2001-TA (ME)/C & LM-I (Part. II) dated 8th April, 2009 issued by the first Respondent namely, the Secretary, Ministry of Tribal Affairs, Union of India and further directing Respondents 1 to 3 to reconsider the proposal of the fourth Respondent declaring Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar as member of the Scheduled Tribes.

2. It appears that by letter dated 21st August, 2006 addressed to the first Respondent, the fourth Respondent i.e., Government of Tamil Nadu requested the first Respondent to include the aforesaid six names as synonyms of Kurumans in the list of Scheduled Tribes in Tamil Nadu. The Petitioners' case is that as per the study conducted by the The Study of Director, Tribal Research Centre, Ooty, it reveals that communities like Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar are identical to each other and these names are synonyms to the community of Kurumans and therefore, these communities

may be brought under Kurumans in the list of Scheduled Tribes.

3. The first Respondent in their counter affidavit has stated that on 15th June, 1999, the Government of India has laid down certain modalities for determining the claims for inclusion in, exclusion from and other modifications in orders specifying Scheduled Castes and Scheduled Tribes lists. The said modalities have been revised on 25th June, 2002. According to this Respondent, only those proposals, which have been recommended and justified, by the concerned State Government, the Registrar General of India (RGI) and the National Commission for Scheduled Tribes (NCST) are to be considered for amendment of legislation. The proposal of the fourth Respondent has been rejected by the Ministry of Tribal Affairs for inclusion of Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar as synonyms of Kurumans in the list of Scheduled Tribes of Tamil Nadu under para (f) of the amended modalities. It is further stated that the aforesaid proposal for inclusion of Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar as synonyms of Kurumans ST of Tamil Nadu has again been rejected by the Ministry of Tribal Affairs vide letter dated 8th April, 2009.

4. We have heard the learned Counsel for the parties.

5. As noticed above, the request of the fourth Respondent for declaring the aforementioned 6 names as synonyms of Kurumans has already been rejected twice by the first Respondent on the basis of the report of the competent authority.

6. The question, therefore, that falls for consideration is as to whether this Court in exercise of power under Article 226 of the Constitution of India can issue such a direction again to consider and/or to declare Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar as synonyms of Kurumans.

7. A similar matter came up for consideration before the Supreme Court in the case of Nityanand Sharma and another Vs. State of Bihar and others, . In the aforesaid case the contention of the Appellant was that the Lohar community was included in the schedule under the Act, as reflected in the Hindi version of the order, and thereby they are entitled to be recognized as Scheduled Tribes. Answering the said contention, their Lordships held as under: (paras 7 & 8, page 2308)

7. In view of the respective contentions, the question that arises for consideration is: Whether the Court can give declaration of the social status as a Tribe or declare Lohars as Scheduled Tribe in the Act and the Schedule of the Act? Clause (24) of Article 366 defines "Scheduled Castes" and Clause (25) of Article 366 defines "Scheduled Tribes". The latter means "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution". Article 341(1) empowers the President, in consultation with the Governor of the State concerned, to specify Scheduled Castes by public notification. Equally, Article 342(1) empowers the President "with respect to any

State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be". Article 342(2) empowers Parliament, by law, to include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1), any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said Clause shall not be varied by any subsequent notification. In other words, it is the constitutional mandate that the tribes or tribal communities or parts of or groups within such tribes or tribal communities specified by the President, after consultation with the Governor in the public notification, will be Scheduled Tribes subject to the law made by Parliament alone, which may, by law, include in or exclude from the list of Scheduled Tribes specified by the President. Thereafter, it cannot be varied except by Parliament. The specification is for the purpose of the Constitution.

8. Constitutional rights given in Part III and Part IV of the Constitution are relating to election to Parliament or the State Legislature. Section 2(f) of the Act defines "Scheduled Tribes Order". It means "the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959 made by the President under Article 342 of the Constitution". Section 3 deals with amendment of the Scheduled Castes Order and Section 4 deals with amendment of Scheduled Tribes Order. The Scheduled Tribes Orders are amended in the manner and to the extent specified in the Second Schedule. First Schedule relates to Scheduled Castes and Second Schedule relates to Scheduled Tribes.

8. In the case of *State of Maharashtra v. Milind* reported in 2001 (1) SCC 4, the Supreme Court, while deciding a similar issue, observed: (para.12, page 15)

12. Plain language and clear terms of these articles show (1) the President under Clause (1) of the said articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) under Clause (2) of the said articles, a notification issued under Clause (1) cannot be varied by any subsequent notification except by law made by Parliament. In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under Clause (1) of the said articles. In including castes and tribes in Presidential Orders, the President is authorised to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the

entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. The States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to the entire State or parts of State. It appears that the object of Clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be, within the meaning of the entries contained in the Presidential Orders issued under Clause (1) of Articles 341 and 342, is to be determined looking to them as they are. Clause (2) of the said articles does not permit any one to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but caste/Tribe (B) is also a part of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the entries in the schedules pertaining to each State whenever one caste/tribe has another name it is so mentioned in the brackets after it in the schedules. In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Scheduled Caste/Scheduled Tribe for the purpose of Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under Clause (1) of the said articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament. Hence it is not possible to say that State Governments or any other authority or courts or Tribunals are vested with any power to modify or vary the said Orders. If that be so, no inquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in Clause (2) of Articles 341 and 342 would be futile, holding any inquiry or letting in any evidence in that regard is neither permissible nor useful.

9. In the instant case, it appears that the proposal of the State Government for inclusion of Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar as synonyms of Kurumans in the list of Scheduled Tribes has been considered in detail by the competent authority of the first Respondent. It has been categorically held by the competent authority that Kurumans and Kurumbas are not synonyms to each other, but they are two different Scheduled Tribes in the State of Tamil Nadu. Be that as it may. Having regard to the fact that the proposal of the fourth Respondent was twice considered and rejected by the competent authority, this Court, in exercise of writ jurisdiction, can neither declare Kuruma, Kurumba, Kurumba Gounder, Kurumban and Kurumbar as synonyms of Kurumans nor deem it proper to send the proposal for reconsideration.

10. For the aforesaid reason, no relief can be granted in this writ petition. The

writ petition is dismissed. No costs.