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**(2006) 08 MAD CK 0162**

**In the Madras High Court**

**Case No : Writ Petition (MD) No. 7219 of 2006**

John Ayyathurai Devehdrar, Vice-President of Devendra Kula  
Velalar Sangam

**APPELLANT**

**Vs**

The Secretary, Social Welfare Department

**RESPONDENT**

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**Date of Decision : 19-08-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 15(4), 16(4), 338, 341, 342

**Citation : (2006) 08 MAD CK 0162**

**Hon'ble Judges : R. Sudhakar, J**

**Bench : Single Bench**

**Advocate : R. Murugappan, for the Appellant; K. Balasubramanian, Additional Government Pleader, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R. Sudhakar, J.—The Writ Petition is filed praying for the issuance of a Writ of Mandamus directing the Respondent to consider the representation of the Petitioner dated 5.7.2006.

2. Mr. K. Balasubramanian, learned Additional Government Pleader takes notice, on instruction, on behalf of the Respondents. By consent of both parties, the writ petition itself is taken up for disposal.

3. The present writ petition is filed by the Vice-President of Devendra Kula Velalar Sangam, Virudhunagar District. According to the Petitioner, the community-Devendra Kula Velalar includes several other groups called Pallan, Kudumpan, Pannadi, Kaladi, Kadaiyan, Pannaiyandi and Vathirian. The prayer of the Petitioner is that all these persons should come under common nomenclature by name "Devendra Kulathar". According to the Petitioner, such common nomenclature will be helpful in securing Government employment and admission to educational institutions easily. A representation was made on 5.7.2006 to the Respondent and since there was no response, the present writ petition has been

filed for a direction to the Respondent to consider the representation. The gist of the representation dated 5.7.2006 is as follows:

The people notified as scheduled caste by the Tamilnadu Government viz., Devendra Kulathan, Pannadai, Pallan, Kudumban, Kaladi, Vathirian shall be brought under one nomenclature viz.

"Devendra Kulathan" in the Government records, community certificates, educational institutions and scheduled items, so as to avoid the hardship faced by their community people at the time of census, getting community certificate and reservation for education and job opportunities.

In other words, the plea of the Petitioner is that the nomenclature of all the scheduled caste notified should be modified and should be given a common name as Devendra Kulathan. In effect, the Presidential Notification, based on which, the list of scheduled caste has been identified, is sought to be changed. In this regard, a representation has been made to the Respondent. Whether the Respondent or any other authority has got the power to vary the names of various communities notified as scheduled caste and bring them into one community as "Devendra Kulathan" is the issue before this Court.

4. Before we consider the claim of the Petitioner for a Mandamus, it will be useful to refer to The Constitution in matters relating to rights of Scheduled Caste and Scheduled Tribes. Article 341 of The Constitution of India reads as follows:

341. Scheduled Castes (1) The President may 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 castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe, or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

5. A reading thereof would clearly indicate that the President may, with respect to any State or Union Territory, after consultation with the Governor, by notification, specify the caste, races or tribes or parts of or groups within castes, races or tribes, which shall, for the purposes of the Constitution be deemed to be scheduled castes in relation to that State or Union Territory, as the case may be. Under Clause(2) thereof, Parliament has been empowered by law either to include in or exclude from the list of the scheduled castes specified by the President under Clause (1) of Article 341, any caste, race or tribe or part of or group within any caste, race or tribe. Once Parliament by law includes in or excludes from any race, caste, tribe, parts of or groups within any caste, race or tribes, save as aforesaid a notification issued under the said clause shall not be

varied by any subsequent notification.

6. Article 338 of the Constitution provides for creation of National Commission for Scheduled Castes and Scheduled Tribes. Clause (5) of Article 338 sets out the duty of the National Commission, which is as follows:

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Sub Clause (f) of Clause (5) of Article 338 provides that the Commission can discharge other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may by rule specify, subject to the provisions of any law made by Parliament. It is clear that the protection, welfare and development of the Scheduled Castes and Scheduled Tribes are within the powers of the National Commission for Scheduled Castes and Scheduled Tribes to be constituted under the provisions of Article 338 of the Constitution of India.

7. As stated above, under Article 341 of The Constitution of India, power vests with the President to issue a notification and specify the caste, race or tribe or parts of or groups within castes, races or tribes which shall for the purpose of the Constitution be deemed to be Scheduled Castes in relation to the States. Such power cannot be exercised by any other Constitutional Authority including the Courts.

8. The scope of the Court as well as the authority of the State to interfere with the entry relating to scheduled caste or scheduled tribe including the power of the President to vary or modify the Presidential Order or Notification has been

dealt with in a number of cases. Most recent decision of the Apex Court was rendered in the case of *State of Maharashtra v. Milind* (2001 (1) SCC 4). It will be useful to refer to the following paragraph in the above said decision, which is set out as here-under:

Thus, it is clear that States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes.

... Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste, a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in Clause(2) of the said Article, it is expressly stated that the said Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike Courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or Courts or other authorities or Tribunals to hold enquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential Order, when it is not so specifically included, may lead to problems. In order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments nor the Courts nor Tribunals nor any authority can assume jurisdiction to hold enquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one entry or the other although they are not expressly and specifically included. A Court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any enquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

In conclusion, the Apex Court summarised the issue as follows:

In the light of what is stated above, the following positions emerge:

i. It is not at all permissible to hold any inquiry or let in any evidence to decide or

declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order 1950.

ii. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

iii. A Notification issued under Clause(1) of Article 342, specifying scheduled tribes can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of scheduled tribes issued under Clause (1) of Article 342 only by Parliament by law and by no other authority.

iv. It is not open to the State Governments or Courts or Tribunals or any other authority to modify, amend or alter the list of scheduled tribes specified in the Notification issued under Clause (1) of Article 342.

9. Therefore, the prayer now sought for by the Petitioner to modify or to vary the nomenclature of the scheduled caste is opposed to the provision of the Constitution of India and the writ petition for a direction to consider the representation as stated by the Petitioner by the Respondent herein cannot be granted.

10. The question whether this Court could issue a writ in the nature of a mandamus with reference to the prayer sought for in the considered view of this Court is a definite "no" and for the following reason. Mandamus derived from its English origin means a "royal command". A Writ of Mandamus is issued in favour of a person who establishes a legal right in himself. A Writ of Mandamus is issued against a person who has a legal duty to perform, but failed and/or neglected to do so. Such legal duty emanates from either in discharge of a public duty or by operation of law (vide Union of India (UOI) and Another Vs. S.B. Vohra and Others, . No such proposition arises in this case. Further, the Respondent is under no obligation muchless a statutory obligation to consider the representation and is not an authority who can redress the grievance of the Petitioner. There is no duty cast on the Respondent to act in the manner that the writ Petitioner wants the Respondent to do. When the power of the Court itself is restrained in this particular issue, a direction as prayed for by the Petitioner cannot be issued to the Respondent. In this case, the Respondent, viz., Secretary, Social Welfare Department is not the competent authority to grant the relief sought for by the Petitioner. Therefore, mandamus cannot be issued to the Respondent to consider the representation made by the Petitioner.

11. In the result, the Writ Petition is dismissed. No costs.