

(1995) 03 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 6758 of 1987

Kerala Pattika Jathi Samrekshana Samithy and Another	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 14-03-1995

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 341
Evidence Act, 1872 — Section 35
Kerala Education Rules, 1959 — Rule 3

Citation : AIR 1995 Ker 337 : (1995) 3 ILR (Ker) 1

Hon'ble Judges : M.M. Pareed Pillay, C.J;T.V. Ramakrishnan, J;P. Shanmugam, J

Bench : Full Bench

Advocate : K.V. Kumaran, for the Appellant; K. Thankappan, Govt. Pleader, K.S. Babu, S. Venkitasubramonia Ayyar, V. Giri, V.P. Seemanthini and N.D. Premachandran, M.K. Damodaran, P.C. Sasidharan, P.R. Raman and B.S. Krishnan, for the Respondent

Judgement

Shanmugam, J.—The petitioners have preferred the Original Petition praying for a writ of certiorari, a writ of mandamus and a declaration containing four prayers. The petitioners did not press the prayers in respect of mandamus but have restricted their prayers to

(a) issue a writ of certiorari to quash Exts. P1 to P4 and

(b) issue a declaration that the change of caste in school records by substituting the name of Scheduled Caste in the place of the name of caste or community coming under the category of Other Backward Classes in school records is illegal and null and void ab initio.

2. When the matter came up before the Bench consisting of K..S. Paripoornan, J. (as he then was) and K.P. Balanarayana Marar, J. on 12-4-1991, the Division Bench ordered that this matter requires indepth consideration and that the impact and the result of this litigation has far reaching consequences regarding the future of the Scheduled Castes and Scheduled Tribes in the State, and in

view of the public importance that is inherent in the very resolution of the controversy posed before this Court and the substantial questions of law that arise for consideration, the case was referred to the Full Bench.

3. The two main questions that arise for consideration before the Full Bench are;

(1) What is the community status of "Thandans"?

(2) Whether the procedure prescribed for corrections of entries in the school records under Exts. P2 to P4 is valid and if it is not valid, the consequences of the corrections/ changes already made?

The issue relating to the first question is fully covered by the Supreme Court decisions which will be referred to later. Mr. K.V. Kumaran, learned counsel for the petitioners made a detailed submission.

4. Briefly stated the facts of the case are follows. The petitioners represent the Scheduled Caste Community. In view of the special benefits provided for the Scheduled Castes by the Government there has been an attempt on the part of the other backward classes to masquerade themselves as Scheduled Castes and infiltrate into it with a view to grab the constitutional concessions meant for Scheduled Castes and consequently the genuine Scheduled Castes are deprived of the benefits. According to him, by taking advantage of the procedure prescribed for correcting the entries in the S.S. L.C. book and other school records under Exts. P2 to P4 and on the strength of the reports and recommendations of Dr. P.R.G. Mathur who was then the Director of the Kerala Institute for Research, Training and Development Studies of Scheduled Castes and Scheduled Tribes, Calicut (KIRTADS) hundreds and thousands of persons belonging to Ezhava/ Thiyya Caste corrected their caste into that of Thandan Castes. According to him, Exts. P2 to P4 were designed to help the change of communities in the guise of correction of entries. According to the learned counsel the orders in Exts. P3 and P4 are ultra vires of Rule 3, Chapter VI of the Kerala Education Rules, 1959 (hereinafter referred to as the Rules). He further contends that the action of respondents 1 to 7 in facilitation, the change of caste are done in violation of Articles 15 16 and 46 of the Constitution of India.

5. The learned counsel for the petitioners relying on various authors and anthropological reports, submitted that Thandan caste never existed anywhere in former Cochin State or Malabar District of the former Madras Province. According to him, in the social hierarchy the Ezhava/Thiyya caste and the Scheduled Castes of Kerala including Thandan caste stand poles apart. They are entirely different in tradition, occupation, custom, behaviour, practice etc. Learned counsel submitted that the headman among Ezhavas/Thiyyas used to be called Thandans but they are only title holders and they cannot claim Scheduled Caste status. By relying upon various facts and findings extensively extracted from the report submitted in 1992 by the Enquiry Committee constituted to submit a report on the real Caste Status of Thandans of erstwhile Malabar area, learned counsel submitted that there is no Thandans community as distinct from Ezhava/Thiyya in the

erstwhile Malabar District and in the Chittur Taluk or erstwhile Cochin, State. The learned counsel further submits that there is no provision or power to change the caste once it is entered in the school records and correct the same to a different caste and the changes that were effected were only to suit the conveniences of the individuals and to deprive the benefits of genuine Scheduled Caste community. In as much as these changes that were effected are illegal, they must be declared so by this Court.

6. Counsel for the petitioners further stated that the 8th and 9th respondents and other impleaded persons in their representative capacity have acquired eligibility to secure seats in educational institutions and jobs in Government service in the quota reserved for Scheduled Castes by correcting the entries in school records and therefore, these changes effected should be declared null and void.

7. The petitioners had filed C.M.P. No. 21017 of 1987 under Rule 152 of the Kerala High Court Rules seeking to implead the 8th respondent in his own and also in the representative capacity and the same was ordered by this Court.

8. On behalf of the 1st respondent-State of Kerala, the Deputy Secretary to Government filed counter-affidavit. The learned Govt. Pleader while reiterating the contention raised in the counter-affidavit conceded for the prayer to declare the changes effected in reference to castes as illegal, null and void. The Government Pleader also submitted that the Government will reconsider all the community certificates if so directed by this Court. Learned Government Pleader drew our attention to a letter addressed by the Director of Scheduled Caste Development dated 21-12-1985 (Ext. R1 (M)). The said letter proceeds to state that a large number of petitions were received in the office of the Director of Scheduled Caste Development for change of community from Thiyya to Thandan, especially from northern parts of Trichur District and Taluka of Alathur, Palghat and Ottappalam of Palghat District. According to that letter, the present spate of petitions arose after the declaration that Thandans are Scheduled Caste. There were a large number of similar petitions during 1978-79 when the Government issued orders stating that Thandans other than Ezhavas and Thiyyas as Scheduled Castes. At that time many people who claimed themselves as Thiyyas or Ezhavas in records like school register, S.S.L.C. Book etc. wanted their community to be changed as Thandan other than Ezhavas or Thiyyas. They have no objection in issuing community certificates to real Thandans but the change of caste is really torpedoing the real purpose and intention of Government orders. The tendency to change community from Thiyya to Thandan is to circumvent the law and snatch away the concessions which are presently enjoyed by the real Thandans. According to the officer, an examination of the petitions received there reveals that in more than 90% of the petitions for change of community from Thiyya/Ezhava to Thandan, the contention of the petitioner therein is that they were admitted in the school as Thiyyas by mistake. On the same lines the counter filed on behalf of the 1st respondent states that the 1st respondent has

experienced that hundreds and thousands of pseudoclaimants are enjoying the benefits earmarked for the real scheduled castes and scheduled tribes and in order to prevent this method of changes on the ground - of correction, stringent provisions are made in Exts. P2 to P4. According to the Government Pleader in majority of cases reported during the period 1979 to 1987 the non-Scheduled Caste persons who had declared their caste name as Thiyya for the purpose of academic records, managed to get the caste name corrected as Thandan, on the basis of the so called anthropological reports of Dr. P.R.G. Mathur, former Director of KIRTADS. For those incorrect reports Dr. P.R.G. Mathur was removed from the Department, disciplinary action was initiated and ultimately a penalty of withholding 1 / 3rd of pension was ordered. While conceding that there were large scale infiltration of non-Scheduled Caste people into Scheduled Caste Thandan the counter in para 15 states as follows:

"It is roughly estimated that more than 18522 scheduled caste Thandan certificates have been issued in North Cochin and South Malabar areas during 1980 to 1988. As many of the files of revenue offices have been destroyed full details are not availableA list of persons who had got Scheduled Caste Thandan certificate after showing their caste name as Thiyya/Thandan (OBC) in SSLC Book is produced as Ext. R1(R). Another list of applicants belonging Ezhava/Thiyya community who have been denied S.C. Thandan status, and applied for change of caste name of SSLC Book is produced herewith as Ext. R.1(S)".

According to the Government, the changes sought from Thiyya to Thandan is only to enjoy the special benefits available to Scheduled Castes.

9. The learned Government Pleader also very emphatically stated that Scheduled Caste Thandans are different from title holder Thandans of Ezhava and Thiyya Community. In conclusion the 1st respondent in para 15 states as follows;

"The 1st respondent has no objection in declaring that the change of caste from Thiyya/Ezhava/Thandan (OBC) to Thandan (S.C.) is illegal and null and void ab initio as has been prayed for by the petitioners".

10. The learned Government Pleader opposed the plea made on behalf of the petitioners that Exts. P2 to P4 are ultra vires of the Kerala Education Rules. Learned Government Pleader submitted that the procedure as prescribed under Exts. P2 to P4 is intended to help genuine cases but it will not authorise the change of community or status.

11. In particular reference to Ext. P1 the counter in para. 19 states that the Government have no objection in quashing Ext. P1 as it is illegal and without jurisdiction. While dealing with the prayer in reference to Ext. P1 the Government Pleader relies on the reports of the detailed investigation and averments made in paras 5, 6, and 8 of the counter. In all these paras the contention of the Government and the learned Government Pleader is that the 8th respondent belongs to Ezhava/Thiyya caste. He further argues that 8th respondent's father, his mother and his father's four sisters and 8th respondents brothers all belong

to Ezhava/Thiyya community and they are recorded in their certificates as Ezhava. In para 6 of the counter it is stated as follows:

"All the consanguineal and lineal relatives of the 8th respondent are well placed persons and better off financially. Almost all of them identify themselves as Thiyyas. But a few like Sri. Haridasan (8th respondent) infiltrated into the Scheduled Caste THANDAN folk. The anthropological investigation conducted as to the three ascending and descending generations reveal that Sri. Appu (father of 8th respondent) actually belongs to the Thiyya community which is locally known as Thandans. The genealogical chart is produced as Ext. R.1(G)".

In reference to the order passed by the Joint Commissioner in Ext. PI the counter states that the proceedings are null and void as it is repugnant to Rule 3 Chapter VI of K.E.R. Government have not authorised the Joint Commissioner for Government Examinations to make such an order and the said order was issued with ugly haste and in quite an irresponsible manner. The real intention of the 8th respondent in getting his caste name corrected in the SSLC Book from Thiyya to Thandan was to apply for the post and if the 8th respondent had applied as Thiyya, he would not have been selected in the general recruitment as he had passed the upper age limit. The first respondent therefore, states that they have no objection to Ext. P1 being quashed as prayed for.

12. Smt. V. P. Seemanthini, learned counsel for respondents 9 and 12 submitted that 12th respondent is a society which* protects the interests of Thandans throughout Kerala. The contention of the learned counsel is that Exts. P2 to P4 are intra vires of the rules and are valid. According to her, the Government has got jurisdiction and power under Article 162 of the Constitution of India to issue executive instructions in reference to education matters including correction of school records and SSLC book. She submits that the provision for correction of any erroneous entries is a basic fundamental requirement and any omission or commission on the part of certain authorities cannot be a ground to invalidate the rules. She further submitted that Rule 3 which enables the authorities to correct name, religion and date of birth should include caste also. Religion must be given the widest meaning as to include the caste also. Assuming the word "caste" is a deliberate omission in the Rule, the procedure prescribed under Exts. P2 to P4 must be deemed to be supplemental to the general power of the Government to allow corrections in the school records in reference to caste also. Learned counsel further pointed out that the Government has not taken up the stand that it is beyond their power to issue such orders.

13. Smt. V.P. Seemanthini further states that she is not pleading for Ezhava/Thiyya communities or the title holder Thandans of the said communities. According to her, she represents the Thandan Caste which is notified as Scheduled Caste as per the present notification and that they are entitled to the Thandan caste certificates. The title Thandan conferred on the headman of the Ezhava/ Thiyya is entirely different from the community or case of Thandan which is notified as a Scheduled Caste. Thandan is a distinct caste from Ezhava.

Learned counsel strenuously pleaded by referring to the reports and various authors that there cannot be any doubt whatsoever about the existence of a distinct community called Thandan in the erstwhile Maiabar district. According to her, the petitioners as well as the Government have misconstrued their status and have a wrong notion to the effect that Thandan caste never existed anywhere in former Cochin State or Travancore State. The Enquiry Committee report referred to by the petitioner is one sided, unreliable and was prepared without giving opportunity to her clients. The Census report of 1891 clearly shows that Thandan is a separate caste which existed in Palghat District. She has also referred to Exts. R12(f), R. 12(g), R12(h), R12(i), R12(j), R12(k) and R12(l) to show that Thandan as a separate caste existed in Maiabar Districts. By producing copies of entries from birth and death registers of the years 1903, 1930, 1956 and 1959 and the voters' list of the year 1952 and documents of 1941 and 1943 emphasised that Thandans, a separate and distinct caste, were found in Maiabar District. She has pleaded that the Thandan community in Palakkad District was discriminated and looked down suspiciously when they claimed community certificates. The members of the Thandan community were forced to approach the High Court repeatedly to get the community certificates and they were compelled to seek judicial remedy in view of the hostile attitude towards their community. When this Court in O.P. No. 2421 of 1982 directed that an enquiry may be conducted by the Government of Kerala to find out whether there is a community called Thandan distinct from Ezhavas in Palakkad District in areas other than in the erstwhile Chittur and also in any other place in the erstwhile Maiabar District, the Government appointed Dr. Ramachandra Raj, Professor, Department of Sociology, University of Kerala as the officer to enquire into the status of Thandans. The findings of the said officer was not made known. The Palghat Jilla Thandan Samudaya Samrakshana Samithi and others challenged the action taken by the Government in W.Ps. (Civil) Nos. 12486 and 12487 before the Supreme Court and the Supreme Court ordered stay of all further proceedings. Even though subsequently the stay order was modified allowing the Commission appointed by the Government to proceed with the work and submit its reports, the State Government was prohibited from taking any action on the report until the matter is finally decided by the Supreme Court. The Government revived the appointment of the Enquiry Officer and substituted the enquiry Officer with a committee. This, according to the learned counsel, is only to get over the previous findings of Dr. Ramachandra Raj. Ultimately the Supreme Court allowed the writ petitions and in the decision reported in Palghat J.T. S.S. Samithi v. State of Kerala (1994) 1 KLT 118 held that the Thandan community having been listed in the Scheduled Castes Order as it now stands, it is not open to the State Government or, indeed, to the Court to embark upon an enquiry to determine whether a section of Ezhavas/Thiyyas which was called Thandan in the Maiabar area of the State was excluded from the benefits of the Scheduled Castes Order. Strongly placing reliance on the judgment of the Supreme Court she pleads that it is not open to the Government to treat Thandans differently, whether they are in Maiabar area or anywhere else.

Learned counsel has made her stand clear by contending that it is not their stand that Thandan is a section of Ezhava/Thiyya community. According to her they are different and distinct from Ezhava/Thiyya community and Thandan is a separate caste.

14. Learned counsel further submits that in the light of the Supreme Court decision reported in (1994) 1 KLT 118 the matter is fully covered and it is not open to the petitioners to plead that there are no Thandan Caste people in Malabar area. The Supreme Court has directed the State Government to grant to all the members of Thandan community including those belonging to the erstwhile Malabar district and the present Palakkad District the benefits due to the Scheduled Castes. Therefore, it is not open to the petitioners to embark upon an enquiry whether there is Thandan community in a particular area and whether they are similar to Ezhava/Thiyya and whether they are entitled to get community certificate or not. In reference to the allegations made against the 8th and 9th respondents, she submitted that the corrections were made after due enquiry and the same was made after strictly following the provisions contained in the relevant Government orders.

15. Learned counsel objected to the invoking of Rule 152 of the Kerala High Court Rules by the petitioners to implead the 8th respondent in a representative capacity. According to her there are innumerable persons who will be affected if the declaration as prayed for is granted and such a general prayer affecting the rights and interests of innumerable persons should not be allowed. Since the addresses of these persons are known to the petitioners, they should have been impleaded in their individual capacity.

16. Mrs. Seemanthini while supporting corrections of caste entries in the school records from Ezhava/Thiyya to Scheduled Caste, submits that mistakes have to be corrected whenever it occurs. The fact that in school records, the community of some persons were wrongly shown as Thiyyan, it will not in any way deny the right to be treated as S.C. Thandan if they really belong to the caste. It should not be looked as a change of caste but only as a correction of an error or mistake. The same cannot be characterised as changing the caste. Learned counsel submits that corrections validly made under relevant law during the relevant time cannot be subsequently declared as illegal. All these corrections were made only by following the procedure as prescribed. The learned counsel strongly defended the reports submitted by Dr. P.R.G. Mathur, who according to her is a well known social Scientist and a renowned anthropologist of international repute. She has referred to the qualifications of Dr. P.R.G. Mathur and according to her, the findings of Dr. Mathur is based on scientific analysis. By relying on the findings of Edgar Thurston and L.K.. Anantha Krsihna Iyer she submitted that Thandan is a distinct caste living in the Malabar area. According to her, the petitioners have no locus standi to challenge the corrections made and prayed for the dismissal of Original Petition.

17. Mr. S. Venkitasubramonia Iyer, learned counsel appearing for respondent No.

8 submitted that the Government cannot give up their own orders passed under Ext. P1. According to the learned counsel there was no change of caste from Thiyya to Thandan in order to enable the respondent to take the benefits of Scheduled Caste. The 8th respondent originally belonged Thandan caste and he continues to be a Thandan. There is was a mistake in the entry in the school records which was corrected later. According to him, 8th respondent was appointed based on merit and no Scheduled Caste candidate was deprived by virtue of his appointments. Learned counsel submitted that Kerala Education Rules has nothing to do with the sovereign executive power of the State. He also submitted that a person is not born in a particular caste and the same can be changed. Learned counsel by referring to Ext. R8(a) submits that even at the time of his admission in the school on 21-6-1946 his caste was shown as Thandan. According to him, father of 8th respondent, grand father and other ancestors have all been members of Thandan community. The last page of document No. 68 of 1941 of the Parali Sub Registrar's Office dated 19-12-1940 supports the said fact. Based on the report of the Assistant Collector stating that 8th respondent belongs to Scheduled Caste, O.P. No. 6215 of 1981 was ordered recording to the said finding. He further submits that in O.P. No. 4506 of 1979, 8th respondent's brother's son was declared to be member of the Thandan community. He further submits that uncle of 8th respondent Sri K.V. Narayanan successfully contested the 1960 general elections from the reserved constituency as Thandan. The election petition was dismissed holding that he belongs to Thandan community. He once again contested in 1965 from the reserved constituency. There was a mistake in his S.S.L.C. certificate, which was corrected as early as on 1-1-1979 (Ext. R8(e) after conducting necessary enquiries. The two community certificates dated 31-1-1978 and 27-2-1978 marked as Exts. R8(f) and R8(g) show that he belongs to Thandan community. According to the learned counsel there was no change in the community status of the 8th respondent.

18. In support of the contentions of respondent No. 8 the learned counsel referred to the following decisions : C.M. Arumugam Vs. S. Rajgopal and Others, In that case the Supreme Court held as follows;

"When the Court speaks of a caste, it does not mean to refer in this context to the four primary castes, but to the multiplicity of castes and sub-castes which disfigure the Indian social scene. A caste is a voluntary association of persons for certain purposes. It is a well defined yet fluctuating group of persons governed by their own rules and regulations for certain internal purposes. Castes are formed based not only on community of religion, but also on community of functions. A change in the occupation sometimes creates a new caste. A common occupation sometimes combines members of different castes into distinct body which becomes a new caste. Migration to another place makes sometimes a new caste. A caste is more a social combination than a religious group."

The Supreme Court further held that on re conversion to Hinduism, a person can

once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. In the decision reported in *The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao*, the Supreme Court held that a person born of Scheduled Caste parents after their conversion to Christianity can on conversion or reconversion to Hinduism be considered a member of the Scheduled Castes. The next decision referred is of the Supreme Court in *Indra Sawhney and Others Vs. Union of India (UOI)*, at page 525 paras, 452 and 453 *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* , wherein it was held by Sawant, J. as follows:

"In view of the above meanings ascribed to the terms, it can hardly be argued that caste is not a class. A caste has all the attributes of a class and can form a separate class. If, therefore, a caste is also a backward class within the meaning of Article 16(4), there is nothing in the said article or in any other provisions of the Constitution, to prevent the conferment of the special benefits under that article on the said caste. Hence it can hardly be argued that caste in no circumstances may form the basis of or be a relevant consideration for identification of backward class of citizens."

4 The last decision cited by the learned counsel is in *Khazan Singh v. Union of India* AIR 1980 Delhi 60. In the said decision it has been held that on adoption the adopted ipso facto acquires the caste of adoptive parents. On adoption as in the case of a birth, the adoptee acquires the caste of the adoptive parents. In the said decision in view of the fact that the adoptive father belongs to Scheduled Caste, the grant of Scheduled Caste certificate to the adoptee accepting adoption as basis was held to be valid.

19. The learned counsel concluded his submission stating that the S.S.L.C. certificate is not a certificate to determine the caste. Respondent No. 8 has overwhelming evidence to prove from the original and ancient documents that he belongs to Thandan community. Learned counsel further submits that the issue relating to the community certificate of respondent No. 8 had already been concluded long time back and it is not open to the petitioners to seek for setting aside the order passed in the year 1978, after so many years. The Original Petition is liable to be dismissed on the ground of laches.

20. In reply to the submissions made on behalf of the respondents, the learned counsel for the petitioners Mr. Kumaran submits that corrections in S.S.L.C. Book is one of the methods for making false claims and based on this, persons belonging to O.B.C. group were able to get community certificates as one belonging to Scheduled Castes. In the reply affidavit filed by the petitioners it is stated that instances like the case of the 8th respondent are numerous and the Scheduled Castes in general suffer due to these false claims. Learned counsel further submits that the 4th respondent is maintaining permanent records in his office regarding change of castes and therefore, there will not be any difficulty in giving notices to those candidates and enquire whether their claims are genuine

or not.

21. Learned counsel for the petitioners submitted that in spite of the procedural stringency contemplated by Exts. P2 to P4, thousands of persons have infiltrated into the folk of Scheduled Castes by changing the caste in their S.S.L.C. book, as admitted by the Government. The procedure laid down in Paras 3, 4 and 5 of Ext. P2 order defeats the very purpose enunciated in paras 1 and 2 of Ext. P2, in as much as it provides for change of caste, whereas the rule does not provide a change of caste. The learned counsel by referring to the document cited by the counsel for the 8th respondent states that they are not reliable. All these documents are fabricated and ought not to be relied upon. According to the counsel the material particulars relating to the documents are either absent or misleading like for e.g. in Ext. R 8(a) in column 16 it is shown as VIIIth Class, whereas it was only Forms during the relevant period. Similarly in Ext. R8(e) there was no declaration as required but the endorsement reads that the caste was corrected as per the orders of the Joint Commissioner dated 26-12-1978. Exts. R8(f) and R8(g) are not in the prescribed forms. Learned counsel further submits that action has been taken vide G.O.Ms. No. 6/91 SC ST DT dated 11-2-1991 on finding that Dr. P. R. G. Mathur has committed grave dereliction of duties and callous indifference while making inconsistent and conflicting statements on a substantive matter like caste status of Thandans of erstwhile North Cochin and South Malabar. He wilfully helped to snatch away the benefits intended for the downtrodden communities. The said charges have been found to be proved by the Public Service Commission. However, the Government after taking some lenient view ordered that 1/3rd portion of admissible pension be withheld as a punishment for the charges. In view of the categorical finding, the Government ought to have taken further action to set at naught the reports issued by the said Officer and the consequential orders passed in favour of the candidates. The learned counsel, therefore, seeks for a declaration and also to quash Exts. P1 to P4.

22. We have gone through the rival contentions, the relevant records and the documents carefully, The Travancore and Cochin States were unified in 1949 and on coming into force of the Constitution the Travancore-Co chin (Part B) State was formed. Under the Presidential Order made in the year 1950, under Article 341 of the Constitution, Thandan Caste in the Travancore-Cochin State was included as one of the Scheduled Castes or Tribes at serial No. 22. The Order of the President, in so far as the then State of Madras is concerned, did not include Thandan Caste as one of the Scheduled Castes in that State. Consequent on the re-organisation of the States by the States Re-organisation Act, 1956 (Central Act 37 of 1956), the Travancore-Cochin State and the Malabar District were integrated to form Kerala. After the re-organisation of States, the President promulgated the Scheduled Castes and Scheduled Tribes list (Modification) Order dated 29th October, 1956. In this Order, the Travancore-Cochin and Madras lists of 1950 were adopted for Kerala State. That means, the Thandan Community was treated as a Scheduled Caste of Kerala only in the erstwhile parts of

Travancore-Cochin, excluding Malabar with effect from 1-11-1956. This position continued upto 1976. The Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976 (Act 108/1976) which came into force on 27-7-1977 specifies Thandan as item 61. The effect of the amendment is to regard the members of the Thandan Caste as a Scheduled Caste for the entire State of Kerala. It is the contention of the petitioners which was conceded by the 1st respondent-State Government that taking advantage of the inclusion of Thandans as a scheduled caste from the year 1976, a section of the Ezhavas/Thiyyas of Malabar area and certain Taluks of Trichur District are claiming to be Thandas and they are not entitled to be treated as Scheduled Caste Thandans for the purpose of benefits under Articles 15 and 16 of the Constitution of India. The said question was squarely considered by the Supreme Court in the decision reported in (1994) 1 KLT 118 and the Supreme Court directed the State Government to grant to all members of the Thandan community including those belonging to the erstwhile Malabar District and the present Palghat District, the benefits due to a Scheduled Caste included in the Schedule to the Constitution Scheduled Castes Order as amended upto date and to issue to them community certificates accordingly. The Supreme Court has also categorically held that it is not open to the State Government or to the Supreme Court to embark upon an enquiry to determine whether a sections of Ezhavas/Thiyyas which was called Thandan in the Malabar area of the State was excluded from the benefits of the Scheduled Castes Order. It is also the admitted case of respondent No. 12 viz. the Kerala Thandan Service Society that they are the real Thandans and they do not belong to a section of Ezhava/Thiyya community. Therefore, in so far as the status of Thandans is concerned, the contention of the petitioners as well as the Government that all Thandans in Malabar area are title holders of Ezhava/ Thiyya community and they are not the genuine Thandans, cannot be countenanced. The Supreme Court in *Srish Kumar Choudhury Vs. State of Tripura and others*, held Presidential notification regarding entries in the Order is final and it is not open to the Court to make by addition or substraction. A Constitution Bench of Supreme Court in *B. Basavalingappa v. D. Munichimappa* AIR 1865 SC 1269 held that it is not open to anybody to make any modification of the Presidential Order. On the same lines the Supreme Court in *Abhoy Pada Saha Vs. Sudhir Kumar Mondal*, and *Kishorilal Hans Vs. Raja Ram Singh and Others*, held that there is no scope for interpreting the Presidential Order in a different way. A Division Bench of Madras High Court in *Karibeeran K. L. President, North Arcot Kurumans Kula Sangam etc. v. State of Tamil Nadu* 1994 WLR 433 following the Supreme Court decisions held that there cannot be any addition to or substraction from the Presidential Order excepting by a Parliamentary enactment passed under Article 342(2) of the Constitution of India. In the light of the Supreme Court decisions referred to above, the inclusion of a particular community in the Presidential Order cannot be enquired into. The Supreme Court itself in (1994) 1 KLT 118 has laid down that the State Government is entitled to initiate appropriate proposals for modification in cases where it was satisfied that modifications were necessary and, if after appropriate enquiry, the authorities were satisfied that a medication

was required, an amendment could be undertaken as provided by the Constitution. However, the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid. Therefore, the contention of the petitioners that the Thandas in Malabar area are only a section of the Ezhara/Thiyya community and are not the real Scheduled Caste, cannot stand a moment's scrutiny and the first question is answered accordingly against the petitioners.

23. Coming to the second question whether Exts. P2 to P4 viz. the procedure prescribed for correcting the entries in school records are valid, Chapter VI of the Kerala Education Rules, 1958 deals with the admission, transfer and removal of pupils. Rule 2 deals with admission register wherein it is provided that the admission register shall be in Form No. 4 and that pupil's name, date of birth, religion, community and other particulars shall be entered in the admission register and attested by the Head-master. Rule 3 which is the relevant provision is extracted below :

"3. Alteration of Date of Birth etc. -- (1) The name of a pupil, his religion and his date of birth once entered in the Admission Register shall not be altered except with the sanction of the authority specified by Government in this behalf by notification in the gazette. Applications for such alterations and corrections should be submitted by the parent or guardian, if the pupil is still on the rolls of any school, and by the pupil himself if he is not on the rolls of any school. All such applications shall be forwarded through the Headmaster with satisfactory evidence. Court fee stamps to the value of One Rupee shall be affixed on such application.

(1A) A time limit of fifteen years from the date of leaving the school or the date of appearing for the S.S.L.C. Examination for the last time whichever is earlier is fixed for entertaining requests for correction of date of birth in school records by the Commissioner of Government Examinations.

Note : The Government shall consider requests for condonation of delay in making application for correction of date of birth in school records, in deserving cases, on merits, provided that the applicant is within 50 years of age as per the original entry in the school records.

(2) If the authority referred to in Sub-rule (1) is satisfied after necessary enquiries that the change applied for could be granted, he will issue an order to make the alteration. The alteration shall then be made in the Admission Register and the other connected records of the schools previously attended by the pupil as well as in the school in which he was studying at the time.

(3) An appeal shall lie to Government against the orders of the authority referred to in Sub-rule (1) within one month of the receipt of the order appealed against :

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

(4) If any change of name is sanctioned after the issue of a public Examination Certificate, the candidate concerned shall notify the change in name in the Gazette and the notification shall be attached to his certificate."

24. The main contention of the petitioners is that while the said rule provides for alteration of name, religion and date or birth, it does not provide for alteration of a caste. However, Ext. P2 while noting in the preamble portion that only minor corrections can be allowed and that substitution of caste cannot be allowed, provided the procedure for changing caste in paras 2, 3 and 4. Ext. P3 order while referring to Rule 3, required for an official gazette notification in the case of changes in castes etc. Similarly Ext. P4 while modifying the previous orders directed that no changes in the original entry shall be made and the notification shall be attached to S.S.L.C./Extract of admission register of the individual concerned. The corrections in the admission register and the school records forms part of the basic document for making entries in the S.S.L.C. The Government of Kerala has authorised the District Educational Officers competent to sanction the alterations in the name and religion of pupils and the Commissioner for Government Examinations with regard to the date of birth of pupils by gazette notification dated 9-6-1959 and G.O. (P) 2-75-G. Edn. dated 1-1-1975. In column 8 of the application for admission (Form 3) the pupil is required to specify the religion and under column 10 the pupil is required to mention his community. Under the column "Religion" it is invariably the religion with the community is given. However, it is not obligatory to give the name of the caste. But in cases where caste is entered along with the religion and in cases of any error in that entry, the only way the said error can be corrected is as per the procedure prescribed under the rules and the orders issued by the Government. Even though the rules do not specifically mention about the caste for the purpose of alteration and correction when the name, date of birth and religion can be corrected and altered on the ground either a wrong entry or subsequent changes, it stands to reason that any entry relating to caste in the admission register should also be permitted to be changed in case of an error or mistake.

25. Assuming that Rule 3 does not provide for alteration or correction it would not mean that the Government has no jurisdiction to provide for alteration or correction in reference to castes. The right of the State Government to frame Rules in the absence of any statutory provisions has been recognised beyond doubt. It has been held in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, that if there is no enactment covering a particular aspect, the Government can carry on the administration by issuing administrative directions or instructions until the Legislature makes a law in that behalf, as otherwise the administration would come to a standstill. It was further

clarified by the Supreme Court in the decision reported in *State of Sikkim Vs. Dorjee Tshering Bhutia and others*, wherein the Supreme Court held that the executive power of the State under Article 162 of the Constitution of India extends to the matters with respect to which the Legislature of the State has power to make laws. The Government business is conducted under Article 166(3) of the Constitution of India in accordance with the Rules of Business made by the Governor. Under the said Rules the Government business is divided amongst the ministers and specific functions are allocated to different ministries. Each ministry can, therefore, issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business. In the light of the above decisions, the Government orders prescribing the procedure followed under Exts. P2, P3 and P4 are sustainable. They cannot be held to have been framed beyond the scope of Rule 3. What is left out in Rule 3 was supplemented by these Government orders for which the Government has ample authority and jurisdiction. These instructions are also reasonable in as much as the Government should have the power to rectify the corrections or to make alterations, if necessary, under the circumstances of the case. Ample safeguard is provided for making enquiry by a competent authority to satisfy itself as to the claims of corrections and alterations. In this view of the matter, we hold that Exts. P2, P3 and P4 are valid.

26. While sustaining the validity of the procedure prescribed for alterations and changes, it has to be understood that the power to correct or alter the entries made in the school records should not be exercised so as to effect change in the caste of the candidates. As a matter of fact, it is conceded by the respondents that only in cases of genuine errors and mistakes the provisions should be invoked and in the case of corrections and alterations there should not be any scope for change of caste. If there is any misuse of power taking advantage of the provisions, the same has to be declared as illegal. It is a matter of concern as evidenced by the counter affidavit of the first respondent, in paragraph 12, that in majority of cases reported during the period from 1979 to early 1987, the non-Scheduled Caste persons who had declared their caste name as Thiyya for the purpose of academic records, managed to get the caste name corrected as Thandan on the basis of the so called anthropological reports of Dr. P. R. G. Mathur former Director of KIRTADS. The Government has also produced a list of persons who had got Scheduled Caste Thandan Certificates after showing their caste name as Thiyya/Thandan (O.B.C.) in the S.S.L.C. book under Ext. R1(R) and another list, Ext. R1 (S), of persons who have applied for change of caste. The first respondent has stated in paragraph 15 of the counter affidavit that it has no objection in declaring that the change of the caste from Thiyya/Ezhava/Thandan (O. B. C.) to Thandan (S.C.) is illegal and null and void ab initio as has been prayed for by the petitioners. The Director of Scheduled Caste Development in his communication addressed to the Secretary to Government dated 21-11-1985 (Ext. R1 (M)) has brought to the notice of the Government that there is a tendency to change the community from Thiyya to Thandan in order to

circumvent the law. It has also been pointed out in the said letter that on examination of the petitions received reveals that in more than 90% of the petitions for change of community from Thiyya/Ezhava to Thandan, the contention of the petitioners is that they were admitted in the school as Thiyyas by mistake.

27. The filing of a large number of applications for correction of the name of caste from Ezhava/Thiyya to Thandan alleging one and the same reason immediately after inclusion of Thandan community as Scheduled Caste in the 1976 order can prima facie be considered only as a concerted attempt on the part of Section of Ezhavas/ Thiyyas to take advantage of the benefits of Scheduled Castes as alleged in the counter affidavit of the first respondent and asserted by the petitioner. It cannot be easily believed that if a person was really a Thandan and as such a Scheduled Caste, his caste would have been noted as Ezhava or Thiyya in the school records. It cannot also be believed easily that in large number of cases for no reason whatsoever the same type of mistake was committed allowed to be on record till Thandan community was included in the list of Scheduled Castes. As such taking a serious view of the entire problem we would hold that in all cases where certificates have been issued on and after 27-7-1977 the date of 1976 order correcting the name of Caste from Ezhava/ Thiyya to Thandan and other cases where certificates have been issued changing the Caste into a Scheduled Caste or Scheduled Tribe such certificates issued are liable to be declared as of doubtful validity, till they are scrutinised by the scrutiny Committee to be constituted by the first respondent as per the directions we propose to issue in that regard. We make it clear that first respondent is free to lay down any cut off date for scrutiny taking note of the entire aspects of the problem since it is upto it to expose in correct nature of the correction already effected with reference to reliable facts and circumstances. In the facts and circumstances of the case, we are of the view that we will not be justified in granting a declaration as prayed for by the petitioners declaring all the certificates en masse illegal and void ab initio. We would accordingly confine the relief to the limited declaration made above.

28. In that view of the matter, now we have to consider the prayer (d) in the original petition, viz., to declare the changes of caste as illegal. The Supreme Court in the decision reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, has issued directions in reference to caste certificates. In the said decision, the Supreme Court was dealing with cancellation of the social certificate issued by the Executive Magistrate. In paragraph 9, the Supreme Court was pleased to point out as follows (Para at, p. 4124 of AIR SCW) :--

"The Union of India and the State Governments have prescribed the procedure and have entrusted duty and responsibility to Revenue Officers of gazetted cadre to issue social status certificate, after due verification. It is common knowledge that endeavour of States to fulfil constitutional mandate of upliftment of

Scheduled Castes and Scheduled Tribes by providing for reservation of seats in educational institutions and for reservation of posts and appointments, are sought to be denied to them by unscrupulous persons who come forward to obtain the benefit of such reservations posing themselves as persons entitled to such status while in fact disentitled to such status".

The Supreme Court further proceeded to hold as follows (Para 9, at p. 4175 of AIR SCW) :--

"The entries in the school register preceding the Constitution do furnish great probative value to the declaration of the status of a caste. Hierarchical caste stratification of Hindu social order has its reflection in all entries in the public records".

It was further held that (Para 10, at p.4126 of AIR SCW) :

"The caste of the person, as stated earlier, is determined on the basis of the caste of their parents, basically for the reasons that the caste is acquired by birth".

While setting aside the order passed by the High Court and confirming the report and findings of the scrutiny committee and the Additional Commissioner, the Supreme Court has laid down an elaborate procedure for the issue of a social certificate and of its verification in paragraph 13 (of SCC) : (para 12 of AIR SCW) which is as follows :

"13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earlier and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for issuance of social status certificates, their scrutiny and their approval, which may be the following :

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an

affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall

convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/ parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be

regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

The Supreme Court ultimately held that the procedure set out above could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the State on the education of the candidate admitted/appointed on false social status or further continuance therein, every State concerned should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons. While it is mandatory for the State Government to constitute a committee as per the directions of the Supreme Court and follow the procedure as laid down, the same committee shall go into the claims of the caste status of those persons who had corrected their caste names from the school records and got a community certificate on that basis. It is admitted that the Government is maintaining a register containing the names of those persons who got the community certificates by claiming changes or corrections in the earlier certificates. All these changes which have been effected have to be reopened for the purpose of verification by the committee referred to above. Accordingly, prayer (d) in the original petition is allowed to the extent that the change of caste in school records by substituting the name of Scheduled Caste in the place of the name of Caste or Community coming under the category of other backward classes in school records are to be verified by the Committee and should be confirmed whether those caste status is genuine or not and issue an order to that effect in respect of a particular candidate to the concerned institution or authority for necessary action. The whole exercise of this verification should be completed within a period of one year from the date of this order.

29. Learned counsel appearing for the respondents made a plea that consequent on the changes of caste status many of the persons would have been undergoing the study or may be in services. Pending investigation and verification, if their course of study or services are disturbed, they will be put to serious hardship. We find force in the said contenton. Therefore, we make it clear that during the pendency of investigation or verification, the status quo will be maintained.

30. In reference to the prayer to quash Ext. P1 wherein the 8th respondent, Shri

P. A. Haridasan by an order dated 26-12-1978 has got sanction for correction of caste as Thandan in all the school records, we have considered the arguments made on behalf of the 8th respondent and also the contention of the Government and the petitioners. While the Government in the counter affidavit conceding that they have no objection to quash Ext. P1 order, stated the order is illegal and without jurisdiction. In paragraphs 5. 6. 7 and 8 the Government has given an elaborate account to establish as to how the 8th respondent does not belong to Thandan caste. Whereas Ext. R8 (a), the admission register shows that he belongs to Thandan caste and the date of admission is 21-6-1946. Further 8th respondent's father, grand father and other ancestors have all been members of the Thandan community. The first page of document No. 68 of 1941 is produced as Ext. R8(b) to substantiate the said contention. Learned counsel appearing for R8 claims that the 8th respondent has always been a Thandan by birth and he continues to be so. His ancestors belonged to the same community and they never changed their caste. The uncle of the 8th respondent has successfully contested in the 1960 general elections in the reserved constituency as Thandan. The defeated candidate filed an election petition on the ground that the uncle of the 8th respondent was a Thandan and hence he was not eligible to contest from the seat reserved for Scheduled Caste. That petition was dismissed holding that the uncle of the 8th respondent belonged to Thandan community and that community belongs to the Scheduled Castes. When a mistake in the SSLC. book has crept and his caste was wrongly shown as Thiyya, he moved the authority for correction and the same was corrected by Ext. P1. These contesting claims and disputed facts as to the caste status of Rule 8 cannot be decided under Article 226, By the very nature of the claim it has to be enquired into by taking into the various documents, reports, evidence and other relevant materials.

31. The decisions reported in C.M. Arumugam Vs. S. Rajgopal and Others, ; The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao, and Khazan Singh v. Union of India AIR 1980 Delhi 60, relied upon by the counsel for respondent No. 8, in our view, are not relevant to the facts and circumstances of the case. The Constitution Bench of the Supreme Court in their decision in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., including the portion referred to by the counsel for R 8 has conclusively decided the status of a castes. Justice Jeevan Reddy giving the leading judgment in paragraph 778-B referred to the decision reported in K.C. Vasanth Kumar and Another Vs. State of Karnataka, for the purpose of the definition of caste. In the said decision, Justice Venkataramiah defined the caste in the following manner :

"A caste is an association of families which practices the custom of endogamy i.e. which permits marriages amongst the members belonging to such families only. Caste rules prohibit its members from marrying outside their caste..... A caste is based on various factors, sometimes it may be a class, a race or a racial unit. A caste has nothing to do with wealth. The caste of a person is governed by his birth in a family. Certain ideas of ceremonial purity are peculiar to each caste..... Even the choice of occupation of members of caste was predetermined in many

cases, and the members of a particular castes were prohibited from engaging themselves in other types of callings, professions or occupations. Certain occupations were considered to be degrading or impure".

Justice Jeevan Reddy in paragraph 779 held as follows :

"The above materials makes it amply clear that a caste is nothing but a social class -- a socially homogeneous class. It is also an occupational grouping, with this difference that its membership is hereditary. One is born into it. Its membership is involuntary".

While summarising the answers to the various questions in paragraph 859, Justice Jeevan Reddy expressed their view in sub para (3) as follows :

"A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purpose of Article 16(4). Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectivities for the purposes of Article 16(4)".

In the same paragraph, it is further held as follows :

"Since caste represents an existing, identifiable social group/class encompassing an overwhelming minority of the country's population, one can well begin with it and then go to other groups, sections and classes".

Caste of a person is determined by his birth and further that the caste is considered as a class for the purpose of reservation under Article 16(4) of the Constitution of India. There is absolutely no scope for a change in the status of the cast. A person cannot be allowed to change his caste. It cannot be the choice or an option of an individual to belong to a particular caste. A caste is classified as backward class for the purpose of reservation. Therefore, a person cannot be allowed to change the caste. If so permitted it would be defeating the very purpose for which the classification is made. The adoption, marriage and conversion of faith of individual from one caste to another as permitted by the Law of Adoption or marriage have no relevance for the purpose of claiming the benefit of reservation under Article 16(4) of the Constitution of India. The decision relied upon by the learned counsel for the 8th respondent reported in AIR 1980 Delhi 60 is not a good law in the light of various decisions on the point in issue. The other decisions referred by the learned counsel dealing with re-conversion and thereafter claiming the benefits of his original caste have no relevance to the facts and circumstances of our case. On the contrary a Division Bench in D. Neelima v. Dean P. G. Studies A.P. Agri. University, Hyderabad, AIR 1993 Andh Pra 229 held that a Hindu caste girl marrying a ST. boy will not be entitled to the benefit of reservation merely because of marriage. In K. Shantha Kumar v. State of Mysore 1971 (1) Mys LJ 21 it was held that by adoption the adoptee cannot destroy or nullify the advantage of the environmental conditions of his upbringing for 16 years by his natural parents and claim the benefits of

reservation. Another decision of Delhi High Court in *Urmila Ginda Vs. Union of India and Others*, held that a change of religion for the purpose of claiming reservation is invalid. We have also in *Valsamma Paul v. Cochin University, W.A. No. 187 and 416 of 1992 dated 18-1-1995* has held as follows :

"Therefore, in our view, it is not open to the appellant to contend that by marriage a person can become a member of that community. It is clear, based on the principles laid down by the Supreme Court, that a person cannot become a member of the community by choice. Latin Catholic community is treated as a class based on their backwardness and also on the ground that they are not adequately represented compared to that of forward groups including that of Syrian Christians. It will be defeating the very purpose of reservation if one is permitted to be included into a backward class".

32. Besides, the 8th respondent in his rejoinder has stated as follows : "A caste is decided by birth and not by claims made by individual or any mistake committed by anybody in entering the caste name in the S.S.L.C. Certificate". He again in paragraph 10 says that "Caste cannot be changed at all. Religion of a person can be changed by way of conversion. There is no way to change one Hindu caste to another Hindu caste. The caste is decided by birth and is hereditary". In the light of these categorical averments, it is not open to the 8th respondent to take a different stand. The contention of the 8th respondent is that he was born as Thandan and continues to live as Thandan. He has not changed his caste. He had only corrected the wrong entry made in the S.S.L.C. book. He has also admitted that he got relaxation in age by virtue of caste status.

33. In view of the serious divergent claims and documents adduced and contradicted by the petitioners, 8th respondent and 1st respondent, we find it proper and necessary that the caste status of the 8th respondent has also to be referred to the committee for investigation and verification to find out as to the genuineness of his claim. It has also been pointed out on behalf of the 8th respondent that by virtue of the Government orders made in G.O. (MS) No. 107/76/G. Edn. dated 12-6-1976, if a mistake is caused by the clerical error it can be got corrected with the sanction of the Joint Commissioner for Government Examinations as per the delegation of powers. However a reading of Ext. P 1 makes it appear as though it is a community certificate. Before the issue of G.O.63/79/ PD. dated 16-4-1979 minor corrections in the spelling and pronunciation of the names alone were permitted and substitution of communities were not envisaged. Assuming Rule 3 of K.E.R. enables the correction, no proper enquiry appears to have been conducted, excepting the marking of the Thasildar's certificate. The Government has conceded that Ext. P 1 order was issued in ugly haste and without jurisdiction and therefore Ext. P 1 order cannot be sustained. Though the order was of the year 1978, respondent No. 8's appointment based on the said correction was subject matter of controversy and hence it did not become concluded. We are therefore of the view that the caste status of the 8th respondent has also to be referred for

investigation and verification by the committee along with the other caste certificate which were based on corrected certificates. In view of the directions made above, no further orders are necessary in reference to Ext. P 1.

34. We summarise our conclusions as follows :

1. The question relating to status of Thandans is covered by the Supreme Court judgment 1994 (1) KLT 118 that all members of Thandan community throughout Kerala State are to be treated as a Scheduled Caste.

2. It is not open to this Court to go into the question and decide whether Thandan community is in existence in a particular area or not.

3. The procedure prescribed for alteration and correction of caste under Exts. P 2 -- P4 are valid.

4. The committee is to investigate and verify the caste status certificates of those persons who had obtained them based on the corrected entries of school records as per the procedure set out by the Supreme Court in their decision Kumari Maduri Patel v. Addl. Commissioner AIR1994 SCW 4116 (Vide para 28 of the judgment).

5. The finding of the committee should be communicated to the educational institutions concerned or the appointing authority for suitable action if necessary.

35. With the result, Original Petition is ordered with a direction set out above. In the circumstances of the case, there is no order as to costs.