
(1996) 01 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition 1897 of 1989

Kulkarni Geeta M.

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 25, 341
Penal Code, 1860 (IPC) — Section 177, 181, 196, 198, 420

Citation : (1996) ILR (Kar) 2672 : (1996) 5 KarLJ 491

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Praveen Kumar Raikote, for the Appellant; A.V. Sreenivasa Reddy, Additional G.A. for R-1 to 3 and Ram Mohan Reddy, for R-4, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this Petition under Articles 226 & 227 of the Constitution of India, the Petitioner has prayed for issuance of a writ of mandamus or writ or order or direction in the nature of mandamus holding the Circulars dated 22-7-1978 - Annexure-D and 5-8-1978 - Annexure- E, to be illegal, null and void as well as to be without any authority of law.

The Petitioner has further sought the relief for issue of writ of mandamus declaring the Petitioner to be belonging to the Schedule Caste being Beda Jangama, a sub-caste in Veerashaiva religion and for a direction to respondents to drop all further proceedings initiated as per Annexure-A to this Writ Petition as well as for issue of direction to respondents to forbear from holding a Departmental criminal proceedings, on the basis of Annexures D & E.

2. The facts of the case in a nutshell are that the petitioner claims to be belonging to Beda Jangama Caste which is a sub-caste of Veerashaivas. Further the case of the petitioner is that, as per Schedule Castes and Tribes Order (Amendment) Act, 1976, for short "Act", Beda Jangama has been recognised as one of the Schedule Castes. Petitioner's ancestors were Jangama and were

known as Beda Jangama. That the Petitioner applied for grant of a certificate that he belonged to the Beda Jangama Schedule Castes Community and the Tahsildar, Belgaum - Respondent No. 2, after holding the necessary enquiries issued a certificate in favour of the petitioner to the effect that Petitioner belonged to Beda Jangama Caste which comes under Schedule Castes. Subsequent to the grant of the certificate, the Petitioner moved application before the Recruitment Board for employment in the post of Clerk-Cum-Typist and along with the application, he attached the copy of the certificate for an appointment under the Schedule Caste reserved category. That the petitioner in 1980, was appointed as Clerk-cum-Typist and was allotted to Uco Bank, Belgaum and had been serving there, under Respondent No. 4.

3. Subsequently, the Police/Sub-Inspector, CRE Cell, Belgaum, under the directions of Dy. Superintendent Police, C.I.D., CRE Cell filed a complaint against the petitioner, on behalf of the State Government alleging that the Petitioner has committed offences u/s 177, 181, 196, 198 and 420 I.P.C. and the complaint was filed on Jan. 2, 1988, in the Court of the Chief Judicial Magistrate, Belgaum. As per complaint, and the allegations therein against the petitioner, she belonged to Hindu Lingayat Community and that Lingayat Community did not belong to Schedule Caste category and as such, the Petitioner falsely claimed under the Head Beda Jangama Caste and a case had been registered against the Petitioner. That on the basis of that Criminal Case No. 1472/1988, Petitioner was being unnecessarily harassed and the Bank authorities were thinking of taking steps to suspend her. That Beda Jangama can also be Lingayats its being the religious cult.

4. The learned Counsel for the petitioner submitted that a Jangama or Beda Jangama could also follow the Veerashaiva or Lingayat cult of devotion and bhakti. The complainant's case has been that as the Petitioner belonged to Lingayat Community, and not Beda Jangama and falsely representing himself to be Beda Jangama, the Petitioner has obtained the certificate so the complaint.

The learned Counsel for the Petitioner submitted before me that because of G.Os. Annexures D & E, the opposite parties were taking the view that the Petitioner did not belong to Beda Jangama sub-caste or Community and has misrepresented and procured Caste Certificate and therefore, they have launched the prosecution.

5. My attention has been invited to Annexures D & E. The circular D deals with the subject of Schedule Castes and Schedule Tribes Orders (Amendment) Act, 1976, whereby, Beda Jangama and Budga Jangama Communities have been indicated at Sl.No. 19, as showing that they belong to Schedule Caste. While issuing the clarification, the State Government also provided for certain procedures to be followed in the matter of granting of certificate in Paragraph-5. In Paragraph-5, it has been observed:

"It is also verified that the caste "Jangam" which is a sub-caste of the Lingayat (Veerashaiva) Community is not a caste declared as scheduled caste in the said

Act. It is further verified that the "Beda or Budga Jangam" is not a section of Lingayats or Veerashaivas."

6. Annexure-E to this Writ Petition referring to the circular dated 22nd July, 1978, in Paragraph-4 thereof, provides:

"In the circumstances, therefore, Government directs that the Caste Certificate produced by the candidates belonging to Jangam which is a sub-caste of Lingayat (Veerashaiva) community as Scheduled Caste, Scheduled Tribes and damming benefits available for Scheduled Castes/Scheduled Tribes should not be acted upon even though, such certificates may have been issued prior to the issue of Circular No. SWL 305 SAD 76 dated 22nd July, 1978 and these instructions should be followed scrupulously.." In the earlier part of Annexure-F, it has been written that they (certificates which have been issued) should be taken not to be valid and should not be acted upon.

Learned Counsel submitted that on the basis of the two circulars, it is being said that a person belonging to Beda Jangam cannot be Lingayat and a Lingayat cannot be a person belonging to Beda Jangam or Budga Jangam, because, Jangam according to the Government Circular, is a sub-caste of Lingayat. Further, the learned Counsel submitted that the Government has no jurisdiction to issue such a circular or order, because, which caste or community is to be put in the Schedule Caste list and described as Schedule Caste or Schedule Tribe, submitted by the learned Counsel, is subject to the power of the President under Clause (1) of Article 341 of the Constitution of India and later on, it is provided under Clause (2), that, parliament by law, may include or exclude the name of a community therefrom and a notification to that effect has to be issued under the law by the Government.

7. Lastly, the learned Counsel submitted that as such, the Government Circular per se appears to be illegal, null and void and ultra vires of the power of the State Government.

I have applied my mind to the contentions made before me. Jangam may be a caste or part of Lingayat's cult of devotion, even among Jangams, there may be various Jangama known as Beda Jangama, Budga Jangama or the like. Any person may follow a cult of bhakti Veerashaiva or Lingayat are devotees of Lord Shiva. To say that a person belonging to Schedule Caste community cannot be a worshiper of Lord Shiva, is again to create a barrier to the effect, the worshipers of Lord Shiva or Lord Vishnu cannot come within the Schedule Caste list and mostly, it happens that a person may belong to Schedule Caste, but, in the matter of worship, there will be no hurdle in the way, as that would be against the intention spirit of the Constitution, as the person belonging to Schedule Caste can worship the deity according to his choice. If we look to the cultural heritage of India, Kabir has been a Ram bhakt and at times, he used to say as "Ram Ki Duthania". If we look to the Saint Gurunanak, a Saint, a person belonging to sikh religion, also has been discussed as worshiper of Lord Shiva, Parvati and Ram (as

a Ram bhakt), sant Ravi Dass hailing from one of the Schedule Caste Communities, was also a Ram bhakt of high decree with devotion to work and to Sri. Ram.

8. Valmiki Saint very much adorned among the members of community particularly and then, others like Maluka Das was great worshiper of Ram and many Ram worshippers have always been worshippers of Shiva.

So far as the bhakti cult is concerned, it depends upon a faith of a person, whom he worships, but, to what community he belongs and caste is not a barrier to a bhakti. Here, if the G.O. issued appears to be creating a barrier against Beda Jangama and Budga Jangama, that they cannot be worshippers of Lord Vishnu and Shiva. Then, that may be said to be affecting Article 25, that is, the right of religious faith or worship is being interfered with. If a Lingayat or a Shiva bhakt learns and adheres to many good things of life, though he belongs to a Schedule Caste community, he cannot be said to be debarred being considered to be as member of the Schedule Caste Community. Really, that would be negation of the mandate of the provisions Articles 25 and 51-k of the Constitution of India. That apart, under Article 341 of the Constitution, it is only with in the power of the President of India, to deal with such matter, i.e., inclusion or exclusion of caste or community in or from the Scheduled Caste list and if there is any other person or body which can deal with it is, the Parliament. It will be profitable to quote herewith Article 341 of the Constitution of India:

"341 (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.

(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."

A reading of this Article 341 Clauses 1 & 2, per se indicates with respect to any state or Union Territory, the President may after consultation with the Governor of the State concerned, by a 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. Further, Clause (2) of Article 341 provides that Parliament is also been empowered by law that it may enact law so as to include in or exclude from the list of Scheduled Castes as notified in the notification under Clause (1) any caste, race or tribe, but, that cannot be done in a sheer notification, i.e., variation therein, and it can be done by an Act of Parliament.

9. It is well settled principle of law relating to interpretation that when a power is

given to a specified person or a specified instrumentality, then, that power has got to be exercised by that person or those persons alone and no person other than those specified can exercise that power. There reference may be made to the decision of Privy Council in AIR 1936 253 (Privy Council) , as well as to decision given by the Supreme Court in State of Uttar Pradesh Vs. Singhara Singh and Others, and several other cases.

10. These circulars appear to have been issued without any jurisdiction or power. The entire Jangama may not be the Schedule Castes, but, there may be Jangama, such as Beda Jangama, Budga Jangama or those specifically mentioned in the Schedule Caste Order under Item 19 of the Order issued by the President of India or as amended by the Parliament, even if they belong to Lingayat or Lingayat cult or the like, they may be said to be coming within the Schedule Caste List. The question whether a person belonged to that particular caste which finds place in the order containing Schedule Caste list or lists of the Schedule Caste persons, that is a different question that has to be examined in the light of the rule.

Thus considered in my opinion, these two circulars are illegal and ultra vires. The circulars need not be taken into consideration and I am informed that the Government has appointed a State Scrutinizing Committee on the subject to determine the case of individual whether he belonged to a particular Beda Jangama or Budga Jangama or the like communities to be included in the Schedule Caste List, The Petitioner cannot and be not prosecuted or convicted on the basis of those Circulars simpliciter until and unless that Committee investigates that question and holds that these persons really did not belong to that community. In the G.O. dated 5-10-1995, it is clearly mentioned even in respect of those, to whom endorsements have been issued like the applicants that they do not belong to Beda Jangama Caste, they should also be considered by the Scrutinising Committee without giving a decision on the question or a finding that he did not belong to that community and a decision on that question is to be given by the committee itself. So, until an order just opposite to the one granted by the Tahsildar is passed by such Committee, no prosecution need be continued nor any disciplinary proceeding be taken against petitioner on that basis of Government Order impugned.

11. With these observations, this Writ Petition is allowed. The opposite parties are directed to drop the pending proceedings, criminal or departmental or disciplinary initiated on the basis of Circular Annexure F dated 22.7.78, but, it will be open to them, if the matter goes before the State Scrutinising Committee and the Committee holds against the Petitioner, then, it may be open to the authorities to take appropriate action in the matter.