
(2010) 11 KL CK 0259

In the High Court Of Kerala

Case No : W.A. No. 1405 of 2008 and W.P. (C) No. 34618 of 2006

Mannan Vannan Samudaya Sangham

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Community Certificates Act, 1996 — Section 3, 9
Constitution of India, 1950 — Article 341, 342, 366(24), 367
General Clauses Act, 1897 — Section 21

Citation : (2011) 1 KLT 836

Hon'ble Judges : Jasti Chelameswar, C.J; Thomas P. Joseph, J; P.R. Ramachandra Menon, J

Bench : Full Bench

Advocate : M. Ramesh Chander, for the Appellant; P. Santhosh Kumar, Spl. Government Pleader, for the Respondent

Judgement

1. Chelameswar, C.J.—W.A. No. 1405 of 2008 and W.P.(C) No. 34618 of 2006 came to be placed before this Full Bench pursuant to an order of reference dated 28.01.2010.

2. Three communities, Mannan, Perumannan and Vannan, in the State of Kerala are recognized by an order of the President issued pursuant to the power entrusted to the President under Article 341 of the Constitution of India to be the "Scheduled Caste" in relation to the State of Kerala. There is another community known as "Peruvannan" in the State of Kerala. The members of the said community claim that the name "Peruvannan" is a synonym of the name "Vannan", a community which is already recognised as Scheduled Caste.

3. The first Appellant in W.A. No. 1405 of 2008, one K. Padmanabhan, produced a certificate as Ext.P2 in the Writ Petition, issued by the Head Master of Government School, Mangada, Pallipuram, Malappuram District dated 14.2.2008 which purports to certify that the abovementioned Padmanabhan belongs to a caste known as "Vannan". However, another certificate dated 24.3.1962 issued

by the head of the Higher Secondary School, Tirur showing the caste of the abovementioned Padmanabhan as "Peru vannan".

4. The question whether Peruvannan and Vannan are synonym has been troubling the State of Kerala for quite some time. The Government of Kerala issued an order, G.O. No. 1090 dated 13.9.1958 (Ext.P1) by the Labour and Local Administration Department (Harijan Welfare B). The relevant portion of it reads as follows:

For the purpose of educational concessions the communities known as Mannan, Pathiyan and Vannan are treated at present as Scheduled Castes throughout the State except in the erstwhile Malabar area. The Director of Harijan Welfare has reported that the Social, Educational and Economic Conditions as well as the traditional occupations of the communities and also the Varnavar community are identical to those of the Peruvannan community which is treated as Scheduled Caste throughout the State. He has therefore recommended that all the four communities mentioned above may be bracketed with Peruvannans. So the Government are pleased to order that the above mentioned communities are bracketed with Peruvannan. However, in the meantime Government are pleased to extend to the four communities mentioned above throughout the State all the Educational and other concessions granted to Scheduled Castes by the Harijan Welfare Department.

In other words, by the said order the State of Kerala wanted to treat the community Peruvannan also as a Scheduled Caste throughout the State of Kerala, an exercise which is not permissible under the scheme of the Constitution, having regard to the language of Article 341 which mandates that the identification of Scheduled Caste to be done by the President at the first instance by a public notification and any change subsequent to the said initial identification can be made either by way of an addition to or exclusion from the list only by the Parliament. The fact that such an identification made by the President cannot be altered by any other body or organ of the State except the Parliament is repeatedly held by the Supreme Court in a number of decisions (See State of Maharashtra v. Milind (2001) 1 SCC 4 (and E.V. Chinnaiah Vs. State of Andhra Pradesh and Others, .

5. However, it is the averment of the Appellants that in view of the abovementioned Government Order (G.O. No. 1090) large number of cases of the people belonging to Peruvannan community were treated as people belonging to Scheduled Caste ever since the abovementioned Government Order in the State of Kerala.

6. The State of Kerala made an enactment known as "The Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (for short Act 11 of 1996)". Section 3 of the said Act postulates that any person claiming the benefit of any reservation, protection, concession or exemption granted by law in favour of persons belonging to Scheduled Caste and

Scheduled Tribe shall prove his claim by producing a certificate issued under the provisions of the Act indicating the caste status of the claimant. The other provisions of the Act stipulate the procedure for securing such a certificate including the nature of the enquiry that is to be conducted before a certificate is granted etc., (the further details of the said Act may not be necessary for the present purpose).

7. However, a Division Bench of this Court in a judgment reported in *Madhavi Vs. Scrutiny Committee*, declared as follows:

The question as to whether third Respondent in fact belongs to Mannan community is always a matter to be examined by KIRTADS or the Scrutiny Committee, but the reasoning that both Mannan and Peruvannan are the same and consequently Peruvannan has to be treated as scheduled caste cannot be sustained unless the Presidential order is amended accordingly.

8. Consequent upon the said decision, the State of Kerala issued another order, G.O.(MS) No. 37/06/SCSTDD dated 28.07.2006, in substance declaring that the Peruvannan is not synonym of Vannan/Mannan/Perumannan and hence no correction of caste name from Peruvannan to either Vannan/Mannan/Perumannan is permissible. The operative portion of the said order reads as follows:

3. In obedience to the observations of the Hon"ble High Court and in modification of the existing orders/guidelines on the subject, Government are pleased to clarify that Peruvannan is not a synonym of Vannan/Mannan/Perumannan communities shown in serial number 37 of the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002 (Act 61 of 2002) and that "Peruvannan" cannot be treated as Scheduled Caste and hence no correction of caste name from Peruvannan (included in the list of OBC and OEC) to Vannan/Mannan/Perumannan (Scheduled Caste) Communities be made on this count.

9. Challenging the abovementioned Government Order dated 28.07.2006, the abovementioned Padmanabhan and three others approached this Court by way of a Writ Petition. By judgment dated 29.05.2008 the said Writ Petition was dismissed. Aggrieved by the same, the Petitioners carried the matter by way of W.A. No. 1405 of 2008. When the Writ Appeal was taken up for hearing by a Division Bench of this Court, by the referral order dated 28.1.2010 thought it fit that the issue involved in the appeal be examined by a larger Bench, more particularly, the Division Bench doubted the correctness of the earlier judgment in *Madhavi's* case (*supra*) for the following reasons: (1) that the State of Kerala had steadily followed the practice of recognising the community named Peruvannan as synonym with Vannan/Mannan/Perumannan from the date of the Government Order dated 13.09.1958 (2) a confession made by the learned Government Pleader who appeared in the matter and (3) that there is a study conducted by an agency by name "KIRTADS", which is constituted u/s 9 of Act 11

of 1996 mentioned above and the study revealed that the names of Vannan and Mannan are synonyms and Peruvannan and Perumannan are honorific titles of the "Vannan" and "Mannan" community and therefore all the communities are required to be recognised as Scheduled Castes. In the referral order the Division Bench also recorded that in view of Sub-section (2) of Section 9 of Act 11 of 1996 that the report of an "Expert Agency", which is a defined expression u/s 2(g) of the Act, is conclusive proof of the status of a community. Hence the reference.

10. W.P.(C) No. 34618 of 2006 came to be tagged on to the appeal in view of the fact that the question of law raised in the said Writ Petition is identical with the question of law involved in the Writ Appeal.

11. The issue is whether the decision of the Division Bench reported in Madhavi's case (supra) requires any reconsideration.

12. The Scheduled Castes and Scheduled Tribes are defined under Article 366(24) and (25) as follows:

366. Definitions.- In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

XXX XXX XXX

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution.

13. Articles 341* and 342** of the Constitution of India stipulate that the President shall identify the Scheduled Castes and Scheduled Tribes in relation to a State or a Union

Territory as the case may be, in consultation with the Governor in the context of State. Sub-article (2) of each of the abovementioned Articles authorises the Parliament by law either to include in or exclude from the list so prepared of either Scheduled Caste or Scheduled Tribe under the abovementioned two Articles. Both the Sub Articles expressly declare that "save as aforesaid", i.e., by law made by the Parliament, a notification issued under Clause (1) shall not be varied by any subsequent notification. In other words, once the identification under Sub-article (2) of either Article 341 or 342 is made by the President and notified the same is not amenable to variation by any subsequent notification. But, for such a declaration under Sub-article (2), the power to issue a notification as the one contemplated under Articles 341 and 342, necessarily takes within its purview the power to vary or amend the said notification by virtue of the

operation of Section 21 of the General Clauses Act, 1897 which is expressly made applicable to the Constitution by virtue of a declaration under Article 367.

14. The principle that the notification once issued under Article 341 (2) or 342(2) is not amenable to any variation process by a body other than the Parliament is too well settled by various decisions of the Supreme Court (See *State of Maharashtra v. Milind* (2001) 1 SCC 4. At paragraph 12 of the said judgment the Supreme Court held as follows:

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

15. In the circumstances, we are of the opinion that the law declared in *Madhavi's* case (*supra*) does not call for any further interference in the matter.

16. The reference is answered accordingly. However, the claim in the present cases is that the name of the community to which the Appellants/Petitioners belonged is erroneously certified in a certificate issued by a competent authority under appropriate law (Act 11 of 1996) and the parties seeking the correction of the said entry after adducing appropriate evidence regarding the fact that the community to which the claimant belongs are debarred from seeking such relief in view of the subsequent proceedings. The fact that except the Parliament no other body is legally authorised to alter (either by addition or omission) the list prepared under Articles 341 or 342 does not mean that an enquiry in an individual case in to the complaint that an authority competent to issue a certificate evidencing the proof of the fact of the community committed a factual mistake in issuing such a certificate.

We are of the opinion that the cases of the parties to these proceedings fall under the above category. Therefore, in our opinion, neither *Madhavi Vs. Scrutiny Committee*, nor the Government Order G.O.(MS) No. 37/06/SCSTDD dated 28.7.2006, can bar or do bar such an enquiry. Both the Writ Appeal and the Writ Petition are, accordingly, disposed of.

*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.

****342. Scheduled Tribes.-** (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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes 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 Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.