
(2000) 04 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 17737 of 1997

P.A. Haridasan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16(4)

Citation : AIR 2000 Ker 313

Hon'ble Judges : S. Sankarasubban, J;Ar. Lakshmanan, J

Bench : Division Bench

Advocate : V. Giri, for the Appellant; Poly Mathai, Govt. Pleader and K.V. Kumaran, for the Respondent

Final Decision : Allowed

Judgement

Sankarasubban, J.—Petitioner -- P. A. Haridasan, is a member of the Subordinate Judicial Service of the Kerala State. He entered into the judicial service as judicial Magistrate of Second Class and now he is working as Judicial First Class Magistrate. The controversy in this case is regarding the caste to which the petitioner belongs. While the petitioner claims that he belongs to Thandan community, respondents 1 and 2 are taking the view that he belongs to Thiyya community. The Thandan community was declared to be a Scheduled Caste so far as the Travancore-Cochin area is concerned from 1950 onwards. But it was extended to the whole of Kerala only by Act 108 of 1976. The entire controversy arose because petitioner's caste in the High School Certificate was originally described as Thiyya but after the coming into force of Act 108 of 1976, petitioner got it corrected and changed it to Thandan. It was after this petitioner applied for the post of Magistrate under the General Recruitment as well as the Special Recruitment for Scheduled Castes and Scheduled Tribes. It appears that in both the categories petitioner came first, but because of the fact that he has crossed the maximum age for general category, he was appointed in the quota reserved for Scheduled Castes. Even when he was selected for appointment, there was a

controversy whether he belongs to Scheduled Caste or not. At the instance of the Public Service Commission, the Government referred the matter to District Collector, Palakkad and the District Collector called for a report from the Assistant Collector regarding the caste status of the petitioner and the Assistant Collector by his report dated 8-2-1982 came to the conclusion that petitioner belonged to community Thandan other than Ezhava or Thiyya. He also relied on the fact that father and grandfather of the petitioner belonged to Thandan community and that it can be seen from the endorsement made on certain documents which came into existence even prior to the birth of the petitioner. Not satisfied with this report, another report was called for and the Assistant Collector made further enquiries and gave a report dated 6-3-1982. According to this report, the Assistant Collector was fully satisfied that P. A. Haridasan, the petitioner herein belongs to Thandan community. After these reports of the Assistant Collector produced as Exts. P-1 and P-2, petitioner was recruited to the Judicial Service.

2. There has been a continuous complaint that many persons belonging to Ezhava/ Thiyya community in Palakkad Region were being issued certificate showing them as Thandans. According to the allegations, these certificates were issued without any basis. The resultant position was that many posts to which members of Scheduled Castes were entitled were snatched away by persons belonging to other communities posing themselves to be Schedule Castes. The question arose whether a person belonging to the Thandan community in the Malabar region should be denied the benefit of status of belonging to Scheduled Caste merely because there are doubts that they had close relationship with Thiyya and Ezhavas. The matter went to the Supreme Court and the Hon''ble Supreme Court in the decision reported in Palghat J.T.S.S. Samithi v. State of Kerala (1994) 1 KLT 118 had occasion to consider this aspect. In the above decision, the Hon''ble Supreme Court held as follows :

"The Thandan community in the instant case having been listed in the Scheduled Castes Order as it now stands, it is not open to the State Government or Indeed to this Court to embark upon an enquiry to determine whether a section of Ezhavas/Thiyyas which was called Thandan in the Malabar area of the State was excluded from the benefit of the Scheduled Castes Order."

It was further directed in the last paragraph of the judgment that "State Government is directed 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 up to date and to issue to them community certificates accordingly."

Thus the above ruling gave a quietus to the controversy. The Hon''ble Supreme Court held that if a man belongs to Thandan community, then no other enquiry should be made whether the person is in the Travancore-Cochin area or in the Malabar area; such person is entitled to the benefit of the Scheduled Castes.

3. As already stated there was a dissatisfaction among the members of the Thandan community of the Travancore-Cochin area that the benefits due to them were being snatched away by persons who do not actually belong to that caste in the Palghat area and that number of certificates have been issued to persons describing them as Thandan community when actually they were belonging to Thiyya or Ezhava communities. It was in that background, an Original Petition was filed before this Court as O.P. No. 6758 of 1987 filed by the Kerala Pattika Jathi Samrakshana Samithi. The challenge in the Original Petition was inter alia directed against the orders issued by the Government providing for the mode by which caste certificates were to be issued and the corrections in the entries in the SSLC Book regarding the community were to be effected. The order passed by the Joint Commissioner of Government Examinations relating to the correction of the entry in the SSLC book of the petitioner was produced in that Original Petition and marked as Ext. P-1. The said order was also challenged. According to the petitioners in O.P. No. 6758 of 1997 the present petitioner did not belong to the community called Thandan and belonged to the community of Thiyya or Ezhava which is listed as backward class; and that the petitioner had caused his community to be corrected in his SSLC Book as Thandan in pursuance of the order marked as Ext. P-1 (in O.P. 6758/97), and that therefore the petitioner had purportedly snatched away the benefit which otherwise would have accrued to a member of the Scheduled Caste. In that Original Petition, petitioner was the 8th respondent. That Original Petition was ultimately disposed of by a Full Bench by judgment dated 14-3-1995. The above Judgment is reported in Kerala Pattika Jathi Samrakshana Samithy and Another Vs. State of Kerala and Others, . The Full Bench directed that the petitioners claim regarding the caste and the correction made in the SSLC book pursuant to the order marked as Ex. P-1 in O. P. 6758/87 is to be looked into by a Scrutiny Committee constituted in terms of the judgment of the Supreme Court in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, : Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . At the time when the Full Bench disposed of O. P. No. 6758/87, the Government was yet to constitute a scrutiny committee in pursuance of the directions of the Hon'ble Supreme Court in Madhuri Patil's case. Subsequently, Government issued G.O.P. No. 16/95/SCSTDD dated 8-5-1995 constituting a scrutiny committee in compliance of the directions Issued by the Supreme Court. According to the petitioner, the constitution of the scrutiny committee was not strictly in accordance with the directions given by the Hon'ble Supreme Court. Subsequent to the judgment of the Full Bench, the scrutiny committee investigated the matter and gave a report to the Government. On the basis of the report of the scrutiny committee, the Government decided to prosecute P. A. Haridasan, for making false claim as to the caste status to deprive the members of the Scheduled Castes of their benefits, thereby exploiting them for unlawful gains. A copy of this order is produced as Ext. P-101. This order was passed pursuant to the report of the scrutiny committee which is produced as Ext. P-100. Thereafter, petitioner received a notice dated 10-9-1997 from the Registrar. High Court of

Kerala to show cause why his appointment should not be cancelled in view of the report of the Scrutiny Committee. The petitioner contended that earlier entries in the SSLC Book were entered out of a mistake or error. He also produced documents showing that petitioner's father and forefather belong to Thandan community. The Full Bench did not go into the question whether the petitioner belongs to Scheduled Caste or not. instead of that, the Full Bench directed the State Government to constitute a scrutiny committee and deal with the case of the present petitioner in accordance with law. After the decision of the Full Bench, the scrutiny committee after taking evidence filed the report, Ext. P-100 to the Government holding that petitioner does not belong to Thandan community and thereafter, the Government issued the order Ext. P-101, declaring that the petitioner does not belong to Scheduled Caste community. Subsequently, the Registrar Issued Ext. P-102 notice to show cause as to why petitioner's service should not be terminated. It was at this stage, petitioner filed this Original Petition and obtained a stay of termination of service of the petitioner. Before the scrutiny committee, the petitioner had produced large number of documents. These documents vary from registered documents, certificates, admission registers, etc. and also certified Court orders. The scrutiny committee considered these documents but was of the view that petitioner did not belong to Thandan community, but belonged to Thiyya community. This report was accepted by the Government and passed Ext. P-101 order.

4. A verified petition was filed on behalf of respondents 1 and 2 enclosing Ext. R-2(c), the report of the Vigilance Officer of KIRTADS. Subsequently, a counter-affidavit has been filed on behalf of respondent No. 2 enclosing Ext. R-2(a). The counter-affidavit and statement are nothing but reiteration of the report of the scrutiny Committee. The counter-affidavit in effect narrates all the findings of scrutiny committee and supported the order passed by the Government. The main thrust of the contention taken in the counter-affidavit is that the scrutiny committee has been formed on the basis of the decision in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, and the enquiry by the scrutiny committee is in consonance with the principles of natural justice. The petitioner was given all opportunity to produce documents and other evidence and he was also personally heard. The scrutiny committee had examined all the evidence produced by the petitioner and the evidence collected by the KIRTADS and after elaborate discussion of the evidence the committee came to the conclusion that petitioner does not belong to Thandan community but belongs to Thiyya community. The contention of the respondents was that this Court was not exercising the power of appeal. Under Article 226 of the Constitution of India, the jurisdiction is supervisory. The lower authority has conducted the enquiry in accordance with law complying with the principles of natural justice and that all the relevant questions were considered by the scrutiny committee. Further it is stated that only relevant matters were considered by the committee and that the finding of facts entered into by the committee is not susceptible to interference under Article 226 of the Constitution

of India.

5. An impleading petition was filed by Kerala Pattika Jathi Samrekshana Samithi as C.M.P. No. 32528 of 1997.

6. We heard counsel for the petitioner Sri. V. Giri, the Special Government Pleader for the State Sri. Poly Mathai and Sri. K.V. Kumaran on behalf of the impleading petitioner. Counsel for the petitioner contended that his client has been victimised unnecessarily. The learned counsel took us to the entire chain of events starting from the appointment of the petitioner as Judicial Second Class Magistrate. According to the counsel, petitioner stood first both in the special and general recruitment category. It was further contended that documents were produced to prove that petitioner's father and grandfather belong to Thandan community. He also referred to a document of 1941 which came into existence even before the birth of the petitioner. These registered documents show the caste to which petitioner's forefather belong as Thandan. He also brought to our notice copies of admission registers in which the petitioner and his close relations were admitted in the school which showed that the caste shown was Thandan. Subsequently by some mistake, the caste was entered as Thiyya. According to the petitioner, this was apparently a mistake. No doubt, the mistake was realised when the Thandan community was included in the list of Scheduled Castes by Act 108 of 1976. Petitioner then got the entry corrected, after the authorities were satisfied about the caste status of the petitioner. Petitioner also brought to our notice the hurdles at the time when he was recommended for appointment and he also made a special reference to the report of the Assistant Collector, produced as Exts. P-1 and P-2 which showed that the suspicions were removed and Collector reported that petitioner belongs to Thandan community. Petitioner vehemently criticised the approach made by the scrutiny committee. The scrutiny committee has ignored certain relevant documents (to which we shall come later), on the ground that persons belonging to Scheduled Castes would not hold or possess any land and that he should not have any dealings with the landlord. Even a judgment given by an Election Tribunal in which one of the uncles of the petitioner was held to be belonging to Thandan community has been ignored on the ground that the Tribunal has not properly understood the law and has not given a correct judgment. Learned counsel further impressed upon us the fact that the scrutiny committee has made reference to certain entries relating to the lineal descendants of the petitioner and also made reference to marriages with Ezhavas and Thiyyas entered by certain lineal descendants, but it had ignored certain documents and registers belonging to lineal ascendants. Further learned counsel submitted that the scrutiny committee was also wrongly of the impression that Full Bench was of the view that petitioner does not belong to Thandan community. The Full Bench only held that an enquiry should be conducted against the caste status of the petitioner. It has made a general observation that there had been wide spread manipulation in obtaining caste certificates in Palghat region after the 1976 Act. That does not mean that petitioner obtained caste certificate or made corrections with illegal means. The

learned counsel made pointed stress to the decision in *Palghat J.T.S.S. Samithi v. State of Kerala* (1994 (1) KLT 118) (*supra*) which declares that once a person belong to Thandan community there is no question of further enquiring into the fact whether he belong to Ezhava community or that even though he is described as Thandan he actually belonged to Ezhava community. Learned counsel also brought to our notice the decisions of the Supreme Court holding that the caste of a person depends upon the caste of his parents. Sufficient evidence is given in this case regarding the caste of his parents. If the caste of his parents is Thandan, then that will not be erased by any subsequent mistakes or errors in describing the caste. Learned counsel further submitted that actually the scrutiny committee was prejudiced against the petitioner because noticing any adverse finding against the petitioner will adversely affect the other members of his family also.

7. Learned Special Government Pleader for the State Sri. Paul Mathai submitted that this Court is exercising the power under Article 226 of the Constitution of India and not of the appellate authority. The power of Judicial review is confined to the finding of whether the procedure has been properly followed and whether the decision making process is free of any vices. This Court cannot interfere with the finding of fact recorded by the scrutiny committee. Learned Government Pleader further contended that it has come to the notice of the Government that many spurious certificates were obtained by the petitioner claiming themselves as Thandan while actually they belong to other castes. He further contended that the Supreme Court has not prevented conducting an enquiry into the caste status of a person. The Supreme Court only stated that if a person belongs to Thandan community then he will be given the benefit of Scheduled Castes and Scheduled Tribes. That does not prevent the committee from enquiring into the caste status of a person. Learned Government Pleader also brought to our notice the decision in *Mrs. Valsamma Paul Vs. Cochin University and others*, wherein it has been held that a person born in affluent circumstances cannot claim the benefit of Scheduled Castes. According to the decision, the caste is included in the Schedule in the light of the hardships and historical background with regard to the caste which prevented the members of It from coming to the forefront in education, economy and other aspects. He further highlighted that this is a case where the petitioner's family possessed large extent of properties and they were landlords. There are also evidence to show that many close relations of the petitioner belong to Thiyya community. He further contended that the Assistant Collector in Exs. P-1 and P-2 did not properly enquire into the matter. Further argument was that the corrections were made only when Act 108 of 1976 came into force. Thus corrections were made intentionally with a view to get the benefit of Scheduled Caste. Learned Government Pleader brought to our notice certain decisions and also took us to Exts. P-100 and other relevant documents.

8. For the impleading petitioner, Sri. K. V. Kumaran appeared. Sri. Kumaran argued generally on the question of Thandans of Palghat region belonging to that caste. He took us to the judgment of the Supreme Court in *Palghat J.T.S.S.*

Samithi v. State of Kerala (1994 (1) KLT 118) (supra) and also the Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . He stressed the importance of a caste in the Scheduled Caste Order and contended that it was not intended for being misused by affluent sections of the society. He has filed a statement. He further highlighted the following observations of the Supreme Court in the decision in Palghat J.T.S.S. Samithi v. State of Kerala (supra), where it is stated thus :

"It is not for the State Government or for this Court to enquire into the correctness of what is stated in the report that has been made thereon or to utilise the report to, in effect, modify the Scheduled Castes Order. It is open to the State Government, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation."

The finding in the report is that in Malabar and Cochin, Thandan is synonymous with Ezhava and that there is no Thandan Caste distinct from Ezhava/Thiyya in Malabar and Cochin areas of Kerala State. He further submitted that Ext. P-100 is a well considered one. There has been no denial of natural justice. He further submitted that the mere mention of Thandan in certain registered documents cannot be taken into account for the purpose of coming to the conclusion that the person belonged to that caste.

9. Before we consider the rival contentions, let us consider how the scrutiny committee has considered this matter. The explanation offered by the claimant is stated in Paragraph 4 of Ext. P-100. It has been categorically stated under 19 heads. The scrutiny committee was right when it said that it was only concerned with the question whether the petitioner belong to Thandan community. But we wish to say that the Committee has been carried away by the fact that in the SSLC book the petitioner's caste has been shown as Thiyya and it was subsequently corrected as Thandan. It has made copious reference to the judgment of the Full Bench of this Court reported In Kerala Pattika Jathi Samrekshana Samithy and Another Vs. State of Kerala and Others, , which had said that large scale corrections have been made in the SSLC book after the Act 108 of 1976. The committee has taken it for granted that what was contained in the SSLC book before corrections was sacrosanct and any corrections made after the Act 108 of 1976 came into force cannot be countenanced. We may at the outset say that the Full Bench has never said that because a person is described in the SSLC book as Thiyya or Ezhava, he cannot prove that he does not belong to Thiyya community. We are saying this because the Committee has not given any relevance or importance to the entries in the admission register made earlier. In paragraph 6 of Ext. P-100 reference has been made to Document No. 1 produced by the claimant. It Is the abstract of Admission Register to Standard I made on 21-5-1946 of Government High School, Peringottukurussi. This document is produced as Ext. P-8 in this case. It shows that the petitioner was admitted in the school on 21-6-1946 and his caste is shown as Thandan. The

Committee does not give importance to this, because according to it in the SSLC book, the caste name was Thiyya. That entry was made in 1958 and that position continued till 1978. Petitioner corrected it as Thandan. He also admitted that it was after coming into force of Act 108 of 1976 he made the correction. From this, the Committee immediately came to the conclusion that the correction was made illegally and in a fraudulent way. It is true that in the SSLC book, the caste name was originally shown as Thiyya and at the same time when the petitioner was admitted in the first standard his caste name was shown as Thandan. At the time when Ext. P-8 was made, the controversy regarding caste was not there. Petitioner's case is that it was by mistake that caste was shown in the SSLC book as Thiyya. Till 1976 it did not matter whether he belong to Thandan or Thiyya because both castes are entitled to the benefits of backward classes. It was when Thandan was Included in the list of Scheduled Castes in the Malabar area from 1976 the question of correction of caste arose. Hence, the committee was not correct in ignoring Ext. P-8. Another document produced before the Committee was Ext. R-3, copy of which is produced as Ext. P-10. That is the copy of the Judgment in Election Petition in which one K.V. Narayanan was involved. This K.V. Narayanan is nobody else than the petitioner's mother's sister's husband. That was Election Petition No. 3 of 1960. The Election Petition was filed by one Eacharan, and the first respondent is K.V. Narayanan. K.V. Narayanan was returned from Chittur Double Member Constituency reserved for Scheduled Castes. The contention was that K.V. Narayanan does not belong to Thandan community. Paragraph 6 reads the issue: The first issue Is whether the first respondent was an Ezhava? The second issue is whether the first respondent is a Thandan as contemplated by Part V of the Schedule of the Constitution and if so, whether he is not a member of the Scheduled Caste? The order of the Election Tribunal is dated 5th December, 1960. In paragraph 27 of the order, the Election Tribunal has stated as follows :

Thus considering the entire oral and documentary evidence, I find that the first respondent Is not an Ezhava and that he Is a Thandan as contemplated in Part V of the Constitution (Scheduled Castes) Order, 1950 and therefore he is a member of the Scheduled Caste and he is entitled to contest for the reserved seat in the Chittur Double Member Constituency."

Ultimately, the Tribunal dismissed the petition holding that first respondent belongs to Thandan community. We find that many documents were produced in that case, Exts. A-I to A-21, B-I to B-11 and oral evidences were also adduced. This has been eschewed by the scrutiny committee in paragraph 9 of the report saying that Government was not a party therein. The judgment of the Election Tribunal was merely based on the documents available in that case based on the depositions of witnesses amongst which there was no genuine SC Thandan. On a perusal of the judgment it is clear that the major question to be resolved were whether the Ist respondent is an Ezhava? and whether the 1st respondent is aThandan as contemplated by Part V of the Schedule of the Constitution. It further says in Ext. P-100 that,

"At any rate an individual will not get caste from the judgment of an election tribunal. That judgment has relevancy only In respect of the election in question. The judgment which wrongly decided the caste of the claimants maternal uncle is irrelevant in these proceedings."

We are unable to appreciate this type of approach made by the scrutiny committee. The committee is not constituted for the purpose of saying that a particular person does not belong to scheduled caste. The Committee's duty is to find to which caste a person actually belongs. A great deal of responsibility is put on the committee. The committee has to scrutinise every document. The Election Tribunal is a powerful judicial body. It cannot just ignore the reasoning of the Tribunal. It should have been taken as one of the items of evidence. As stated by the Supreme Court, Insofar as the caste of a person is concerned, the person belongs to the caste in which he Is born. There is no case that petitioner has changed his caste. When there are documentary evidence to show that petitioners ascendants belong to Thandan community, that was a circumstance which should have been taken note of seriously by the scrutiny committee. The committee then discusses regarding the caste to which other members of petitioner's family belong. This Is only on the basis of entries in the school certificate. The committee then considered the caste of close relations as in the academic bodies. It Is pertinent to note in this respect that P. S. Pradeep, the son of claimants elder brother P. A. Sukumaran has obtained a judgment from this Court in O.P. No. 1847/ 94 holding that he belongs to Thandan community, but an appeal is pending against that. Another circumstance taken note of by the committee is the second marriage of the petitioner. As the petitioner married a Ezhava, the scrutiny committee states that petitioner also belongs to Ezhava community. We don't think that this can be accepted especially after the commencement of Hindu Marriage Act. The marriage among any section of Hindus is possible. Only thing Is that the marriage should be in accordance with the customs and ceremonies of one of the spouses. Before the committee, petitioner produced many registered documents which are produced before this Court as Exts. P-11 to P-15. Ext. P-11 is a mortgage deed executed in favour of Nappan, S/o. Palanivelan. This Palanivelan is none other than the claimant's paternal great great grandfather. Palanivelan is described in Ext. P-II document as Thandan. This document is of the year 1914. It is a deed of possessory mortgage executed in favour of Thandan Palanivelan, S/o. Nappan. Now the scrutiny committee takes this as item of evidence against the petitioner because according to the committee, a person belonging to Scheduled Caste cannot advance money and be a mortgagee. It is further stated that the executants of the document belong to higher castes and such a thing was not contemplated at the time when the document was executed. Ext. P-12 is the mortgage executed in favour of Manu. He is claimant's paternal grandfather. He is also described as Thandan. This document also was not taken into account for the same reason for rejecting Ext. P-I 1. Exts. P-13 and P-14 are two other kanam deeds. In Ext P-13, claimant's paternal great grandfather Nappan and grandfathers Manu and

Narayanan are cited as belonging to Thandan caste. In Ext. P-14, claimant's paternal great grandfather Nappan and grandfather Manu are shown as belonging to Thandan caste. These documents were also not taken into account by the committee for the same reason given for rejecting Ext. P-II. Exts. P-13 and P-14 are of the years 1936 and 1940 respectively. Ext. P-15 is a registered partition entered in the family of the claimant. This document is of the year 1941. It was executed even before the petitioner was born. The preamble of the document shows that the document was executed amongst Thandan Nappan's Projeny 1. Manu, 2. Ravunni and Manu's son; 3. Appu, and Nalppen's sons; 4. Narayanan and 5. Kannan; and Narayanan's son; 6. Vasu of Paruvassery, Peringottukurussi Amsom and Desom in Palakkad Taluk. This document is also not taken into account by the committee. It is also interesting to note that what the committee has stated about these documents. In paragraph 18, the Committee states as follows :

"When the claimant place reliance on the Socio-economic and other characteristic backwardness of Thandans to suggest that he belongs to that caste the documents produced prove otherwise. Document No. 4 proves that the claimant's father had declared his occupation as a "LANDLORD" quite incompatible with the economic status of the then depressed classes. His father was a tenant of an aristocratic Brahmin family. 6 title deeds in respect of landed property transactions entered into by his paternal ancestors since 1914, and 17 documents including mortgage deed, Kanam deed. Judgments in property disputes etc., in respects of his maternal ancestors have been produced which rather than establishing the depressed class status prove their high socio-economic status. It is only paradoxical that Thandan claim of the claimant is sought to be established by a registered receipt of Kuri transactions of 1936 between his father and private individual, which shows the latter had received Rs. 420/-."

Thus the scrutiny committee took the view that even if the documents give indications of the caste to which the petitioner's ancestors belong, because those persons were tenants or holding properties or possessed of money were not backward and thus people who are only backward can only be Thandans. The Committee then considered the social, economic and cultural status of the claimant's family and came to the conclusion that the family possessed properties. It says that documents of property transactions, money receipts. Judgments in civil cases etc. only prove their financial status right from the pre-Constitution periods. Those in no way suggest the downtrodden and untouchable status of this family and his ancestors. The Scheduled Castes lists have been drawn up on the basis of set of hard and fast guidelines being followed without exception since 1950. Extreme socio-economic and educational backwardness arising out of the traditional practice of untouchability is the acid test for eligibility therefor. Thandans have also undergone all the ordeals of the untouchability and deprivations. If Thandans were tenants of Namboodiri Brahmins as In the case of the claimant, they would not have been Included in

the Scheduled Caste list of Kerala. No Thandan could have ever dreamt of becoming a tenant of Aristocratic Brahmin families or Devaswoms, at a time when they were not even permitted to walk through the roads used by upper caste people, or step into the premises of a temple. Thandans were so a depressed class that they required to answer the caste Hindus by the utterance "Kuzhiyan". (dweller in pit). This indicates the utter submissiveness and total, servitude of Thandans to higher castes. It then takes into account that the house of the petitioner's family does not resemble hut, but that of feudal caste Hindus. The Committee then takes into account the fact that petitioner's father stood in the way of the enquiry being done with regard to the Thandan caste of the Malabar area. It then finds that many of the relations of the petitioner were occupying high positions have stated their caste as Ezhavas or Thiyyas. In this connection, we wish to further state that Ext. P-21 (R-14) Is the extract of admission register in favour of Krishnankutty, who is the brother in law of petitioner's brother, Sukumaran. It is dated 10-6-1943. He is also shown as Thandan. The claimant's elder sister's husband Achuthan's caste is shown as Thandan in Ext. P-22 (R-15) dated 5-6-1933. Ext. P-20 (R-13) is the Electoral Rolls of Mundur Panchayat for 1952 General Election which shows that claimant's elder brother Sukumaran's wife Yasoda's father Kandu Vaidiar and her brother Raghavan are shown as belonging to Thandan caste. Ext. P-19 (R-12) is the front page of SSLC book of P. A. Jayachandran petitioner's elder brother which shows his caste as Thandan. In the same way, petitioner has produced other documents, Exts. P-16, P-17, P-18 to show that petitioner's relations were shown as Thandan in the admission registers. Thus, there is evidence here to show that some of the petitioner's family members were Thandan while there is also evidence to show that some of the members were described as Ezhava or Thiyya. The question now posed before us is whether Ext. P-100 and Ext. P-101 are legally valid.

10. We know the limitations of this Court. This Court is not sitting as a Court of Appeal. But this Court is exercising its supervisory power under Article 226 of the Constitution of India. In fact in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , the Supreme Court has clearly held that the only remedy against the finding of the scrutiny committee is a petition under Article 226 of the Constitution of India. It was repeated time and again by the counsel for the respondents that our power is not an appellate power but only supervisory and that we can't go into the facts or appreciate the evidence in the matter. It is true that in appreciation of evidence this Court will not interfere. But the Court has a duty to see whether the authority which exercises the power has exercised it properly, legally and according to the facts. It is true that Judicial review is more concerned with decision making process. That does not mean that this Court will shut its eyes and give green signal to anything which is passed by the lower authority, on the ground that it involves appreciation of evidence and facts. This Court will certainly Interfere when the reasoning of the lower authorities is perverse and is not susceptible to ordinary

common sense. When an object which is black is found by the lower authorities to be white, this Court will certainly put its foot down and correct the error. No doubt, it may be going into facts.

11. Before we enter into a discussion of the question raised here, we have to first find out what is meant by a "caste". It has been defined by many authors and in many decisions. The Hon"ble Supreme Court in the decision reported in Sital Prasad Saxena (Dead) by Lrs. Vs. Union of India (UOI) and Others, , held as follows (Para 22 of AIR)

"What then is a caste? Though caste has been discussed by Scholars and Jurists, no precise definition of the expression has emerged. A caste is a horizontal segmental division of society spread over a district or a region or the whole State and also sometimes outside it. Homo Hierarchicus is expected to be the central and substantive element of the caste system which differentiates it from other social systems. The concept of purity and impurity conceptualises the caste system. Louis Dumont asserts that the principle of the opposition of the pure and the impure underlies hierarchy, which is the superiority of the pure to the impure, underlies separation because pure and the impure must be kept separate and underlies the division of labour because pure and Impure occupations must likewise, be kept separate. There are four essential features of the caste system which maintained its homo hierarchicus character; (1) hierarchy; (2) commensality; (3) restriction on marriage; and (4) hereditary occupation. Most of the castes are endoga-mous groups. Inter marriage between two groups is impermissible. But "Pratlom" marriage are not wholly unknown. Similarly with the onward movement of urbanisation, members of various castes are slowly giving up traditional occupations and the concept of pure and impure avocations is being frowned upon by developing notion of dignity of labour. As the fruits of Independence were unequally distributed amongst various segments of the society, in each caste there came into existence a triple division based on economic resurgence amongst the members of the caste. Those who have become economically well off have acquired an upper class status (class consciousness) and the one on the step below is the middle class and the third one belongs to poorer section of the caste. This led to the realisation that caste culture does not help economic interest. In fact the upper crust of the same caste is verily accused of exploiting the lower strata of the same caste. It is therefore, rightly argued that the basis of the caste system namely, purity and pollution is slowly being displaced by the economic condition of the various segments of the same caste. It is recognised on almost all hands that the important features of the caste structure are progressively suffering erosion. The new organisation, the so-called caste organisation, is substantially different from the traditional caste structure and caste councils. Economic differentiation amongst the members of the caste has become sharp, but not so sharp as to bury caste sentiments and ties."

In paragraph 110 (of SCC) : (Para 109 of AIR) it is further observed as follows :

"We are aware of the meanings of the word caste, race, or tribe or religious minorities in India. A caste is an association of families which practice 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. There are sub-groups amongst the caste which sometimes inter many and sometimes do not. 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,"

12. In *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, the Hon'ble Supreme Court held that, "a caste is nothingbut a social class--a socially homogeneous class. It is also an occupational grouping with its difference that its membership is hereditary. One is from into it. Its membership is involuntary."

13. In the decision reported in *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, : *Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others*, , at Paragraph 11, (of SCC) : (Para 10 of AIR), the Hon'ble Supreme Court observed as follows :

"..... .This school record, comparatively, is not only oldest but it being the record pertaining to candidate" father"s admission to school prior to independence, it carries greatest probative evidentiary value. 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."

14. It is also right in this context to remember the following observation of the Supreme Court in the decision reported in *Palghat Jilla Thandan Samudhaya Samrakshana Samithi v. State of Kerala* (1994) 1 KLT 118.

"15. We now proceed upon the basis that the State Government is right when it says that there is a section of the Ezhavas/Thiyyas community which is called Thandan in the Malabar area of the State.

16. Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a State but also "parts of or groups within castes, races or tribes" which shall be deemed to be Scheduled Castes in relation to a State. By reason of Article 341 a part or group or section of a caste, race or tribe, which as a whole, is not specified as a Scheduled Caste, may be specified as a Scheduled Caste. Assuming therefore, that there is a section of the Ezhava/Thiyyas community (which is not specified as a Scheduled Caste) which is called Thandan in some parts of Malabar area, that section is also entitled to be treated as a Scheduled Caste, for Thandans throughout the State are deemed to be a Scheduled Caste Order as it now stands. Once Thandans throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in the 1987 Order."

15. The learned Government Pleader brought to our notice the decision, reported in G. Sundarasan Vs. Union of India and another, In paragraph 3 of the decision, It is observed that, ".....It is for the petitioner to prove that he belongs to the Scheduled Caste specified in the Presidential Notification in relation to the State to which he belongs and was born."

16. Learned counsel also relied on the decision in Mrs. Valsamma Paul Vs. Cochin University and others, . In paragraph 32 it is observed as follows (Para 33 of AIR) :

". . . . It is seen that Dalits and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected to and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities."

17. Another decision cited by the learned Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another Vs. Union of India (UOI) and Another, wherein it was held by the Supreme Court that "a Scheduled Caste can get the benefits from the state of origin and not to the state of migration." Thandans of the erstwhile Malabar were not scheduled castes prior to the amendment to the Scheduled Caste Order in 1976."

18. With regard to the question whether petitioner is entitled to the benefit of Scheduled Caste, the judgment of the Hon'ble Supreme Court in Palghat Jilla Thandan Samudhava Samrakshana Samithi v. State of Kerala(1994 (1) KLT 118) (supra), holds the field. We are stressing this aspect because lot of argument was made by ti respondents as well as lot of comments have been made in Ext. P100 report to the fact that because petitioners ancestors used to possess properties and were not backward --socially or economically, they cannot belong to the community of Thandan. We are of the view that the scrutiny committee as well as the Government have gone at a tangent when these observations were made. The focus of attention is not on the social status or economical position or educational qualification of a person or members of his family. The question is in which caste he was born. It is not always necessary that all persons belonging to a caste should suffer in the same way. Persons in the same caste may be poor or rich, educationally backward or forward. But the Scheduled Castes Order is not intended to a private individual, but It is intended for a particular class of persons. It may be true that a person belonging to a particular caste may be in very lucrative circumstances, but having born in such a caste, he is entitled to all the benefits available to that caste. In the same way, there may be persons who are in poverty but belonging to a caste which is not Included in the list Scheduled Castes. The Honourable Supreme Court put it very aptly when it observed in

Palghat J.T.S.S. Samithi v. State of Kerala (1994 (1) KLT 118) (supra), "Assuming therefore, that there is a section of the Ezhavas/Thiyyas community (which is not specified as a Scheduled Caste), which is called Thandan in some parts of Malabar area, that section is also entitled to be treated as a Scheduled Caste, for Thandans throughout the State are deemed to be a Scheduled Caste by reason of the provisions of the Scheduled Caste Order as it now stands. Once Thandans throughout the State are entitled to be treated as Scheduled Caste by reason of the Scheduled Castes Order as it now stands. it is not open to the State Government to say otherwise, as it has purported to do in the 1987

19. In Sital Prasad Saxena (Dead) by Lrs. Vs. Union of India (UOI) and Others, . Chandrachud, C.J. observed as follows (Para 2 of AIR):

The reservation in favour of the Scheduled Castes and Scheduled Tribes must continue as at present, there is, without the application of a means test, for a further period not exceeding fifteen years. Another fifteen years will make it fifty years after the advent of the Constitution, a period reasonably long for the upper crust of the oppressed classes to overcome the baneful effects of social oppression, isolation and humiliation",

In the same judgment, Desai J. observed that the assumption that all members of a caste are equally socially and educationally backward is not well founded. In Paragraph 25, It was further observed that caste criterion would not furnish a reliable yardstick to identify socially and educationally backward group in the aforementioned communities though economic backwardness would. It was further observed in paragraph 26 that a time has come to review the criterion for identifying socially and educationally backward classes ignoring the caste label. In paragraph 31, it was observed as follows :"

"Let me make abundantly clear that this approach does not deal with reservation in favour of Scheduled Castes and Scheduled Tribes. Thousands of years of discrimination and exploitation cannot be wiped out in one generation. But even here economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefitted by it and improve their position. And finally reservation must have a time span otherwise concessions tend to become vested interests."

In the same judgment, at Paragraph 37 Chinnappa Reddy, J. observed that, "so far as Scheduled Castes and Scheduled Tribes are concerned, the question of their identification stands resolved by the notifications issued by the President under Part XVI of the Constitution. The problem is only in regard to the identification of the other socially and educationally backward classes."

The above observations show that the economic criterion is not the guiding principle to deny a person the benefit of Scheduled Caste if he actually belongs to that caste.

20. Learned Government Pleader relied on the decision in Mrs. Valsamma Paul

Vs. Cochin University and others, . According to us that decision has no relevance to the facts of this case. That was a case where a person belonging to a forward caste married a person belonging to Latin Christian Community which was entitled to reservation as backward class. The contention raised was that once a person marry into a family which belong to a community which was a backward class, that person was also entitled to claim reservation. The Court held that there is no change of religion by marriage. Further it went out to hold that reservation is given keeping in view the backwardness of the class. Petitioner therein being born in a class which was not backward she was not entitled to the privileges merely because she was married to a person belonging to backward class. This case is not relevant so far as our case is concerned because here there is no change of caste. The case of the petitioner is not that he belongs to Thandan community but evidence is there that his family is in affluent circumstances. We are also of the view that the question of caste depends upon the caste in which the person is born. Unless there is evidence to show that a person has given up the membership of a caste and joins some other caste, he should be deemed to be a caste in which he is born. The crucial point is to ascertain the caste at the time of birth. When we look in that perspective we find that documents produced by the petitioner especially Exts. P8, P10, P 11 to 15, P17, clearly show that petitioners ancestors were Thandans. No document has been produced to show that either petitioner's father or his grandfather or his mother belong to Ezhava or Thityya community. No doubt, there are some extracts produced to show that some of the relations of the petitioner have described themselves as Ezhavas. These are all subsequent to the earlier documents. We do not know in what circumstance those entries were made. Probably, they are also challenging the entries.

21. On the whole, when we look at Ext. P100 we find that the scrutiny committee ignored documents which prove that petitioner's ancestors and petitioner as belonging to Thandan community on irrelevant grounds. It was merely on the ground that petitioner's family had social status that the entries in the documents were not taken into account. There is no case for the committee or for the respondents that these documents were not genuine. As a matter of fact, these documents came into force in the early 1940's and 1950's, when there was no such controversy. The scrutiny committee made much of the petitioner's correcting his SSLC book after the Act 108 of 1976 came into force. We find nothing wrong in this. If actually a person belongs to Thandan community, and he finds that entry in the SSLC book was wrong, he has every right to correct it and if a honest correction is made it is not necessary to view it with suspicion that it was done only to reap the benefit of the 1976 Order. We cannot find fault with a person in attempting to get the benefit of law if it is done not fraudulently and if it is done honestly and in accordance with law. In this context, we also wish to say that the question whether petitioner belongs to Thandan community arose even when the petitioner was advised for appointment in the judicial service. Exts. P1 and P2 are the two reports of the Assistant Collector. The

Assistant Collector has even said that the petitioner belongs to Thandan community. Even at that time, the Assistant Collector had referred to the partition deed of the year 1941. Hence these reports cannot be lightly thrown away. As already seen from the Supreme Court judgment that in certain areas of Palghat, a section of Ezhavas or Thiyyas were called Thandans. If we look into the entire aspects in this perspective, merely because a person was shown as Thiyya or Ezhava, it cannot be assumed that he does not belong to Thandan community if there are documents to prove that. Thus, on a scrutiny of the documents we are of the view that Exts. P100 and P101 cannot stand. The finding in Ext. P100 that the petitioner is not a person belonging to Thandan community is set aside. On the other hand, we are of the view that evidence adduced in the case shows that petitioner belongs to Thandan community. The order. Ext. P100 stating that community certificates obtained by the petitioner from Tahsildar Alathur is false is set aside. The community certificate are restored. The " correction of the caste entry in the SSLC book is approved. It is further declared that petitioner is entitled to all the rights, benefits, exemptions or concessions admissible for scheduled castes. Ext. P101 order passed by the Government of Kerala is set aside. Consequently, the show cause notice , Ext. 102 is quashed.

22. Before we part with this case, we want to stress one aspect. In Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , the Hon"ble Supreme Court has held that against the orders passed by the scrutiny committee, only a petition under Article 226 will lie and the High Court shall dispose of the case as expeditiously as possible within a period of three months. The present Original Petition was filed on 7-10-1997. On 9-10-1997 learned single Judge referred the matter to Division Bench and it came before the Division Bench on 14-10-1997 and it was adjourned to 22-10-1997. On 22-10-1997 it was adjourned to 4-11-1997. On 4-11-1997 notice was ordered. Notice was sent on 5-11-1997 with hearing dated 26-11-1997 and an interim order of stay was granted on 4-11-1997. The stay was extended until further orders on 2 -12-1997. Thereafter the case was posted before the Bench consisting of AR Lakshmanan, J. and K. Narayana Kurup. J. on 4-11-1998. It is seen that Government Pleader filed statement on 10-11-1998 and it was in the list till 25-11-1998. On 25-11-1998 the case was adjourned to 4-12-1998. The English translation of the documents were not produced and therefore the matter was adjourned and was posted on 12-1-1999. Then it was adjourned to 18-1-1999 and on 22-3-1999 at the request of the parties, it was adjourned after vacation. After the summer vacation the case was posted before this Division Bench. It was in the list throughout from Oct. to Dec. The matter was not taken either because the counsel was not ready or because the Court had no time. After the Christmas Holidays, the matter was posted before the same Bench, but the said Bench was not continuously sitting. It was sitting only on Tuesdays and Thursdays at 3.30 p.m. Thereafter the case was posted on 7-2-2000 and the petitioner's counsel sought for adjournment due to illness. Thereafter the Government Pleader sought for adjournment. Counsel for the

impleading petitioner was present only on two days. When the hearing started, he was not present. When the hearing was about to be completed, counsel wanted time to argue. With much reluctance we granted time. On the adjourned day, counsel was present and we heard him. Counsel also submitted a written note. We are stating this because counsel for the impleading petitioner was absent throughout except on two occasions and the case was adjourned either at the request of the counsel for the petitioner or the respondent. Being a matter containing a large number of materials we wanted English translation of the documents and also paper book containing all documents.

The Original Petition is allowed.