

(2012) 01 KL CK 0073
In the High Court Of Kerala
Case No : M.F.A. No. 121 of 2003

P.G. Bhanumathy and Others

APPELLANT

Vs

Chairman, Scrutiny Committee

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 — Section 1, 10, 11, 12(3), 13

Citation : (2012) 1 KLJ 529

Hon'ble Judges : Thottathil B. Radhakrishnan, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : Laly Vincent (GP), P.V. Mohanan and B. Harish Kumar, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The captioned appeal is filed u/s 12(3) of the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of issue of Community Certificates Act, 1996, for short, the "Act", challenging a decision of the Scrutiny Committee u/s 11 of that Act. The connected writ petition is filed challenging the validity of certain provisions of the Act. we may record that while the reliefs sought for in the writ petition relate to different provisions of the Act, arguments were confined to pointing out that Section 9(2) of the Act is arbitrary, in as much as, the report of the Expert Agency, an entity defined in Section 2(g) of the Act, is ordained as "conclusive proof, taking away safeguards in adjudication. But, as rightly pointed out by the Learned Counsel for the petitioners and the learned Special Government Pleader, that challenge no more survives, in view of the amendment made as per the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of issue of Community Certificates (Amendment) Act, 2008, for short, the "Amending Act". Thereby, the vigor of the Expert Agency's report as "conclusive proof has been watered down to be "unless found contrary by the Scrutiny committee, after due procedure". No other issue having been raised and argued on the validity of the Act, WPC.No. 30481 of 2003 is only to be ordered recording that the invalidity of Section 9(2) of the Act, as contended by the

petitioners, does not survive in view of the legislative change as noted above.

2. On to the appeal; the fact of the matter remains that by two different written objections filed by them, the appellants placed their entire contentions before the Scrutiny Committee. Apart from producing the documents relied on by them, they had also requested that Committee for opportunity to examine the witnesses enumerated in their objections. Remember, this exercise was carried out by the appellants at a point of time when the Act stood unamended and the Scrutiny Committee had to follow the Expert Agency's report, as if it were an unexceptional hard rock of "conclusive proof, in view of sub-section 2 of Section 9 as it then stood. At that time, subsection 2 of Section 9 of the Act enjoined that the Expert Agency's report shall be "conclusive proof for or against the Scheduled caste or the Scheduled Tribe claim, as the case may be, of the person reported upon. It was, obviously therefore, that the scrutiny committee did not grant opportunity to the appellants, either to summon and examine the witnesses or to incorporate the documents placed on record.

3. Section 10 of the Act provides that in any enquiry conducted by the Competent Authority, the Expert Agency or the Scrutiny Committee, the burden of proving that he belongs to such Caste or Tribe shall be on the claimant. Section 14 provides that the Competent Authority, the Expert Agency and the Scrutiny Committee shall, while holding an enquiry under the Act, have all the powers of a Civil court, trying a suit under the Code of Civil Procedure, in respect of the matters enumerated in clauses 1 to 6 of that section. This includes powers attendant to summoning; discovery; recording evidence; issuing commissions for examination of witnesses or documents etc. After casting the burden of proof on the claimant in terms of section 10, the Legislature prescribed, in section 14, the mechanism for carrying out the enquiry; enabling the claimant to discharge his burden of proof which would be in the nature of rebuttal evidence, in as much as, he has to show that he belongs to the Caste or Tribe as claimed by him and thereby establish his on the face of an imputation to the contrary. That being so, there is no ground to exclude opportunity to adduce evidence. The amendment to Section 9(2) relates to matters attendant to procedure and evidence. Appeal u/s 12(3) is a statutory appeal. It is provided to an established Court, i.e., the High Court. Appeal is continuation of trial, change in laws relating to procedure and evidence (is to be reckoned as applying to all pending proceedings. That way, such legislative changes are retrospective and apply to proceeding pending in the appellate jurisdiction also. Therefore, that amendment having come during the pendency of the appeal, that has to be applied in deciding the appeal, though the impugned decision was rendered by the scrutiny Committee before that amendment.

4. Looking at the facts from the aforesaid angle, we cannot but say that the appellants, who could be visited with serious adverse civil consequences, stand deprived of opportunity to adduce oral and documentary evidence in rebuttal of the contents of the report of the Expert Agency. They are entitled to make the

representation, on facts, including by tendering evidence to rebut the conclusiveness available to the report of the Expert Agency. Such entitlement is part of their right to discharge the burden of proving that they belong to such caste or tribe as claimed by them. They are entitled to such opportunity. The report of the Expert Agency will stand only if the appellants fail to avail such opportunity and thereby discharge the burden of proof. Appellants had produced materials and requested to summon witnesses. Such opportunity not having been extended to them, we have, necessarily, to remit the matter for reconsideration by the Scrutiny Committee in terms of what is stated herein above.

5. But, the learned special Government Pleader argued that if the appellants had any grievance against the report of the Expert Agency, they ought to have challenged it by filing a revision before the Government u/s 13 of the Act. Appellants' Learned Counsel argued that such revisional authority is not available having regard to the scheme of the Act.

6. Sub-section 1 of Section 13 provides for a revision, including suo motu under that provision, if in any case, it appears to the Government, on such an exercise, that any decision or order should be modified, annulled, reversed or remitted for reconsideration, or subjected to enquiry by the Expert Agency or Scrutiny Committee they may do so accordingly. The inexcusable rationale which needs to be remembered in this context is that the very purpose of having an "Expert Agency" is to identify and employ an agency of such expertise as enjoined in section 2(g), for the purpose of ensuring that there is an enquiry by that Expert Agency in terms of Section 9 of the Act. The Government is no substitute for that expert. The quality and expertise of the Expert Agency, its duties and powers under the Act and its role in terms of Section 9, obviously, go to show that its report is something of which, a revision to the Government is not conceived by the legislature. This view emanates on the totality of the scheme of the legislation in hand, Not only that, in exercising the revisional authority, the Government can, and, may, subject the issue to an enquiry by the Expert Agency or the Scrutiny Committee, obviously, this means that the statute does not conceive the Government sitting in revision on any report on the Expert Agency or the scrutiny committee. Another formidable aspect is that by the Amending Act, while retaining the status of the report of the Expert Agency as being one of "conclusive proof, the opportunity given to one who challenges it, is only to prove the contrary before the Scrutiny Committee, in the scheme of the Act and the setting in which the Expert Agency is conceived and provided for in the Act, there is no room to hold that a revision lies u/s 13 of the Act, against the Expert Agency's report or the Scrutiny Committee's decision based on that report. The power of the Government to decide on such a revision cannot be exercised as against any decision of [the Expert Agency or Scrutiny Committee. The argument on behalf of the State to the contrary is, hence repelled,

7. We are also unable to accept the argument on behalf of the State that" the

appellants should have produced materials in this appeal before this Court, if they were to sustain the attack against the impugned order of the Scrutiny Committee. The short answer to that argument is that a court of appeals not a court of first instance, it having been held that the appellants are entitled to opportunity before the Scrutiny Committee in view of the provisions of Section 9 (2) as amended, they cannot be compelled to establish their case in the appeal without being provided opportunity before the Scrutiny Committee, which is the authority of first instance. The well settled doctrines of appellate jurisdictions qua original jurisdictions advise us against accepting the argument of the learned Special Government Pleader in this regard.

8. For the aforesaid reasons the proceedings impugned in the appeal is vacated. The matter from which that appeal arose is remitted to the Scrutiny Committee for consideration de novo in the light of what is stated above. The appellants are directed to mark their appearance before the Scrutiny Committee on 01.02.2012. This order of remit having become essential in the light of what is stated above, we need to mention that the Scrutiny Committee will make an end favour to conclude the proceedings remitted hereby at the earliest. The Writ Petition and the Miscellaneous First Appeal are ordered accordingly. No costs.