

(2006) 05 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No. 8492 of 2001

Prabhakar Marvelar

APPELLANT

Vs

The Special Divisional Commissioner, Belgaum Division, The
Chairman, District Caste Verification Committee and The
Deputy Commissioner, Syndicate Bank and The Deputy
General Manager, Syndicate Bank

RESPONDENT

Date of Decision : 30-05-2006

Acts Referred:

Constitution of India, 1950 — Article 15, 16, 17, 46

Citation : (2006) ILR (Kar) 2586 : (2007) 3 KarLJ 288 : (2006) 3 KCCR 1604

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; K.R. Prabhu, for Tukaram S. Pai, for Respondent Nos. 3 and 4 and R.B. Satyanarayana Singh, HCGP, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for the following reliefs. They are;

- (1) To declare that the disciplinary proceedings initiated as per the order dated 10.09.1992 against the petitioner as null and void;
- (2) For a writ in the nature of certiorari to quash the order dated 12.01.2001 passed by the Divisional Commissioner;
- (3) To quash the orders dated 31.03.1992 and 06.06.1992 passed by the Deputy Commissioner, Uttara Kannada, Karwar.

2. The petitioner was appointed as a Clerk in the third respondent -Syndicate Bank in the year 1980. Petitioner secured this appointment claiming to be a Scheduled Caste candidate belonging to Hindu-Bandi community. The Deputy Commissioner, Uttara Kannada district, reported to me fourth respondent stating that the petitioner belongs to "Baandhi" community which is not a Scheduled

Caste community and that the same is backward class community. The fourth respondent, on the basis of the report submitted by the Deputy Commissioner, issued a charge sheet to the petitioner on 10.09.1992 alleging that the petitioner obtained the appointment in the third respondent - Bank by falsely representing that he belong to Scheduled Caste community. Since the reply submitted by the petitioner was not satisfactory, the disciplinary authority appointed an Enquiry Officer to enquire into the matter. The Enquiry Officer completed the enquiry and submitted his report stating that the charge levelled against the petitioner as proved. The Disciplinary Authority vide notice dated 31.05.1994 called upon the petitioner to show cause as to why he should not be dismissed from service. When the matter stood at mat stage, the petitioner approached this Court in W.P. No. 17396/1994 to quash the show cause notice issued by the Disciplinary Authority of the Bank dated 31.05.1994. The petitioner also filed another writ petition in W.P. No. 36909/1994 to quash the letter dated 08.09.1992 issued by the Deputy Commissioner reporting the caste of the petitioner to the fourth respondent. This Court, by a common order dated 09.07.1996, disposed these writ petitions with a direction to the Deputy Commissioner to refer the issue of petitioner's caste to the Caste Verification Committee. Till the Caste Verification Committee decides the caste of the petitioner, the Bank was directed not to proceed with the show cause notice issued by the Disciplinary Authority. Subsequently, the Caste Verification Committee by its order dated 31.08.1998 held, that the petitioner belongs to "Baandhi" community which is a Backward Class community and not a Scheduled Caste community. Aggrieved by this order of Caste Verification Committee, petitioner filed an appeal before the Divisional Commissioner and the same came to be dismissed on 12.01.2001 confirming the order of Caste Verification Committee. Hence, this writ petition.

3. Sri. Umesh R. Malimath, learned Counsel for petitioner contends, that the Government of India in its notification dated 20.09.1976 included "Bandi" community in the first schedule as Scheduled Caste community. In the Kannada version of the notification dated 20.09.1976, the caste "Bandi" was translated as "(sic)". He contends, that the petitioner belongs to "Baandhi" community and therefore he belongs to Scheduled Caste community. The findings of the Caste Verification Committee and also the order of the Divisional Commissioner are contrary to the Government of India's notification dated 20.09.1976 in Kannada. He contends, that the State Government has no power to alter or to give a different meaning to the Government of India's notification dated 20.09.1976. Reliance is placed on the following decisions.

1. State of Maharashtra v. Milind and Ors. AIR 2001 SC 393
2. Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another,
4. Sri. V.P. Kulkarni, learned Counsel requests the Court to permit him to make a submission on the issue involved in this case on the ground that there are similar other matters pending on the file of this Court and in those matters he

represents the petitioners. Accordingly, he was permitted to make his submissions. He contends, that in the Government of India's notification dated 20.09.1976 the caste "Bandi" is declared as Scheduled Caste community. In the Kannada version of this notification the word "Bandi" is stated as "(sic)". The State Government is not entitled to give a different meaning to the word "Bandi". Even if there is a mistake in the translation, it is open to the State Government to request the Government of India to correct the mistake. Without correcting the mistake in the Kannada version of the notification, the State Government is not entitled to give a different meaning.

5. Sri. K.R. Prabhu, learned Counsel for the respondent - Bank contends, that the Government of Karnataka in the year 1986 notified the community "Baandhi" as backward class community. The Government of India in its notification 20.09.1976 declared the community "Bandi" as Scheduled Caste community. He contends, that there are two communities called "Bandi" and "Baandhi" in Uttara Kannada District, Taking advantage of the Kannada translated version of the notification of the word "Bandi" as "(sic)" candidates belonging to "Baandhi" community are enjoying the benefits reserved for Scheduled Caste community by depriving the candidates of "Bandi" community who are the genuine Scheduled Caste community. He justifies the impugned orders. Reliance is placed on the following decisions.

1. Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others,

2. Lilly Kutty Vs. Scrutiny Committee, S.C. and S.T. and Others,

3. Bank of India and Another Vs. Avinash D. Mandivikar and Others,

4. R. Vishwanatha Pillai Vs. State of Kerala and Others, .

6. Heard arguments on both the sides. Perused the entire writ papers.

7. The caste system has hounded Indian Society for thousands of years. India is the only country in the world where the caste system came into force and still exists. The caste system was sanctified by religion and ancient scriptures and this was the main reason for its consolidation. The distinctiveness of the caste system was that it was hereditary, compulsory and endogamous. The worst affected by the caste system and its social oppression have been the "Dalits" or Atishudras" or Scheduled Castes. The Adivasis or Scheduled Tribes in India have also faced social oppression over the ages. The Scheduled Castes and Schedule Tribes were subjected political, economical, social and religious disabilities in society. By experience it is realised that by political empowerment and economical empowerment of the Scheduled Castes and Scheduled Tribes, their living conditions can be improved. Reservations to these sections is an affirmative action intend to provide space and scope for these historically discriminated communities to move away from discrimination and segregation. In order to protect and promote the less fortunate or unfortunate people who have

been suffering from political, economical, social and religious injustice, certain provisions are made in Indian Constitution. In our Constitution equality of all citizens of India was announced. Article 15 specifies that State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Article 16 specifies that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 17 prohibits the practice of untouchability in any form and the practice of it is made a punishable crime. Article 46 empowers the State to promote with special care, the educational and economical interest of Schedule Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Article 33 provides reservation for Scheduled Castes and Scheduled Tribes in the house of people.

8. After independence the living conditions of a small section of Scheduled Castes and Scheduled Tribes has been improved. These castes are entering every area of activity and have contributed for the development of the Country. Despite the little improvement in the living conditions of these casts, almost every socio-economic indicator shows that the position of Scheduled Castes is extremely unsatisfactory and in many cases it is getting worst. Added to this, some persons by producing false certificates as belonging to Scheduled Castes and Scheduled Tribes have been capturing or cornering seats or vacancies reserved for these castes defeating the very purpose for which the provisions are made in the Constitution. Keeping this purpose for which reservation for Schedule Caste and Schedule Tribes are made the fact situation in the instant case is to be examined.

9. It is not in dispute that in Karwar District, there is a caste called "Bandi" and also another caste by name "Baandhi. The Gezetter of Bombay Presidency of 1883 describes the caste "Bandi" as under:

Bandis or Bondsmen, numbering about 4500 of whom 2000 are males and 2500 females, are found in small numbers in Karwar and Kumta and along the coast as far as Honavar. They are the descendants of the bondsmen whom the landed proprietors formerly owned. Their ancestors were probably prisoners of war, imported slaves, and perhaps women taken in adultery. They are said to have come with the Konkani-speaking Brahmans from Goa after the Portuguese occupation of the Country. The names in common use among men are Pursu, Kamu, Nagu, Chiku, Narayan, and Kushta; and among women, Shevantu, Putli, Krishni, Kasi, Venu, and Thakai. They have no surnames or household gods but members of the same family do not intermarry. The Bandis of different parts of the coast do not intermarry or eat together. They are short and muscular, some of them fair and some of them dark, and most with well-cut features. All speak Konkani. They live in huts with mud walls and thatched roofs. Their every-day food is rice, but they eat fowls, mutton and game, and drink liquor. They are immoderate eaters and bad cooks. The men generally wear loincloth, a coarse blanket, and a headcarf; and the women the robe with the skirt passed between the feet and a bodice with short sleeves and a back. They mark their brow with

red and wear the lucky necklace, nose and ear rings and glass bangles. They are hardworking, but careless, vicious, thriftless, hot-tempered, and dishonest. Both men and women are employed as domestic servants by Brahmans and other high class Hindus. Their chief work is to clean copper pots and pound rice, cowdung the floor, and bring headloads of fire wood, but some men work as carpenters and a few as husbandmen. Their earnings as prostitutes which are insignificant are spent in buying flowers, cloths, and sweetmeats. They are almost destitute. They rank with the Adbatkis next above the impure classes. Their daily life does not differ from that of the Adbatkis. A family of five spends about 14s. (Rs.7) a month. They worship all Brahman gods and evil spirits, employ Joshis to perform their ceremonies and stand in great fear of the spirits of the dead. Their spiritual Teacher is the head of the Smart monastery at Shringeri. Few of them marry, most of the girls becoming prostitutes. The married women are allowed to consort with whom they pleas, except with men of the impure castes. Their ceremonies are the same as those of the Devlis....

10. The Karnataka Second Backward Class Commission report specifies "Baandhi" community as backward class community and the Government of Karnataka in its order dated 13th October 1986 accepted the Second Backward Class commission Report and provided reservation to the "Baandhi" community under the category of backward caste. Therefore, the caste "Bandi" and the caste "Baandhi" are different. The caste "Bandi" is notified as scheduled caste and included in the first schedule by presidential assent dated 18.9.1976.

11. Admittedly, the petitioner belongs to "Baandhi" community. This Baandhi community is notified as backward class community in the Government of Karnataka's notification dated 13.10.1986. But the petitioner though belongs to Baandhi community, claims that he is a scheduled caste person. The petitioner secured employment in the respondent-bank, claiming to be a member of scheduled caste community. The caste verification committee in its order dated 31.08.1998 held that the petitioner is not a person belonging to scheduled caste community. The only ground on which the petitioner attacks the order of caste verification committee is on the basis of the Kannada Version of presidential assent dated 18.09.1976 in which, the caste Bandi is worded in Kannada as "(sic)". Benjamin N. Cardozo in one of his lectures - The Methods of History Tradition and Sociology, observed, that when Judges are called upon to say how far existing rules are to be extended or restricted, they must set the welfare of society, fix the path, its direction, and its distance. Therefore, in the instant case, the social mission behind the reservation for Scheduled Castes and Scheduled Tribes shall guide our path, direction and distance. A combined reading of the presidential assent dated 18.09.1976, the Gezetter of Bombay Presidency of the year 1883 and the Government of Karnataka's notification dated 13.10.1986 manifestly makes it clear that the Bandi community is the scheduled caste community, for which reservation is provided in the employment of respondent-bank. The petitioner admittedly belongs to Baandhi community, which is backward class community as notified by the Government of Karnataka. The

petitioner claiming to be a member of scheduled caste community secured employment in the bank. Thus, the petitioner by taking advantage of the Kannada version of presidential assent dated 18.09.1976, played a fraud on the respondent-bank and secured employment. Therefore, the impugned order of caste verification committee is in accordance with law and the same do not call for interference.

12. The Kannada version of "(sic)" is spelled in English as "Bandi". The Kannada version of "(sic)" is spelled in English as "Baandhi". It is the "Bandi" community which is declared as Scheduled Caste community. Admittedly petitioner do not belong to "Bandi" community. On the other hand petitioner admits that he belongs to "Baandhi" community. The question is whether the petitioner belongs to Scheduled Caste? The Government of India Notification dated 20.09.1976 includes "Bandi" community in the first schedule as Schedule Caste. Admittedly the petitioner do not belong to "Bandi" community and as such he is not a Schedule Caste person. The petitioner who is not a Scheduled Caste person falsely claiming to be a Scheduled Caste person secured an employment in the bank to which he is not entitled, committed a fraud. The petitioner who has played fraud is not entitled for equity.

13. For the reasons stated above, the writ petition is rejected with no order as to costs.