

(1979) 10 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 8873 of 1979

Somashekhar Veerappa B. Murgod

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 11-10-1979

Acts Referred:

Citation : AIR 1980 Kar 62

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : S.M. Babu, for the Appellant; B.B. Mandappa, Govt. Pleader, for the Respondent

Judgement

1. In this writ petition , in which the petitioner who, was an applicant for admission to Ist year M.B.B.S Course in any one of the Medical Colleges in the state has prayed for issue of a writ of mandamus directing the Selection committee to select him for Ist year M.B.B.S. Course during the academic year 1979-80 the following question arises for consideration:

"Whether such of the, persons who be Kuruhina Setty Community, who had become Lingayats are, entitled to the benefit of special provisions made in favour of educationally and socially backward classes according to which "Kuruhina setty" is declared as one of the Backward Communities?"

2. The State has constituted a, Selection Committee for the purpose of making selection for admission to Ist Year M.B.B.S Course in Government and Private medical Colleges in the, State. "The selection Committee called for applications from the eligible candidates for admission to Ist year M.B.B.S. Course during , the. academic year 1979-80. The petitioner being eligible for admission to M.B.B.S. Course submitted his application to the Selection Committee. In the application, the petitioner claimed admission as against seats reserved for Backward, Communities as per Government order dated on 18-5-1977, on the basis that he belongs to Kuruhina setty, Community, which is one of the.

Backward Communities, set out in appendix-I to the said Government Order in which, the State Government directed reservation of seats in favour, of Backward Communities, Backward Castes and special Groups to the extent of 20 per cent, 20 per cent and 10 percent respectively along with the application, the petitioner has produced a certificate obtained from the prescribed officer to the effect that the petitioner belongs to Kuruhina setty community which is one of the Back Backward Communities as specified in the Government order dated 18-5-1977. The petitioner was called for interview. He was not selected. The petitioner found that persons who had secured lower marks than him have been selected as against the seats reserved for Backward communities. Hence, he has presented this writ petition complaining discrimination in the matter of selection for admission to Ist Year M.B.B.S Course.

3. Sri B.B. Mandappa, learned High Court, Government Pleader, submitted that the Selection Committee rejected the, claim of the petitioner for selection as against the seat reserved for Back ward Communities on the ground that the petitioner belongs to Lingayat com as disclosed from, the copy of the transfer certificate produced by him along with the application. Therefore, he submitted that as Lingayat communities is not one of the communities specified in the annexure to the Government order dated 18-5-1977, the Selection Committee was right in rejecting the claim of the petitioner.

4. As against this, Sri Prasad learned counsel appearing for the petitioner, contended that the petitioner belongs, to Kuruhina Betty Community though, his ancestors had adopted "Veerashaiva or Lingayat in order to substantiate that: the entire Kuruhina Setty Community is a Backward community notwithstanding the fact that some of them had become Lingayats, he relied on the report of Karnataka Backward Classes Commission under the Chairmanship of Sri L. G.Havanur on which the Government order is based. The portions of the report on which he relied consists of the evidence given before the commission and the findings and- are found at pages 244, 270, 271, 278 and 279. The relevant portions read as follows:

SUMMARY OF EVIDENCE

KURUHINA SETTY :

B. V, Ramanna, M.A.L.T., President, south Coorg Kuruhina. Setty Association, Bittangala, Viraipet Taluk Ex-District Educational Officer, Mangalom Ex-Vice-Principal, College of. Education, Mangalore.

In the district of Coorg. the Kuruhina Setty are planters and, agriculturists but in the remaining are" of the State their. Traditional occupation is silk weaving. The criteria mentioned in the questionnaire are exhaustive. Some of the Kuruhina Settys have embraced Veerashaivism. of late, there have been marriages between the non Lingayat Kuruhina Settys and Lingayat Kuruhina Set There is no distinction between, the two. However, they all go as Kuruhina

1. B. Siddappa, A.M.I.C, Secretary, Kuruhina Betty Association, Bangalore.
2. B. R. Neelankstappa, Merchant, Bangalore.
3. B. R. Ramachandraiah, Merchant, Bangalore

The population of Kuruhina Settys may be about 2 lakhs. They also go as Bilimagga, because, they are engaged in weaving white dhotis. The synonymous names for Kuruhina setty are Bilimagga, Sale, Koshti non Lingayat Kuruhina setty girl when married to Lingayat Kuruhinasetty Bridegroom, is made to go through the initiation ceremony of wearing Lingarn. When Lingayat Kuruhinasetty girl marries a non Lingayat Kuruhinasetty boy, it is left to the discretion of the girl either to continue to wear the Lingarn or to discard it. There are some communal hostels for students, and Mutts or Monasteries. Kuruhinasettys claim to be vanishes occupying the third rank in the caste hierarchy. They do not belong to Shudras. There are some belonging to Vaishnava cult and some belonging to Shaiva cult, but there have been inter-marriages. Some have gone as Kuruhina Settys and some have gone as Veerashaivas in official records.

1. Basappa Kattappa Anand, Vice President, Shree Kuruhina Setty Yuvaka Mandali, Gadag-Betgerl, Dharwar District.
2. Narayan Narasappa Mudagundi, Hon. Secretary.
3. G. Hutchappa.
4. Shankarappa Adiki.
5. Sanna Jambanna, P. Shavi, Members.

Kuruhinasettys, a section of weavers, whose traditional occupation is weaving, are engaged in the production of sarees used mostly by the village women-folk. Of late, they have taken to large scale Production of unproved varieties of sarees by employing power-looms. On account of the emergence of textile mills which produce sarees in large-scale of finer variety, the demand for coarse products has gone down considerably, and so, the people who are traditional weavers have been rendered unemployed or they have taken to other trades or occupations. A section of Kuruhina Settys are Lingayats. The Lingayat section are vegetarians and they wear Lingarn, The non Lingayat section are non-vegetarians and they do not wear Lingarn. Those who wear Lingarn, have gone as Lingayats in the official records.

xxx xxx xxx xxx INTERPRETATION OF SOCIO-ECONOMIC SURVEY DATA

So far as Lingayats' claim that they are 60 lakhs is concerned, they seem to have proceeded on the basis that everyone who wears Lingarn is a Lingayat by community and everyone who wear a Lingarn was invariably returned at the census enumeration as Lingayat. Indeed, some of the people belonging to other castes such as Beds (hunter) and Kuruba (Shepherd) castes are wearing Lingarn. Nevertheless, they have retained their original caste identity. Some of the untouchable caste people wear Lingarn, but in the Census and other official records they have gone as untouchables with their caste names. This is not all. Some of the Reddish and Kunchitigas, who form sections of Vokkaliga Community, wear Lingarn, yet remaining to be Reddish and Kuchitigas, as the

case may be. However, we cannot take notice of such things, since one could wear Lingarn without becoming a Lingayat. It only shows the cultural impact of Lingayatism and the influence of hundreds of Mutts and thousands of Swamiji on others. Some Shudra castes, in the process of sanskritization, have adopted the life styles of Brahmins, but they cannot be considered Brahmins. A Lingayat easy refuse to wear Lingarn, and yet remain a Lingayat.

3. The representatives of the Central Muslim Association, the religious heads of Christian community, His Holiness the Swamiji of Sringeri Mutt (Brahmin) and all others have suggested to the Commission that so far as Hindus are concerned, social backwardness should be determined taking caste as a factor. The Veerashaiva Association has not pointed out which provision of the Constitution would be offended if caste is taken, as a factor. However, the commission does the statement of the Teerashaiva Association that "within the same community there exist side by side various sections of people with varying of backwardness - social, educational and economic." Having accepted that the entire community cannot be taken as a unit to be considered backward or forward, but only certain "sections" who would satisfy the test of "backwardness - social, educational and economic", the commission has Found out certain sections of Lingayats as socially, educationally and economically backward. such as barbers, washermen, oil-pressers, weavers, etc."

xxx xxx xxx xxx 11. Veerashaivas (Lingayats) claim to belong to a religion of their own, though legally they are considered as a Hindu denomination. It originated by uniting certain caste-blocks, and has grown by adding new ones which did not accept the principle of status or rank ascribed by birth. The unit of endogamy amongst Veerashaivas in principle, is their denominational community, but in the process of expanding itself into a still larger Community, it has allowed, perhaps, the new entrants to retain their autonomy and identity, That appears to be the reason why we find separate religious heads and monasteries of each section widespread in the State. The cases of those caste-units who have not yet been wholly assimilated into, or are half-way to, the Veerashaiva community but who could be readily identified and whose population could be ascertained have been considered separately. Such cases include the Ganigas (oil pressers), the Kumbars (potters), the Kshowrikas (barbers), the Agasas (washermen), some Neygis (weavers) etc."

(Underlining by me)

5. The evidence recorded and the conclusion reached by the Commission, in particular the underlined portions, clearly disclose that in the State there is a community which is called "Kuruhina Setty". The hereditary avocation of this community is "neyge" (weaving). At some point of time in the past some of the Kuruhina Settys adopted Veerashaiva or Lingayat faith. Among Kuruhina Settys, there are both vegetarian and non-vegetarian and those who have adopted Lingayat faith are vegetarians. From the finding recorded by the Commission, it is clear that all persons belonging to Kuruhina Setty community are considered

as backward irrespective of the fact that some of them are Lingayats and others are not. The petitioner has claimed that he is a Kuruhina Setty, though he is a Lingayat. He had also produced certificate issued by the Tahsildar in which it is specifically stated that the petitioner belongs to Kuruhina Setty community. The only reason given by the Selection Committee for rejecting the claim of the petitioner is that in the transfer certificate produced by the petitioner, the community of the petitioner is given as Lingayat. Even the petitioner does not dispute that he is a Lingayat. The fact that he is a Lingayat does not mean that he does not belong to Kuruhina Setty community. As pointed out by the commission, among persons belonging to Kuruhina Setty community some have become Lingayats, but all of them are considered and identified as belonging to backward community. Therefore, a Kuruhina Setty who has become a Lingayat is not disentitled to the benefit of reservation. In this behalf it is necessary to set out the relevant portion in the appendix-1 to Government Order No. ED 44 TGL 77, Bangalore, Dated 18th May, 1977, which sets out all the communities falling under the category of Neygi who are considered as Backward Community. The relevant portion reads:

"(1) BACKWARD COMMUNITIES

xxx xxx xxx xxx 10. Neygi: Kuruhinasetty, Bilimagga, Thogata, Seniga, Jamkhana, Ayiri, Avir Sale, Padmasale, Saale, Kaikolan, NeiIrar, Jadar, Jandra, Swakulasale.

6. As can be seen from the Government order and the relevant entry, the State Government has accepted the recommendation that the entire Kuruhina Setty community is backward not with the fact that some of them are Lingayats. Kuruhina Setty community is included in the list of Backward Communities without incorporating any exceptions. Therefore, every applicant belonging to Kuruhina Setty community whether a Lingayat or not is entitled to claim selection against seats reserved for Backward communities subject to the income test prescribed in the Government Order. The entry made in the transfer certificate that he is Lingayat is therefore not inconsistent with the belonging to Kuruhina Setty community. Therefore, the fact that in the school certificate, there was no entry to the effect that the petitioner is a Kuruhina Setty could not preclude him from claiming that though he is a Lingayat he is also Kuruhina Setty.

7. The Selection Committee, therefore, even after having noticed that the transfer certificate showed that the petitioner was a Lingayat, should have looked into the certificate produced by the petitioner in which it is clearly stated that he belongs to Kuruhina Setty community. The selection committee was not right in rejecting the claim of the petitioner on the mere ground that the petitioner was a Lingayat. If only the Selection Committee had come to the conclusion on the basis of relevant evidence that the petitioner does not belong to Kuruhina Setty community and that the certificate issued by the Tahsildar in this behalf is not true, it could have refused to consider- the case of the petitioner as against the seats reserved in favour of backward communities.

8. In the result, I hold that every person who belongs to Kuruhina Setty community whether a Lingayat or not belongs to Backward community for the purpose of the Government Order, and can claim the benefit of special provisions subject to the income test prescribed in the Government order and therefore, the Selection Committee erred in rejecting the claim of the petitioner for selection to Ist Year M.B.B.S. Course as against seats reserved for Backward Communities.

9. For the aforesaid reasons, I make the following Order:

(i) The writ petition is allowed.

(ii) A writ in the nature of mandamus shall issue to the 2nd respondent to consider the claim of the petitioner for selection to Ist M.B.B.S. Course during the academic year 1979-80 as against one of the seats reserved for backward communities. The Selection Committee shall however be at liberty to enquire as to whether the petitioner belongs to Kuruhina Setty community as claimed by him and as certified by the Tahsildar. If the selection committee comes to the conclusion that the petitioner belongs to Kuruhina Setty Community, notwithstanding the fact that he is a Lingayat, the Selection Committee shall select the petitioner for Ist Year M.B.B.S. Course during the academic year 1979-80 either In addition to or in supersession of the selection already made.

(iii) Sri B. B. Mandappa, learned High Court Government Pleader, is permitted to file memo of appearance within two weeks.

10. Petition allowed.