
(1992) 02 KL CK 0022

In the High Court Of Kerala

Case No : W.A. No's. 1170, 1173 and 1232 of 1991

State of Kerala

APPELLANT

Vs

C.K. Balakrishnan and Another

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Citation : (1992) 02 KL CK 0022

Hon'ble Judges : M. Jagannadha Rao, C.J; Krishnamoorthy, J

Bench : Division Bench

Advocate : K. Thankappan, Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Krishnamoorthy, J.—In these three Writ Appeals, a common question arises and accordingly they are being disposed of by a common judgment. The question involved is as to whether the Caste "Palluvan" mentioned in the Schedule to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act (Act 108 of 1976) is mis-spelt for the community "Palluvan" to which the writ Petitioners belong.

2. In the three writ petitions, Petitioners belonging to the community "Pulluvan" claimed that they are entitled to all the benefits extended to Scheduled Castes under, the Constitution and other laws. According to them the caste "Palluvan" included in the Schedule is only a mistake, for "Pulluvan" and the said entry has to be treated as "Pulluvan".

3. In the Constitution (Scheduled Castes) Order, 1950 admittedly, "Pulluvan" was included as one of the Scheduled Castes. But when it was amended in 1956 and the list of Scheduled Castes revised, the community name was entered as "Palluvan". By amending the Schedule by Act 108 of 1976, in the Schedule to that Act also "Palluvan" was included as one of the Scheduled Castes, so far as Kerala is concerned. The contention of the writ Petitioners was that there is no community by name "Palluvan" in the State of Kerala and what is included in the

Schedule to the 1956 and 1976 Acts can only be "Pulluvan" and the name shown in the aforesaid Acts as "Palluvan" is a mistake for the word "Pulluvan". Accordingly they prayed for a declaration that they are entitled to all the benefits extended to Scheduled Castes under the Constitution and other laws.

4. In the counter-affidavit filed by the State, it is admitted that there is no caste by name "Palluvan" in the State of Kerala. It is also admitted that "Pulluvans" belong to the Scheduled Caste community. But the contention raised by the State is that unless the Schedule to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 amended by including "Pulluvan", the benefits available to Scheduled Castes cannot be extended to the Petitioners.

5. The learned Single Judge by judgment dated 29th October, 1990 in O.P. Nos. 8347 of 1989 and 7917 of 1990 overruled the contention of the State and declared that what was intended, by the 1976 Act was the "Pulluvan community" and accordingly granted a declaration as prayed for by the Petitioners. Following the above judgment, Anr. learned Single Judge granted a similar declaration to the Petitioners in O.P. No. 8536 of 1991, who also belonged to the same community. State has filed these, writ appeals against the above judgments.

6. After hearing learned Government Pleader, we have no hesitation to hold that the learned Single Judges Were right in holding that what was intended by the 1976 Act was to extend the benefits to the Pulluvan community and that the community name given as "Palluvan" in the Schedule to the aforesaid Act is only a mistake. It is pertinent to note that the State in its counter has also admitted that there is no caste by name "Palluvan" in the whole State of Kerala. It is also admitted that "Pulluvans" are member's of the Scheduled Caste community and benefits have been extended to the by G.O. (Ms) No. 600/59/ L and LAD dated 31st July 1959. In that G.O. it is said:

It is reported that the Pulluvans of the entire State are socially, educationally and economically very backward. In the list of Scheduled Castes published by the Government of India under the Modification Order, 1956 this community is wrongly shown as Palluvan among the Scheduled Castes in Travancore-Cochin area. At present the Pulluvans of Malabar area are treated only as other backward classes. As the Pulluvans of the entire State deserve to be classified under Scheduled Castes and as the term Palluvan shown in the list of Scheduled Castes for Travancore-Cochin area, is a mistake for Pulluvan, the Government are pleased to extend to the Pulluvans of the entire State the educational and all other concessions granted to Scheduled Castes, pending revision of list of Scheduled Castes by the Government of India.

Thus, it can be seen that here is a case where it is admitted on ill hands that there is no caste by name "Palluvan" in the whole State of Kerala. It is further admitted that "Pulluvan" is a Scheduled Caste community and the Government have recognised the same in the above G.O. In the 1930 Order the community included was "Pulluvan". But when that was amended in 1956 and 1976, in the

new Schedule the name of the community is wrongly spelt as "Palluvan" instead of "Pulluvan". Thus, it can be seen that "a" was substituted for "u" and that is the only change made by the amendment acts. The fact that there is no caste by name "Palluvan" is very significant and the Court is entitled to find as to what was intended by including "Palluvan" as one of the Scheduled Castes in the 1956 and 1976 amendments. It is clear that some caste was intended to be included. Admittedly, in the 1950 Order, "Pulluvan" was included as one of the Scheduled Castes. There is no material to show that it was purposely amended to make it "Palluvan", which, it is admitted on all hands, is a non-existing community. In these circumstances, the Court can look into the intention and find out what was the community that was intended to be included in the Scheduled Castes Order. From the facts available in the case it has come out that there cannot be any doubt that what was intended to be included was the caste "Pulluvan" for otherwise there will be no meaning as "Palluvan" is a non-existing community. In that view of the matter, the learned Single Judges were perfectly justified in holding that Pulluvan caste is one included in the Scheduled Castes and Scheduled Tribes Order's (Amendment) Act, 1976 and that they are entitled to all the benefits extended to the Scheduled Caste community.

7. A similar matter wherein the name of a community was wrongly mentioned in the Scheduled Castes Order came up before their Lordships of the Supreme Court in *B. Basavalingappa Vs. D. Munichinnappa*. So far as the Mysore State was concerned, in the Constitution (Scheduled Castes) Order 1950, a caste by name "Bhovi" was mentioned as one of the Scheduled Caste communities and the question arose as to whether persons belonging to the caste "Boyi" were intended to be included by that entry. The Supreme Court came to the conclusion that the inclusion of the caste "Bhovi" was actually a mistake for the caste "Boyi". In that context the Supreme Court observed as follows:

But the same difficulty which faced us in, considering the question whether Voddar Caste was meant by the Caste Bhovi included in the Order arises when we consider the difference in spellings, for it is not in dispute that there was no caste known as Bhovi in the Mysore State as it existed in 1950 when the order was passed. As the president could not have included in the Order a non-existent caste, it means the word "Bhovi" relates to some caste in Mysore as it was before 1956 and we have, therefore, to establish the identity of that caste and that can only be done by evidence.

After considering the evidence, their Lordships further held:

It seems, therefore, that we cannot attach undue importance to the spelling in English in this case when we know that there was no specific caste known as Bhovi in Mysore State as it was before 1956 and we have to determine which, was the caste which was meant by the use of that term in the Order... It seems to us, therefore, that the High Court was right in the peculiar circumstances of the present case in not attaching any importance to difference in spelling in English, and to treat Bhovis as, the same as Boyis.

The fact that there was no community by name "Bhovi" in the Mysore State was again taken as an important fact by their Lordships of the Supreme Court to come to the conclusion that what was meant by that was only the caste "Boyi" and it was observed:

We may again repeat that we have referred to the evidence in this case only because there was undoubtedly no caste known as Bhovi in the Mysore State as it was before 1956 and we had to find out, therefore, which caste was meant by the word "Bhovi" as used in the Order. But for this fact it would, not have been open to any party to give evidence to the effect that (for example) Caste A mentioned in the Order includes or was the same as Caste B where Caste A does exist in the area to which the Order applies.

In this case also, it is an admitted fact that no caste by name "Palluvan" exists in this State and the principles laid down by their Lordships of the Supreme Court in the aforesaid decision squarely apply to the case.

8. We do not find any reason to interfere with the judgments of the learned Single Judges and accordingly these Writ Appeals are dismissed.