
(2005) 10 KL CK 0032
In the High Court Of Kerala
Case No : W.A. No. 2990 of 2001

State of Kerala

APPELLANT

Vs

Subbayyan

RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

Constitution of India, 1950 — Article 341, 342

Citation : (2005) 4 ILR (Ker) 430 : (2006) 1 KLT 182

Hon'ble Judges : Rajeev Gupta, C.J.; S. Siri Jagan, J

Bench : Division Bench

Advocate : P.K. Santhamma, Special Government Pleader, for the Appellant;
Johny Thottam, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—Appellants in this appeal are the State of Kerala and the Tahsildar, Kollam. They were the respondents in O.P. No. 27291/2000, the judgment in which is impugned in this appeal. They are aggrieved by the direction of the learned Single Judge in the impugned judgment directing the 2nd appellant to issue a caste certificate to the daughter of the 1st respondent as belonging to Hindu-Pallan community, which is recognised as a scheduled caste in the State of Kerala and further to give financial assistance on the basis of such certificate. The situation culminating in the Original Petition arose in the following circumstances.

2. The 1st respondent was originally a native of Palayamkottai Village in Dindigal Taluk in the State of Tamil Nadu. He belonged to the caste Hindu-Pallan. Hindu-Pallan caste of Tamil Nadu was recognised as a scheduled caste in that State as per the Constitution (Scheduled Caste) Order, 1950. Accordingly, he and his family were treated as scheduled caste members in the State of Tamil Nadu and they were enjoying the benefits applicable to scheduled castes in Tamil Nadu. In 1960, the 1st respondent, for the purpose of employment, migrated to Kollam in Kerala and settled there permanently. He had three children. He applied for a

caste certificate before the 2nd appellant for his daughter Santhy for the purpose of getting educational benefits applicable to scheduled castes in Kerala, which was not issued to the 1st respondent. It is under the said circumstance that the 1st respondent approached this Court through the Original Petition.

3. In the Original Petition, the appellants herein did not file any counter affidavit. In Kerala also, there is a community called Hindu-Pallan which is also specified as a scheduled caste as per the Presidential order. It so happened that in the SSLC certificate of the 1st respondent's daughter, her caste was shown as Hindu-Pallan. The concerned Village Officer also reported that the 1st respondent and his family are residing permanently in Mundakkal Village, Kollam and they belonged to Hindu-Pallan community. On the basis of these facts, the learned Single Judge, by the impugned judgment, directed that if the 1st respondent applies to the 2nd appellant, a certificate should be issued within one month from the date of application and on getting the certificate, necessary financial assistance also should be given. This judgment is under challenge in this Writ Appeal.

4. Along with the appeal memorandum, the appellants have produced Annexure A1, which is a report dated 22-2-2001 from the Vigilance Officer of the Directorate of KIRTADS, Kozhikode to the Chairman of the Scrutinising Committee for verification of SC/ST claims, on the basis of the investigation conducted by the vigilance cell of KIRTADS in respect of the community status of the 1st respondent. The report shows that the 1st respondent and his parents as well as his wife belonged to Hindu-Pallan community of Tamil Nadu, which is recognised as a scheduled caste in the State of Tamil Nadu, it further stated that, admittedly, the 1st respondent had migrated to Kollam in the State of Kerala in the year, 1960, that is, subsequent to the Presidential order of scheduled castes issued in 1950. On the basis of Annexure A1 report, the learned Special Government Pleader would argue that since the 1st respondent had migrated from Tamil Nadu to Kerala, although in both Tamil Nadu and Kerala, a community named Hindu-Pallan is a scheduled caste as per the Presidential order, the Hindu-Pallan of Tamil Nadu is not the same as Hindu-Pallan of Kerala State. In view of the above position, relying on the decision of the Supreme Court in the case of Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the. 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, , the learned Government Pleader argued that a person belonging to the scheduled caste in one State when migrates to another State, he loses his benefits as a scheduled caste in the latter State.

5. Since, the entire case of the appellants is based on the above Supreme Court decision, it would be advantageous to extract the relevant portion of the said decision, which reads thus:

We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes

in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non-existent in another State to which persons belonging thereto may migrate. Coincidentally, it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also, the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr. Jaipal Singh, Dr. Ambedkar answered as under:

He asked me another question and it was this. Supposing a member of a scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area. It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a scheduled Tribe going outside the Scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them"

Relying on this statement, the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin. (Emphasis supplied)

In the said decision, the Court was dealing with a case where person/persons belonging to a community specified as a scheduled tribe in one State migrated to another State where the said community was not specified as a scheduled tribe and in the latter State the said person/persons claimed benefits as applicable to scheduled tribes on the strength of their specification as a scheduled tribe in the original State. Relying on an earlier Constitution Bench decision of the Supreme Court in *Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others*, the Supreme Court, in the above decision, came to the conclusion that a scheduled tribe member of a State, when migrates to another State, he cannot

claim benefits available to scheduled tribes. For our purposes, the underlined portion in the paragraph extracted above would be most relevant. Going by the same, it is clear that the Supreme Court has categorically laid down that merely because a given caste is specified in one State as a scheduled caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the scheduled caste of the latter State for the purposes of the Constitution. This statement of law would definitely apply to the case at hand.

6. Of course, based on the facts of the said case, an argument can be raised that the Supreme Court was considering only a situation where a scheduled tribe member of Andhra Pradesh when migrated to Maharashtra where his community is not specified as a scheduled tribe. However, from the above underlined portion of the extract of the judgment, we see that the word used by the Supreme Court is "specified" in two States. That word "specified" refers to specified in the Constitution (Scheduled Castes) Order 1950 and Constitution (Scheduled Tribes) Order, 1950 for both States. Therefore, in the underlined portion, the Supreme Court was definitely dealing with a situation where in both States a community of the same nomenclature was specified as a scheduled caste/scheduled tribe. As such, we are of opinion that the said decision squarely applies to the case at hand.

7. Another decision of the Supreme Court was also brought to our notice in this regard, which is *S. Pushpa and Others Vs. Sivachanmugavelu and Others*, in which, the Supreme Court has held that when scheduled caste/scheduled tribe member migrates from one State to a Union Territory, he would be entitled to the benefits and concessions as applicable to scheduled caste/ scheduled tribe in the Union Territory also. However, that case can be clearly distinguished as has been done by the Supreme Court itself in so far as the migration is to a Union Territory which is under the Control of the Central Government and the decision was based on the specific Central Government Order in that regard. In fact, in that case also, both the decisions of the Supreme Court referred to earlier in this judgment have been specifically adverted to and approved.

8. Of course, our decision would certainly be harsh on the 1st respondent. He suffered all the disadvantages and backwardness of a scheduled caste member in Tamil Nadu as a Hindu-Pallan of that State. When he migrated to Kerala, here also, Hindu-Pallan is a specified scheduled caste. That being so, among the people of the area to which he has migrated, he would be regarded only as a scheduled caste only going by the name of his caste which he cannot change and he would be subjected to all the disadvantages and backwardness applicable to Hindu-Pallan of the State of Kerala also, without any benefits or concessions available to such scheduled caste in Kerala. This, of course, is an unfortunate and sad situation. However, in so far as we are bound by the law laid down by the Supreme Court on the subject, referred to above, we are helpless in the matter.

9. In the above circumstances, we are of opinion that the learned Single Judge was not correct in directing the 2nd appellant to issue a caste certificate to the daughter of the 1st respondent as a scheduled caste member. Therefore, we allow this Writ Appeal, set aside the judgment of the learned Single Judge and dispose of the Original Petition holding that the 1st respondent and his daughter are not entitled to the benefits and concessions available as a scheduled caste member in Kerala. There will be no order as to costs.