
(1983) 10 KAR CK 0010
In the Karnataka High Court
Case No : WP. 13890 & 14566/83

Syed Noor Fathima

APPELLANT

Vs

Selection Committee

RESPONDENT

Date of Decision : 05-10-1983

Acts Referred:

Constitution of India, 1950 — Article 15(4)

Citation : (1984) 1 KarLJ 19

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner in Writ petition No. 13890 of 1983 has sought for the issue of a writ of mandamus directing the respondent-selection committee for admission to 1 year M.B.B.S. course, to select him against one of the seat reserved for Backward Tribe. The petitioner in writ petition No. 14566 of 1983 has questioned the legality of the decision of the Principal Jayachamarajendra college of Engineering, Mysore, rejecting the claim of the petitioner for admission to the college against a seat reserved for Backward Tribe.

2. As both the petitioners claim that they belong to "Darwesu" section among, Muslims, which is classified as Backward Tribe by the state Government, the two cases raise common question of law and fact and a common statement of objection has been filed on behalf of the state. The two petitions are disposed of by this common order.

3. (i) The petitioner in W.P. 13890 of 1983 passed the pre-University examination conducted by the pre-University Board of this state in April 1983 with Physics, Chemistry and Biology as optional subjects. She secured 83 per cent marks. The respondent in this writ petition is the selection committee constituted by the State Government for making selection to the I year M.B.B.S course in Government Medical colleges and Government seats in private Medical colleges. Applications were invited from the candidates seeking selection to the I year MBBS course. The petitioner submitted her application. In the application she claimed selection against one of the seats reserved for Backward Tribe. She also

filed the necessary declaration in the prescribed form. The claim of the petitioner was not considered in respect of a seat reserved for backward Tribe. Aggrieved by the said decision, the petitioner has presented this writ petition.

(ii) the petitioner in Writ petition No. 14566 of 1983 was an applicant before the Director of Technical Education in Karnataka for selection for admission to I year B.E. degree course. In the application, the petitioner claimed selection against a seat reserved for Backward Tribes. The name of the petitioner was included in the list of select candidates and was allotted to Jayachamarajendra College of Engineering Mysore. After making an inquiry as to the truthfulness of the claim of the petitioner that he belonged to backward Tribe, the principal of the college issued an endorsement dt. 4.8.1983 (Annexure-C). It reads:

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"To: Sri Khaliqle Ejaz Ahmed,
(16-78) Mysore.

ENDORSEMENT.

The admission of this candidate has been rejected on the following: grounds:

On enquiry, it was discovered that the candidate's father is a Divisional Medical Officer, whereas the candidate has claimed a seat under B.T. (Darvesu)

Sd/-Principal."

according to the endorsement, the claim was rejected on the ground that the father of the petitioner was a divisional Medical Officer, and therefore, he could not claim to belong to Darvesu tribe which is declared as Backward Tribe by the State Government. Statement of objections has been filed by the state reliance parties of the statement of objection reads:

1. In the Notification issued under Art. 15(4) of the constitution of India, Muslims are included under the category of Backward communities. Certain groups among muslims can be readily identified by their occupations or professions. This section of Muslims is known as dervesu, whose traditional occupation is begging and it has been included in the list of the Backward Tribes. In accordance with the law enunciated by this Hon'ble court in the State of Karnataka v. M.P. Shylaja reported in 1981(2) KLJ 205, if the parents of the candidates seeking reservation under the Backward tribe on the ground that they belong to Darvesu section of Muslims whose traditional occupation is not begging, the candidates are not entitled to the claim of reservation under this particular category. It is submitted, that Darvesu Section of Muslims is identified only with reference to the profession or the occupation which is being pursued by the persons in that section of the Muslim community. When once it is discovered that the parents of the candidates are engaged in professions or occupations other than begging getting considerable income, they are not entitled to lay claim to the reservation under this category. It is submitted in this connection that the classification with

regard to Backward tribe is not analogous to that of Scheduled Tribes as has been modified by the Presidential order under Art. 342 of the constitution of India. Certain sections are listed under the Backward Tribe since they are considered as more backward than other Backward classes viz., Backward caste, Backward community and special Groups. It is also submitted in this connection, an income ceiling has been prescribed in respect of castes and communities under Backward castes and communities. It also may be appreciated in this connection that the state Government have added to the Backward classes in the Notification issued under Art. 15(4) of the constitution one more group called "Special Group" with a family income of Rs. 4,800/ p. a even for persons in the forward communities who are pursuing one or the other occupation set out under the special Group. The quantum of income and the nature of the occupation are the determining factors. It follows therefore, when once persons who are taken remunerative occupations or professions, the claim of reservation would become unjust and therefore the claim of reservation has to be rejected.

2. This Hon"ble court in Shailaja's case has observed that the selection committee should scrutinise strictly the claims of the applications who claim to be Darvesu. The selection Committee are therefore charged with the responsibility of scrutinising strictly the claims of the applicants who claim to be Darvesu. The committees after scrutinising the documents and eliciting the information from the candidates at the time of interview, have rejected the claims since their parents are not pursuing the occupation begging. The certificates produced by the candidates in this behalf could not be accepted since the selection committees have come to that conclusion on the basis of the material collected by them at the time of interview. In the selection committee constituted for the purpose of selecting candidates for the I year M.B.B.S. the director of Backward classes and Minorities is one of the Members of the committee. With this assistance, the selection committee has been able to scrutinise the claims of the applicants and has come to the conclusion that the candidates do not belong to Darvesu section.

3. During this years selection, the Muslims who come under the category Backward communities apart from claiming reservations of the Darvesu under Backward Tribe have claimed seats under various other categories viz.,:

Backward Castes-Kasai/Kasab/-Khatik/Hoogar/Phulari.

Backward Tribes: Shikkaligar/-Chapparband/Katabu.

Scheduled Tribe: Chodhara.

In respect of these applicants who have claimed under various categories mentioned above, the verification of their records like Records of School and Transfer Certificates reveal that they are only Muslims. It may be noticed in this connection that the applicants whose parent's income is more than the income ceiling prescribed for Backward Communities and Backward Castes and Special Groups, have made an attempt to layclaim under Backward Tribe and Scheduled

Tribe, in which categories, the income ceiling is not prescribed. It may be appreciated in this connection, the relative merit for the selection under the category of Backward Community stands at a higher level than that in the category of Backward Tribe, Backward caste and scheduled Tribe. Therefore, an ingenious attempt is made by the candidates to lay false claims under the other categories.

Similar stand has been taken in the statement of objection filed by the college in Writ petition No. 14566 of 1983. The relevant portion of the statement of objections reads:

"6. Rule 5.4(f) of the said Rules imposes a duty upon the Director of Technical Education/Principal to verify the correctness of the particulars furnished in the application or certificate or affidavit and review or reject the same during the course of allotment of seat/admission to the college. It is further provided in the Rule that the decision of the Director of Technical Education shall be final on all merits covered by the Rules.

7. The petitioner was provisionally selected for admission by director of technical Education for a reserved seat under the category of backward tribes. This provisional selection was made on the basis of the statement of the applicant that he belong to the Darvesu Tribe which is one of the backward tribes. The correctness or otherwise of this claim was not required to be verified by the Director of technical Education while making the provisional selection. After the provisional selection, the petitioner presented his original certificates and the application to the first respondent. The documents so furnished were scrutinised by a scrutiny committee consisting of 4 Senior professors of the colleges and the Principal. On scrutiny of the documents, it was found that the occupation of the petitioner's father was given as Medical Officer. The petitioner was asked to explain as to how he could claim to be a Darvesu when the occupation of his father was that of Divisional Medical Officer in Southern Railway at Mysore. The petitioner was unable to furnish any explanation or to substantiate his claim of being a person belonging to Darvesu tribe. The Scrutiny Committee perused the certificate produced by the petitioner in Form 2 attached to the application and found that the declaration made by the petitioner's father has been signed on 27.6.1963; that the Revenue Officer of Mysore City corporation had directed the Revenue Inspector to make a report on 28.6.1983 and on the said day i.e. 28.6.1983 an endorsement was made that it was verified and on the same day the Revenue Officer had signed the certificate certifying that the petitioner belongs to the Darvesu tribe. It was thus apparent that no proper enquiry has been conducted by the Tahsildar (Commissioner) to ascertain the correctness of the claim of the petitioner. All that the Tahsildar (Commissioner) appears to have been done is to ask his Revenue Inspector to make a report and acting solely on that report he has issued the certificate. The Certificate so issued by the Tahsildar (Commissioner) could not, therefore, be accepted as final especially in the light of the fact that the petitioner's father is a Medical Officer while the Darvesu

group is a professional or occupational group among the Muslims, their occupation being begging.

8. While rejecting the petitioner's claim that he belongs to the backward tribe of Darvesu, the Scrutiny committee was guided by the instructions given by the Director of Technical Education and the Judgment of this Honourable court in the case of state of Karnataka and another v. M.P. Shylaja and others reported in (1981) 2 Kar. L.J. p. 204. A Division Bench of this Hon'ble court in the said decision has held that the selection committee has the power to verify the particulars furnished by Applicants and to make enquiry to verify such particulars; that the selection committee need not and should not accept without scrutiny the particulars furnished by applicants and certificates produced by them including certificates issued by Tahsildars or other persons and authorities. It was further observed that such certificates are not conclusive but are subject to scrutiny. This Hon'ble court also warned against the acceptance of certificates issued by Tahsildar without further scrutiny. The fanger of accepting such certificates without scrutiny was pointed out. Thus the court observed "If such certificates issued by Tahsildars or other persons and authorities are held to be conclusive and the selection committee is held to have no power to verify the correctness and truth of such certificates, there will be a large number of false claims on the part of the applicants that they belong to backward community, backward castes, backward tribes, scheduled castes, scheduled tribes, resulting in the deprivation of the benefit of reservation to those applicants who really belong to those categories."

9. These observations apply with full force to the certificate in Form-2 produced by the petitioner and on the basis of which the petitioner has sought admission against the seat reserved for backward tribes. The certificate has been issued without proper enquiry. The petitioner cannot be regarded as belonging to the Darvesu tribe.

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12. The occupation of petitioner's father is admittedly that of a "Medical Officer". The petitioner's father is highly qualified Doctor as seen from the official seal on the forms and documents produced by the petitioner. The petitioner's father holds the degrees of M.B.B.S and DCH. He is a divisional medical Officer in southern Railway at Mysore. To regard such a person as belonging to the professional group of beggars is to strain once credulity to the extreme. It is apparent that the petitioner is seeking to claim a benefit to which he is not entitled and in the process is seeking to deprive another deserving member of backward tribe from having the opportunity to qualify as an engineer."

Learned counsel for the petitioners submitted that the declaration made by the petitioners in the prescribed form and the certificate produced should have been accepted or in any event opportunity should have been given to them to establish their claims by adducing further evidence.

4. Learned counsel for the respondents maintained that certificates issued and declaration filed by the candidates were not conclusive and they had the necessary power to scrutinise the material available and to reject the certificate or declaration if the respondents are satisfied that the claim is not a genuine.

5. The contention of the petitioners that the respondents were bound to accept the certificate or declaration produced by the petitioners, is clearly untenable. Respondents have not only the power, but they are also under a duty to scrutinise the claim, meticulously and reject untruthful claims. This is absolutely necessary to a safeguard the interests of those who really belong to backward classes, as it is a matter of common knowledge that the tenancy to make untruthful claim by producing certificates in support of such claims, getting of which from the officers is not at all difficult, for the sake of getting a seat in professional, colleges is prevalent, and, unless such careful scrutiny is made, the reservation intended for the benefit of real backward classes would remain only on paper and those not deserving such special concession would, by such ingenious methods secure the benefits intended for backward classes. Hence, I hold that the respondents were entitled to verify the truthfulness of the claim of the petitioners and to reject the same, if the claim was not genuine.

6. On the merits of the case, Sri. V.C. Brahmarayappa, High Court Government Advocate, appearing for the State and Sri. R.J. Babu, learned counsel appearing for the college in W.P. No. 14566/1983 made the following Submission:

According to the Government order the Muslims as a community have been declared as belonging to backward class in the category called "Backward Communities". Only a certain section, whose number in the state is considerably small and whose hereditary occupation has been begging and who were called "Darvasu" alone are classified as backward tribe. Therefore, unless a person adduces conclusive evidence that the hereditary occupation of his family was begging, he cannot be regarded as backward tribe. This aspect has been clearly laid down by a Division Bench of this court in the case of State of Karnataka v. Shylaja. The respondents scrutinised the claim of the two petitioners in the light of the above judgment and as they were satisfied that the claims were not genuine, the same were rejected.

7. Learned counsel for the petitioners, however, strenuously, Contended that the petitioners belong to Darvesu Tribe and the more fact that the father of the petitioner in each of the petitions was an officer in the service of the Government and was drawing higher salary was no criteria for depriving them of the status of belonging to Darvesu Tribe. The learned counsel maintained that even though the father of the petitioner in each of the petitions is an officer of the Government they could still claim that they belong to Darvesu Tribe, and it could not be rejected merely on the basis of the present occupation of their fathers.

8. In order to appreciate the rival contentions, it is necessary to ascertain as to who can really be registered as "Darvesu" and this can be done only on

consideration of the contents of the Government order and the report of the Backward classes commission on which the order was based.

9. In the year 1972, the state Government appointed a Backward classes commission with following items of reference:

"(1) To suggest the criteria to be adopted for determining whether any classes of persons in the state other than the scheduled castes and the scheduled tribes may be treated as socially and educationally backward classes;

(2) To investigate into the living and working conditions of all such classes of persons with special reference to the difficulties under which they may be labouring and to make recommendation as to the special provisions which are necessary to be made by the Government for their advancement and for the promotion of their social, educational and economic interest generally;

(3) To make a list of all classes which may be regarded as backward classes in the state.

(4) To suggest what reservations should be made for such a classes in the educational institutions maintained by the state of receiving aid out of state funds.

(5) To suggest what other concessions like scholarship, etc., may be given to such classes by way of assistance.

(6) To determine to what extent such classes are represented in the services under the state and to recommend what reservations of posts in such services may be made for them;

(7) To generally advise the Government about the steps to be taken to ensure adequate safeguards for the backward classes of citizens in the state."

The commission headed by Sri. L.G. Havanur was appointed. The commission had made an elaborate enquiry relating to the Castes and communities in the state of Karnataka and had made its report. The report was accepted and the state Government made an order on 22.2.1977. The relevant portion of that ordered reads:

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Backward classes commission's Report approval of recommendations.

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Order on SWM 12 TBS 77, Bangalore Dated 22nd February 1977.

1. After careful consideration of the various recommendations made by the commission, Government are pleased to direct as follows:

I. The Backward communities, backward castes and Backward tribes as mentioned in the list appended to this order shall be treated as Backward classes

for purposes of Article 15 (4) and Art. 16 (4) of the Constitution of India. Only such citizens of these Backward classes whose family income per annum from all sources is Rs. 10,000/-* (Rupees ten thousand only) and below shall be entitled to special treatment under these Articles.

II. The following five categories of citizens shall be considered as a special group and such citizens of this special group whose family income of Rs. 4,800/- (Rupees four thousand eight hundred only) and below per annum shall be, eligible for special treatment under these Article.- (i) an actual cultivator.

(ii) An artisan.

(iii) a petty businessman.

(iv) one holding an appointment either in Government service or correspond in services. Under private employment including Casual labour and (v) any person self employed or engaged in any occupation involving manual labour.

III. To fix the reservation for purposes of Articles 15(4) and 16(4) of the constitution in respect of the Backward classes and the special group of citizens at 40% the allocation being as follows:

*substituted for Rs. 8,000 subsequently

(a) Backward Communities 20%

(b) Backward Castes 10%

(c) Backward Tribes 5%

(d) Special Group 5%

Note: Family income under Sub-paras I and II above means income of the citizen and his parents and if either, of the parent is dead, his legal guardian."

10. Thereafter, the state Government made a specific order dated 18.5.1977 under Article 15(4) of the constitution providing for reservation of seats in favour of Backward classes in professional and technical colleges. The relevant portion of the order reads:

"Order no ED 44 TGL, Bangalore, Dated 18th May 1977.

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2. In the Government order SWL 12 TBS 77, dated 22nd February, 1977 after careful consideration of various recommendations made by the Karnataka Backward Classes Commission, the Government of Karnataka have directed that citizens belonging to the Backward communities, Backward castes and Backward Tribes and special groups specified in the said order be eligible for special treatment for purposes of Articles 15(4) and 16(4) of the constitution of India and that reservations shall be made to the extent indicated in that order for Backward classes and the special Group mentioned therein and that appropriate

orders shall be issued from the concerned Departments .

3. Accordingly, in the matter of admissions to educational institutions including professional and technical colleges and institutions receiving aid from the state, the Government of Karnataka direct that reservations of seats shall be made for persons belonging to the scheduled caste, scheduled tribes and to the said Backward classes and special Group to the extent specified below, namely:

(1) Scheduled castes as defined in the constitution of India. 15%

(2) Scheduled Tribes as defined in the constitution of India. 3%

(3) Other Backward classes namely, 5%

(i) Backward communities.

(ii) Backward Castes 20%

10%

(iii) Backward Tribes 5%

(iv) Special Group 5%

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6. Any person claiming to belong to the Backward Communities Backward classes, Backward tribes or special Tribes or special Group shall enclose a certificate issued not earlier than one year prior to the date of making the application in the appropriate form prescribed in Form 2 or 3 of the said Appendix-II.

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Appendix-I

List of "Backward Classes of Citizens" Under Article 15(4) of the Constitution of India.

(1) Backward Communities

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16. Muslims (3) Backward Tribes

17. Darvesu.

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By a subsequent Government order dated 12.5.1978 (printed at page 35 of the Government Publication) the income tax as a criteria for backward class was removed in so far it related to backward tribes."

11. In view of the above order there can be no doubt that a Muslim can claim the benefit extended to Backward communities on the basis that he is a Muslim

provided the family income is Rs. 10,000/- or less per annum. Further, a person belonging to "Darvesu" tribes can claim the benefits provided for Backward tribe without reference to family income. To this extent there is no dispute. But the crucial question for consideration in this case is who among Muslims, which is a single community can be regarded as belonging to "Darvesu" tribe. The answer to the question can be found only from the report of the Havanur commission on which the Government order is based. The relevant part of the evidence given before the Havanur commission by leading members of the Muslims community, which was accepted by the commission reads;

"Muslims have no social privileges or disabilities amongst themselves.

Muslims are homogeneous group without any divisions. There are no separate Mosques and no separate idgas. Marriage rites and funeral rites are the same for all. Muslims do not have any traditional occupations. They are following all sorts of occupations. No occupation is considered either low or high. There are no hereditary occupations. A butcher by profession has the same religious and social rights as a priest has in Muslim community. The daughter of a priest can marry the son of a scavenger without any inhabitation, and both of them shall have the same status make mention about the backwardness of Denotified, Nomadic and and Semi-Nomadic Tribes. Those tribes are very backward and they are akin to scheduled castes and Schedule-status. Muslim community is a perfect society which has accorded similar rights to one and all. The touch or a sight of even a scavenger is not considered by Muslims as polluting. A scavenger or a sweeper can act as a priest in the marriages, the only qualification being that he should have studies the Koran and known the procedural aspect.

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Although there is no caste system as such in the Muslim social order, unfortunately, the community was divided and stratified into hereditary, professional and functional groups, following professions which are most unremunerative and uneconomic, which has relegated them to lowest strata of society of the state, economically and educationally.

The conventional idea of high and low peculiar to Hindu Society is unknown to Muslim Society. The groups amongst the Muslims could be readily identified by their occupations or professions of professions. The opinion of some members of the Mysore Backward classes committee (1961), that only a few sections amongst the Muslims should be considered as socially backward, is not correct.

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Witnesses volunteers: In our reply to the questionarie we in advertently omitted to make a mention about the backwardness of Denotified, Nomadic and Semi-Nomadic Tribes. Those tribes are very backward and they are akin to Scheduled castes and Scheduled Tribes. They should be treated separately and liberal help should be extended to them".

Thus it may be seen that the Muslim society unlike Hindu society is not divided into various castes and communities. Neither there are castes among Muslims nor there is any gradation. The entire Muslim community constitutes one homogeneous unit and there is no question of high and low among them. However, there was a plea to the effect that such of the Muslims who belonged to Denotified, Nomadic and Semi-Nomadic tribes are akin to scheduled castes and scheduled Tribes in the matter of backwardness and they required liberal assistance from the state.

12. The next matter for consideration is who are those who belong to the aforesaid tribes. Question VII of the questionnaire prepared by the commission reads:

"VII-Denotified, Nomadic and Semi-nomadic Tribes:

Note: The expression "Denotified Tribes" means those castes and tribes which were notified as criminal under the Criminal Tribes Act, 1924, but who, on account of the Replacement of the said act, came to be denotified as Criminal Tribes.

32 (a) which are the Denotified Tribes in your area of our State? Please specify those castes and tribes, and the population of each such caste or tribe.

(b) In your area of the State what are the wandering communities called the Nomadic and Semi-Nomadic tribes? Please give the approximate number of each tribe.

(c) It is generally believed that members belonging to Denotified Criminal Tribes, Nomadic and Semi-nomadic tribes habitually indulge in the commission of Offences of theft, robbery, extortion etc. Is it a fact? If so, which of those castes or tribes have generally taken to crime as their career?

(d) Some of the Denotified Criminal tribes, Nomadic and Semi-nomadic tribes having been specified by

the President in his orders relating to scheduled castes and scheduled tribes, issued under Articles 341 and 342, as the case may be, would you consider that the remaining few castes and tribes be treated as socially and educationally backward classes for purposes of Articles 15(4) and 16(4), they being similar in all respects to Scheduled castes and scheduled Tribes?

(e) What are the superstitious beliefs, omens and taboos peculiar to them?

(f) Would you suggest that Government should undertake measure for their upliftment to help those groups discard their old habits and beliefs thus enabling them to gradually get fully assimilated in the general population?"

Regarding identification of these tribes on consideration of all the relevant materials the commission observed:

"11. We do not have sufficient population data about the nomadic and semi-

nomadic tribes in Karnataka. However, P.K. Misra, C.R. Rajalaxmi and I, Verghese have written about the Nomads in Mysore City, and in our opinion, the said study, besides being inadequate, does not cover all the tribes notified by the Government of Karnataka as Nomadic and Semi-nomadic tribes.

12. The list of Nomadic Tribes and the list of Criminal Tribes overlaps each other in respect of some tribes. We have, however, considered the case of the Criminal and the Nomadic Tribes together.

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14. Some of the tribes belong to Hindu religion and some of Muslim religion.

15. All the social Welfare Officers and all the witnesses, Hindu, Muslim and Christian have deposed before the Commission that Nomadic and criminal tribes should be categorised separately.

17. But the economic social, educational and cultural conditions of the nomadic, criminal and begging tribes are worse than that of some of scheduled castes and the scheduled tribes, though these nomadic, criminal and begging tribes are not untouchables in the conventional sense, and are not forest dwellers. The nomadic, begging and criminal tribes are professional beggars eking out their livelihood by begging in various ways such as carrying the pictures and images of deities leading the life of mendicants, torturing their own bodies, performing some physical feats, indulging in committing thefts of all kinds in fields, forests etc. some are highway robbers, fortune tellers, monkey and deer dancers, fowlers, hunters, manufacturers of illicit liquors, cowherds, snake charmers and so on. They have, no fixed place of habitation. They do not own land or houses, and some, not even huts. Their sojourn in the itinerary is in the dilapidated and abandoned temples and dharamshalas, and on the Government or municipal waste lands or beneath the bushy trees, they are gipsy like in their life. Some tribes live on deers, rates monkeys and flesh of dead animals. They steal thily steal from village, pets, like cats and dogs for

their food. But these tribes are not Scheduled either under Article 341 or Article 342.

18. *** **

In our own state some at the begging, wandering and criminal communities or groups of such communities, have been included in the scheduled under Article 341 or Article 342, but not the other communities or the remaining groups of the same tribe. Some tribes were either scheduled castes or Aboriginal Tribes before the coming into force of the constitution in the year 1950 but they were left out when the presidential orders were issued in that year, some of the tribes which found place in the schedules of the presidential orders of 1950 were excluded later.

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24. Those tribes being nomadic, criminal and begging in character, full data cannot be available to satisfy the tests suggested by the judiciary even if ten or more commissions are appointed to study their problems. As is done in the case of scheduled castes and scheduled tribes, while recommending them to be included in the schedules under Articles 341 and 342 as the case may be, the state Government should straightaway declare the wandering tribes, the begging tribes and criminal tribes as a separate category amongst the "other Backward classes". We believe, judiciary would not be rigid to insist upon the Government to prove the backwardness of those tribes, forought we know that judges being drawn from our own society, cannot afford to be blind to the realities of our society.

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26. The said tribes are far more backward than some of the castes and tribes presently included by the president in the schedules under Article 341 and Article 342. Though Justice Gajendragadkhar said in Balaji case that the other backward classes are similar to scheduled castes and scheduled tribes in the matter of their backwardness, the begging tribes, the wandering tribes and the criminal tribes that we have specified separately are far more backward than some of the scheduled castes and scheduled tribes presently notified by the president under Article 341 and Article 342. The Nomadic Tribes and Denotified Tribes are halfway to untouchability and semi-inarticulate. They suffer from the stigma of criminality and begging. There are no members of the villages Panchayats, Municipal Councils and Co-operatives belonging to those tribes, majority members of these tribes are not even voters at any elections." (Underlines italics by me).

13. It is those tribes, which have been classified as backward tribes by the Government order. Therefore, there can be no doubt that unless a person proves to the satisfaction of the concerned authority that the hereditary occupation of his family is one of those alluded to in the report, he cannot secure the benefit of reservation provided for Backward tribes.

14. In the present cases, the facts are as follows: The father of the petitioner in writ petition No. 13890/83 is an Assistant Executive Engineer and it is not disputed that he is a Gazetted officer of the State Government and enjoys a good social status and his annual income certainly exceeds Rs. 10,000/- Therefore as a Muslims he cannot even get the benefit available to Backward communities. Similarly, in the case of the other petitioner, his father is a Divisional Medical Officer in the Railway Department of the Central Government and thereby both in the matter of status and income, he cannot be regarded as belonging to a class of citizens who are described as educationally, economically and socially backward class even though he belongs to Muslims community. But, both of them claim to belong to a still backward class, i.e., Backward tribe. In view of the occupation and income of the father of each of the petitioner, the decision of the respondents in rejecting their claim on the material regarded as unreasonable or arbitrary regarded as unreasonable orbitrary and in fact by

doing so the respondents have only discharged their duty (See: State of Karnataka v. M.P. Shylaja, (1981) 2 Kar. L.J. 204.)

15. But the learned counsel for the petitioners submitted that they were not given opportunities to prove their claim by adducing further evidence. Learned counsel for the respondents submitted that in view of the admitted fact relating to occupation, status and income of the father of each of the petitioner, they could hardly be able to establish that they belong to "Darvesu" section among the Muslims. Whatever that may be, the submission that the petitioners should have been given opportunity to prove their claim has to be upheld on the basis of the principles of natural justice.

In the result, I make the following Order:

(i) The writ petitions are allowed in part.

(ii) The respondents are directed to re-examine the claim of the petitioners for selection against a seat reserved for Backward Tribe on the ground that they belong to "Darvesu" section among the Muslims in the light of this order, If they come forward to adduce evidence in support of their claim within one month from today, and to pass appropriate orders on consideration of the evidence so adduced.

(iii) No Costs.