Sunayana Vs Tahsildar and Others

Court: High Court Of Kerala

Date of Decision: Aug. 8, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 11
Constitution of India, 1950 â€" Article 15(4), 16(4), 16(4A), 226
Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 â€" Section 12, 25, 4, 5
Kerala Lok Ayukta Act, 1999 â€" Section 14, 7, 9, 9(1)

Citation: (2013) 2 ILR (Ker) 663

Hon'ble Judges: Manjula Chellur, Acting C.J.; P.R. Ramachandra Menon, J

Bench: Division Bench

Advocate: C.P. Sudhakara Prasad, Sri S. Ramesh, Sri Naveen T. and Smt. Pooja Surendran, for the Appellant; Santhamma Senior Government Pleader, for the Respondent

Judgement

Manjula Chellur, Actg. C.J.

1. The Writ Appeal is filed challenging the judgment of the learned Single Judge in setting aside Exhibit P-4 order of the Kerala Lok Ayukta for

want of jurisdiction. The brief facts that led to filing of the present appeal are as under. The appellant herein is the child of an inter-caste marriage,

where father belongs to Hindu Ezhava and mother belongs to Latin Christian. According to the appellant, her mother converted to Hinduism and

became a Hindu--Sambavar, a Scheduled Caste Community.

2. According to the appellant, her mother sought for Caste Certificate for the appellant on 8-10-2003 claiming that she belongs to Hindu--

Sambavar Community. The same came to be rejected by the first respondent Tahsildar alleging that the appellant is born to a couple of inter-caste

marriage. Apparently, the mother of the appellant is the child of a Christian parents as her name was Jalaja P. Martin. Admittedly, she converted to

Hindu--Sambavar by conversion in the year 1988. When the first respondent Tahsildar refused the Caste Certificate, the mother of the appellant

approached Lok Ayukta and Lok Ayukta passed an order dated 29-8-2005 directing to issue a Scheduled Caste Certificate to the appellant''s

mother. After the same was rejected by Government Order, again the mother of the appellant applied for a certificate for her daughter. It was also

rejected by order dated 20-6-2005. When the appellant''s mother approached Lok Ayukta and got an order for issuing certificate indicating that

they belong to Scheduled Caste Sambava Community, W.P. (C) Nos. 14956 of 2007 and 13930 of 2008 came to be filed before this Court by

the State.

3. During the pendency of the Writ Petitions, a new Government Order dated 20-11-2008 came to be passed modifying the earlier order dated

20-6-2005. The two Writ Petitions came to be withdrawn by the Tahsildar on the ground that as per the new Government Order, assistance of

KIRTADS was necessary. Subsequently, KIRTADS conducted a detailed enquiry of the caste status of the appellant in the light of the conditions

specified in the Government Order of 2008. The appellant when again applied for Scheduled Caste Certificate on 27-10-2010, the Tahsildar

concerned rejected the claim on 2-11-2010 on the report of the Village Officer, Kudappanakunnu and clarification from KIRTADS. Aggrieved by

the same, the appellant herein approached Lok Ayukta who passed the order at Exhibit P-4 and the same came to be challenged before the

learned Single Judge by the State.

4. According to the writ petitioner State, as the appellant was admittedly an offspring of inter-caste marriage as her father belongs to Ezhava

Caste, which falls within Other Backward Classes and mother belongs to Christian--Sambavar Community, which also comes in Other Backward

Classes and the mother having underwent reconversion into Hindu--Sambavar on 26-8-1988, the appellant was not entitled to claim as a member

of Scheduled Caste Hindu--Sambavar Community, as she was not a child of a Scheduled Caste parents. It was also contended that as per Section

5 of the Act 11 of 1996, i.e., the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (for

short, "the SC/ST Act"), the competent authority alone has to issue caste certificate after due enquiry. As appeal is provided under the very same

Act to the next higher authority under the Act, the appellant was not required to approach the Lok Ayukta, but the Lok Ayukta passed Exhibit P-4

exceeding its jurisdiction. On facts also, according to the respondent--writ petitioner, as the appellant was found to be not born to a Scheduled

Caste parents as per the enquiry, there was justification in rejection of the application. They also rely upon Section 25 of the Act to contend that

Lok Ayukta did not have jurisdiction to entertain the matter.

5. As against this, the appellant contended that the Writ Petition was not at all maintainable, as none of the contentions raised are applicable to the

facts of the present case. If mother of the applicant belongs to Hindu-- Sambavar, a Scheduled Caste Community, in accordance with the

Government Order concerned, they were entitled to have a caste certificate from the Tahsildar, a competent authority. The competent authority did

not conduct any examination by himself. According to the appellant''s counter-affidavit filed in W.P. (C) No. 28730 of 2011, mother of the

appellant had embraced Hinduism and thereby she had revived her Scheduled Caste status. According to her, after such conversion, appellant''s

mother was accepted back to the fold of the Sambavar Scheduled Caste Community. Her caste was not disputed or questioned before any forum.

On earlier occasion, after a report from the Revenue Inspector, after investigation, the competent authority had certified that the appellant was

living, following the customs and practice of Hindu--Sambavar Community. 1999 Circular of the Government alone has to be followed. There is

no requirement for the authority to call for report from KIRTADS. No affidavit came to be obtained by the first respondent from the appellant''s

mother. The proceedings conducted by the first respondent Tahsildar was with undue haste having profane intention of the appellant, was the

contention before the learned Single Judge.

6. According to them, having withdrawn W.P. (C) Nos. 14956 of 2007 and 13930 of 2008, the issue cannot be reopened. Therefore, the

contention of the authority that the appellant does not belong to Hindu--Sambavar Community is hit by principles of res judicata. Even otherwise,

no notice was issued to the appellant to conduct enquiry by KIRTADS. Therefore, there was no justification for the Tahsildar, a competent

authority, to place reliance on the same. According to them, the maternal grandfather and grandmother of the appellant originally were born as

Scheduled Caste in the Hindu--Sambavar Community. Later on maternal grandfather Sri P.D. Martin, embraced Christianity and became a

Lutheran-Christian-Sambavar Community The appellant was born when her mother was a Lutheran-Christian-Sambavar. After the appellant

attained majority, admittedly, she embraced Hinduism on 26-12-1988 after getting married to the father of the appellant.

7. The question is whether a person, who was born to a Scheduled Caste parents after their conversion as Christian, can become a Scheduled

Caste after re-embracing Hinduism on attaining majority. They placed reliance on The Principal, Guntur Medical College, Guntur and Others Vs.

Y. Mohan Rao, to contend that the said action of the mother of the appellant was in accordance with law declared by the Apex Court. With these

averments they sought for dismissal of the Writ Petition.

8. The learned Single Judge, after referring to various aspects of the matter, both the Kerala Lok Ayukta Act and Rules and also the Kerala

(Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, ultimately opined that the Lok Ayukta has

exceeded its jurisdiction in passing Exhibit P-4 order, therefore, proceeded to quash Exhibit P-4. However, concession was reserved to the

appellant to prefer an application u/s 4 of the Act for issuance of Community Certificate. Aggrieved by the same, the present appeal is filed.

9. Learned counsel for the appellant contends that the appellant''s mother did not approach u/s 4 of the Act. The certificates were issued at the

request of the mother of the appellant way back in 1988. There was no justification for rejection of such certificate to the appellant, though she had

such certificate from 1992 onwards. Unless the said certificate is cancelled under the provisions of the Act, the same would entail benefit to the

appellant, is the contention. According to the appellant, due to maladministration and abuse of position on the part of the first respondent authority,

the appellant''s mother and her sister had to approach the Lok Ayukta several times from 2004 onwards. Annexures A-2 to A-5, orders issued in

2004 by Lok Ayukta, indicate that they belong to Hindu--Sambavar, a Scheduled Caste. Similar orders came to be issued in 2007. Those orders

were challenged before this Court by filing Writ Petitions, but the Writ Petitions were withdrawn without reserving liberty to approach the Court.

Therefore, principles of constructive res judicata come into play. As there was high handedness and arbitrariness on the part of the first

respondent, they had to approach Lok Ayukta. On the basis of the allegations contained in the complaint and the grievance of maladministration

stated therein, the Lok Ayukta was competent to proceed with the matter, therefore, there was no justification in the observation of the learned

Single Judge. With these averments they have sought for setting aside of the judgment of the learned Single Judge holding that the abuse of position

as a public servant by the first respondent being complained, the Writ jurisdiction under Article 226 of the Constitution of India could not have

been invoked by the first respondent authority. Supporting that the Lok Ayukta has jurisdiction to entertain a complaint and pass orders at Exhibit

P-4, the appellant has sought for setting aside of the judgment of the learned Single Judge.

10. It is not in dispute that issuance of community certificate is governed by Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of

Community Certificates Act, 1996, Rules of 2002 and again the Kerala State Commission for the Scheduled Castes and the Scheduled Tribes

Act, 2007 apart from various Government Orders on income, Caste Certificate, orders on creamy layer etc. It is also not in dispute that

subsequent to the decision of the Supreme Court reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development

and others, in tune with the law laid down in the said judgment the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of

Community Certificates Act, 1996 came into existence. This enactment is a complete code by itself for issuance of Community Certificate. An

application came to be filed before the Lok Ayukta u/s 9(1) of the Kerala Lok Ayukta Act, 1999 by the mother of the appellant, though Act 1996

contemplates how an application has to be filed for issuance of Community Certificate. When separate enactment is brought into force governing

the various aspects of issuance of Community Certificates including an enquiry after due notice to the applicants by KIRTADS, the competent

authority indicated under the Special Enactment can alone issue a Community Certificate in accordance with the procedure contemplated under the

special enactment. Section 5 refers to issuance of such certificate by the competent authority. Challenging such issuance of Community Certificate,

an appeal could be preferred against the order of the competent authority as contemplated u/s 12 of the Act. Thereafter, one can approach the

High Court under Article 226 of the Constitution of India for judicial review of the orders. The learned Indira Vs. State of Kerala, to contend how

the children born out of an inter-caste marriage couple could claim the status of Scheduled Caste/Scheduled Tribe and the procedure. Paragraphs

20 and 21 of the said decision read as under:

20. Children bom of inter-caste marriage of which either of the parents belongs to scheduled caste/scheduled tribe should have a caste status either

that of the mother or that of the father. Articles 15(4), 16(4) and 16(4A) are intended to remove all handicaps and disadvantages suffered by

members of Scheduled Caste/Scheduled Tribes. Suppose a neglected or deserted SC/ST woman brings up her child, with the same handicaps,

suffering, disadvantages, attached to that caste/tribe, whose father belong to non SC/ST, it is too harsh to deny the benefit to that child on the mere

reason that the child''s father belongs to non Scheduled Caste/Scheduled Tribe Caste. Person who claims the status of Scheduled Caste/Scheduled

Tribe of his/her father or mother has to establish that on his/her birth, he she is subjected to same social disabilities and also following the same

customs and traditions and the community has accepted that person to its fold.

21. The Government, vide order G.O. (Ms.) No. 25/2005/SCSTDD dated 20-6-2005 directed the competent authorities to issue SC/ST

Community Certificates to the children born out of inter-caste married couples as per the caste community of the father subject to the conditions of

acceptance, customary traits and tenets stipulated in Punit Rai''s case and Sobha Hymavathi Devi''s case. The above Government Order would

also be applicable to the children born out of inter-caste married couple if the mother belongs to SC/ST Community. Subject to the above

direction, rest of the directions contained in G.O. (Ms.) No. 11/05 and G.O. (Ms.) No. 25/2005 would stand.

The learned Government Pleader also places reliance on Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, . So far as res

judicata, paragraphs 26, 31 and 32 of the said decision are relevant, which read as under

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated

as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a

judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the

proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same

cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are ''cause of action

estoppel'' and ''issue estoppel''. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot

subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only

remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue

estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits

between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of

the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative

authorities as they are based on public policy and justice.

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31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these

subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however,

different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh

cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the

meanwhile, law has changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive

res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule

1) review is not permissible on the ground

that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a

superior court in any other case, shall not be a ground for the review of such judgment".

32. Since the appellant never claimed exemption outside the ceiling area on the ground of cardamom plantation, the question was never gone into

in the earlier proceedings of this Court. This point, therefore, could not be agitated before the Taluk Land Board dealing with the matter on remand

as finality attached to the areas under the fuel area and rested tea area for which exemption was not or (sic) fully granted. It is, therefore,

unnecessary for us to go into the question if a cardamom plantation existed at the relevant time. We, therefore, uphold the judgment of the High

Court on the extent of "fuel area" and "rested tea area" as determined finally by this Court in CA No. 227 of 1978 and would dismiss the appeal

limited to this extent.

Reliance is also placed on Rameshbhai Dabhai Naika Vs. State of Gujarat and Others, . Paragraphs 50, 51 and 54 of the said judgment pertaining

to the caste certificate of children born out of inter-caste parents read as under:

50. A Full Bench decision of the Kerala High Court in M.C. Valsala v. State of Kerala is a case in point. The Government of Kerala had issued

G.O. (Ms.) No. 298 dated 23-6-1961 stating that children born of inter-caste marriages would be allowed all educational concessions if either of

the parents belonged to the Scheduled Caste/Scheduled Tribe. Later, on a query made by the Kerala Public Service Commission, the Government

clarified vide a G.O. (Ms.) dated 25-1-1977 that the Government Order dated 23-6-1961 could be adopted for determining the caste of the

children born of such inter-caste marriage for all purposes. Resultantly, such children were treated as belonging to the Scheduled Caste or

Scheduled Tribe if either of their parents belonged to SC/ST. After the decision of this Court in Punit Rai"s case and in light of the separate though

concurring judgment of Sinha, J. the State of Kerala cancelled the earlier G.O. (Ms.) dated 23-6-1961 and its clarification dated 25-1-1977 and

replaced it by another order G.O. (Ms.) No. 11/2005/SCSTDD dated 20-6-2005 directing that the competent authorities would issue the

Scheduled Caste/Scheduled Tribe Community Certificates to the children born from inter-caste marriage only as per the caste/community of

his/her father subject to the conditions of acceptance, customary traits and tenets as stipulated in the judgments of the Supreme Court. The validity

of the Government Order dated 20-6-2005 came up for consideration before the Full Bench of the Kerala High Court.

51. The High Court considered the decisions of this Court in a number of cases including Valsamma, Sobha Hymavathi Devi and Punit Rai and in

para 21 of the judgment came to hold as follows: (M.C. Vasala''s case, AIR P. 10)

21. The Government, vide order G.O. (Ms.) No. 25/2005/SCSTDD dated 20-6-2005 directed the competent authorities to issue SC/ST

Community Certificates to the children born out of inter-caste married couples as per the caste/community of the father subject to the conditions of

acceptance, customary traits and tenets stipulated in Punit Rai''s case and Sobha Hymavathi Devi''s ease. The above Government Order would

also be applicable to the children born out of inter-caste married couple if the mother belongs to SC/ST Community. Subject to the above

direction, rest of the directions contained in G.O. (Ms.) No. 11/05 and G.O. (Ms.) No. 25/2005 would stand.

We are in agreement with the view taken by the Kerala High Court.

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54. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste

marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided

on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a

tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case''.

11. Section 7 of the Kerala Lok Ayukta Act, 1999 refers to matters which may be investigated by the Lok Ayukta and the Upa Lok Ayukta and

Section 9 refers to provisions relating to complaints and investigation. Section 12 refers to the reports of the Lok Ayukta. In the present case,

apparently the Lok Ayukta has granted the following reliefs:

The grievance of the complainant that injustice is meted out to her by the refusal of the first respondent to issue the caste certificate applied for by

her and she has been subjected to hardship stands established. I hold that the complainant is eligible to get caste certificate issued by the competent

authority showing that she belongs to Hindu-Sambavar Community which is included in the list of Scheduled Castes. The second prayer made is

for a declaration that the first respondent is unfit to hold the post he holds at present. Though the conduct of the first respondent warrants, prima

facie, such drastic action against him, I think, before proceeding further under Sec. 14 of the Kerala Lok Ayukta Act, he can be given an

opportunity to file action taken report in terms of the finding entered above and if he does so, further proceedings can be dropped. I make it clear

that if the first respondent continues to act in defiance of the findings of this Forum, the complainant will be free to press for the declaration sought

for on the ground that the first respondent has abused his official position causing hardship and loss to the complainant, thereby warranting the

application of Sec. 14 of the Kerala Lok Ayukta Act.

12. The question is whether Lok Ayukta was competent to issue such directions in the light of the Kerala (Scheduled Castes and Scheduled

Tribes) Regulation of Issue of Community Certificates Act, 1996 and the Kerala State Commission for the Scheduled Castes and the Scheduled

Tribes Act, 2007. As could be seen from the records, on earlier occasion, for specific purpose the appellant had approached the first respondent

Tahsildar for issuance of caste certificate. In 1992 it was granted and later in 2004 and 2005 it was rejected. Therefore, she had to approach this

Court.

13. It is not in dispute that the first respondent Tahsildar is the competent authority to issue community certificate. Though the learned Single Judge

observes, there was no complaint as such, leading to passing of orders at Exhibit P-4, factually it is incorrect, as the appellant herein did approach

Lok Ayukta in complaint No. 1928 of 2010. Based on this complaint, Exhibit P-4 was passed by Lok Ayukta. It is also not in dispute that from

time to time, Government Orders are issued how community certificates have to be issued. It is also not in dispute, under the special enactment as

already stated above, enquiry, appeal and revision to the Government are provided. In other words, if anyone is aggrieved by the orders of the

competent authority, they can approach the appellate authority u/s 12 of the Act. The Kerala (Scheduled Castes and Scheduled Tribes) Regulation

of Issue of Community Certificates Act, 1996 is a special Statute governing issuance of community certificate and Government Orders as stated

above are issued from time to time giving guidelines how provisions of the Statute have to be implemented.

14. When the first respondent did not issue community certificate based on certain materials placed before the competent authority, it ought to

have approached the competent authority under the special enactment, but bypassing the said procedure, she approached Lok Ayukta with a

complaint at Exhibit R-1(m). The question is whether Lok Ayukta lacks jurisdiction to pass an order at Exhibit P-4 as a different authority was

competent to consider the same under a procedure regulated by altogether a different Act. Admittedly, she had applied for caste certificate on 27-

9-2010, which is admitted by the first respondent in the objection statement. When the said application was referred to Village Officer for enquiry

and report, later the first respondent, not being satisfied with the report of the Village Officer, again sought for fresh report incorporating the details

of income and social status of the family of the complainant. But, however, the first respondent replied on 2-11-2010 indicating that the appellant

was not entitled for community certificate, as she belongs to Hindu-Sambavar Community as per the direction given by the Director, KIRTADS by

letter dated 30-5-2009. It is also not in dispute that this report of the KIRTADS was in respect of earlier enquiry.

15. It is not in dispute that the maternal grandfather and grandmother of the appellant, though initially belonged to Sambavar Community, a

Scheduled Caste, later they converted to Lutheran-Christian-Sambavar Community. The mother of the appellant, Smt. Jalaja Martin was born

subsequent to such conversion of the appellant as Christian. Later, she married a person belonging to Ezhava Community, an Other Backward

Class and not a Scheduled Caste. Later on by some ritual ceremony she claims to have converted as Sambavar Community. In the light of these

facts glaring at the authorities concerned were they not competent to make further enquiry and do the needful as per the Government Orders

issued from time to time. The jurisdiction of the Lok Ayukta as indicated in the Act, no doubt, authorises the Lok Ayukta to enquire into the

maladministration etc. But, if the Lok Ayukta is of the opinion, there was some maladministration, it can definitely inform the competent authority

concerned about the injustice or hardship caused to the complainant and then only after action taken report to be submitted by the competent

authority the Lok Ayukta can close the case or if not satisfied, forward a special report to the Governor. When a proper regulated procedure is

contemplated under the special enactment how a community certificate has to be issued, it was not open to the Lok Ayukta to give direction to

issue such community certificate. When Lok Ayukta lacks inherent jurisdiction to pass an order of this nature, as pointed out by the learned Single

Judge it would go to the root of the competence of the forum. If Exhibits R-1 (k), R-1 (e) or R-1 (f) are favourable to her, she could have

produced the said documents before the competent authority for admission to Research Programme as desired by her. If she wanted a community

certificate in the year 2010, the authority concerned must follow the guidelines issued by way of Government Orders and they are governed by the

Government Orders, which were in force at the relevant point of time. Therefore, the learned Single Judge was justified in holding that the Lok

Ayukta exceeded its jurisdiction in passing Exhibit P-4 order and was further justified in quashing the same. As already stated above, if the

appellant is aggrieved by the rejection of community certificate, she is entitled to approach the appellate authority under the special enactment by

placing entire materials.

With these observations, we decline to interfere with the judgment of the learned Single Judge and accordingly, the appeal is dismissed.

No order as to costs.