

(2009) 01 KL CK 0072

High Court Of Kerala

Case No: M.F.A. No. 424 of 2001

Anila

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Jan. 14, 2009**Acts Referred:**

- Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 - Section 10, 12(3)

Citation: (2009) 4 KLT 112**Hon'ble Judges:** K. Surendra Mohan, J; K. Balakrishnan Nair, J**Bench:** Division Bench**Advocate:** K. Ramakumar and T. Ramprasad Unni, for the Appellant; P. Santhosh Kumar, Spl. Government Pleader and K.V. Reshmi, for the Respondent

Judgement

K. Balakrishnan Nair, J.

Appellants 1 and 2 are sisters and third appellant is their brother. This miscellaneous first appeal is filed by them u/s 12(3) of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (hereinafter referred to as the "Act"). They challenge Annexure B order of the Scrutiny Committee under the Act issuing the following directions:

Considering all the facts detailed as above the Scrutiny Committee decide undoubtedly that the claimants Smt. K.K. Anila, P.D. Teacher, Government U.P. School, Odampally Poochakkal Alapuzha Dist., Shri. V. Baiju, ICE Fitter NSRY, Naval Base Kochi and Smt. K.V. Seenamol, CN II AR Naval Base Kochi do not belong to Malayaraya community of the Scheduled Tribes but belong to the OBC Arayan Community.

The Committee recommends to the Government that the benefits enjoyed by them on pseudo caste identity to be recovered from them. The revenue authorities will be informed not to issue any community certificate to them as Hindu Malayaraya

hereafter. There shall be strict watch to see that none of the Araya Circles of Eruvallipra village of Thiruvalla Taluk get Scheduled Tribes community certificates. The services of the above 3 claimants have to be terminated immediately and 3 Scheduled Tribes candidates to be preferred for appointment in the respective vacancies. The committee decided to submit a copy of the proceedings to Government for follow up action as per G.O.(R)16795/SCST-DDD dated 8.5.1995.

The brief facts of the case are the following:

2. The first appellant is employed under the Government as PD Teacher and appellants 2 and 3 are employed in the Naval Base at Cochin. All the three got employment under the scheduled tribe quota. The mother of the appellant Smt. Amminikutty got a declaration from this Court in O.P. 274/1980 that she belongs to Hindu Malayaraya community. Their father was treated as member of the Araya community. In view of the Government order (MS) 11/77 dated 25.1.1977, if one of the parents belongs to a scheduled tribe, the children were entitled to be treated as members of the scheduled tribe. Therefore the appellants got all benefits available to the members of the scheduled tribe in the matter of educational benefits as well as appointment to public services. When the official respondents raised some dispute regarding the caste status of the petitioners they approached this Court and by Annexure A judgment, a Division Bench of this Court declared that the petitioners will be entitled to get the benefits of the aforementioned GO dated 25.1.1977, in view of the fact that their mother belongs to scheduled tribe. The relevant portion of the said judgment reads as follows:

In the result, the appeal is disposed of finally declaring that since the mother of the petitioners belongs to schedule tribe, the petitioners will be entitled to all the benefits available to Scheduled Tribe under the Government order dated 25.1.1977, irrespective of the fact whether they themselves belong to Scheduled Tribe.

3. While so again the KIRTADS started an enquiry to ascertain the caste status of the petitioners which ended in issuance of Annexure B order by the scrutiny committee under the Act. Hence this appeal challenging the said order.

4. Learned senior Counsel Mr. Ramakumar, who appeared for the appellants, submitted that though, in view of the enactment of the aforementioned Act, the statutory authorities concerned under the Act may hold enquiries to find the caste status of the appellants, but, even if an adverse finding is entered against the appellants in such an enquiry, such a finding can operate only prospectively by denying them the benefits available to scheduled tribe in future. In this case they got the benefits of scheduled tribe based on valid orders of this Court and relevant Government orders. Learned Counsel also submitted that in this case without conducting a proper, genealogical study the scrutiny committee has arrived at an adverse finding against them.

5. We heard Mr. P. Santhosh Kumar, learned Special Government Pleader. He took us through the report of the KIRTADS which would show that elaborate genealogical study has been done in this case. The study conclusively proved that petitioners mother also belonged to Araya community/Valan community. The appellants' mother's claim that she belonged to Malayaraya community was plainly false and unfounded. Therefore the learned Special Government Pleader supported the decision of the scrutiny committee.

6. We also heard Smt. K.V. Reshmi, learned Counsel who appeared for the additional fifth respondent Shri. T. Vijaya Kumar. It was he who set in motion the enquiry against the third appellant Shri. V. Baiju. The official respondents have produced the reports of the KIRTADS as Annexure A2 along with their counter affidavit filed. We notice that the genealogical details on the maternal side would show that Smt. Amminikutty, the mother of the appellants is a member of the Araya community and document No. 70 produced along with the report would show that when she was admitted in Thirumoola Vilasam U.P. School, Thirumoolapuram, Pathanamthitta District, her caste was shown as Valan. The date of admission was 12.10.1118 (M.E). Document Nos. 71,72 & 73 which are the extract of the admission register of the appellants in Government L.P. School, Vazhekad, Vaikom would show that they belong to Araya/Valan community. We notice that u/s 10 of the Act the burden of proof in an enquiry before the competent authority/expert agency/scrutiny committee is on the claimants to prove that they belong to scheduled caste or scheduled tribe. In this case we find that no material has been produced to show that the mother of the appellants belongs to Malay araya community. So we find that the finding made by the KIRTADS regarding the caste status of the appellants mother is valid and the said finding has been rendered based on relevant materials.

7. But we notice that in view of document No. 78 (judgment in O.P. 274/1980 dated 30.10.1980) of this Court the petitioners mother got a declaration in her favour that she belongs to scheduled tribe Malayaraya community and this Court further ordered to grant the benefit of that declaration to her children also. Thereafter the caste shown in the records of her children who are appellants herein were corrected and they were granted educational benefits. Such correction enabled them to get employment also under the scheduled tribe community. Annexure A judgment of Division Bench of this Court also upheld the rights of the appellants in this regard. Therefore, we notice that the appellants got employment and various service benefits on the strength of the valid orders then in force, though, now it is found that the basis of those orders was wrong. We also notice that in this case there is no fraud played from the part of the petitioners and the principles laid down by this Court in the judgment reported in Prakash v. State of Kerala 2002 (2) KLT 580 will be applicable in this case. We feel that denial of scheduled tribe status to the appellants will operate only prospectively from the date of issuance of Annexure B. The benefits accrued to them till the date of Annexure B shall not be disturbed. In other words the employment secured by them or any promotions granted to them shall

not be cancelled or disturbed, but from the date of Annexure B order, the appellants are not entitled to get any benefit available to members of the scheduled tribe. If any benefit like promotion is given to appellants 2 and 3, the same can be cancelled by the competent authority. It is also ordered that the petitioners or their children are not entitled to claim any benefit available to scheduled tribes from the date of Annexure B.

M.F.A is disposed of as above.