

Mini Vs. Jwala Sajikumar

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Court : Kerala

Decided On : Feb-22-2010

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Judge : S.S. Satheesachandran, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 88, 88(2), 89(1), 102 and 102(1); ;Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 - Sections 3, 5, 6, 7, 8, 9, 11, 13, 24 and 30; ; [Citizenship Act, 1955](#); ;Insolvency Act; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 9; ;Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Rules, 2002; ;[Constitution of India](#) - Articles 341, 341(2), 342, 342(2), 366(24) and 366(25)

Appeal No. : C.R.P. Nos. 834 of 2007 and 252 of 2008

Appellant : Mini

Respondent : Jwala Sajikumar

Advocate for Def. : Liji J. Vadakedom,; K.T. Shyamkumar,; Mathew John (K)

Advocate for Pet/Ap. : S. Sreekumar,; S. Vaidyanathan and; Joice George, Ad

Judgement :

ORDER

S.S. Satheesachandran, J.

1. A short, but, interesting question arise in common for consideration in these revisions, both filed by the returned candidates whose election as members to the Panchayat was impeached. Both of them were elected from reserved constituencies earmarked for Scheduled Caste. Election of the revision petitioner in C.R.P. No. 834 of 2007 was impeached on the ground she belonged to the Scheduled Tribe and that of the revision petitioner in C.R.P. No. 252 of 2008 contending that he is a converted Christian, and thus, disqualified. Both of them are incompetent and not qualified to contest from the reserved constituencies for Scheduled Caste was the challenge in the respective Election Petitions.

2. The question posed for determination is whether the Civil Court, even when it is competent to try an Election Petition as empowered under Section 88 of the [Kerala Panchayat Raj Act, 1994](#), for short, the 'Panchayat Raj Act', has jurisdiction to examine the disqualification imputed over the community of a candidate when his claim as a member of Scheduled caste/tribe is supported by a certificate issued under the provisions of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of issue of Community Certificates Act, 1996 (Act 11 of 1996), for short, the K (SC & ST) RICC Act and the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Rules, 2002, for short the K (SC & ST) RICC Rules, 2002. Since the K (SC & ST) RICC Act and K (SC & ST) RICC Rules provide for a mechanism to examine the genuineness of a certificate issued in relation to Scheduled Castes and Scheduled Tribes and Section 24 of the Act oust the jurisdiction of the Civil Court in respect of any order passed by any officer or authority under the Act, it cannot examine even in an Election Petition disqualification imputed against the election of the returned candidate as not being a member of the Scheduled Caste or Scheduled Tribe is the challenge canvassed in these revisions.

Shorn of all paraphernalia, the bare facts giving rise to these revisions can be summed up hereunder:

(i) C.R.P. No. 834 of 2007 is filed by the 1st respondent in O.P.(Ele). No. 1 of 2005 on the file of the Munsiff Court, Changanacherry. She was the returned candidate

from Ward No. 6 of Vellavoor Grama Panchayat in which the petitioner and the 2nd respondent in the O.P. were other contesting candidates. Ward No. 6 of Vellavoor Grama Panchayat is a reserved constituency for Scheduled Castes. The 1st respondent (revision petitioner) who contested and got elected from that Ward is a member of Hindu Malavedan Community included in the list of the Schedule Tribe and not a member of the Scheduled Caste was the case canvassed to impeach her election as the returned candidate from the reserved constituency for Scheduled Castes. Disqualification imputed against the revision petitioner that she is not a member of the Schedule Caste, and thus, her election from the constituency reserved for such caste, after trial, was upheld by the learned Munsiff, and later, confirmed in appeal by the learned District Judge, Kottayam. Her election as the returned candidate from Ward No. 6 of Vellavoor Grama Panchayat was declared void by the learned Munsiff, and in appeal, it was confirmed by the learned District Judge. Propriety and correctness of the decisions so rendered concurrently by the two inferior courts is challenged in the revision by the returned candidate.

(ii). C.R.P. No. 252 of 2008 is preferred by the 1st respondent in O.P. No. 1 of 2005 on the file of the Munsiff Court, Kanjirappally. He was the returned candidate from Ward No. 5 of Manimala Panchayat, a constituency reserved for Scheduled Castes. His election was impeached by the petitioner in the O.P. alleging that he is not a member of the Scheduled Caste and that he and his family members had converted to Christianity five years before the election and they are members of the Roman Catholic fraction of the Christian Religion. The 2nd respondent in the O.P. was another candidate who contested the election with the petitioner and the 1st respondent. The learned Munsiff, after examining the materials produced found that the 1st respondent in the O.P., the returned candidate/the revision petitioner was a converted Christian and disqualified to contest the election from a constituency reserved for the Schedule Castes. His election as the returned candidate was declared void. Challenge raised against the decision by the 1st respondent in the O.P. (revision petitioner) by way of an appeal was turned down by the learned District Judge Kottayam concurring with the findings entered by the learned Munsiff and upholding the declaration that his election as the returned candidate is void. The 1st respondent in the O.P., the returned candidate has filed

the revision challenging the propriety and correctness of the concurrent decision rendered by both the courts below declaring his election as void.

3. Adv. Sri. S. Sreekumar appeared for the revision petitioner in C.R.P. No. 834 of 2007 and Adv. Sri Joice George, for the revision petitioner in C.R.P. No. 252 of 2008. Adv. Sri. Liji J. Vadakedom appeared for the 1st respondent and Adv. Sri. K.T. Shyamkumar for the 2nd respondent in C.R.P. No. 834 of 2007 and Adv. Sri. Mathew John for the 1st respondent in C.R.P. No. 252 of 2008.

4. The Civil Court as the Election Tribunal notified and empowered under Section 88 of the Panchayat Raj Act, has no competency or jurisdiction to adjudicate any challenge relating to the status of the returned candidate as a member of the Scheduled Castes/Scheduled Tribes, when his claim thereof had been established by the production of a certificate issued by the competent authority under the K (SC & ST) RICC Act and K (SC & ST) RICC Rules, is the common ground canvassed by the learned Counsel appearing for the respective revision petitioners/the returned candidates to impeach and assail the concurrent decisions of both the courts below declaring the election of the revisions petitioners/returned candidates as void. A number of authorities has been pressed into service by the respective counsel to contend that the Election Tribunal has no jurisdiction to decide and adjudicate upon a dispute over the status of a returned candidate as a member of Scheduled Caste or Scheduled Tribe, where his claim over such caste/tribe is established by the production of a certificate issued under the K (SC & ST) RICC Act and K (SC & ST) RICC Rules. My attention has been invited to Kumari Madhuri Patil and Anr. v. Addl. Commissioner of Tribal Development and Ors. : (1994) 6 SCC 241, Director of Tribal Welfare, Government of A.P. v. Laveti Giri and Anr. : (1995) 4 SCC 32 to highlight that the above Act has been brought into force on the directions issued by the apex court in the above two cases. Reliance is also placed on State of Tamil Nadu and Ors. v. A. Guruswami : (1997) 3 SCC 542 and Kutty Nanu v. State of Kerala 2002

(1) KLT 367 to contend that the jurisdiction of the Civil Court to decide the status of a person, whether he belongs to the community of Scheduled Caste or Scheduled Tribe, is impliedly barred under Section 9 of the Code of Civil Procedure, and so

much so, it has no jurisdiction to adjudicate upon that question. Inviting my attention to *Gayathri Lekshmi Bapurao Nagpure v. State of Maharashtra and Ors.* : (1996) 3 SCC 685 it was contended by the learned Counsel for the revision petitioners that greater care and caution is required in deciding any issue relating to the validity of a caste certificate issued under the K (SC & ST) RICCA Act, and it can be gone into only by the statutory authorities under that Act. The Election Tribunal under the Panchayat Raj Act, notified Civil Court dealing with an Election Petition, is incompetent to decide a dispute over a caste certificate issued under the K (SC & ST) RICCA Act and K (SC & ST) RICCA Rules or the cancellation of such caste certificate, and any certificate issued thereunder is valid until it is cancelled under the provisions of the above Act is the submission of the learned Counsel. Reliance is placed on *Prakash v. State of Kerala* 2002

(2) KLT 580 to contend that the caste certificate issued under the above Act is valid and binding including the Government and it can be cancelled only under the provisions and in the manner provided under the Act complying with the procedural requirements necessary for doing so. Where a Statute has been enacted empowering an authority constituted thereunder to decide any question relating to the status of a person as a member of the Scheduled Caste or Scheduled Tribe, as under the K (SC & ST) RICCA Act, it is submission of the counsel, a dispute regarding the status of a returned candidate as a member of such caste/tribe, when it is supported by a certificate issued by the competent authority under the above Act is outside the province of the Election Tribunal. Reliance is placed on *Bhagawathi Prasad Dixit Ghorewala v. Rajeev Gandhi* to contend that the caste question as to whether an elected member of the Panchayat is a member of the Scheduled Caste or Scheduled Tribe is not a dispute which could be entertained by the Election Tribunal, notified civil court, but only before the authority under the K (SC & ST) RICCA Act. Banking upon the decision rendered by the Apex Court in *Thampanoor Ravi v. Charupara Ravi and Ors.* : 1999

(3) KLT 487 (SC) : (1999) 8 SCC 74, it is contended where an authority has been constituted under the K (SC & ST) RICCA Act, jurisdiction to decide a dispute relating to the caste question as to whether the elected member belongs to a

Scheduled Caste or Scheduled Tribe even if it is canvassed as a disqualification in an Election Petition can be decided only by that authority and not by the Election Tribunal. Both the courts below in having decided the disputed caste question had overstepped and transgressed the limits of their jurisdiction, is the challenge canvassed in the revisions for setting aside the concurrent decisions declaring election of the respective revision petitioners/the returned candidates as void. Per contra, the learned Counsel appearing for the respective respondents/petitioners in the Election Petitions, contended that the Election Tribunal, Civil Court empowered under Section 88 of the Kerala Panchayat Raj Act, which alone can go into the election disputes, is fully competent to decide the caste question when it is raised as a ground imputing disqualification of the returned candidate, to set aside his election. Challenge raised on the basis of the K (SC & ST) RICC Act and K (SC & ST) RICC Rules by the revision petitioners is resisted by the counsel submitting that the provisions of the Act have applicability in determining the disputes on the claim of caste as a member of the Scheduled Castes or Scheduled Tribes for admission to educational institutions or appointment to public services and not in the case of determining the election disputes. Placing emphasis on the provisions of the Act and distinguishing the decisions rendered thereunder it is contended that the Election Tribunal constituted under the Panchayat Raj Act is the sole authority which can go into a dispute relating to the caste of an elected member when an election to a reserved constituency for Scheduled Caste and Scheduled Tribe is impeached on the ground of his disqualification as not a member of that Caste/Tribe. Neither the K (SC & ST) RICC Act nor the K (SC & ST) RICC Rules, according to the counsel, in any way place any embargo or interdict or preclude or prohibit the Election Tribunal from examining and entering a decision over a dispute as to whether the returned candidate is a member of the Scheduled Caste or Scheduled Tribe when his election is impeached on the ground of such disqualification, and failure of the Election Tribunal to do so, it is contended, will tantamount to abdication of the jurisdiction vested in it to determine that ground of disqualification which had been raised in the Election Petition to impeach the election of the returned candidate.

5. To appreciate the challenge canvassed that the Election Tribunal constituted under the Kerala Panchayat Raj Act, in view of the provisions under the K (SC &

ST) RICC Act and K (SC & ST) RICC Rules, has no jurisdiction to decide the caste question relating to Scheduled Caste/Scheduled Tribe even when it is canvassed as a ground to impeach the election of the returned candidate, it is necessary to examine some of the relevant provisions of the Panchayat Raj Act and also K (SC & ST) RICC Act and K (SC & ST) RICC Rules. Disputes regarding election to a Panchayat are covered by Chapter X of the Panchayat Raj Act. An election of a returned candidate can be questioned only by way of an Election Petition as provided under the Act. Section 88 of the Panchayat Raj Act specify the court which has jurisdiction to try an Election Petition in the case of an election to a Village Panchayat; and, it is the Munsiff Court over the place in which the headquarters of the Panchayat is located is the competent court having jurisdiction to try the petition. Such an Election Petition can be filed within the time limit fixed only by an elector or by a contestant to the election from the constituency, as per the provisions under Section 89(1) of the Act. Section 102 of the Panchayat Raj Act specify the ground on which an election of the returned candidate can be impeached by filing an Election Petition before the court having jurisdiction. Sub-section (1)(a) of Section 102 of the Panchayat Raj Act states that an election of a returned candidate can be impeached on the ground that on the date of his election, he was not qualified or was disqualified, to be chosen to fill the seat under the Act. There is no challenge that the Election Petitions giving rise to these revisions have not been presented before the competent court having jurisdiction to entertain such petitions nor that the grounds canvassed for declaring the election of the returned candidates do not come within the ambit of Section 102 of the Panchayat Raj Act. Election Petitions have been presented before the respective Civil Court which has jurisdiction to entertain such petition and the grounds canvassed are also such on which election of the returned candidate can be impeached by presenting such a petition goes a long way in resolving the challenge in the revisions that the Civil Court (Election Tribunal) lack jurisdiction to decide a caste question, the adjudication of which is stated to be falling within the ambit of the K (SC & ST) RICC Act and K (SC & ST) RICC Rules.

6. A perusal of K (SC & ST) RICC Act and K (SC & ST) RICC Rules spell out that it has been brought into force to regulate the issue of community certificate to members of the Scheduled Caste and Scheduled Tribe. The above Act, K (SC &

ST) RICC Act has been brought into force pursuant to directions given by the Apex Court in Kumari Madhuri Patil and Anr. v. Addl. Commissioner of Tribal Development and Ors. : (1994) 6 SCC 241 and Director of Tribal Welfare, Government of A.P. v. Laveti Giri and Anr. : (1995) 4 SCC 32. The Apex Court noticing that the benefits reserved for the Scheduled Caste and Scheduled Tribe are claimed and exploited by others fabricating false records issued guidelines and directions for bringing about a uniform legislation prescribing penal consequences as well against the persons who take advantage of the benefits of the marginalised sections on false certificates. The above two decisions at the most only explain the backdrop how the K (SC & ST) RICC Act came into force and is not of any assistance in resolving the present question.

7. Much emphasis has been laid by the learned Counsel appearing for the revision petitioner in C.R.P. No. 834 of 2007, Adv. S. Sreekumar, on Section 3 of the K (SC & ST) RICC Act to contend that the mechanism provided under the Act has to be resorted to even when a challenge over the qualification of the returned candidate impeaching his claim as a member of Scheduled caste/tribe is canvassed before the Election Petition pending before the court. The Malayalam translation relating to Section 3 of the Act was also read over to me by the counsel, wherein it is expressed with more clarity that proof of a person as a member of a Scheduled Caste and Scheduled Tribe as covered under Section 3 is applicable in the case of contesting to a reserved constituency in a local authority.

8. Section 3 of the K (SC & ST) RICC Act reads thus:

Notwithstanding anything contained in any other law for the time being in force, any person belonging to any of the Scheduled Castes of the Scheduled Tribes claiming any benefit, concession, protection, exemption or reservation provided to such Castes or Tribes either for any appointment in public services or for admission into educational institutions, exclusively intended for members of the Scheduled Castes or Scheduled Tribes, or for contesting for the seats reserved for them in any educational institution in the State or outside the State for the students of the State or local authority or co-operative institution, shall prove his claim by a Certificate issued for the purpose under this Act, by the competent authority, in the

prescribed manner.

Section 3 of the Act mandates that any person belonging to the Scheduled Caste or Scheduled Tribe to claim any benefit, concession, protection, exemption or reservation provided to such caste or tribe for any appointment in public services or for admission in the educational institutions, exclusively for such castes or tribes, or for contesting the reserved seats for them in any educational institutions or local authority or co-operative institution shall prove his claim by a certificate issued by the competent authority under the Act. The certificate issued under Section 3 of the Act by the competent authority in the prescribed manner is mandated to prove the status of the candidate claiming to be Scheduled Caste or Scheduled Tribe to contest the election from a reserved constituency has been highlighted by the counsel for the revision petitioners to contend that the certificate has to be treated as conclusive and final unless and until it is cancelled by due process of law as envisaged under the Act. Before considering the merit of the challenge canvassed under Section 3 of the Act, other provisions in that Act which has some bearing over the question presented has to be adverted to. The scheme of the K (SC & ST) RICC Act provide for issue of certificate by the competent authority (Section 5), constitution of Screening Committee for verification of Community Certificate (Section 6), further verification by the Competent authority or the head of the educational institution at the time of initial appointment, selection or admission or at any stage thereafter (Section 7), constitution of Scrutiny Committee for verification of the Community Certificates (Section 8), and enquiry by the Expert Agency (Section 9) to examine and give a final conclusive opinion over the claim of an individual or group of individuals that he or they belong to Scheduled Caste or Scheduled tribe. The report of the expert agency has to be treated as conclusive proof for and against the claim of a person as a member of the Scheduled Caste or Scheduled Tribe. The Act provide for an appeal and a review against any order passed by the competent authority on an application submitted for issue of a certificate under the Act and also an order passed by the Scrutiny Committee constituted under Section 11 of the Act. Power of revision is conferred on the Government (Section 13) to examine the record relating to any decision or order passed by the competent authority or any of the committees constituted under the Act. Section 24 of the Act bars the jurisdiction of

the Civil Court from examining the correctness of any order passed by any officer or authority under the Act and from granting any stay or injunction in respect of any action taken under the Act.

9. The edifice of the challenge as to the ouster of jurisdiction of the civil court, which is otherwise competent to try an Election Petition as the notified court under Section 88(2) of the Panchayat Raj Act, is built upon the mechanism provided under the K (SC & ST) RICC Act to examine the correctness and validity of a community certificate issued under that Act and Rules and the bar of jurisdiction of the Civil Court as covered by Section 24 of the above Act. A close scrutiny of the provisions of the K (SC & ST) RICC Act and K (SC & ST) RICC Rules spell out that there is no merit in the challenge set up that the court notified for, which is competent to try an Election Petition, has no jurisdiction to go into the disqualification imputed against the returned candidate as to his status as a member of Scheduled caste/tribe when his claim thereof is supported by a certificate issued under the Act.

10. Section 3 of the K (SC & ST) RICC Act provides for issue of community certificate to establish the claim of a person as a Scheduled Caste or Scheduled Tribe to contest an election to a local authority as similar to establish a claim for admission to an educational institution or appointment to public services or co-operative institution is at the most only an incidence of proof as to the status of a person as coming under the community of Scheduled Caste or Scheduled Tribe. It is interesting to note that Section 6, which deals with the Screening Committee to be constituted for verification of the community certificate issued under the Act is empowered to scrutinise the validity or correctness of the certificate issued to the members of the Scheduled Caste and Scheduled Tribe for the admission of the seats reserved for such community in educational institutions, but not of certificates issued in relation to appointment to public services or for contesting election to a local authority. Section 7 of the K (SC & ST) RICC Act states that the production of the community certificate issued by the competent authority under the Act in no way preclude the appointing authority, or head of an educational institution or any officer or authority superior to the appointing authority and also the State Government from verifying or causing to be verified the claim of an

individual that he belongs to Scheduled Caste or Scheduled Tribe, at the time of initial appointment, selection or admission or at any stage thereafter. Scrutiny Committee to be constituted under Section 8 of the Act for verification of community certificates can do so either suo motu or the application in the prescribed manner from the person or authority specified. A person belonging to the Scheduled Caste or Scheduled Tribe or any appointing authority or local body or heads of educational institutions can make an application in such form as prescribed by the Scrutiny Committee for verification of community certificate. The Scrutiny Committee, after due verification and conducting such enquiry as found necessary, shall pass appropriate orders on the correctness of such certificate, and if it is of the opinion that the certificate was obtained fraudulently, it shall cancel the certificate after giving the person concerned an opportunity of making a representation, if any.

11. The question to be examined is whether the empowerment of the Scrutiny Committee constituted under Section 8 of the K (SC & ST) RICC Act to examine the correctness or validity of a community certificate issued to a person who has claimed to be a member of the Scheduled Caste or Scheduled Tribe would oust the jurisdiction of the civil court, a notified court competent to try an Election Petition involving a question as to the disqualification imputed against him to contest from a reserved constituency for such caste or tribe as not a member thereof. In this context, it has to be noticed the Scrutiny Committee can verify the correctness of a community certificate issued in relation to issue of a community certificate suo motu or on the application in the prescribed form by any person belonging to Scheduled Caste or Scheduled Tribe or any appointing authority or local body or head of educational institution, and after the enquiry on such plaint, if it is of the opinion that the certificate was obtained fraudulently, it is competent to pass an order to cancel the certificate after giving the person concerned an opportunity, of making a representation, if any. Other than the appointing authority or local body or head of educational institution, the only other person or individual who is competent to move an application in the prescribed form challenging the community certificate issued to any person as seen from Section 8 of the above Act should be a member of the Scheduled Caste or Scheduled Tribe. That itself is sufficient that the Act cannot in any way bar the right of an elector in a

constituency, leave alone the contesting candidate, to impeach the claim of the returned candidate to contest the election to a reserved constituency disputing his status as a member of the Scheduled Caste or Scheduled Tribe, in an Election Petition as provided by the Panchayat Raj Act. So much so, the Act provides for a Scrutiny Committee for verification of the community certificate issued under the Act, which as seen indicated above, can be moved only by such persons as referred to under Section 8 of the Act, has no merit in setting up a challenge that a notified court competent to try an Election Petition cannot go into the disqualification imputed against the returned candidate from a reserved constituency that he does not belong to the caste or tribe to which the constituency has been reserved.

12. The bar of jurisdiction of the Civil Court covered by Section 24 of the K (SC & ST) RICC Act relates only to questioning the correctness of an order passed by any officer or authority under the Act. Section 24 of the Act reads thus:

24. Bar of jurisdiction of Civil Courts: No Civil Court shall have jurisdiction in respect of any order passed by any Officer or authority under this Act and no stay or injunction shall be granted by a Court in respect of any action taken or to be taken by such officer or authority under this Act in pursuance of any power conferred by or under this Act.

The ouster of jurisdiction of the Civil Court is only in examining the correctness or validity of any order passed by any officer or authority under the Act and of interdicting it from granting any injunction or stay in respect of any action taken or to be taken by such officer or authority under the Act. Orders passed by the competent authority declining the issue of a certificate to a person or any other order passed by the Scrutiny Committee or even orders of cancellation of the community certificate already issued, no doubt, cannot be challenged before a civil court. In an Election Petition notified Civil Court, Election Tribunal under the Panchayat Raj Act, where disqualification is imputed against the returned candidate from a reserved constituency for Scheduled caste or Scheduled tribe contending that he is not a member of the caste or tribe for which the constituency is reserved, the notified court in adjudicating that question is not deciding the

correctness of the community certificate, if any, issued under the provisions of the K (SC & ST) RICC Act, but only determining on the materials whether the candidate was qualified or disqualified to contest the election from the reserved constituency. Claim of a person to be a member of the Scheduled Caste or Scheduled Tribe has to be proved by a certificate issued under the K (SC & ST) RICC Act to claim any benefit, concession, protection, exemption or reservation provided to such caste or tribe in the matter of public appointment or admission to educational institutions or contesting an election to the local authority or co-operative institution does not ipso facto lead to the conclusion that his status once recognised under a community certificate is immune from any challenge otherwise than as provided under the Act. The Act provides for a mechanism for impeaching the certificate to the persons specified by the committee covered by Sections 6, 7, 8, 9 thereof does not in any way interdict the right of an elector including a defeated candidate to impeach the election of a returned candidate from a reserved constituency challenging his qualification as not being member of a Scheduled Caste or Scheduled Tribe, to which the constituency has been reserved.

13. The decision relied by the learned Counsel for the revision petitioners State of Tamil Nadu and Ors. v. A. Guruswami : (1997) 3 SCC 542 has no application to the facts involved in the present case. That was a case where a person, who was a member of the Scheduled Caste, after having obtained a certificate from the Revenue Divisional Officer showing his status as a member of the Scheduled Tribe applied for a permanent certificate claiming his status as a member of the Scheduled Tribe. After enquiry, the certificate issued to him earlier was cancelled. Suit was filed for a declaration that he is a member of a community which come under the Scheduled Tribes. Adverting to the declaration of the President of India under Articles 341 and 342 of the Constitution, with respect to the lists of the Scheduled Castes and Scheduled Tribes in a State, it was held by the Apex Court that such notification is decisive, final and conclusive. The Apex Court held that the jurisdiction of the Civil Court to take cognizance and giving a declaration stands prohibited in such a case as the declaration of the President under Articles 341 and 342 as to the lists of the Scheduled Castes and Scheduled Tribes in relation to a State, that a particular caste or tribe as defined under Article 366(24)

or (25) respectively, is conclusive subject to an amendment by Parliament under Articles 341(2) and 342(2) of the Constitution. In the present case, no declaration with respect to the caste question of the returned candidate is raised, but only that both the returned candidates were disqualified to contest the election from the reserved constituency as not being members of the Scheduled Caste to which such constituency was reserved. Similarly, the decision relied by the learned Counsel for the revision petitioner, namely, *Kutty Nanu v. State of Kerala* 2002 (1) KLT 367 also relate to a similar case where the plaintiffs 41 in number sought a declaration that they are members of a particular community. Taking note of the decisions rendered by the Apex Court including the previous case referred to, this Court held that the jurisdiction of the Civil Court to try the suit is impliedly barred under Section 9 of the C.P.C. That decision also does not help the revision petitioners to contend that the notified court trying an Election Petition has no jurisdiction to determine the challenge against the election of the returned candidate impeached on the ground that he was not qualified to contest for an election to the reserved constituency as not being a member of the Scheduled caste, for which the constituency is reserved.

14. Similarly, the decision rendered in *Prakash v. State of Kerala* 2002 (2) KLT 580 relied by the learned Counsel for the revision petitioner arose from a case where the appointment made to a public service of a person in a special recruitment for the members of the Scheduled Caste/Scheduled Tribe was sought to be cancelled directing him to quit the appointed post and refund the salary received on the basis of the enquiry and decision given by the competent authority under the K (SC & ST) RICC Act. The facts presented in the case would disclose that the proceedings initiated against the person was without jurisdiction and also that the enquiry conducted violated the principles of natural justice. Concluding so, this Court quashed the proceedings and the order. The challenge involved in that case indisputably related to the claim of a person as a member of the Scheduled Tribe in appointment to public services and any dispute thereof, no doubt, has to be resolved through the mechanism provided under the K (SC & ST) RICC Act. Though his appointment under the special recruitment for Scheduled Caste/Tribe was earlier and also on the basis of the certificate produced by him showing his status as a member of the Scheduled Tribe from the revenue authority, taking note

of the transitory provision covered by Section 30 of the K (SC & ST) RICC Act, this Court held that the certificate issued by him can be cancelled only under the provisions of that Act. As discussed earlier, the Scrutiny Committee constituted under Section 8 of the K (SC & ST) RICC Act is the competent body to examine the question whether a person has obtained a false community certificate or that he or his children belongs/belong to Scheduled Caste or Scheduled Tribe, to obtain appointment to public services. In that context, this Court in the above decision has held that a certificate issued as to the status of a person as a member of the Scheduled Caste or Scheduled Tribe can be cancelled only under the provisions of the K (SC & ST) RICC Act.

15. The other two decisions relied by the counsel for the revision petitioners, namely, *Bhagawathi Prasad Dixit Ghorewala v. Rajeev Gandhi* : (1986) 4 SCC 78 and *Thampanoor Ravi v. Charupara Ravi and Ors.* : 1999 (3) KLT 487 (SC) : (1999) 8 SCC 74, both of them have no relevance or applicability so far as the consideration of the question involved in the present case. In the former case, a challenge set up in the election that the returned candidate had ceased to be an Indian citizen, and therefore, was disqualified to be a candidate for the reason he had married a foreign citizen was found to be not entertainable nor can be adjudicated upon in the petition, by the apex court, since the Central Government alone has exclusive jurisdiction under the [Citizenship Act, 1955](#) to decide questions regarding loss of Indian citizenship and acquisition of citizenship of a foreign country. So far as the K (SC & ST) RICC Act is concerned, it regulates the issue of the community certificate for the Scheduled caste/Scheduled tribe to facilitate the claim of any person in such caste or tribe for the benefits provided to such marginalised sections of the society and also cancelling such certificates subject to the procedure provided after enquiry by the committees concerned when a certificate has been obtained by any person by fraudulent means. It does not deal with the acquisition of the status of a person as a member of the Scheduled caste or Scheduled tribe nor of losing his status in such caste or tribe. Certificate issued under the K (SC & ST) RICC Act is only a proof to establish his claim reserved for such caste or tribe in an election to local authority. Such a certificate is a prerequisite for any person claiming to be a member of such caste or tribe to contest in a reserved constituency for such caste or tribe. That proof as

to the claim of status to contest the election as a contestant does not insulate him from a challenge in an Election Petition as to his disqualification to contest the election as being not a member of the caste or tribe to which a constituency had been reserved. The K (SC & ST) RICC Act does not have any jurisdiction to decide a dispute arising in an election as to the disqualification of the person with respect to his community even if he had been issued a certificate under that Act by the competent authority. When the authorities or committees under the K (SC & ST) RICC Act do not have jurisdiction to determine all disputes relating to the status of a person as a member of the Scheduled caste or Scheduled Tribe neither the provisions nor even the issue of a community certificate under the K (SC & ST) RICC Act can be pressed into service to contend that a notified court competent to try an Election Petition has no jurisdiction to decide the disqualification imputed against the returned candidate from a reserved constituency on the ground that he is not a member of the Scheduled caste or Scheduled tribe. In *Thampanoor Ravi v. Charupara Ravi and Ors.* : 1999 (3) KLT 487 (SC) : (1999) 8 SCC 74 also, the challenge canvassed in the Election Petition that the returned candidate, was an un-discharged insolvent, and, thus, disqualified to be a candidate, was negated by the Apex Court since the Insolvency Court governed by the Insolvency Act alone and no other court is competent to decide the question of insolvency of a person. When exclusive jurisdiction is conferred on a particular court or authority under an Act, it can be said that the jurisdiction of other court or authority has been ousted. As indicated earlier, other than issue of certificate and determination of the validity and correctness of the certificate, K (SC & ST) RICC Act does not provide a mechanism or provision that all disputes relating to the status or qualification of a person as a member of the Scheduled caste/Scheduled tribe is determinable only by the authorities constituted under that Act.

16. In an Election Petition challenging the election of a returned candidate from a constituency reserved for Scheduled Caste/Scheduled Tribe raising a ground that he is not a member of the caste/tribe for which such constituency is reserved, the notified court having jurisdiction to try such a petition, no doubt, cannot declare that the certificate issued by a competent authority under the K (SC & ST) RICC Act as false nor pass any order cancelling such certificate. However, a certificate issued by the competent authority under the K (SC & ST) RICC Act and its

production before the court, in no way oust the jurisdiction of the court in examining the disputed question whether the returned candidate is a member of the Scheduled caste or Scheduled tribe for which the constituency is reserved. The K (SC & ST) RICC Act does not contain any provision that a certificate issued by the competent authority under that Act is final, conclusive and binding, and no dispute relating to the status of a person who had been issued with such a certificate can be raised in a competent Civil Court even where resolving of that dispute is necessary and vital for a just decision in the case. The K (SC & ST) RICC Act has been enacted to curb effectively the practice of securing false certificate by persons other than those belong to Scheduled Caste and Scheduled Tribe for claiming the benefits of reservation and such other benefits made for such caste and tribe and also to make provisions for prescribing the punishment thereof and connected matters. Any person belonging to the Scheduled Caste or Scheduled Tribe to claim any benefit, concession, protection, exemption or reservation provided for such caste in respect of appointment to public services, admission to educational institutions, contesting an election to a local authority or co-operative institutions has to prove his claim by a certificate issued under that Act. The Act provide a mechanism for cancellation of false certificate obtained by a person after verification and enquiry by a Scrutiny Committee following the procedure prescribed. But the above provision made in the Act does not postulate nor lead to the conclusion that once a certificate is issued under the Act and till it is cancelled, that certificate has to be treated as conclusive and final as to the status of a person as a member of the Scheduled caste/tribe and a competent court cannot even where it is having a jurisdiction to decide a lis in which the caste or community question of one or other party is involved, has to accept that certificate as final, conclusive and binding. A certificate produced by a contestant in an election to the local authority claiming his status as a member of the Scheduled caste/Scheduled tribe to contest an election from the constituency reserved for such caste or tribe, is only proof of her claim to contest election from a reserved constituency. When a challenge is made of his election as a returned candidate that he is not a member of the Scheduled Caste or Scheduled Tribe, and, thus, disqualified to contest an election to the constituency reserved for such caste or tribe that dispute has to be resolved on the basis of the materials produced before

the Election Tribunal and an enquiry on that disputed question cannot be resisted on the basis of the certificate obtained by the returned candidate under the Act. A Scrutiny Committee constituted under the K (SC & ST) RICC Act is empowered to go into the falsity of the certificate and pass orders for its cancellation if it is found to have been fraudulently obtained, in no way interdict the Election Tribunal in examining the question whether the returned candidate was qualified to contest the election from a reserved constituency as a member of the Scheduled Caste or Scheduled Tribe. That question can be gone into only by the Election Tribunal and not by any other authority. The Election Tribunal is not entering any finding as to whether the certificate had been obtained fraudulently and also not passing any order for cancelling such certificate. Certificate issued under the K (SC & ST) RICC Act is only proof to show the status of a person to contest the election and when his status as such is impeached in the Election Petition contending that he was disqualified to contest the election as not being a member of the caste or tribe to the constituency so reserved, the Election Tribunal is not bound by the certificate. A certificate issued under the K (SC & ST) RICC Act does not in any way impinge the jurisdiction of the Election Tribunal to examine the qualification of the returned candidate to contest the election in the reserved constituency, when it is challenged in the Election Petition. To read into the provisions of the K (SC & ST) RICC Act that the mechanism provided for verification of the certificate and also its cancellation when it had been obtained by fraudulent means is a complete embargo on competent courts even in the case of disputes, which are not covered by the Act, and in which, qualification of a person as a member of the Scheduled caste or Scheduled Tribe is involved, is totally misconceived and patently erroneous especially where there is nothing in the Act to indicate even impliedly the ouster of jurisdiction of the Civil Court in such matters.

17. The Apex Court has laid down the principles to be followed in examining the ouster of Civil Court jurisdiction where a particular Statute contains provisions regarding the right of liabilities and also forums for enforcement of such right or protection from the liability ensuing from the orders under the provisions of that Statute. In *Shiv Kumar Chadha v. Municipal Corporation of Delhi and Ors.* : (1993) 3 SCC 161, it has been held thus:

Where statutory enactments only create rights or liabilities without providing forums for remedies, any person having a grievance that he has been wronged or his right is being affected, can approach the ordinary Civil Court on the principle of law that where there is a right there is a remedy - *ubijus ibi remedium*. Where a particular Act creates a right or liability and also provides a forum for enforcement of such right or for protection from enforcement of a liability without any authority in law; the ouster of court's jurisdiction can be upheld on the finding that the rights or liabilities in question have been created by the Act without touching a pre-existing common law right and the remedy provided therein is adequate and complete. But the situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the court so far remedy against the orders passed under such statute is concerned. In such cases, the courts have to be more vigilant, while examining the question as to whether an adequate redressal machinery has been provided, before which the person aggrieved may agitate his grievance. In spite of the bar placed on power of the court, orders passed under such statutes can be examined on 'jurisdictional question'.

In an earlier decision in *Ram Swarup and Ors. v. Shikar Chand and Anr.* : AIR 1966 SC 893, it has been held that jurisdiction of civil court can be excluded in matters covered by the provisions of a Statute but that also will not be applicable when the order impugned is a nullity. In the above decision the two main tests to be applied in considering whether the bar of jurisdiction of Civil Court under the provisions of a Statute have also been pointed out. It has been held thus:

The jurisdiction of the civil courts to deal with civil cases can be excluded by the Legislature by special Acts which deal with special subject-matters; but the statutory provision must expressly provide for such exclusion, or must necessarily and inevitably lead to that inference. The bar created by the relevant provisions of the statute excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity. One of the points which is often treated as relevant in dealing with the question about the exclusion of Civil Courts' jurisdiction, is whether the special statute, which, it is

urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is: does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions?

This Court in *Walton v. Cochin Stock Exchange Ltd.* 1995 (1) KLT 81 has held that the mere fact that the person could complain to the authorities created by the Act cannot be considered as a bar to the right of that party to approach a Civil Court for appropriate relief. It has been held thus:

The mere fact that the plaintiff could complain to the authorities created by that Act and hope that the authorities under that Act would take action cannot be said to bar the right of the plaintiff to approach the Civil Court for the redressal of its grievances. This question in the form will arise only in a case where the statute that creates the rights also creates a machinery for the enforcement of the right and not in cases where the statute merely creates a right and does not create any specific machinery for its enforcement.

In the context, it has to be pointed out that under Section 8 of the K (SC & ST) RICC Act, Scrutiny Committee can be moved only by the specified persons named therein or it has to take action suo motu with respect to the validity of a community certificate issued under the Act. Mere fact that it can take suo motu action does not postulate that any person having any complaint over the community certificate issued under the Act has to move the Scrutiny Committee so that it may take suo motu action over such complaint. At any rate, the right of an elector or a candidate to challenge the disqualification of a returned candidate impeaching the status of a person as not a member of a Scheduled caste or tribe is no way affected by Section 8 or any other provisions under the K (SC & ST) RICC Act.

18. Ouster of jurisdiction of Civil Court canvassed under the provisions of the K (SC & ST) RICC Act by the revision petitioners, when examined with reference to the decisions rendered by the Apex Court and this Court, as referred to above, is found to be meritless. There is no bar under Section 24 of the K (SC & ST) RICC Act or any other provision under such Act interdicting the notified court, Election Tribunal, from examining the disqualification imputed against a returned candidate

as not being a member of the Scheduled caste/Scheduled tribe for the reason that his claim as a member of the caste/tribe is supported by a community certificate issued under the Act and a machinery is provided in that Statute to examine its validity and also for ordering its cancellation if the certificate is found as having been obtained by fraudulent means. Section 24 of the K (SC & ST) RICC Act, as already stated, only prohibits the Civil Court from entertaining a challenge against any order passed by any authority of the Act and granting of any stay or injunction against the operation of such orders passed by the authorities. Issue of community certificate, determination of its validity, cancellation of the certificate etc. under the K (SC & ST) RICC Act can in no way place any fetter on the jurisdiction of the notified Civil Court trying an Election Petition under the Panchayat Raj Act in adjudicating upon the disqualification imputed against a returned candidate from a reserved constituency as not being a member of the caste/tribe for which it has been reserved, and decide the validity of his election.

19. In the light of the discussion made above, it has to be concluded that the challenge canvassed that the notified Civil Court, Election Tribunal under the Panchayat Raj Act, has no jurisdiction to determine the dispute relating to the qualification of a returned candidate whose election is impeached as not being a member of the Scheduled Caste/Schedule Tribe for the reason that he had been issued certificate showing his status under such caste or community under the K (SC & ST) RICC Act has no merit and it is only to be repelled, and, I do so. On the factual disputes in the case, the concurrent findings entered by the courts below that the respective revision petitioners were disqualified to contest the election from reserved constituency as not being members of the Scheduled caste/Scheduled tribe, no serious argument was presented before me to impeach the correctness of the findings entered thereof. Perusing the judgment rendered by the courts below, I find the conclusion drawn that both the revision petitioners were not members of the Scheduled caste/Scheduled tribe as claimed by them, and therefore, they were disqualified to contest the election from the reserved constituency for such caste/tribe, is fully established by the materials produced in the case. Such concurrent decision rendered by the inferior courts respectively is also not open to challenge in the revisions when there is nothing to indicate that there was any jurisdictional infirmity in arriving at such finding. Suffice to state,

both the revisions fail, and are dismissed.

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