

M. Rugmini Vs. Director, Kerala Institute for Research, Training and Development Studies of Scheduled Castes and Tribes and Others

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Court : Kerala

Decided On : May-25-2012

Reported in : 2012(3)KLT47(SN)(C.No.48); 2012(3)KHC30; 2012(3)ILR(Ker)161

Judge : Thottathil B. Radhakrishnan & C.T. Ravikumar

Appeal No. : M.F.A. No. 173 of 2004

Appellant : M. Rugmini

Respondent : Director, Kerala Institute for Research, Training and Development Studies of Scheduled Castes and Tribes and Others

Judgement :

Thottathil B. Radhakrishnan, J.

1. The decision under the provisions of the Kerala (Scheduled Castes and scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, that the appellant is not a member of a Scheduled Caste (Thandan community) is under challenge. Action to terminate her service in public employment is also recommended as per the impugned order.

2. Apart from eloquently challenging the findings on facts, it was argued on behalf of the appellant that the binding nature of the decision contained in O.S. No. 92 of

1991 of the Court of the Munsiff, Alathur, rendered with the State of Kerala and others on the array as defendants, has been unreasonably ignored while passing the impugned order. It is also pointed out that the effect of the judgment in O.P. No. 5603 of 1991 has also been overreached in issuing the impugned decision.

3. Per contra, the learned Special Government Pleader argued that the findings rendered by the civil court are without jurisdiction since that suit was not maintainable on the face of the law laid by the Apex court that such suits are impliedly barred in terms of the special provisions that govern the resolution of disputes relating to inclusion or exclusion of the benefits due under the Presidential Orders. Copious reference was also made to the materials on record to contend that the findings in the impugned order are based on materials and do not warrant interference.

4. At the outset, it needs to be stated that W.A. No. 1983 of 1997 carried by State of Kerala against the judgment in O.P. No. 5603 of 1991, was decided by the Division Bench clarifying that the Bench was not interdicting any fresh action on the basis of the Act, if the appellant's family had got any illegal benefits; and that, if her family has any grievance, it is for them to approach the statutory authorities. So much so, the decisions rendered in that original petition and writ appeal do not contain any finding which will affect the right of parties in this appeal.

5. The suit by the appellant, her father and others was instituted on the teeth of the finding by the Government that the members of the family of Madhavan, the father of the appellant herein, do not belong to Thandan community, a scheduled caste. That suit was decided on 22nd December 1999, long after the Act came into force.

6. In **State of T.N. Vs. A. Gurusamy, (1997) 3 SCC 542**, the Apex Court dealt with the case of a person who was initially reckoned as belonging to a scheduled caste, "Thotti", and later, was given a certificate as belonging to a scheduled tribe "Kattunaicken". When he applied for a permanent certificate in that regard, an inquiry was held, leading to the finding that the said person was not a member of a scheduled tribe but was a member of a scheduled caste. Consequently, the certificate issued to him to the effect that he belongs to a scheduled tribe "Kattunaicken" was cancelled. The civil courts, at the trial and first appellate

stages, came to his rescue and granted a declaration that he belongs to the scheduled tribe "Kattunaicken", thereby denouncing the Government decision to the contrary. The High court refused to interfere with that decision on the ground that it is a declaration granted on the basis of concurrent decisions on facts. The Apex Court overturned that and held that such a suit is not maintainable. The conclusive nature of the Presidential declarations under Articles 341 and 342 of the Constitution, subject only to an amendment by Parliament, was dilated upon. Accordingly, it was held that subject to any amendment by Parliament, the lists of Scheduled Castes and Scheduled Tribes in terms of the Presidential declarations would govern the field. Consequentially, it was held that by necessary implication, the jurisdiction of the civil court to take cognizance of and give a declaration stands prohibited. It was specifically stated that by operation of Section 9 of CPC, a suit of civil nature, cognizance of which is expressly or by implication excluded, cannot be tried by any civil court. The ratio of that precedent includes that a suit for declaration of status, as against the contrary finding by the Government, in relation to issuance of community certificates, for the enjoyment of caste/tribe/community benefits, does not lie and is impliedly barred. This aspect has been pointedly noted, with reference to the aforesaid precedent, by a learned single Judge of this Court in **Kutty Nanu Vs. State of Kerala, 2002 (1) KLT 367**. The decisions of the Apex court in **Kumari Madhuri Patil Vs. Addl. Commr., Tribal Development, (1994) 6 SCC 241** and **Palghat Jilla Thandan Samudhaya Samrakshana Samithi and Anr. Vs. State of Kerala, 1994 (1) KLT 118 (SC)**, also lead to the same view.

7. As already noted, O.S. No. 92 of 1991 of the Court of the Munsiff, Alathur, was filed by the appellant, her father and others when they were faced with the finding of the Government that they do not belong to the scheduled tribe "Thandan" and are therefore liable to be proceeded against. The issue in that case was regarding the validity of the community certificate or cancellation of such certificate on a finding by the Government that the persons involved in that litigation do not belong to that particular community, whether a scheduled caste or scheduled tribe. Adjudication of such issue, to wit, the correctness or otherwise of the Government decision in relation to the grant or cancellation of the community certificate, was beyond the province of the civil court, in view of the Act and the provisions which

were in place following the directions of the Apex Court in Kumari Madhuri Patil (supra); which directions applied till the commencement of the Act. Hence, the decision rendered in that suit is without jurisdiction and does not operate as res judicata. It, in no manner, prevents the Government or its officers from exercising authority under the Act. Therefore, that decree of the civil court does not apply and cannot be relied on to torpedo the impugned decision.

8. Now, on to the materials that were available before the scrutiny committee, it needs to be stated at the outset that the impugned order discloses that the committee had scrupulously examined all relevant materials. The documents with the committee clearly showed that the appellant's father and mother were born in the Thiya community. Documents 3 to 25 appended to the report evidenced such status of the appellant's father and documents 26 to 40 showed such status of her mother. Different documents relating to the appellant's siblings were also considered by the committee. All those documents categorically show that appellant's siblings were also described as the Thiyas in their school records. Clinching material was also on record to the effect that the appellant was admitted to Std. VII by giving her caste status as Hindu/Thiya. That entry was also carried over to her SSLC book. The scrutiny committee concluded that thereafter, caste details regarding the appellant were, essentially, manipulated, leading to her obtaining a false certificate and thereby enriching herself with undue benefit, by passing herself off as a member of a scheduled tribe. The appellant did not dispute before the committee, the genealogical pro forma evincing that her spouse and his relatives belong to Ezhava community which is treated as "other backward community". On the basis of the clear evidence against the appellant, as available in defiance of the scrutiny committee, we find absolutely no reason to upset the findings in the impugned decision of that committee.

9. For the aforesaid reasons, this appeal fails.

In the result, this appeal is dismissed with costs.

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