

Kerala High Court

C. Sunil Krishnan vs State Of Kerala And Ors. on 29 February, 1996

Equivalent citations: AIR 1997 Ker 62

Author: K N Kurup

Bench: K N Kurup

ORDER K. Narayana Kurup, J.

1. The petitioner was appointed provisionally as a Commercial Clerk in the Palakkad Division of Southern Railway against Scheduled Caste quota and sent for training with effect from 21-7-1989. Subsequently the petitioner was transferred to T.P.J. Division to wipe out the short-fall in the quota reserved for Scheduled Castes. The appointment of the petitioner as aforesaid was provisional because he did not produce the caste certificate issued by the Revenue authorities at the time of appointment. Since the petitioner failed to produce the caste certificate to the satisfaction of the Railway authorities, steps were taken to terminate his service. The petitioner thereupon moved this Court in O.P. No. 3635/88 praying for the issuance of a writ of mandamus directing the Tahsildar, Palakkad to issue to the petitioner a community certificate to the effect that he belongs to the caste "Thandan" which is a scheduled caste and for a declaration that the action of the Tahsildar, Palakkad in refusing to grant community certificate to the petitioner is illegal, unconstitutional and void. The said original petition was disposed of by this Court as per Ext. P9 judgment dated 6-5-1988 directing the second respondent therein, namely, the Tahsildar, Palakkad to conduct an enquiry and if he finds that the petitioner belongs to the community of Thandan, a certificates prayed for shall be issued to the petitioner within one month from the date of receipt of a copy of that judgment. Pursuant to the direction issued by this Court as per Ext. P9 judgment, an enquiry was conducted by the Tahsildar, Palakkad and the petitioner's claim for inclusion as scheduled caste was rejected as per Ext. P10 letter of the third respondent. Since Ext. P10 was patently illegal, wrong and unsustainable according to the petitioner, he again moved this Court in O.P. No. 6984/89. This Court by Ext.-P11 judgment dated 9-1-1990 permitted the petitioner to make a fresh petition to the third respondent herein and the third respondent was directed to pass appropriate orders on the question of the scheduled caste status of the petitioner as expeditiously as possible after affording an opportunity to the petitioner to substantiate his claim. In compliance with the direction issued by this Court in Ext. P11 judgment, Ext. P13 final order was passed by the third respondent rejecting the petitioner's application for the issuance of scheduled caste certificate. Consequent to Ext. P13 final order of the third respondent, the petitioner was asked by the 4th respondent by letter dt. 13-2-1990 to produce a fresh community certificate from the Tahsildar concerned in the prescribed pro forma within 3 months failing which the petitioner was informed that his service will be terminated on 13-5-1990 in terms of Railway Board letter No. 78 E(SCT) 15/29 dt. 12-7-1978. Since the petitioner failed to produce the community certificate stating that he belongs to scheduled caste Thandan community, the 4th respondent issued Ext. P15 letter granting the petitioner 15 days time from the date of receipt of Ext. P15 letter to produce the caste certificate failing which he was informed that his services are liable to be terminated. On receipt of Ext. P15, the petitioner moved the Central Administrative Tribunal, Ernakulam Bench in O.A. No. 1601/91 challenging Ext. P15. The said O.A. was disposed of by the Tribunal by judgment dated 29-1-1993 directing respondents 1 to 3 therein to reconsider the case of the petitioner and pass appropriate orders in accordance with law as expeditiously as possible, at any rate, without any delay bearing in mind the observations

contained in the judgment of the Tribunal. It was also ordered that the petitioner shall continue in service till the decision on the case is communicated to the petitioner and his further continuance will abide by the decision thereof. After the judgment of the Tribunal in O.A. 1601/91 the 4th respondent issued Ext. P16 show cause notice informing the petitioner that since he does not belong to the scheduled caste community, his services will be terminated on completion of one month period from the date of receipt of Ext. P16. On receipt of Ext. P16, the petitioner approached this Court with the present writ petition for a declaration that he belongs to the Thandan community referred to in the Constitution (Scheduled Caste) Orders, 1950 as amended by the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976 and for the issuance of a writ of mandamus directing the second respondent to certify that the petitioner belongs to the Thandan Community falling within the purview of the Scheduled Caste Orders as laid down by the Hon'ble Supreme Court and for other incidental reliefs.

2. As per order in CMP No. 24956/95 dated 28-8-1995 this Court issued an ad interim direction restraining respondents 4 and 5 from acting upon Ext. P16 pending disposal of the original petition, for a period of one month. Thereafter, the interim direction was extended from time to time and by order dated 29-1-1996 the interim direction was extended by one month.

3. Respondents 2 and 3 have filed a counter-affidavit contending inter-alia that the petitioner is not entitled to get Scheduled Caste Thandan certificate even on the basis of the decision of the Supreme Court reported in Palghat J.T.S.S. Samithi v. State of Kerala (1994) 1 Ker LT 118. Respondents 4 and 5 have not filed any counter-affidavit. However, learned counsel appearing for respondents 4 and 5 has orally submitted that the Railway is adopting the stand taken by respondents 2 and 3 in their counter-affidavit.

4. Having heard learned counsel on both sides in extenso/and having perused the relevant file produced by respondents 4 and 5, I am not satisfied that the petitioner has made out a case for interference by this Court in proceedings under Article 226 of the Constitution of India.

5. The main thrust of the petitioner's case is based on the decision of the Apex Court reported in (1994) 1 Ker LT 118. In particular, specific reliance was placed on paragraph 16 of the judgment as follows :

"Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a State but also "parts of or groups within castes, races or tribes" which shall be deemed to be Scheduled Castes in relation to a State. By reason of Article 341 a part or group or section of a caste, race or tribe, which, as a whole, is not specified as a scheduled caste, may be specified as a Scheduled Caste. Assuming, therefore, that there is a section of the Ezhavas/Thiyyas community (which is not specified as a Scheduled Caste) which is called Thandan in some parts of Malabar area, that section is also entitled to be treated as a Scheduled Caste, for Thandans throughout the State are deemed to be a Scheduled Caste by reason of the provisions, of the Scheduled Castes Order as it now stands. Once Thandans throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in the 1987 order."

The petitioner seeks the benefit of the judgment of the Supreme Court noted supra. But then, the question is whether the petitioner actually belongs to the Scheduled Caste Thandan Community and not whether Thandan community is a Scheduled Caste as has been held by this Court in the judgment in O.P. No. 1847/94 as affirmed by the decision of the Division Bench in W.A. No. 287/94. The question whether the petitioner can derive any mileage or benefit out of the judgment of the Apex Court will arise only if the Government accepts that the petitioner belongs to the Thandan Community. Therefore, necessarily the enquiry has to be confined to the question whether the petitioner belongs to the Scheduled Caste Thandan Community, Ext. P13 is a complete answer to the petitioner's contention in this regard. Before issuing Ext. P13, the third respondent Tahsildar conducted a detailed enquiry. As part of the detailed enquiry which was conducted in compliance with the direction issued by this Court to ascertain whether the petitioner belongs to Scheduled Caste Thandan Community, the petitioner and his father were summoned for enquiry on 17-2-1990. But the petitioner did not adduce any evidence other than producing certain copies of certificates and documents submitted earlier. However, the third respondent conducted a detailed enquiry about the community of the petitioner in his village as also in the nearby villages where his relatives live. The documents submitted by the petitioner were also examined in detail and on verification of the documents and examination of the petitioner and on the basis of the local investigation, the third respondent came to the conclusion that the petitioner and his family members belong to Ezhava/Tiyya community falling under other Backward Classes. The relevant part of Ext. P13 is as follows:

"The petitioner, his family members and their relatives have no similarity or connection to Thandan community of scheduled caste. They have no similarity or connection to other scheduled castes like 'Cheruman', 'Pulayan', 'Parayan', 'Mannan', 'Panan' etc. Even though during the enquiry the petitioner submitted that he had close relations with scheduled castes like 'Cheruman', the local investigations revealed that the petitioner's ancestors practiced untouchability against these castes. The petitioner and his father have also admitted during the enquiry that in the school records of the petitioner's sister "Sujalakshmi", her caste is shown as 'Thiyya'. In the caste hierarchy, the position of the petitioner and his family members is just below the forward caste Nairs. The 'Thandan' referred to in the documents submitted by the petitioner is a title conferred on his family, considering that dominant position in the society. Further, this was a title meant to identify well placed persons among local Ezhava/Tiyya sect. On verification of the marital relationships of the petitioner's family members and ancestors, it has come clear that they had such relationships only among Ezhava/Thiyya sects. Palakkad Tahsildar has come to the conclusion that the petitioner attempted to usurp the privileges given to Scheduled Castes by using the high title 'Thandan' acquired by the family of the petitioner. Under, these circumstances, it is hereby informed that petitioner and his family members do not belong to the Thandan community included under Scheduled Castes. On further enquiries, it is also hereby informed that they belong to Ezhava/Thiyya community coming under other backward class_(O.B.C.) Since, village officers are empowered to issue caste certificates to persons other than those who belong to Scheduled Castes and Scheduled Tribes, certificate can be obtained, if the petitioner and his family members who belong to Ezhava/Tiyya Community coming under other backward classes, approach village officer, Mankara."

The findings arrived at by the third respondent is based on an enquiry conducted by him after affording an opportunity of stating their case to the petitioner as well as his father. In fact, the petitioner participated in the enquiry and produced certain documents before the third respondent. The third respondent also conducted a local enquiry to get at the correct picture. He also examined the various documents produced by the petitioner. It was on a consideration of all these that the third respondent came to the conclusion that the petitioner cannot claim the status of Scheduled Caste Thandan and he in fact belongs to Ezhava/Thiyya coming under other Backward Classes. The findings contained in Ext. P13 cannot be characterised as perverse or arbitrary nor they can be said to be vitiated by jurisdictional error nor violative of the principles of natural justice. For the aforesaid reasons I am inclined to accept the findings contained in Ext. P13 and hold that the petitioner belongs to Ezhava/Thiyya coming under other Backward Classes and not a Scheduled Caste Thandan as contended by him. I also hold that the decision of the Apex Court reported in (1994) 1 Ker LT 118 has no application to the facts of the petitioner's case. That apart, it has also to be noted that though in Ext. P13 there is a finding that the petitioner is not entitled to claim the Scheduled Caste status which was passed as early as 15-3-1990, the same remains unchallenged even as on today. In that view, Ext. P13 has attained finality.

6. Learned counsel then relied on the Full Bench decision of this Court reported in Kerala Pattika Jathi Samrakshaka Samithi v. State of Kerala ILR (1995) 3 Ker 1. Here again, the enquiry was whether Thandan community is a Scheduled Caste and not the claimants belong to the Thandan community as has been pointed out in the judgment in O.P. 1847/94 as affirmed by the decision of the Division Bench in W.A. No. 287/94 where it was held once the third respondent Tahsildar finds on a detailed enquiry that a person claiming Scheduled Caste Thandan status is a title holder of Ezhava community, such a person cannot be treated as a Scheduled Caste unless it is found that he belongs to a section of Ezhava community which may be called as Thandan in which case the person concerned may claim the Scheduled Caste status. But, that is not the finding in Ext. P13. The finding in Ext. P13 is that the petitioner belongs to Ezhava community having the title of Thandan. All that the Full Bench said was that if there is any genuine or bona fide scheduled Caste Thandan in any area excluding title holders of Ezhava caste or Thiyya caste such person shall be treated as Scheduled Caste throughout the State. Moreover, the Full Bench decision relied on by the petitioner will not apply on all fours to the facts of the petitioner's case in the light of the categorical finding arrived at by the third respondent in Ext. P13 to the effect that the petitioner and his family members do not belong to 'Thandan' community and that they belong to Ezhava/Thiyya community under other Backward Classes (OBC). There is nothing either in the Full Bench decision or in the decision of the Supreme Court which says that a Thandan title holder belonging to Ezhava/Thiyya community shall be treated as a Scheduled Caste Thandan. In the light of the aforesaid discussion, I am of the view that the petitioner cannot derive any advantage out of the Full Bench decision referred to above.

7. Learned counsel brought to my notice Exts. P1 to P7 and P17 to P22 in support of his contention that he belongs to Scheduled Caste Thandan. Having perused those documents, I am not satisfied that it will be of any help to the petitioner to advance his case before this Court. Ext. P1 is a certificate issued in favour of the petitioner by the third respondent wherein the petitioner's community is shown as 'Thandan' and nothing more. Likewise, Ext. P2 is the relevant extract of the first page of

the petitioner's S.S.L.C. Book wherein also his community is shown as 'Thandan' without anything more, Ext. P3 is the true copy of the community certificate issued to the petitioner by the Village Officer, Mankara wherein it is mentioned that the petitioner belongs to Thandan community which is recognised as Scheduled Caste in the State of Kerala, Ext. P4 is the true copy of the community certificate issued in favour of the petitioner's father on 21-3-1959 in which it is stated that he belongs to Scheduled Caste Thandan. In Ext. P5 the petitioner's maternal uncle is mentioned as a 'Hindu Thandan'. In Ext. P6, the petitioner's maternal uncle's son is mentioned as Thandan which is recognised as a Scheduled Caste. In Ext. P7, the petitioner's maternal uncle's son is described as belonging to Thandan Caste which is recognised as a Scheduled Caste, Ext. P17 is the copy of the first page of the S.S.L.C. Book of the petitioner's father in which the caste is mentioned as Hindu Thandan, Ext. P18 is the copy of the first page of the S.S.L.C. Book of the petitioner's father's eldest brother wherein his caste is stated to be Hindu Non-brahmin Thandan, Ext. P19 is a registered lease deed executed by the petitioner's paternal grandfather on 2-4-1939 wherein the lessor is mentioned by his title name Thandan, Ext. P20 is a mortgage deed executed in favour of the petitioner's paternal grandmother in which she is described as (Varnacular matter omitted) Ext. P21 is the sale deed executed by the petitioner's paternal grandmother Smt. Lakshmikutty in which she is described as (Varnacular matter omitted) Ext. P22 is a copy of the sale deed executed in favour of the petitioner's paternal grandmother Smt. Lakshmykutty in which she is described as (Varnacular matter omitted). On a scrutiny of these documents, namely. Exts. P1 to P7 and P17 to P22, I am of opinion that they will not in any way advance the petitioner's case. The various entries contained in Exts. P1 to P7 are made without conducting any enquiry by a competent authority and as such they cannot be acted upon in support of the petitioner's, case. The other documents before this Court also will not help the petitioner as the description therein by themselves will not prove the caste status of the petitioner as Scheduled Caste Thandan. The entries are made based on the information furnished by the persons concerned. Mere recital in a document or entry in a certificate by itself without anything more cannot form the basis for a caste certificate unless supported by independent corroborative materials gathered on a duly instituted enquiry. Therefore, I am not placing any reliance on these documents. The case of the petitioner is further weakened by Ext. R2(a) admission register of the sister of the petitioner which shows that she belongs to Hindu thiyya O.B.C. and that being the position, I am of the view that the petitioner cannot claim a caste status other than that of his own sister,

8. In the light of the aforesaid discussion, this original petition is devoid of any merit which is accordingly dismissed. There is no order as to costs.