Supreme Court of India
R. Unnikrishnan & Anr vs V.K. Mahanudevan & Ors on 10 January, 1947
Author: .....J.
Bench: T.S. Thakur, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3468 OF 2007

R. Unnikrishnan and Anr. …Appellants

Versus

V.K. Mahanudevan and Ors. …Respondents

WITH

CIVIL APPEAL NO.3469 OF 2007

State of Kerala and Ors. …Appellants

Versus

V.K. Mahanudevan and Ors. …Respondents

AND

CIVIL APPEAL NO.3470 OF 2007

State of Kerala and Ors. …Appellants

Versus

V.K. Ananthan Unnikrishnan and Anr. …Respondents

AND

CIVIL APPEAL NO. OF 2014
(Arising out of S.L.P. (C) No.24775 of 2013)

State of Kerala and Ors. …Appellants

Versus

Prem Kumar and Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted in Petition for Special Leave to Appeal (Civil) No.24775 of 2013.

2. Common questions of law arise for consideration in these appeals which shall stand disposed of by this common order. But before we formulate the questions that fall for determination the factual matrix in which the same arise need to be summarised for a proper appreciation of the controversy.

3. Respondent-V.K. Mahanudevan in Civil Appeal No.3468 of 2007 applied to Tehsildar, Alathur in the State of Kerala for grant of a Scheduled Caste Certificate on the basis that he was a 'Thandan' which was a notified Scheduled Caste. The Tehsildar held an enquiry and found that the appellant did not belong to the Scheduled Caste community and reported the matter to the Director, Scheduled Caste Development Department, who in turn forwarded the case to Director, Kerala Institute for Research, Training and Development Studies of Scheduled Castes and Scheduled Tribes, ('KIRTADS' for short) for investigation and report.

4. Aggrieved by the denial of the certificate the respondent filed O.P. No.9216 of 1986 before the High Court of Kerala which was disposed of by the High Court in terms of its order dated 25th February, 1987 with a direction to the Tehsildar concerned to issue a caste certificate in favour of the said respondent. A certificate was accordingly issued in his favour. It is common ground that the respondent was appointed as an Assistant Executive Engineer under a special recruitment scheme for SC/ST candidates.

5. Long after the certificate had been issued in favour of the respondent and his appointment as an Assistant Executive Engineer in the State service, a Full Bench of the Kerala High Court in Kerala Pattika Jathi Samrekshana Samithy v. State AIR 1995 Ker 337 observed that a large number of applications for change of caste name from 'Thiyya' to 'Thandan' had been received pursuant to The Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and ordered that all such certificates as were corrected on the basis of such applications after 27th July, 1977 ought to be scrutinized by a Scrutiny Committee. The High Court observed:

> "...The filing of a large number of applications for correction of the name of caste from Ezhava/Thiyya to Thandan alleging one and the same reason immediately after inclusion of Thandan community as Scheduled Caste in the 1976 order can prima facie be considered only as a concerted attempt on the part of Section of Ezhavas/Thiyyas to take advantage of the benefits of Scheduled Castes as alleged in the counter affidavit of the first respondent and asserted by the petitioner. It cannot be easily believed that if a person was really a Thandan and as such a Scheduled Caste, his caste would have been noted as Ezhava or Thiyya in the school records. It cannot also be believed easily that in large number of cases for no reason whatsoever the same type of mistake was committed allowed to be on record till Thandan community was included in the list of Scheduled Castes. As such taking a serious view

> of the entire problem we would hold that in all cases where certificates have been issued on and after 27-7-1977 the date of 1976 order correcting the name of Caste from Ezhava/Thiyya to Thandan and other cases where certificates have been issued changing the Caste into a Scheduled Caste or Scheduled Tribe such certificates issued are liable to be declared as of doubtful validly, till they are scrutinised by the scrutiny Committee to be constituted by the first respondent as per the directions we propose to issue in that regard..." (emphasis supplied)

6. Pursuant to the above directions of the High Court the caste certificate issued in favour of the respondent also came under scrutiny. In the course of scrutiny, it was found that the reports submitted by KIRTADS and relied upon by the High Court while allowing O.P. No.9216 of 1986 was erroneous and that the respondent actually belonged to Ezhuva community which fell under the OBC category. Director, KIRTADS accordingly issued notice to the respondent to appear before him for a personal hearing in support of the claim that he was a Thandan and hence a Scheduled Caste. Aggrieved by the said proceedings the respondent filed O.P. No.5834 of 1991 before the High Court of Kerala in which he challenged the proposed enquiry proceedings relating to his caste status primarily on the ground that the decision of this Court in Palaghat Jilla Thandan Samudhaya Samrakshna Samithi and Anr. v. State of Kerala and Anr. (1994) 1 SCC 359 had settled the controversy relating to Ezhuva/Thiyya being a 'Thandan' in the district of Palaghat. It was also contended that the respondent's own case that he was a Thandan Scheduled Caste had been settled by the High Court in terms of the order passed by the High Court in O.P. No.9216 of 1986. These contentions found favour with the High Court who allowed O.P. No.5834 of 1991 filed by the respondent by its order dated 15th December, 1998 and quashed the ongoing enquiry proceedings.

7. Aggrieved by the order passed by the High Court the State of Kerala filed Writ Appeal No.1300 of 1999 which was allowed by a Division Bench of the High Court by its judgment and order dated 14th June, 1999 and directed a fresh enquiry into the caste status of the respondent by KIRTADS. Review Petition No.236 of 1999 filed against the said order by the respondent was dismissed by the Division Bench by its order dated 29th July, 1999. The Division Bench, however, specifically reserved liberty for the respondent to bring the judgments pronounced in O.P. No.9216 of 1986 and O.P.No.5470 of 1988 to the notice of the Director, KIRTADS and declined to express any opinion of its own as to the effect of the said judgments. This is evident from the following passage from the order passed by the High Court:

> "At the time of argument our attention was drawn to Ext. P7 judgment dated 25.2.87 in O.P. 9216/86 and also the judgment of a Division of this Court in O.P. 5470/88 for the proposition that this Court has already accepted the status of the petitioner in the above two cases. We are not inclined to express any opinion on the two judgment referred to above. It is for the review petitioner to place the above two judgments and other materials, if any before the Director for his consideration and report. The Director of Kirtads is directed to send his report to the State government within three months from the date of receipt of copy of the judgment and the Government may consider the entire matter on merits and pass appropriate orders accordingly, Review petition is disposed of as above."

8. A fresh enquiry accordingly commenced in which Vigilance Officer, KIRTADS, reported that the genealogical and documentary evidence available on record proved beyond doubt that the respondent and all his consanguinal and affinal relatives belonged to the 'Ezhuva' and not 'Thandan' community. The Scrutiny Committee acting upon the said report issued a show-cause notice to the respondent to show cause as to why the certificate issued in his favour should not be cancelled.

9. Aggrieved by the notice issued to him the respondent once again approached the High Court in O.P. No.2912 of 2000 which was disposed of by the High Court by its order dated 4th July, 2001 with a direction that the KIRTADS report shall be placed before the State Government for appropriate orders. The State Government accordingly considered the matter and passed an order dated 18th January, 2003 by which it concurred with the report and the view taken by KIRTADS and declared as follow:

> "(i) It is declared that Shri. V.K. Mahanudevan, S/o Shri Kunjukuttan, Kunnissery House, Kottaparambil, Vadakkancherry, Alathur, Palakkad District who is now working as Executive Engineer, Minor Irrigation Division, Irrigation Department, Palakkad does not belong to Thandan Community which is a Sch. Caste, but belongs to Ezhava Community included in the list of Other Backward Classes (OBC).
>
> (ii) None of the members of his family shall be eligible for any of the benefits exclusively intended for members of the Sch. Castes. If any of the members of the family of Shri V.K. Mahanudevan have availed of any of the benefits meant for members of the Sch. Castes, all such benefits availed of shall be recovered.
>
> (iii) If the caste entry in respect of the members of the family of Shri V.K. Mahanudevan as recorded in their academic records is Thandan (SC), it shall be corrected as Ezhava.
>
> (iv) Sch. Caste Certificates shall not be issued to any of the members of the family of Shri V.K. Mahanudevan hereafter. All the Sch. Caste Certificates secured by Shri V.K. Mahanudevan and his family members will stand cancelled.
>
> (v) On completion of the actions as per this order the services of Shri V.K. Mahanudevan, Executive Engineer, Minor Irrigation Division in the Irrigation Department shall be terminated forthwith and a member of Sch. Caste community shall be appointed against the post in which Shri V.K. Mahanudevan was appointed in the Irrigation Department if his appointment was on consideration as member of Sch. Caste."

10. Aggrieved by the order passed by the Government, the respondent and his brother who is respondent in Civil Appeal No.3470 of 2007 challenged the order passed by the Government before the High Court in O.P. No.5596 of 2003 and Writ Petition (C) No.20434 of 2004 respectively which were allowed by a Single Judge of the High Court in terms of its order dated 11th November, 2005, primarily on the ground that the issue of caste certificate to the respondent had already been

concluded by the judgment of the High Court dated 25th February, 1987 in O.P. No.9216 of 1986 and that the said question could not be re-opened so long as the said judgment of the High Court was effective.

11. The State of Kerala then preferred Writ Appeal No.134 of 2006 which was dismissed by a Division Bench of the High Court in terms of its order dated 25th January, 2006 concurring with the view taken by the Single Judge that the issue regarding the caste status of the respondent stood concluded by a judicial order passed inter parties and could not, therefore, be re- opened. Writ Appeal No.410 of 2006 filed by the aggrieved members of the Irrigation Department and Writ Appeal No.193 of 2006 filed by the State in relation to respondent were dismissed by the Division Bench on the same terms by order dated 28th and 27th January, 2006 respectively. So also Review Petition No.263 of 2006 filed by the State against the order passed by the Division Bench was dismissed with the observation that the judgment in O.P. No.9216 of 1986 had effectively settled the question regarding the caste status of the respondent. Civil Appeals No.3469 and 3470 of 2007 have been filed by the State against the said judgment of the High Court while Civil Appeal No.3468 of 2007 has been filed by the members of the Irrigation Department of the Government of Kerala. Civil Appeal arising out of Petition for special leave to appeal (Civil) No.24775 of 2013 has been filed by State against the Order dated 5th September, 2012.

12. Two distinct questions fall for determination in these appeals. The first is whether the appellants could have re-opened for examination the caste status of the respondent-V.K. Mahanudevan no matter judgment of the High Court in O.P No.9216 of 1986 had declared him to be a 'Thandan' belonging to a Scheduled Caste community. The High Court has as seen above taken the view that its judgment and Order in O.P.No.9216 of 1986 effectively settled the question regarding the caste status of respondent which could not be reopened as the said judgment had attained finality. The second and the only other question that would arise for determination is whether the respondent-V.K. Mahanudevan can claim protection against ouster from service and, if so, what is the effect of the change in law relevant to the caste status of the respondent. We propose to deal with the two questions ad seriatim.

13. In O.P No. 9216 of 1986, the respondent (writ petitioners in OP) had claimed to be a Thandan by Caste, hence, a Schedule Caste in terms of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. In the SLCC book the respondent was described as a "Thandan Hindu" but falling in the OBC category. He applied for correction of the SLCC book by deleting his description as an OBC and for treating him as a member of the Scheduled Caste. Since the correction did not come about quickly, he moved to the High Court for a direction against the respondents to treat him as a Scheduled Caste and to make appropriate entries in the relevant record. Kerala Public Service Commission, Director, Harijan Welfare Board, Trivandrum were among others arrayed as respondents to the writ petition. When the matter appeared before a Single Bench of the High Court for hearing, it was reported that Director, Kerala Institute for Research Training and Development Studies of Scheduled Castes and Scheduled Tribes, Kozhikode (KIRTADS) had conducted an anthropological study and recorded a finding that the respondent–writ petitioner before the High Court belonged to Thandan Community and that he was entitled to be treated as a Scheduled Caste. Government advocate representing the respondents appears to have submitted before the Court that

the findings recorded by the KIRTADS had been communicated to the Director of Harijan Welfare, Trivandrum–respondent no.3 in the writ petition and accepted by him. It was on these submissions made before the High Court that the Single Bench of the High Court passed an Order dated 25th February, 1987, the operative portion whereof read as under :-

> "I record the submission of the Government Pleader that the 3rd respondent has accepted the findings of the 4th respondent that the petitioner is a Thandan and hence entitled to the benefits as a scheduled caste. The 6th respondent may implement this finding and issue certificate to the petition in the prescribed form certifying that the petitioner is a Thandan, a member of the scheduled caste. This shall be done within a period of ten days from today. Based thereon the 5th respondent will also make the necessary changes in the S.S.L.C. book of the petitioner treating him as a scheduled caste and not as an D.B.C. This also will be done by the 5th respondent within a period of one month from today."

14. A caste certificate was in the above circumstances issued in favour of the respondent pursuant to the order passed by the High Court which order has attained finality for the same has not been challenged leave alone modified or set aside in any proceedings till date. The question in the above context is whether a fresh enquiry into the Caste Status of the respondent could be instituted by the Government. The enquiry, as seen earlier, was initiated in the light of the certain observations made by the full bench of the Kerala High Court in Kerala Pattika Jathi Samrekshana Samithy v. State AIR 1995 Ker 337 whereby the High Court had entertained suspicion about the validity of certificates that were corrected after 27th July, 1997. That pronouncement came nearly eight years after the High Court had disposed of O.P. No.9216 of 1986 and a resultant certificate issued in favour of the respondent. It was in the above backdrop rightly argued by Mr. Giri appearing for the respondent that the judgement and order passed by the High Court in O.P No.9216 of 1986 having attained finality no fresh or further enquiry into the question settled thereby could be initiated, the observations of the full bench of the High Court to the contrary notwithstanding. The judgement of the High Court in Pattika Jathi's case (supra), it is obvious, from a reading thereof, does not deal with situations where the issue regarding grant of validity of a caste certificate secured earlier than the said judgment had been the subject matter of judicial proceedings and effectively and finally resolved in the same. That apart, the respondent was not a party to the proceedings before the full bench nor was the certificate issued in his favour under challenge in those proceedings. The full bench did not even incidentally have to examine the validity of the certificate issued to the respondent or the correctness of the order passed by the High Court pursuant to which it was issued. Such being the position the direction issued by the full bench of the High Court could not possibly have the effect of setting at naught a judgment delivered inter-parties which had attained finality and remained binding on all concerned.

15. It is trite that law favours finality to binding judicial decisions pronounced by Courts that are competent to deal with the subject matter. Public interest is against individuals being vexed twice over with the same kind of litigation. The binding character of judgments pronounced by the Courts of competent jurisdiction has always been treated as an essential part of the rule of law which is the basis of the administration of justice in this country. We may gainfully refer to the decision of

Constitution Bench of this Court in the Daryao v. State of U.P. AIR 1961 SC 1457 where the Court succinctly summed up the law in the following words:

> "It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.(***) The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis."

16. That even erroneous decisions can operate as res-judicata is also fairly well settled by a long line of decisions rendered by this Court. In Mohanlal Goenka v. Benoy Kishna Mukherjee AIR 1953 SC 65, this Court observed:

> "There is ample authority for the proposition that even an erroneous decision on a question of law operates as 'res judicata' between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as 'res judicata'."

17. Similarly in State of West Bengal v. Hemant Kumar Bhattacharjee AIR 1966 SC 1061, this Court reiterated the above principles in the following words :

> "A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides."

18. The recent decision of this Court in Kalinga Mining Corporation v. Union of India (2013) 5 SCC 252 is a timely reminder of the very same principle. The following passage in this regard is apposite:

> "In our opinion, if the parties are allowed to reagitate issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision."

19. In Mathura Prasad v. Dossibai (1970) 1 SCC 613, this Court held that for the application of the rule of res-judicata, the Court is not concerned with the correctness or otherwise of the earlier judgement. The matter in issue if one purely of fact decided in the earlier proceedings by a competent Court must in any subsequent litigation between the same parties be recorded as finally decided and cannot be re-opened. That is true even in regard to mixed questions of law and fact determined in the earlier proceeding between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties. Having said that we must add that the only

exception to the doctrine of res-judicata is "fraud" that vitiates the decision and renders it a nullity. This Court has in more than one decision held that fraud renders any judgment, decree or orders a nullity and non-est in the eyes of law. In A.V. Papayya Sastry v. Government of A.P., (2007) 4 SCC 221, fraud was defined by this Court in the following words:

> "Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss and cost of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

20. To the same effect is the decision in Raju Ramsingh Vasave v. Mahesh Deorao Bhivapurkar and Ors., (2008) 9 SCC 54, where this Court held:

"If a fraud has been committed on the court, no benefits therefrom can be claimed on the basis of thereof or otherwise."

21. In the case at hand we see no element of fraud in the Order passed by the High Court in O.P.No.9216 of 1986. The order it is evident from a plain reading of the same relies more upon the submissions made before it by the Government Counsel than those urged on behalf of the writ-petitioners (respondents herein). That there was an enquiry by KIRTADS into the caste status of the writ petitioners (respondents herein) which found his claim of being a Thandan justified hence entitled to a scheduled caste certificate has not been disputed. That the report of KIRTADS was accepted by the Director of Harijan Welfare, Trivandrum is also not denied. That apart, the State Government at no stage either before or after the Order passed by the Single Judge of the High Court questioned the conclusions recorded therein till the full bench in Pattika Jathi's case (supra) expressed doubts about the corrections being made in the records and certificates for the grant of scheduled caste status. That being the case, the High Court could not be said to have been misled or fraudulently misguided into passing an order, leave alone, misled by the writ- petitioners (respondent herein). It is only because the full bench of the Kerala High Court held that anthropological study conducted by KIRTADS may not provide a sound basis for holding Thandan's like the respondent as those belonging to the scheduled caste category that the issue regarding the correctness of the certificate and a fresh investigation into the matter surfaced for consideration. Even if one were to assume that the conclusion drawn by KIRTADS was not for any reason completely accurate and reliable, the same would not have in the absence of any other material to show that such conclusion and enquiry was a complete farce based on wholly irrelevant or inadmissible material and motivated by extraneous considerations by itself provided a basis for unsettling what stood settled by the order passed by the High Court. Suffice it to say that the contention urged on behalf of the appellants that the order passed by the High Court in O.P. No. 9216 of 1986 was a nullity on the ground of fraud has not impressed us in the facts and circumstances of the case. The upshot of the above discussion, therefore, is that the order passed by the High Court in O.P.No.9216 of 1986 which had attained finality did not permit a fresh enquiry

into the caste status of writ-petitioner. Inasmuch as the High Court quashed the said proceedings and the order passed by the State Government pursuant thereto, it committed no error to warrant interference.

22. That brings us to the second question which can be answered only in the perspective in which the same arises for consideration. The Constitution (Scheduled Castes) Order, 1950 specified the castes that are recognised as Scheduled Castes for different states in the Country. Part XVI related to the then State of Travancore and Cochin. Item 22 of that part specified the "Thandan" as a scheduled caste for the purposes of the entire State. The Presidential Order was modified by The Scheduled Castes & Scheduled Tribes Lists (Modification) Order 1956. In the list comprising Part V applicable to the State of Kerala (the successor to the State of Trivandrum, Kochi), 'Thandan' as a caste appeared at Item 14 for the purposes of the entire State except Malabar District. Then came the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 with effect from 27th July, 1997. In the first Schedule under part VII applicable to the State of Kerala 'Thandan' as a caste was shown at Item

61. Unlike two other castes shown in the said part namely Boyan and Malayan which were shown as scheduled caste for specific areas of the State of Kerala, Thandan had no such geographical or regional limitation. This implied that 'Thandan' was included as a Scheduled Caste for the entire State of Kerala.

23. Consequent upon the promulgation of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, the Kerala State Government started receiving complaints alleging that a section of Ezhuva/Thiyya community of Malabar areas and certain taluk of Malabar districts who were also called 'Thandan' were taking undeserved advantage of the Scheduled Caste reservations. The complaints suggested that these two categories of Thandan were quite different and distinct from each other and that the benefit admissible to Thandans generally belonging to the Scheduled Caste community should not be allowed to be taken by those belonging to the Ezhuva/Thiyya community as they are not scheduled castes. Acting upon these reports and complaints, the State Government appears to have issued instructions to the effect that applications for issue of community certificates to 'Thandans' of all the four districts of Malabar areas and Taluks of Thalapilly, Vadakkancherry and Chavakka in Trichur District, should be scrutinised to ascertain whether the applicant belongs to the Thandan community of the scheduled caste or the Thandan section of Ezhuva/Thiyya community and that while issuing community certificate to the 'Thandans' who were scheduled caste, the authorities should note the name of the community in the certificate as "Thandans other than Ezhuva/Thiyya". These instructions were withdrawn to be followed by another order passed in the year 1987 by which the Government once again directed that while issuing caste certificate, the Revenue Authority should hold proper verification to find out whether the person concerned belongs to Thandan caste and not to Ezhuva/Thiyya. The matter eventually reached this Court in Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Anr. v. State of Kerala and Anr. (1994) 1 SCC 359 in which this Court formulated the principal question that fell for consideration in the following words:

> "The principal question that arises in these writ petitions and appeals is in regard to the validity of the decision of the State of Kerala not to treat members of the Thandan community belonging to the erstwhile Malabar District, including the present Palghat District, of the State of Kerala as members of the Scheduled Castes."

24. This Court reviewed the legal position and declared that Thandan community having been listed in the Scheduled Caste order as it then stood, it was not open to the State Government or even to this court to embark upon an enquiry to determine whether a section of Ezhuva/Thiyya which was called Thandan in the Malabar area of the State was excluded from the benefits of the Scheduled Caste order. This Court observed:

> "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." (emphasis supplied)

25. What followed from the above is that Thandans regardless whether they were Ezhuvas/Thiyyas known as Thandans belonging to the Malabar area, were by reason of the above pronouncement of this Court held entitled to the benefit of being treated as scheduled caste by the Presidential Order, any enquiry into their being Thandans who were scheduled caste having been forbidden by this Court as legally impermissible. The distinction which the State Government sought to make between Ezhuva/Thiyyas known as Thandans like the respondent on one hand and Thandans who fell in the scheduled caste category, on the other, thus stood abolished by reason of the above pronouncement. No such argument could be countenanced against the respondent especially when it is not the case of the appellants that the respondent is not an Ezhuva from Malabar area of the State of Kerala.

26. The legal position has since the pronouncement of this Court in Pattika Jathi's case (supra) undergone a change on account of the amendment of the Presidential Order in terms of The Constitution (Scheduled Castes) Order Amendment Act, 2007 which received the assent of the President on 29th August, 2007 and was published in the official gazette on 30th August, 2007. The Act, inter alia, made the following change in Part VIII – Kerala for entry 61:– "61. Thandan (excluding Ezhuvas and Thiyyas who are known as Thandan, in the erstwhile Cochin and Malabar areas) and (Carpenters who are known as Thachan, in the erstwhile Cochin and Travancore State)".

27. There is in the light of the above no manner of doubt that Ezhuvas and Thiyyas who are also known as Thandan, in the erstwhile Cochin and Malabar areas are no longer scheduled caste for the said State w.e.f. 30th August, 2007 the date when the amendment was notified. The Parliament has, it is evident, removed the prevailing confusion regarding Ezhuvas and Thiyyas known as Thandan, in the erstwhile Cochin and Malabar areas being treated as scheduled caste. Ezhuvas and Thiyyas even if called Thandans and belonging to the above area will no longer be entitled to be treated as scheduled caste nor will the benefits of reservation be admissible to them.

28. Taking note of the amending legislation, Government of Kerala has by Order No.93/2010/SC/ST dated 30th August, 2010 directed that Ezhuvas and Thiyyas who are known as Thandan, in the erstwhile Cochin and Malabar shall be treated as OBCs in List III. This part was not disputed even by Mr. Giri, counsel appearing for the respondent who fairly conceded that consequent upon the Amendment Act of 2007 (supra) Ezhuvas and Thiyyas known as Thandan, in the erstwhile Cochin and Malabar areas stand deleted from the Scheduled Castes List and are now treated as OBCs by the State Government. What is significant is that the deletion is clearly prospective in nature for Ezhuvas and Thiyyas known as Thandan in the above region were in the light of the decision of this Court in Pattika Jathi's case (supra) entitled to be treated as scheduled caste and the distinction sought to be made between 'Thandans' who were Ezhuvas and Thiyyas and those who were scheduled caste was held to be impermissible and non est in the eye of law. The law declared by this Court in Pattika Jathi's case (supra) entitled all Thandans including those who were Ezhuvas and Thiyyas from Cochin and Malabar region to claim the scheduled caste status. That entitlement could be taken away retrospectively only by specific provisions to that effect or by necessary intendment. We see no such specific provision or intendment in the amending legislation to hold that the entitlement was taken away retrospectively so as to affect even those who had already benefited from the reservation for scheduled caste candidates. At any rate, a certificate issued to an Ezhuvas known as Thandan who was a native of Cochin and Malabar region of the State could not be withdrawn as The Constitution (Scheduled Castes) Order, 1950 did not make a distinction between the two categories of Thandans till the Amendment Act of 2007 for the first time introduced such a difference.

29. That apart the question of ouster of Ezhuvas and Thiyyas known as Thandan on account of the confusion that prevailed for a considerable length of time till the decision of this Court in Pattika Jathi's case (supra) would be unjustified both in law and on the principles of equity and good conscience. In State of Maharashtra v. Milind (2001) 1 SCC 4, this Court was dealing with a somewhat similar situation. That was a case where a student had secured admission to the MBBS degree course by claiming himself to be a Scheduled Tribe candidate. The student claimed that Halba- Koshti were the same as Halba, mentioned in the Constitution (Scheduled Tribes) Order. This Court held that neither the Government nor the Court could add to the List of castes mentioned in the Order and that Halba- Koshtis could not by any process of reasoning or interpretation treated to be Halbas. Having said that, the question that fell for consideration was whether the benefit of the reservation could be withdrawn and the candidate deprived of the labour that he had put in obtaining a medical degree. This Court while protecting any such loss of qualification acquired by him observed:

> "In these circumstances, this judgment shall not affect the degree obtained by him and his practising as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. (***) we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment".

30. Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430, was also a similar case where the question was whether the appellant who was a 'Halba- Koshti' could be treated as 'Halba' for purposes of reservation and employment as a Scheduled Tribe candidate. This Court traced the history of the long drawn confusion whether a 'Halba' was the same as 'Halba-Koshti' and concluded that while 'Halba' and 'Halba-Koshti' could not be treated to be one and the same, the principle stated in Milind's case (supra) was attracted to protect even appointments that were granted by treating 'Halba- Koshti' as Halba Scheduled Tribe although such extension of the expression 'Halba' appearing in the Presidential Constitution (Scheduled Castes) Order 1950 was not permissible. This Court observed:

> "If "Halba-Koshti" has been treated as "Halba" even before the appellant joined service as a teacher and if the only reason for her ouster is the law declared by this Court in Milind case, there is no reason why the protection against the ouster given by this Court to appointees whose applications had become final should not be extended to the appellant also. The Constitution Bench had in Milind case noticed the background in which the confusion had prevailed for many years and the fact that appointments and admissions were made for a long time treating "Koshti" as a Scheduled Tribe and directed that such admissions and appointments wherever the same had attained finality will not be affected by the decision taken by this Court".

31. In Sandeep Subhash Parate v. State of Maharashtra and Others, (2006) 7 SCC 501, also dealing with a similar confusion between 'Halba' and 'Halba- Koshti' and applying the principle underlying in Milind's case (supra) this Court held that ouster of candidates who have obtained undeserved benefit will be justified only where the Court finds the claim to be bona fide. In State of Maharashtra v. Sanjay K. Nimje, (2007) 14 SCC 481 this Court held that the grant of relief would depend upon the bona fides of the person who has obtained the appointment and upon the facts and circumstances of each case.

32. In the instant case there is no evidence of lack of bona fide by the respondent. The protection available under the decision of Milind's case (supra) could, therefore, be admissible even to the respondent. It follows that even if on a true and correct construction of the expression 'Thandan' appearing in The Constitution (Scheduled Castes) Order 2007 did not include 'Ezhuvas' and 'Thiyyas' known as 'Thandan' and assuming that the two were different at all relevant points of time, the fact that the position was not clear till the Amendment Act of 2007 made a clear distinction between the two would entitle all those appointed to serve the State upto the date of the Amending Act came into force to continue in service.

33. In Civil Appeal arising out of SLP (C) No.24775 of 2013 filed against an order dated 5th September, 2012 passed by the Division Bench of the High Court of Kerala, the High Court has found the cancellation of the Caste Certificate issued in favour of the respondent in that appeal to be legally bad inasmuch as the Scrutiny Committee had not applied its mind to the material which was relied upon by the respondent in that case. No enquiry into the validity of the certificate was found to have been conducted nor was the order passed by the Scrutiny Committee supported by reasons. There is, in our opinion, no legal flaw in that reasoning muchless any perversity that may call for our interference. The order passed by the High Court takes a fair view of the matter and does not suffer from any illegality or irregularity of any kind.

34. In the result these appeals fail and are, hereby, dismissed. We, however, make it clear that while the benefit granted to the respondent V.K. Mahanudevan as a Scheduled Caste candidate till 30th August, 2007 shall remain undisturbed, any advantage in terms of promotion or otherwise which the respondent may have been granted after the said date solely on the basis of his being treated as a Scheduled Caste candidate may if so advised be withdrawn by the Competent Authority. It is axiomatic that the respondent-V.K. Mahanudevan shall not be entitled to claim any benefit in the future as a scheduled caste candidate but no benefit admissible to him as an OBC candidate shall be denied. Parties are directed to bear their own costs.

.....J.

(T.S. THAKUR) .....J.

New Delhi (VIKRAMAJIT SEN)
January 10, 2014