

CASE NO.:
Appeal (civil) 255 of 2004

PETITIONER:
L. Ushadevi

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

W I T H
CIVIL APPEAL NO. 258 OF 2004
CIVIL APPEAL NO. 256 OF 2004
AND
CIVIL APPEAL NO. 257 OF 2004

S.B. SINHA, J :

These appeals involve interpretation and/or application of the provisions of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (for short "the Act").

The fact of the matter is being noticed from Civil Appeal No. 258 of 2004.

Konda Reddi is notified as a Scheduled Tribe in the Presidential order for the States of Andhra Pradesh, Tamil Nadu and Kerala. Appellant originally hails from the State of Tamil Nadu. Her forefathers admittedly migrated to the State of Kerala. She was appointed as Quality Supervisor in the Marine Products Export Development Authority \026 Respondent No. 1 herein, which is a statutory body controlled by the Central Government. Her appointment was made on the basis of the caste certificate granted in her favour. On or about 11.12.1980, a show cause notice was issued to her to show cause as to why her certificate shall not be cancelled. Disciplinary proceedings were also initiated against her. Her service was terminated but the said order was set aside by a Division Bench of the High Court.

In other civil appeals also, relying on or on the basis of the purported certificates issued in their favour, the appellants obtained their appointments in the Central Government or public sector undertakings. Notices were served on them to show cause as to why their appointments shall not be cancelled. Disciplinary proceedings were also initiated against them. Their services were terminated but the same were set aside by the Tribunal.

The questions which have been raised before us by the learned counsel for the appellants are:

- (i) The Act having contained provisions of cancellation of certificates granted by the authorities of the State of Kerala only, they have no jurisdiction to cancel a certificate granted by the State of Tamil Nadu.
- (ii) The Act applies only in regard to the employees of the State Government and not to the employees of the Government of India or their institutions.

The Act was enacted to provide for and regulate the issue of community certificates to member of the Scheduled Castes and Scheduled Tribes in the State of Kerala. In terms of Article 342 of the Constitution of India, a member of a tribe may be notified as Scheduled Tribe for a particular State. 'Konda tribe' is admittedly notified as Scheduled Tribe inter alia in the State of Kerala.

The legislatures of various States as also this Court had been noticing the misuse or wrong use of such certificates. Such a question came up for consideration before this Court in *Kumari Madhuri Patil & Anr. v. Additional Commissioner, Tribal Development & Ors.* [(1994) 6 SCC 241] wherein inter alia it was directed to constitute appropriate committees for determining the question as to whether a certificate had wrongly been obtained and the procedures were laid down for the purpose of cancellation thereof.

Scrutiny Committees thereafter came to be constituted by various States by making enactments in that behalf. Consequences flowing from cancellation of such certificates were also laid down.

The question in regard to the power of such Committees recently came up for consideration before this Court in *State of Maharashtra and Others v. Ravi Prakash Babulalsing Parmar & Anr.* [2006 (10) SCALE 575 : 2007 (1) SCC 80] wherein referring to *Kumari Madhuri Patil* (supra), it was held:

"The said decision, therefore, is also an authority for the proposition that the Committee can go into the question as to whether a caste certificate has rightly been issued or not. The authorities concerned were also found to have some role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate."

This Court furthermore noticed that there are decisions and decisions in regard to grant of actual relief. [See also *State of Maharashtra & Ors. v. Sanjay K. Nimje*, 2007 AIR SCW 1575]

Although the learned counsel for the parties have cited certain decisions in that behalf, we need not go into the said question at this stage, being not necessary at this stage.

The Act is a complete code by itself. 'Appointment in public service' has been defined in Section 2(a) of the Act to mean a service or post under the State or Central Government and includes appointment to any post of the State or Central Government undertakings. A 'community certificate' has been defined to mean the certificate issued by the competent authority in the prescribed form indicating therein the caste or tribe to which he belongs, as the case may be. Section 2(1) of the Act assigns the same meaning to 'Scheduled Castes' and 'Scheduled Tribes' which have respectively been assigned to them in clause (24) and clause (25) of Article 366 of the Constitution of India.

Section 3 of the Act provides for a non-obstante clause. Section 4 provides for the manner in which an application for grant of community certificate is required to be filed. Section 5 provides for issuance of a certificate only by a competent authority. Section 6 provides for constitution of Screening Committee for verification of community certificate. Section 8 provides for constitution of Scrutiny Committee for verification of community certificates in the following terms:

"8. Constitution of Scrutiny Committee for

verification of Community Certificates:
Government shall constitute a scrutiny committee for verification of community certificates. Any person belonging to Scheduled Castes or Scheduled Tribes or any appointing authority or local body or heads of educational institutions may make an application in such form and in such manner as may be prescribed by the scrutiny committee for verification of Community Certificates."

Section 11(1) of the Act reads as under:

"11. Cancellation of false community certificate \026 (1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes or the Scheduled Tribes has obtained a false community certificate to the effect that either himself or his children belongs or belong to such Caste or the Tribe, the Scrutiny Committee may either suo motu or on a written complaint or report by any person or authority, call for the records and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by order, cancel the certificate after giving the person concerned an opportunity of making a representation, if any."

Section 30 provides for a transitional provision in the following terms:

"30. Transitional Provision \026 A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act, shall unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act."

It is, therefore, not a case where the appellants herein were outside the purview of the Act. Appellants are residents of the State of Kerala. It is difficult to comprehend as to how they obtained caste community certificate from the authorities of the State of Tamil Nadu.

The jurisdiction of a Scrutiny Committee under the Act is of wide amplitude.

When a competent statutory authority invokes its jurisdiction, we fail to understand as to why the appellants could not submit themselves to the said jurisdiction.

In M/s. Siemens Ltd. v. State of Maharashtra & Ors. [2006 (13) SCALE 297], it is stated:

"The question as to whether jurisdictional fact existed for issuance of the said notice order passed by the respondent was in question in the said writ petition.

Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to

show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

At one point of time, the controversy as to whether the jurisdiction to deal with such a matter, as the employees concerned were holding posts under the Central Government, might be relevant. The courts might have directed the Central Government to hold an investigation in relation thereto. But, once the legislature of a State enacts an Act which is a self contained code, it might not have been necessary for the court to refer the matter again to the Central Government.

It is true that in the case of the appellant, the Kerala High Court by an order dated 25.07.1989 directed the Government of India to resolve the doubt as to whether the appellant therein belonged to the Kondareddy caste, but, in our opinion, the same could not have been a ground for setting aside the order of the State Government. We, however, do not wish to dwell thereupon.

As the High Court has directed consideration of the matter afresh, we do not intend to say any more in this behalf.

We would, however, direct the Committee, keeping in view the fact that the matters are pending for a long time, to determine the question, as expeditiously as possible.

For the reasons aforementioned, these appeals are dismissed, being devoid of any merit. No costs.