

S. Nagarajan

Vs

District Collector, Salem and Others

Civil Appeal No. 236 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

13.01.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the Division Bench of the Madras High Court, made on 19-8-1996 in Writ Appeal No. 166 of 1996.

3. The appellant claimed his status as Scheduled Tribe (Kondareddi) and had appeared in Central Civil Services Examination held in 1985. His status was doubted by the Union Public Service Commission and an enquiry was directed to be made. During enquiry, the Tehsildar found that the certificate of social status given by the Deputy Tehsildar was not correct and was without jurisdiction and accordingly cancelled the said certificate. The appellant filed a writ petition and the High Court directed fresh enquiry in that behalf after giving notice to the appellant. After giving notice, the Tehsildar cancelled the certificate given to the appellant which was again challenged by way of another writ petition. The High Court again directed that the matter be enquired by the RDO. The RDO also found the appellant to be not a Scheduled Tribe. The appellant made third attempt by filing writ petition in the High Court. The High Court directed the Collector to personally enquire into the matter after giving reasonable opportunity to the appellant and to pass a speaking order. Thereafter, the Collector made a detailed enquiry and held that the appellant did not belong to the Scheduled Tribe community. Calling that action in question, the appellant filed a writ petition. The learned Single Judge by order dated 18-12-1995 upheld the order of the District Collector with the finding that the appellant was given opportunity to prove his tribal traits and also that the appellant was unable to give any proof in support of his claim that he belongs to Scheduled Tribe community and as such the certificate granted by the Deputy Tehsildar was rightly cancelled as the same was without jurisdiction. It was also found that the persons who had stated earlier in favour of the appellant as to his community and status at the behest of the appellant's father who retired as Commissioner, resided thereafter. Therefore, their statements that the appellant was a member of the Scheduled Tribe could not be relied upon. The learned Judge has also accepted the reasoning of the Collector that the father of the appellant who was in government service had not claimed his status to be a member of Scheduled Tribe. Had he been a member of Scheduled Tribe community, it was unlikely that he would have omitted to claim his said status. In the school certificate of the appellant, his caste was originally noted as Hindu Reddiar and subsequently the word "Konda" had been added. Equally, in entry in the school admission register, the caste as originally noted was "Hindu Reddi" and the word "Konda" was added subsequently that too in different ink. In other words, he is a member of forward caste and there is no signature on the correction of word "Konda" by the Headmaster concerned. Thus, it appears to have been so made as to be consistent with the interpolation made in the school certificate of the appellant. Having regard to these facts the learned

Single Judge has held thus :

"13. The fact that the petitioner's father subsequently claimed to be a Joint Secretary of the Madurai Unit of the State Kondareddi Association and the President of that Association claimed to be granduncle of the petitioner does not help the petitioner to establish his claim that he is a Kondareddi.

14. The petitioner was required to establish before the Collector that he belonged to Kondareddi community. No attempt was made to establish that the customs and practice followed by the petitioner and his family are those of the tribal group of Kondareddi. What was sought to be established by the petitioner was that in certain documents such as school admission register and sale deeds, the caste of the petitioner or his relatives was mentioned as Kondareddi. Such description of the petitioner's caste after the petitioner's father had become aware of the benefit available to Kondareddi, even though he himself at no point of time claimed to have belonged to the Scheduled Tribe, and claimed the benefits available to those belonging to that tribe, cannot form a reliable basis for holding that the petitioner is a Kondareddi. His membership of the tribe has to be established with reference not merely to the documents wherein he or his relatives are described as Kondareddi, but by establishing the customs, habits or anthropological data concerning the family from which one could reasonably conclude that the petitioner belongs to the tribe of Kondareddi. No such evidence was produced by the petitioner."

4. It would thus be seen that the documentary evidence was brought on record to prop up the retrograde status of Scheduled Tribe to snatch the constitutional benefits given to the Scheduled Tribes.

5. The Division Bench after considering these facts has held thus :

"... About the documentary proof let in by the petitioner, the father's case is the proper proof to know the caste of his son. In the school admission register, the caste of the writ petitioner's father Thiru N. Siddareddi was originally noted as 'Hindu Reddi' only. Subsequently, the word 'Konda' has been written in it, in brackets and that too in different ink. The corrections have not been attested by the Headmaster. A certificate issued on 2-7-1953 by the Village Munsif of Kannamoochi has been pasted in the admission register which does not bear the initial or signature of the Headmaster for having accepted it. In the Transfer Certificate dated 16-6-1955 also, his caste has been originally noted as Hindu Reddiar and subsequently the word 'Konda' has been added. Even accepting that the correction in the Admission Register had actually been made in the year 1953 itself on the strength of the Village Munsif's Certificate dated 2-7-1953, the caste in the T.C. would have been noted as Hindu Kondareddi in the first instance itself. Even in the Service Register of Siddareddi, it has been noted as Hindu/Reddi (Konda). Hence it is patently clear that the caste noted in the admission register was not corrected in the year 1953 but was corrected long after the entry of Thiru Siddareddi into government service. The other documents filed by the petitioner do not support the claim that the writ petitioner is a Kondareddi.

2. It is an established position of law that though jurisdiction under Article 226 of the

Constitution is wide, but nevertheless it cannot be exercised as an appellate jurisdiction and it is not open to this Court to appreciate the evidence and come to its own conclusion as long as it is shown that the fact-finding authority has followed the provision of law correctly and appreciated the evidence in a reasonable manner. In other words, the approach of the fact-finding authority not being perverse and unreasonable and not being vitiated by non-consideration of the evidence on record, the fact that this Court can come to a different conclusion on the very same evidence would not be a ground for interference. Added to that, while considering a similar issue, the Supreme Court in *Madhuri Patil v. Addl. Commr. Tribal Development* [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259 : AIR 1995 SC 94] has held as follows : (SCC p. 257, para 15)

'The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.'

3. Further, in a case like this, the determining factor is the community to which the father of the writ petitioner belonged. In the instant case, the father of the writ petitioner never claimed that he was a Kondareddi, even though he was a government servant. Kondareddi is recognised as a Scheduled Tribe. Any person entering a government service, if he is entitled to such a benefit, would never fail to avail such a benefit. If the father of the writ petitioner was a Kondareddi, he would not have failed to take advantage of the fact that he belonged to Kondareddi, as such he was a Scheduled Tribe and entitled to all the benefits. He had not done so. The learned Single Judge, referring to the community of the father of the writ petitioner, in para 12 has observed as follows :

'It is apparent that petitioner's father was fully aware when he entered government service that he did not belong to any Scheduled Tribe. He has attempted to take advantage of the name 'Reddi' being part of the name of Scheduled Tribe "Kondareddi" and had "Konda" added to his school records and declare that his son's community is "Kondareddi" so that the same may be entered in the petitioner's school records. Such entries cannot confer the status of Scheduled Tribes. The claim made on the basis of such records is, in the words of Apex Court, in the case of *Madhuri Patil* [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259 : AIR 1995 SC 94] is one of "Pseudo status" ."

6. This Court in several cases has negated the claim even when the claimant's father had enjoyed the status of Scheduled Tribe on the basis of the finding made in the enquiry that he did not belong to Scheduled Tribes. This is a converse case.

7. Shri Vaidyanathan, learned Senior Counsel appearing for the appellant, contends that the view expressed by the courts below is not correct and in view of the fact that the appellant's grandfather had entered into an unregistered agreement wherein they claimed the status of Kondareddi, a Scheduled Tribe, prior to 1949, it is unlikely that the appellant would fabricate the records and claim the status of being a member of the Scheduled Tribe community. The High Court is not a court of appeal to appreciate the evidence. The Collector after detailed consideration of the evidence placed by the petitioner, has concluded that the appellant is not a member of Scheduled Tribe (Kondareddi). His father, N. Siddareddi had never claimed this status though in the ordinary course he would have claimed to be belonging to the Scheduled Tribe community to avail of the benefit of reservation available under State service. The learned Single Judge was right in concluding that the appellant's father having been in government service would not have omitted to claim his status as belonging to Scheduled Tribe had he really been a member of Scheduled Tribe community (Kondareddi). On the other hand, his father was Reddy which is a forward caste and that therefore, the subsequent interpolation that he was Kondareddi (interpolation) is not genuine and an incorrect document was thus brought into existence to claim the status as Scheduled Tribe. It is obvious that the Constitution intended to give benefit of social and economic advancement and empowerment and social equality of status and dignity of person, by providing reservation in services of the State and in education by operation of Articles 15, 16 and 14 of the Constitution and that therefore, only the persons who are members of Scheduled Tribes and Scheduled Castes alone are entitled to the benefit. By interpolation of the documents, none can get a particular social status unless it is recognised as per the Presidential Notification/Order under Article 341 or 342, to avail of the benefit of reservation made in that behalf. The High Court was, therefore, correct in accepting the conclusion reached by the Collector that the appellant had not established his status as Scheduled Tribe.

8. The appeal is accordingly dismissed. No costs,