

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 8TH DAY OF JANUARY 2024 / 18TH POUSHA, 1945

WP(C) NO. 18160 OF 2015

PETITIONER:

AKHILA KERALA MAVILAN SAMAJAM
THROUGH ITS DISTRICT PRESIDENT,
KASARAGOD DISTRICT COMMITTEE,
KERALA STATE - 671 314.

BY ADVS.

SRI.P.K.JAYAKRISHNAN
SRI.P.K.GEETHAKRISHNAN

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT,
MINISTRY OF TRIBAL AFFAIRS, SHASHTRI BHAWAN,
NEW DELHI - 110 001.
- 2 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
SCHEDULED CASTES/SCHEDULED TRIBES DEVELOPMENT (G)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
KERALA-695 001.
- 3 NATIONAL COMMISSION FOR SCHEDULED TRIBES
6TH FLOOR, 'B' WING, THROUGH ITS REGISTRAR,
LOK NAYAK BHAWAN, KHAN MARKET,
NEW DELHI - 110 003.
- 4 REGISTRAR GENERAL OF INDIA (CENSUS)
2/A, MANSINGH ROAD, NEW DELHI, PIN - 110 011.
- 5 KERALA INSTITUTE FOR RESEARCH TRAINING &
DEVELOPMENT STUDIES OF SCHEDULED CASTES/SCHEDULED
TRIBES [KIRTADS], KOZHIKODE - 17,
REPRESENTED BY ITS DIRECTOR.

6 REGISTRAR
KERALA STATE COMMISSION FOR SCHEDULED CASTE AND
SCHEDULED TRIBE, AYYANKALI BHAVAN, KANAKANAGAR,
VELLAYAMBALAM, THIRUVANANTHAPURAM – 695 003.

BY ADVS.

SRI.K.R.RAJKUMAR, ADDL.CGSC (FOR R1, R3 & R4)

SRI. ROBIN RAJ M K (SPL GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

This writ petition has been filed seeking the following reliefs:

- i. Call for the entire records leading to the case from the concerned respondents Ministry, departments and from the state and the central governments.*
- ii. issue a writ of Certiorari and/or any other appropriate Writ/ direction or order quashing and setting aside the Part of the Constitution (Scheduled Tribes) Order (Amendment) Act, 2013 (No.24 of 2013), passed under Article 342, that has included the non-Tribe as part of Scheduled Tribes list for the State of Kerala i.e.,

“(a) in Part-VII..Kerala, after entry 27, insert-
“28. Marathi (of the Hosdurg and Kasargod Taluks of Kasargod District)” [Ext.P19] And;*
- iii. Declare that the Constitution (Scheduled Tribes) Order (Amendment) Act, 2013. (No.24 of 2013), in as much as and to the extent it includes Marathi (of the Hosdurg and Kasargod Taluks of Kasargod District) is ultra vires and violative of Article 14 and 21 of the Constitution of India and therefore void and inoperative.*
- iv. Quash the recommendations made by the Government of Kerala, which formed the basis of the*

Constitution (Scheduled Tribes) Order (Amendment) Act, 2013. (No.24 of 2013), for the inclusion of Marati community vide Order No. G1/2010/SCSTDD dated 31.8.2010 (Ext.P13) and the recommendation by the National Commission for Scheduled Tribe vide recommendation No.16/01/inclusion/2012 RU-III dated 12.07.2012 (Ext.P16) as illegal and unconstitutional.

- v. Issue specific direction to the National Commission for Scheduled Tribes to initiate time bound steps to exclude Marati community from the list of Scheduled Tribes in State of Kerala, included vide Constitution (Scheduled Tribes) Order (Amendment) Act, 2013. (No. 24 of 2013), passed under Article 342 i.e.,*

"(a) in Part-VII..Kerala, after entry 27, insert-

"28. Marati (of the Hosdurg and Kasargod Taluks of Kasargod District)" And;

- vi. Declare that Marati (Hosdurg and Kasargod Taluk of Kasargod District) of Kerala are not entitled to be included in the list of Scheduled Tribe and are not entitled to the benefits of Scheduled Tribe.*

- vii. Issue detailed guidelines to the state and the Central Governments for the inclusion and exclusion of a community from the list of Scheduled Tribe, from the Presidential Order in tune with Art. 342 (1) and (2) of the constitution.*

- viii. Issue a writ of Mandamus or any other appropriate*

*writ direction or order to the government of Kerala to implement the proposal for the exclusion of Marati community from the list of Scheduled Tribe as provided in **Exhibit P-20** dated 16.11.2013.*

ix. Pass such other relief or reliefs as this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be granted.

2. It is seen from the pleadings in the writ petition that W.P.(C)No.27770 of 2012 was filed before this Court seeking almost identical reliefs. That writ petition was dismissed by this Court through Ext.P18 judgment finding as follows:

"2. The sequence of events as narrated in the writ petition shows that the community by name 'Marati' was earlier included in Ext. P1 Constitutional Order as a Scheduled Tribe community. This order was issued by the President invoking the power and procedure under Article 342(1) of the Constitution of India. Subsequently, based on various studies as to the socio-economic status of the persons belonging to the community, reports were submitted by KIRTADS, as borne by Exts.P3 and P4, whereby it was categorically asserted that they do not come within the purview of 'Scheduled Tribe' and it was accordingly, that the

'Marati' community came to be omitted from the list by virtue of a conscious exercise of the legislative power vested with the Parliament under Sub Article 2 of Article 342, as borne by Ext.P5. Now after a few years, things have taken a different turn following the same cycle, whereby another report has been procured from the KIRTADS, as borne by Ext.P6, certifying that the socio economic status of the persons concerned is enough to have them certified as belonging to Scheduled Tribe. The reason stated as pointed out by the petitioner is that, the persons concerned have entered into marriage with similar community in Kasargod district and hence they are entitled to be reinducted as Scheduled Tribes in the list. The learned counsel for the petitioner submits that SC/ST status of the particular community is to be assessed with reference to the facts and circumstances as prevailing in the State and not with reference to the circumstances prevailing elsewhere.

3. During the course of hearing, it is brought to the notice of this Court that the report of the KIRTADS as per Ext.P6 was recommended by the second respondent and thereafter, the matter was referred to SC/ST Commission. The Commission also examined the matter and a recommendation has been made so as to have them included in the list of Scheduled Tribes, as borne by Ext.P8. It is at this point of time, that the petitioner has approached this Court deprecating the stand of the concerned respondent and seeking for

*interference of this Court. It is relevant to note that jurisdiction of this Court to deal with such matters is very limited, more so, in view of the settled law, whether a particular community belongs to Scheduled Tribe or not, does not come within the powers and jurisdiction of this Court and it is not for this Court to conduct any equalisation exercise or some other method so as to arrive at a finding as to whether that community is entitled to have an entry in the list already declared. Once a notification is issued under Article 342(1), even the President, who issued the same does not have any power to vary the same and the said power is vested only with the Parliament. The position has also been considered by a Full Bench of this Court as per the decision reported in **Mannan Vannan Samudaya Sangham v. State of Kerala** (2011 (1) KLT 836 (F.B.))*

In the above circumstances, this Court finds that the factual postilion with regard to the credentials of the particular community have been evaluated by different Committees at three different levels. It is not open for this Court to have a fact adjudication exercise, that too invoking the discretionary jurisdiction under Article 226 of the Constitution of India. In the said circumstances, interference is declined and the writ petition is dismissed”.

The petitioner-organization appears to approached the Supreme Court by filing a writ petition under Article 32 of

the Constitution of India. That writ petition, before the Supreme Court, numbered as W.P.(C)No.995 of 2013, was disposed of by Ext.P22 judgment, permitting the petitioner - organization to approach this Court by filing a writ petition. It does not appear from Ext.P22 order of the Supreme Court in W.P.(C)No.995 of 2013 that the attention of the Supreme Court was drawn to the fact that, W.P.(C)No.27770 of 2012 filed by the National Adivasi Federation, which, even according to the pleadings in the writ petition is a 'similar organization with similar interest', had been dismissed by this Court. I am in respectful agreement with the view taken by the learned Single Judge of this Court while dismissing W.P.(C)No.27770 of 2012. Once the President of India issues a notification in terms of the provisions contained in Article 342 of the Constitution of India only the Parliament can by law include or exclude any community from the notification issued by the President under Article 342 (1). This Court while disposing of W.P.(C)No.27770 of 2012 has also taken that view.

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-:9:-

Therefore, for the same reasons as set out in Ext.P18 judgment of this Court in W.P(C)No.27770 of 2012, this writ petition fails and it is accordingly dismissed.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 18160/2015

PETITIONER EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE CONSTITUTION (SCHEDULED) ORDER 1956 PRIOR TO THE CONSTITUTE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT ACT) 2002 DATED NIL (PAGES 39 TO 70)
- EXHIBIT P2: TRUE COPY OF THE EXTRACT FROM THE REPORT OF THE ADVISORY COMMITTEE ON THE REVISION OF THE LISTS OF SCHEDULED CASTES AN SCHEDULED TRIBES (LOKUR COMMITTEE REPORT)
- EXHIBIT P3: TRUE EXTRACT COPY OF THE REPORT OF THE JOINT COMMITTEE OF THE SCHEDULED CASTE AND SCHEDULED TRIBE ORDERS 9AMDENTMENT) BILL, 1967 PRESENTED ON 1969.
- EXHIBIT P4: TRUE COPY OF SCHEDULED CASTES AND SCHEDULED TRIBES ORDER (AMENDMENT) ACT, 1976 DATED 20.9.1976 WERE MARATI IN KASARGOD TALUK OF MALABAR DISTRICT(PRIOR TO THE CONSTITUTION SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS 9AEMDNMENT ACT) 2002.
- EXHIBIT P5: TRUE COPY OF THE LETTER NO. DO NO.12016/17/81/SCBCD.IV DATED FEBRUARY 1981.
- EXHIBIT P6: TRUE COPY OF LETTER NO.TC 486/79 DATED 2.8.1981 OF THE DIRECTORATE OF KERALA INSTITUTE FOR RESEARCH AND TRAINING DEVELOPMENT STUDIES OF SCHEDULED CASTES AND SCHEDULED TRIBES (KIRTADS).
- EXHIBIT P7: TRUE COPY OF THE LETTER NO. TC 610/81 DATED 4.8.1981 OF THE DIRECTORATE OF KERALA INSTITUTE FOR RESEARCH AND TRAINING DEVELOPMENT STUDIES OF SCHEDULED CASTES AND SCHEDULED TRIBES (KIRTADS)

- EXHIBIT P8: TRUE COPY OF THE MODALITIES FOR DECIDING CLAIMS FOR INCLUSION AND EXCLUSION FROM AND OTHER MODIFICATIONS IN THE ORDERS SPECIFYING SCHEDULED CASTES AND SCHEDULES TRIBES LIST.
- EXHIBIT P9: TRUE COPY OF SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 2002 DATED 8.1.2003.
- EXHIBIT P10: TRUE COPY OF LETTER DATED 13.12.2004 NO.D.1539/04 FROM THE DIRECTOR KIRTADS TO THE PRINCIPAL SECRETARY TO THE GOVERNMENT OR SCHEDULED CASTE AND SCHEDULED TRIBE
- EXHIBIT P11: TRUE COPY OF THE REPORT DATED 5.10.2005 PREPARED BY KIRTADS FOR THE KERALA STATE COMMISSION FOR BACKWARD CLASSES TO MEASURE THEIR SOCIO-ECONOMIC AND EDUCATIONAL BACKWARDNESS
- EXHIBIT P12: TRUE COPY OF LETTER NO D1.1279/09 DATED 2.8.2010.
- EXHIBIT P13: TRUE COPY OF LETTER NO. G1/2010/SCSTDD DATED 31.8.2010 OF GOVERNMENT OF KERALA
- EXHIBIT P14: TRUE COPY OF THE REPORT OF STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2011-12) THE CONSTITUTION (SCHEDULED TRIBES) ORDER (SECOND AMENDMENT) BILL 2011.
- EXHIBIT P15: TRUE COPY OF LETTER NO.1/4/12-COORD DATED 4.7.2012
- EXHIBIT P16: TRUE COPY OF THE LETTER NO. 16/01/INCLUSION/2012/RU-III DATED 12.7.2012.

- EXHIBIT P17: TRUE COPY OF THE REPRESENTATION DATED 3.8.2012 SUBMITTED BY THE CHAIRMAN OF THE KASARGOD DISTRICT ADIVASI SAMRAKSHANA SAMITHI, NATTAKKL BEFORE THE HONOURABLE PRESIDENT OF INDIA AND VARIOUS HIGHER AUTHORITIES VIS. HONOURABLE PRIME MINISTER ETC
- EXHIBIT P18: TRUE COPY OF THE ORDER DATED 4.2.2013 IN WPC NO.27770 OF 2012 OF THIS HONOURABLE COURT.
- EXHIBIT P19: TRUE COPY OF THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) ACT, 2013 DATED 19.9.2013.
- EXHIBIT P20: TRUE COPY OF THE LETTER NO.24891/G1/12/SCSTDD DATED 16.11.2013
- EXHIBIT P21: TRUE COPY OF GOVERNMENT ORDER (K) NO.16/2014/SC/ST DEV. DEPT. TVM. DATED 29.1.2014
- EXHIBIT P21(A): A TRUE ENGLISH TRANSLATION OF EXT.P21
- EXHIBIT P22: TRUE COPY OF ORDER DATED 7TH JULY T 2014 IN WPC NO.995 OF 2013 OF THE HONOURABLE SUPREME COURT.