

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.03.2018
CORAM
The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.4728 of 2018

Fisherman Care,
Registered Association
Bearing S.L.No.386 of 2010
Rep by its President,
L.T.A. Peter Rayan,
No.6, Nagalakshmi Salai,
Tiruchandur Nagar,
Old Pallavaram,
Chennai-600 117.

.. Petitioner

vs.

1.Union of India,
Rep. by the Secretary,
Ministry of Law and Justice,
New Delhi-110 001.

2.The Chief Educational Officer,
Election Commission of India,
Niavachan Sadan,
New Delhi-110 001.

3.Chief Secretary to Government,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st and 2nd respondents to implement the recommendation of the Mandal Commission for including the fisherman community in the list of Scheduled Caste and consequently consider reservation of six Legislative Constituencies and three Parliamentary Constituencies (two Lok Sabha, One Rajya Sabha) in the areas of their concentration in Tamil Nadu.

For Petitioner : Mr.V.Raghavachari
for M/s.L.P.Maurya

For Respondents : Mr.J.Madhanagopal Rao
Senior Central Government
Standing Counsel for R1

Mr.Niranjan Rajagopal
for R2

Mr.E.Manoharan,
Addl. Government Pleader
for R3

ORDER

(Order of the Court was made by Ms.Indira Banerjee,
Hon'ble Chief Justice)

This writ petition has been filed seeking orders on the respondents 1 and 2, being the Union of India, represented by the Secretary, Ministry of Law and Justice, New Delhi and the Chief Election Commissioner, New Delhi, to include the Fishermen community in the list of Scheduled Castes and consequently to consider reservation of six Legislative Constituencies and three Parliamentary Constituencies, in the areas of their concentration in Tamil Nadu.

2. Article 341 of the Constitution of India empowers the President to specify by public notification the castes, races or tribes or parts of or groups within castes, races or tribes which are be deemed to be Scheduled Castes for the purpose of the Constitution, after consultation with the Governor and by public notification.

3. The list of Scheduled Castes is now contained in the Constitution (Scheduled Castes) Order, 1950 promulgated by the President of India in exercise of power under Article 341 of the Constitution of India, as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, Section 41 of the State Reorganization Act, 1956, and the Punjab Reorganization Act, 1966.

4. The word "castes" in the expression "Scheduled Castes" is not used in the ordinary sense of the term, but is used in the sense of the definition of Scheduled Castes in Article 366 (24) of the Constitution to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution. A caste is, therefore, a Scheduled Caste

only if it is included in the Presidential Order issued under Article 341 i.e., Scheduled Castes Order, 1950.

5. The object of Clause (1) of Article 341 is to avoid all disputes as to whether a caste is a Scheduled Caste or not, for the purposes of the Constitution. It is the President's notification which is to determine who is to be a member of a Scheduled Caste for the purposes of the Constitution. To determine whether any particular caste is a Scheduled Caste, it is necessary to look into Scheduled Castes Order promulgated by the President, as amended.

6. Once Parliament by law includes in or excludes from the Scheduled Castes Order, any race, caste, tribe, parts of or groups within any caste, race or tribe, the President thereafter has no power to vary it by any subsequent notification.

7. The Court cannot amend the Scheduled Castes Order either directly or even indirectly and it can at best make recommendation, as held by the Supreme Court in Palghat Jilla Thandan Samudhaya Samrakshna Samiti v. State of Kerala, reported in (1994) 1 SCC 359.

8. The Court is also devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe. The Courts have no power to go behind the Order or to hold any inquiry or to let in any evidence to determine whether or not any particular community falls within the Order or not.

9. The National Commission for Scheduled Castes constituted under Article 338 is cast with the following duties set out in sub-clauses (a) to (f) to clause (5) as under:

"338.National Commission for Scheduled Castes.-

...

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament by the rule specify."

10. Inquiring into specific complaints in respect of deprivation of rights and safeguards of the Scheduled Castes and to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes are within the domain of the National Commission for Scheduled Castes. In our considered view, the duties conferred on the National Commission for Scheduled Castes includes the duty to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes by reason of non-inclusion of any caste or group in the Constitution (Scheduled Castes) Order, 1950 and to make if it deems, appropriate recommendation for legislative enactment for amendment of the Constitution (Schedules Castes) Order, 1950.

11. The petitioner may make an application to the National Commission for Scheduled Castes, for redressal of the grievances of the group represented by the petitioner, by making a recommendation for enactment of law by Parliament, amending the Constitution (Scheduled Castes) Order, 1950 by inclusion of that group as a Scheduled Caste. The National Commission for Scheduled Castes may make an investigation and/or conduct a study pursuant to such application and take a decision on the application of the petitioner within six months, after complying with the requisite procedural formalities.

12. The writ petition is disposed of with the above observations. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jvm

To:

- 1.The Secretary,
Union of India,
Ministry of Law and Justice,
New Delhi-110 001.
- 2.The Chief Educational Officer,
Election Commission of India,
Niavachan Sadan, New Delhi-110 001.
- 3.Chief Secretary to Government,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
4. The National Commission
for Schedule Caste
new Delhi

+1 cc to the Govt Pleader sr 16475
+1 cc to M/s.J.Madanagopal Rao Advocate sr 16973
+1 cc to M/s.L.P.Maurya Advocate sr 17183

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