

LILLY KUTTY
v.
SCRUTINY COMMITTEE, S.C. AND S.T. AND ORS.

OCTOBER 6, 2005

[S.B. SINHA AND C.K. THAKKER, JJ.]

Constitution of India—Articles 14, 136, 341 and 342—Kerala (Scheduled Castes and Scheduled Tribes) Regulations of Issue of Community Certificate Act, 1996—Sections 8, 9, 10, 12, 16, 17 and 26—Appellant, claimed to be a Scheduled Caste on basis of a Caste Certificate, contested and won the election for office of the President of Gram Panchayat reserved for Scheduled Caste—Complaint under the Act by rival candidate challenging the caste status and eligibility of the appellant to contest the election—Caste Scrutiny Committee recording a finding that the appellant do not belong to Scheduled Caste and that the certificate has been obtained fraudulently by misrepresentation, cancelled that appellant's caste certificate and directed the State to take consequential action—High Court dismissed the appeal confirming the findings of the committee—Correctness of—Held, findings of fact are not subject to judicial review under Article 136 of the Constitution—Complaint by the rival candidate is proper and legal—Onus of proof is on the person who claims to be a Scheduled Caste in accordance with law—Proceedings before the Committee were legal, valid and lawful and the certificate was rightly directed to be cancelled—Obtaining a false caste certificate with a view to obtain undue privilege under the Constitution must be treated as a fraud on the Constitution—Hence, consequential actions can be taken in pursuance of cancellation of caste certificate.

Appellant, who claimed to be a Hindu Pulayan—Scheduled Caste on the basis of a certificate, contested an election against 3rd respondent for the office of the President of Gram Panchayat, which was reserved for Scheduled Caste. The appellant won the election. The 3rd respondent filed a complaint before the State under the Kerala (Scheduled Castes and Scheduled Tribes) Regulations of Issue of Community Certificate Act, 1996 alleging that the appellant is a Christian and not a Scheduled Caste and hence could not have contested for the office. A Caste Scrutiny Committee, constituted under the Act, on the basis of the evidence held that the

A appellant was a Christian and did not belong to Hindu Pulayan—Schedule Caste. The Committee, cancelled the caste certificate of the appellant holding that it was obtained fraudulently by misrepresentation. An appeal preferred by the appellant under the Act before High Court was dismissed confirming the findings of the Committee.

B In appeal to this Court, the appellant contended that she belongs to Hindu Pulayan—Schedule Caste Community since her parents belonged to that Community at the time of their marriage and at the time of the birth of the appellant and hence the certificate issued to her could not have been cancelled; and that the burden to prove should have been cast on respondent no.3 that she is a Christian and not on the appellant to prove that she belonged to that Community.

C The appellant filed an application raising additional grounds contending that in view of Article 243-O of the Constitution of India and section 153(14) of the Kerala Panchayat Raj Act, 1994 it was not open to the respondents to enquire into eligibility or status of the appellant; that the only remedy available to the 3rd respondent was to file an election petition.

D The respondents contended that the findings recorded by the Caste Scrutiny Committee and confirmed by the high Court cannot be assailed under Article 136 of the Constitution of India; that the Committee, on the basis of the documentary evidence, considered the case and by observing principles of natural justice and fair play came to the conclusion that the appellant was a born Christian; that the burden was not discharged by the appellant under the Act and hence the action taken against her could not be said to be illegal or unlawful; that the appellant claimed to be a Hindu Pulayan—Scheduled Caste only with a view to get undeserving benefits and since she was a Christian, the certificate was liable to be cancelled.

E The respondents, objecting to the application, contended that the additional grounds raised by the appellant were not taken before the Scrutiny Committee or the High Court and such new plea should not be allowed to be raised; and that Article 243-O of the Constitution of India or section 153 (14) of the Kerala Panchayat Raj Act do not apply to the present case.

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Dismissing the appeal, the Court*(Per Curiam)*

HELD: 1.1. No case has been made out to interfere with the order passed by the Caste Scrutiny Committee and confirmed by the High Court. The Scrutiny Committee considered the case of the appellant and her assertion that she belonged to Hindu Pulayan Community—Scheduled Caste and on the basis of report of the Expert Agency and considering the relevant record rightly negated such claim. A finding of fact has been recorded that the appellant was born and brought up as a Christian and she continued to remain as Christian. She was never accepted by Hindu Pulayan Community—Scheduled Caste as a member of the Community. She never followed Hinduism nor lived in Hindu Milieu. [99-B, C]

1.2. Such a finding cannot be assailed before Supreme Court under Article 136 of the Constitution of India. It cannot be said that the finding is based on ‘no evidence’ or is arbitrary or perverse. The Kerala (Scheduled Castes and Scheduled Tribes) Regulations of Issue of Community Certificate Act, 1996 provide procedure for an enquiry by Expert Agency and the report by such agency is conclusive proof by or against the person reported upon. [99-D, E]

1.3. Section 10 of the Act is clear and expressly enacts that when a person claims to be a member of Scheduled Caste or Scheduled Tribe, burden of proof that he or she belongs to such caste or tribe is on him or her. Since the appellant was born as a Christian and continued to remain a Christian, the order passed by the Scrutiny Committee cancelling the appellant’s certificate and confirmed by the High Court cannot be said to be illegal and no interference is called for. [99-G, H]

1.4. A claim, as to whether the appellant belonged to Hindu Pulayan—Scheduled Caste or not, can only be decided in the light of the provisions of the Act. Hence the proceedings initiated by 3rd respondent were proper and in consonance with law. Similarly the enquiry which has been made was also legal and proper. The Caste Scrutiny Committee considered the claim of the appellant and decided the complaint of the 3rd respondent by invalidating and cancelling the certificate of the appellant. It was according to law and no illegality has been committed. The proceedings before the Committee were legal, valid and lawful and the certificate was rightly cancelled. If the appellant had to suffer because

A of the finding recorded by the committee and confirmed by the High Court in accordance with law, she cannot make compliant in as much as such consequences would ensue in view of the order passed against the appellant. The respondent rightly relied upon on sections 16, 17 and 26 of the Act. [100-A, B, D]

B 1.5. The plea sought to be taken by the appellant by raising additional grounds was never taken earlier. There is no pleading on the point nor finding recorded on such plea. Once it is held that she did not belong to Scheduled Caste, the action of cancellation of certificate could not be held illegal. Consequential actions can be taken thereafter in pursuance of cancellation of caste certificate. In the facts and circumstances of the case, it is not necessary to deal with the contention sought to be raised by the appellant since it was never raised earlier. The application stands disposed of without expressing final opinion on applicability or otherwise of Article 243-O of the Constitution of India or section 153(14) of the Kerala Panchayat Raj Act, 1994. [101-C, D]

D *Kailash Sankar v. Smt. Maya Devi*, [1984] 2 SCC 91; *Principal, Guntur Medical College, Guntur and Ors. v. Y. Mohan Rao*, [1976] 1 SCC 411; *C.M. Arumugam v. S. Rajagopal and Ors.*, [1976] 1 SCC 863; *State of Kerala v. Chandramohanam*, [2004] 3 SCC 429; *E.V. Chinnaiah v. State of A.P. and Ors.*, [2005] 1 SCC 394 and *Kumari Madhuri Patil and Anr. v. Additional Commissioner, Tribal Development and Ors.*, [1994] 6 SCC 241, referred to.

(Per S.B. Sinha, J)

F 1.6. Scheduled Castes and Scheduled Tribes in view of the constitutional provisions contained in Articles 341 and 342 of the Constitution of India occupy a special position. Protective discrimination and affirmative action for the downtrodden people are envisaged in our constitutional scheme despite the fact that the equality clause enshrined under Article 14 of the Constitution of India is of great significance.

[91-H; 92-A]

G *E.V. Chinnaiah v. State of A.P. and Ors.*, [2005] 1 SCC 394, referred to.

H 1.7. When a person, who is not a member of Scheduled Caste or Scheduled Tribe, obtains a false certificate with a view to gain undue advantage to which he or she was not otherwise entitled to, would amount

to commission of fraud. Fraudulent acts are not encouraged by the Courts. A
A person, for the purpose of obtaining the benefits of the Presidential
Order, must fulfil the condition of being a member of Scheduled Castes
and continue to be so. Any action by the authorities or by the people
claiming a right/privilege under the Constitution of India which subverts
the constitutional purpose must be treated as a fraud on the Constitution.
The Constitution does not postulate conferment of any special benefit on
those who do not belong to the category of people for whom the provision
is made. [92-B, C; 94-D]

State of Kerala and Anr. v. Chandramohanam, [2004] 3 SCC 429; *Sobha
Hymavathi Devi v. Setti Gangadhara Swamy and Ors.*, [2005] 2 SCC 244;
Ram Chandra Singh v. Savitri Devi and Ors., [2003] 8 SCC 319; *Vijay Shekar
and Anr. v. Union of India and Ors.*, [2004] 4 SCC 666; *Vice Chairman,
Kendriya Vidyalaya Sangathan and Anr. v. Girdharilal Yadav*, [2004] 6 SCC
325; *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.*, JT (2005)
7 SC 530 and *Ram Preeti Yadav v. U.P. Board of High School and
Intermediate Education and Ors.*, [2003] 8 SCC 311, referred to.

Lazarus Estates Ltd. v. Beasley, [1956] 1 All ER 341, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7174 of 2004.

From the Judgment and Order dated 15.3.2004 of the Kerala High
Court in M.F.A. No. 333 of 2003.

B.V. Deepak, M.P. Vinod, Ajay Kumar Jain and P. Sajith for the
Appellant.

K. Radhakrishnan, S. Udaya Kumar Sagar, Ms.Bina Madhavan, Mrs.
Pooja Nanekar, Ms. Susan Zachariah, A. Venayagam and Hemal K. Sheth for
M/s. Lawyer's Knit & Co. for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Although, I respectfully agree with the judgment and
order proposed to be pronounced by Brother, Thakker, J., I would like to add
a few words.

Scheduled Castes and Scheduled Tribes in view of the constitutional
provisions contained in Articles 341 and 342 of the Constitution of India
occupy a special position. Protective discrimination and affirmative action

A for the downtrodden people are envisaged in our constitutional scheme despite the fact that the equality clause enshrined under Article 14 of the Constitution of India is of great significance. [See *E.V. Chinnaiah v. State of A.P. and Ors.*, [2005] 1 SCC 394]

B When, thus, a person who is not a member of Scheduled Caste or
 C Scheduled Tribes obtains a false certificate with a view to gain undue advantage to which he or she was not otherwise entitled to would amount to commission of fraud. Fraudulent acts are not encouraged by the courts. A person for the purpose of obtaining the benefits of the Presidential Order must fulfil the condition of being a member of Scheduled Castes and continue to be so. Conversion of a member of Scheduled Castes to a different religion may not, in certain circumstances, deprive him of the said benefits although there appears to be some divergence of views in this regard. [See *State of Kerala and Anr v. Chandramohan*, [2004] 3 SCC 429 and *Sobha Hymavathi Devi v. Setti Gangadhara Swamy and Ors.*, [2005] 2 SCC 244]. In this case, however, even the said question does not arise.

D In *Ram Chandra Singh v. Savitri Devi and Ors.*, [2003] 8 SCC 319, this Court held:

“15.....Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

E 16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.”

It was further held:

F “18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

G 23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void *ab initio*. Fraud and deception are synonymous.

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24. In *Arlidge & Farry on Fraud*, it is stated at p. 21:

“Indeed, the word sometimes appears to be virtually synonymous with ‘deception’, as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context ‘fraud’ included certain kinds of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit ‘under false pretences, or by means of any other fraud’. In *Jones*, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly, it has been suggested that a charge of conspiracy to defraud may be used where a ‘false front’ has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act, 1968) is broader than that of a false pretence in that (*inter alia*) it includes a misrepresentation as to the defendant’s intentions; both *Jones* and the ‘false front’ could now be treated as cases of obtaining property by deception.”

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.

26. In *Shrisht Dhawan v. Shaw Bros.* it has been held that: (SCC p. 553, para 20)

“20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.”

[See also *Vijay Shekhar and Anr. v. Union of India and Ors.*, [2004] 4 SCC 666 and *Vice-Chairman, Kendriya Vidyalaya Sangathan and Anr. v. Girdharilal Yadav*, [2004] 6 SCC 325]

Yet recently in *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.* JT (2005) 7 SC 530, a Division Bench of this Court *inter alia* following *Ram Chandra Singh* (*supra*) and other decisions observed:

“17. “Fraud” is a conduct either by letter or words, which induces the

A other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter..."

In *Lazarus Estates Ltd. v. Beasley*, [1956] 1 All ER 341 the Court of Appeal stated the law thus:

B "I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

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[See also *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and Ors.*, [2003] 8 SCC 311]

D Any action by the authorities or by the people claiming a right/ privilege under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution. The Constitution does not postulate conferment of any special benefit on those who do not belong to the category of people for whom the provision was made.

E The fraud committed by the Appellant for obtaining unlawful gain has been found as of fact by a statutory committee. The said finding of fact has not been interfered with by the High Court. No case has been made out for us to take a different view.

F **C.K. THAKKER, J.** The present appeal is filed by the appellant against the judgment and order dated March 15, 2004 in MFA No. 333 of 2003. By the said order, the Division Bench of the High Court of Kerala dismissed the appeal filed by the appellant and confirmed the order dated February 26, 2003 passed by the Scrutiny Committee for verification of community certificates.

G The case of the appellant as revealed from the record is that she belongs to Hindu Pulayan Community—Scheduled Caste. Both her parents at the time of their marriage, were Hindu Pulayan. The appellant was born in 1961 as Hindu Pulayan and she was never converted to Christianity and remained to be of Hindu Pulayan Scheduled Caste all throughout. She took her education and during that period, she was treated as a member of Scheduled Caste. In

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1975, she got married to Kunjukutty, a member of the Scheduled Caste in accordance with the custom of the said community. A certificate to the effect that both, the appellant as well as her husband were members of the Hindu Pulayan Community was issued by the Association of the Community and was produced in the enquiry proceedings. According to the appellant, it was alleged that much later after she got married, her mother remarried to a Christian and converted to Christianity. Conversion by her mother was not proved but even if it is assumed that there was conversion on the part of her mother, the said fact in no way affected the status of the appellant who was born to Hindu Pulayan parents who were at the time of their marriage belonged to Scheduled Caste and the appellant who was born was a member of the Scheduled Caste. The appellant never converted to Christianity.

It is the case of the appellant that on September 25, 2000, an election for Thannithode Gram Panchayat was held. The appellant contested from Ward No. 2 reserved for women. Though she belonged to Scheduled Caste, she contested the election by filing a nomination paper for a seat reserved for women without filing the column in the nomination paper as "Scheduled Caste". Respondent No. 3, P.K. Gopi belongs to Scheduled Caste. He contested the election and got himself elected from the constituency reserved for Scheduled Caste in Ward No. 4. On 5th October, 2000, there was an election for office of the President of the Gram Panchayat. It was reserved for a member belonging to Scheduled Caste. The third respondent contested for the reserved seat. Since the appellant belonged to Scheduled Caste, she also contested for the office of the President against Respondent No. 3, and got herself elected as the President of the Gram Panchayat. According to the appellant, the 3rd Respondent did not like the act of contesting by the appellant against him and since he lost against the appellant, he filed a complaint under the Kerala (Scheduled Castes and Scheduled Tribes) Regulations of Issue of Community Certificate Act, 1996 (Act 11 of 1996) (hereinafter referred to as 'the Act'), alleging that the appellant did not belong to Hindu Pulayan Community, Scheduled Caste and hence could not have contested for the office of the President of the Gram Panchayat as a member of Scheduled Caste. Appropriate actions were, therefore, required to be taken against her. Upon receipt of the complaint, the Government referred the issue to the Vigilance Officer, KIRTADS for detailed inquiry. Notices were issued to the appellant and the third respondent by the Vigilance Officer and on finalization of the inquiry, he submitted the report to the Government. The Government referred the issue to the Scrutiny Committee. The Committee felt that detailed inquiry was necessary which was conducted by the Vigilance Officer and the

A final report was submitted. The Committee, on the basis of the evidence reached the conclusion that the appellant was not Hindu Pulayan and did not belong to Scheduled Caste. She never followed Hinduism nor lived in Hindu cultural milieu. The Scrutiny Committee by its order, dated September 22, 2001, held that the appellant did not belong to Scheduled Caste.

B According to the Committee, the appellant was born to Christian parents and she had never been converted to Hinduism nor professed Hinduism. She was not accepted as a member of Hindu Pulayan, Scheduled Caste Community. She, therefore, could not claim the status of Hindu Pulayan, Scheduled Caste Community. A recommendation was, therefore, made by the Committee to take action for canceling the certificate granted in favour of the appellant.

C It appears that against the decision of September 22, 2001 by the Scrutiny Committee rejecting the claim of the appellant, an appeal being MFA No. 1303 of 2001 was preferred by the appellant. The High Court set aside the order of the Committee on December 4, 2002 observing that the constitution of the Committee was not as per the decision of this Court in *Kumari Madhuri Patil and Anr. v. Additional Commissioner, Tribal Development and Ors.*, [1994] 6 SCC 241. The High Court observed that after the decision in *Kumari Madhuri Patil*, the Legislature of Kerala enacted Act 11 of 1996 and constituted a Committee on April 20, 2002 under Section 8 of the Act. Since the Committee, which considered the case of the appellant had not been constituted in accordance with law, it had no jurisdiction to pass the order or to make recommendation. The recommendation was, therefore, liable to be set aside. A direction was issued by the High Court to the Committee constituted under the Act to consider the matter after hearing the parties on the basis of the evidence and material and to pass final order. The appeal was accordingly allowed.

D In the light of the directions of the High Court, the Committee constituted under the Act considered the case of the appellant. It issued notices to the parties and applied its mind on the status of the appellant as to whether she belonged to Scheduled Caste. The Scrutiny Committee considered several documents which were before it and on the basis of such evidence came to the conclusion that the appellant did not belong to High Pulayan Community—Scheduled Caste. Her claim, therefore, could not be upheld. The Committee constituted under the Act went through the report, statements recorded during the course of enquiry and also documentary evidence. According to the Committee, the enquiry report ‘conclusively’ proved that the claimant’s mother

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Saramma @ Ponnamma was a born Christian and died also as a Christian. The appellatant was, therefore, a born Christian. It further found that the caste entries of the appellatant showing to be Hindu Pulayan—Scheduled Caste have been obtained fraudulently by misrepresenting facts with a view to corner benefits as a member of Scheduled Caste. The appellatant, however, was a Christian. The appellatant's children were also participating actively in Baptist Church, Thannithode. The Committee found that though the appellatant professed Christian religion and never followed Hinduism nor lived in Hindu culture, she declared herself to be Pulayan Hindu and styled herself as a member of Scheduled Caste falsely. It was a deliberate attempt on her part to conceal her true identity. The Committee noted that under Section 9 of the Act, the report of the Expert Agency was 'conclusive' proof for or against the claimant and under Section 10 of the Act, burden of proof that the claimant belonged to Scheduled Caste or Schedule Tribe was on the person claiming the benefit of such caste or tribe. Since all materials went to show that the appellatant was Christian and did not belong to Scheduled Caste Community, she was not entitled to benefits as a member of Hindu Scheduled Caste. She has been born and brought up as Christian. She continued and remained as Christian. She had never been converted to Hinduism. She was not accepted as a member of Hindu Pulayan Community of Schedule Caste. The Committee, therefore, cancelled the certificate of the appellatant as belonged to Scheduled Caste Community. The Committee also forwarded the copy of the report and proceedings to the Government for taking appropriate consequential action.

In accordance with the provisions of the Act, the appellatant preferred an appeal in the High Court of Kerala at Ernakulam under Section 12 of the Act. The Division Bench of the High Court again considered the relevant evidence produced before the Scrutiny Committee and the reasons recorded by the Committee and held that the Committee was justified in negating the claim of the appellatant. The High Court also observed that it was satisfied that the appellatant could not substantiate her claim that she belonged to Scheduled Caste. Accordingly, the appeal was dismissed.

Being aggrieved by those orders, the appellatant as approached this Court. Leave was granted. Parties were given liberty to file affidavit and further affidavit and also to produce additional documents. Hearing was expedited. We have heard learned counsel for the parties.

The learned counsel for the appellatant contended that the parents of the

- A appellant belonged to Hindu Pulayan Community—Scheduled Caste, at the time of their marriage as well as at the time of birth of the appellant. In the light of the said circumstance, the burden could not have been cast on the appellant to prove that she belonged to Scheduled Caste Hindu Community. The committee as well as the High Court ought to have considered whether
- B respondent No. 3 was able to prove that the appellant converted herself to Christianity. As there was nothing to show that the appellant was converted to Christianity, her claim that she was Hindu Pulayan - Scheduled Caste was well founded and the certificate could not have been cancelled. Alternatively, it was contended by the learned counsel that even if it is assumed that she had married to a Christian, such marriage with non-Hindu male was not
- C sufficient to prove conversion and she would continue to enjoy all the benefits as a member of Scheduled Caste. Reference was made by the learned counsel to certain decisions of this Court in *Kailash Sonkar v. Smt. Maya Devi*, [1984] 2 SCC 91; *Principal, Guntur Medical College, Guntur and Ors. v. Y. Mohan Rao*, [1976] 3 SCC 411 and *C.M. Arumugam v. S. Rajgopal and Ors.*, [1976] 1 SCC 863. Reference was also made to *State of Kerala and Anr. v. Chandramohanan*, [2004] 3 SCC 429 and *E.V. Chinnaiah v. State of A.P. and Ors.*, [2005] 1 SCC 394.

- The learned counsel for the respondents, on the other hand, supported the order passed by the Scrutiny Committee and confirmed by the High
- E Court. It was submitted that all the findings recorded by the Scrutiny Committee and confirmed by the High Court were findings of fact. On the basis of the documentary evidence and material on record, the Scrutiny Committee considered the case and by observing principles of natural justice and fair play and having gone through the report of the Expert Agency and after application of mind, it came to the conclusion that it was proved that
- F the appellant was born and brought up as Christian and she had all through out continued to remain as Christian and never believed or professed Hinduism. She had put forward her claim as Hindu Pulayan—Scheduled Caste only with a view to get undeserving benefits and since she was not entailed to such benefits as she was Christian and there was no proof that she was reconverted
- G to Hinduism, that certificate was liable to be cancelled and accordingly the action was taken. The counsel also submitted that the Caste Scrutiny Committee as well as the High Court were right in relying upon Sections 9 and 10 of the Act and as burden was not discharged by the appellant, the action taken against her could not be said to be illegal, unlawful or otherwise objectionable. The sole question raised by the 3rd Respondent related to false and fraudulent
- H claim put forward by the appellant and for cancellation of caste certificate.

The only remedy available for such dispute was to file a complaint under the Act which had been done and no fault can be found against the orders passed by the Scrutiny Committee and the High Court. It was, therefore, prayed that the appeal deserves to be dismissed. A

Having heard the learned counsel for the parties, in our opinion, no case has been made out to interfere with the order passed by the Scrutiny Committee and confirmed by the High Court. We are clearly of the view that the Caste Scrutiny Committee considered the case of the appellant and her assertion that she belonged to Hindu Pulayan Community—Scheduled Caste and on the basis of report of the Expert Agency and considering the relevant record rightly negated such claim. A finding of fact has been recorded that the appellant was born and brought up as a Christian and she continued to remain as Christian. She was never accepted by Hindu Pulayan Community—Scheduled Caste as a member of the Community. She never followed Hinduism nor lived in Hindu Milieu. B C

In our opinion, the submission of the learned counsel for Respondent No. 3 is well founded that such a finding cannot be assailed in this Court under Article 136 of the Constitution. By no stretch of imagination, it can be said that the finding is based on 'no evidence' or is arbitrary or perverse. To us, the provisions of the Act are clear and unambiguous. They provide procedure for an enquiry by Expert Agency and the report by such agency is 'conclusive' proof by or against the person reported upon. Section 10 casts burden of proof on the person claiming the status of Scheduled Caste or Scheduled Tribe. D E

In the instant case, it is the appellant who claimed to belong to Scheduled Caste. In view of the finding of fact recorded against her that she was born and brought up as Christian, the caste certificate was ordered to be cancelled. In view of the said finding, it is immaterial that she had obtained a certificate showing her caste to be Hindu Pulayan—Scheduled Caste. If her case was that she was re-converted in Hinduism, it was for her to put forward such claim and to prove it in accordance with law. In our opinion, Section 10 is clear and expressly enacts that when a person claims to be a member of Scheduled Caste or Scheduled Tribe, burden of proof that he or she belongs to such caste or tribe is on him/her. Since the appellant was born as a Christian and continued to remain as Christian, the order passed by the Scrutiny Committee canceling the appellant's certificate and confirmed by the High Court cannot be said to be illegal and no interference is called for. F G H

A The learned counsel for the respondents are also right in contending that the controversy in the present proceedings was as to whether the appellant belonged to Hindu Pulayan—Scheduled Caste or not. Such a claim could only be decided in the light of the relevant statutory provisions of the Act and hence the proceedings initiated by the 3rd Respondent were proper and in consonance with law. Similarly, the enquiry which has been made was also

B legal and proper. The Caste Scrutiny Committee considered the claim of the appellant and decided the compliant of Respondent No.3 by invalidating and canceling the certificate of the appellant. It was also according to law and no illegality has been committed. The proceedings before the Committee were legal, valid and lawful and the certificate was rightly cancelled. The appellant

C approached the High Court by invoking the appellate jurisdiction under the Act and the High Court again considered the relevant material, evidence and the findings recorded by the Caste Scrutiny Committee and confirmed them.

If the appellant had to suffer because of the finding recorded by the Scrutiny Committee and confirmed by the High Court in accordance with

D law, she cannot make complaint inasmuch as such consequences would ensue in view of the order passed against the appellant. The respondent rightly relied upon on Sections 16, 17 and 26 of the Act. Section 16 provides for withdrawal of benefits secured by a person on the basis of false community certificate. Section 17 is a penal provision and prescribes punishment for securing an appointment or election to local bodies on the basis of false

E community certificate. Section 26 gives overriding effect of the Act over other laws.

As late as on September 2, 2005, the appellant filed I.A. No. 2 permitting him to raise additional grounds. Apart from relying on certain decisions of

F this Court, the appellant sought leave to raise the contention that in view of Article 243-O of the Constitution and Section 153(14) of the Kerala Panchayat Raj Act, 1994, it was not open to the respondent Nos. 1, 2 and 4 to enquire into eligibility or status of the appellant. It was also contended that the only remedy available to respondent No. 3 was to file an election petition. The counsel submitted that the order passed by the Scrutiny Committee for

G verification of community certificates and confirmed by the High Court requires to be set aside on these additional grounds also.

The learned counsel for the respondents objected to the application submitted by the appellant at this stage. It was stated that these grounds were

H neither taken before the Scrutiny Committee nor before the High Court. At

this stage, such new plea should not be allowed to be raised. Even otherwise, the appellant is not right in relying on Article 243-O of the Constitution or Section 153(14) of the Kerala Panchayat Raj Act as they do not apply to the present case. According to the respondents, the order passed by the Scrutiny Committee was legal, lawful and in accordance with law, which was confirmed by the High Court and this Court is considering whether those orders are in consonance with law. A B

From the orders impugned, it is clear that the plea sought to be taken by the appellant now was never taken earlier. There is, therefore, no pleading on the point, nor finding recorded on such plea. We are *prima facie* of the view that learned counsel for the respondents are right in submitting that the issue was whether the appellant belonged to Hindu Pulayan Community, Scheduled Tribe? Once it is held that she did not belong to Scheduled Tribe, the action of cancellation of certificate could not be held illegal. Consequential actions can be taken thereafter in pursuance of cancellation of caste certificate. C

In the facts and circumstances of the case, however, it is not necessary to deal with the contention sought to be raised by the appellant since it was never raised earlier. The application, accordingly, stands disposed of without expressing final opinion on applicability or otherwise of Article 243-O of the Constitution or Section 153(14) of the Kerala Panchayat Raj Act, 1994. D

Since, we are of the view that the findings recorded by the Scrutiny Committee and confirmed by the High Court cannot be said to be contrary to law or based on 'no evidence' or otherwise objectionable, the grievance of the appellant is ill-founded and no relief can be granted to her. E

For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs. F

B.S.

Appeal dismissed.