

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/401/2017

DATED THIS THE 22ND DAY OF JULY, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Bharathi Vigneshwar Moger,
Do Vigneshwar Moger,
Aged about 28 years,
Resident of Belni
Via Mavinakurve
Bhatkal Post,
Karwar District

...Applicant

(By Advocate Shri B.S. Venkatesh Kumar)

Vs.

1. Union of India
Rep. by the Secretary,
Department of Posts,
Ministry of Communications & Information Technology,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Post Master General,
Karnataka Circle,
Palace Road,
Bengaluru-560 001.
3. The Post Master General,
South Karnataka Region,
2nd Floor, GPO Building,
Bengaluru-560 001.
4. The Supdt of Post Offices,
Udupi Division, Udupi.
5. The Additional Director General of Police,
Directorate of Civil Rights Enforcement
Thanthrika Shikshana Bhavana,
Palace Road,
Bengaluru-560 001..

6. The Uttara Kannada District
Caste Verification Committee, Karwar,
By its Chairman the Deputy Commissioner,
Uttara Kannada District, Karwar.
7. The Tahasildar,
Bhatkal -581 320. ...Respondents

(By Standing Counsel Shri Vishnu Bhat, for Respondents)

O R D E R (ORAL)

HON'BLE DR.K.B.SURESH ...**MEMBER(J)**

Positive discrimination which explains Article 14(vi) and 16(vi) of Constitution of India seems to be the issue. The applicant claims that he belongs to a particular community which apparently has two elements in it. Moger who are the Fishermen and Moger the Rabbit catchers exist. Karnataka Government in their wisdom had pointed it out has a distinction between them and held that Fishermen as a rule everywhere belong to other backward case, whereas Rabbit catchers, because of fundamentally by profession, and we note wherever they existed, were deemed to be belonging to SC.

2. The question in a nutshell is only this, whether having similarity in name can be said to be indicative of similarity in nature in the nature of their profession, which was handed out to them. Hon'ble Apex Court had held that even if it were to be equated, that there is a clash between either of the two as fundamental rights are two elements of one single fundamental rights. Right which would advance the public morality or public interest would alone be enforced through the process of Court, for the reason that moral considerations cannot be at bay and the Judges cannot be expected to sit mute as held by Hon'ble Apex Court in X vs. Hospital YZ reported in AIR 1999 SC(4) 495.

3. This matter comprises two elements

- (1) Whether reservation is applicable to all Moger cutting across geographical boundaries.
- (2) Who is the actual Moger intended by the Act? The Fisherman Moger or the Rabbit Catcher Moger? As these are apparently distinct and different communities.

4. The first element is covered by two judgments of the Hon'ble High Court.

We quote from W.P.No. 43169/2002 dated 30.11.2004:

"O R D E R

Per S.R. NAYAK J.,

Sri Shashi Kumar Kittur, claiming to be the President of Karnataka State Rajya Samagar (Chamar) Karalya Samaj Veidke Forum, the headquarters of which is situated at Belgaum, claiming to be a pro bone public character has filed this Writ Petition under Arts. 226 and 227 of the Constitution of India to espouse the public cause. It is alleged that in terms of the President's order, the Scheduled Castes & Scheduled Tribes Orders (Amendment) Act, 1976, (for short 'the Act'), only those persons belonging to 'Moger' community in the District of undivided South Canara and Kollegal taluk, are regarded as Scheduled Caste and not the persons belonging to 'Moger' community residing in other parts of the State of Karnataka. It is alleged that thousands of certificates have been issued to persons belonging to 'Moger' caste in the Uttara Kannada District certifying that they belong to Scheduled Caste and they are making use of those certificates for getting employment under the State and admission to Government Schools and Colleges. According to the petitioner, this particular action of the State authorities in granting certificates to those 'Moger' caste who are residents of Uttara Kannada District is unauthorised and illegal. Therefore, the petitioner has sought for a discretion to the Commissioner of Social Welfare- respondent No.2 to consider the representation made by him and take necessary steps to cancel the certificate issued to the persons belonging to 'Moger' caste of Uttara Kannada District. This Court in a number of pronouncements has held that persons belonging to 'Moger' caste in any part of the State of Karnataka are entitled to seek certificates to the effect that they belong to Scheduled Caste, in the absence of any area restriction. This Court in Mohandas Shivaray Shiroor –vs- The District Election Officer & others, has held that the persons belonging to 'Moger' community are entitled to seek certificates as belonging to Scheduled Caste. The above view of the learned Single Judge was affirmed by a Division Bench also. Although right to be considered can be enforced by issuing mandamus, the person who moves the application for such

mandamus, should establish that he has a right to be considered in terms of law. The 2ndn respondent is not the authority to appreciate the grievance of the petitioner. If the State Government or the petitioner is of the opinion that inclusion of 'Moger' caste of Uttara Kannada District in the category of Scheduled Caste is unjustified on merit, it is for them to move the Government of India and seek amendment of the law. So long as the Presidential order stands and operates, that should be given effect to and the petitioner cannot have any legitimate grievance against it.

2. The prayer made in the writ petition is misconceived. Be that as it may, the certificates issued to persons belonging to 'Moger' community of Uttara Kannada District cannot be faulted in as much as the President's order does not restrict the reservation only to those persons belonging to 'Moger' caste who are residents of undivided Dakshina Kannada District and Kollegal Taluk. In that view of the matter, we are not inclined to entertain the writ petition.

3. Writ Petition is, therefore, dismissed. No costs".

5. We also quote from judgment in WP.No.11756/2010 dated 29.06.2011:

"O R D E R

J.S. KHEHAR, C.J (Oral)

The question that arises for consideration in the present writ petition is. Whether the 'Moger' caste in the State of Karnataka is a scheduled caste. If the answer to the aforesaid query is in the affirmative, whether the aforesaid status of being a scheduled caste is available to the entire Moger caste, irrespective of the place of residence of the community in Karnataka, or whether it is limited to Mogers of South Kanara District or Kollegal Taluk of Chamarajanagar District?

2. In order to determine the aforesaid issue, first and foremost reference must be made to Article 341 of the Constitution of India, Article 341 is accordingly being extracted hereunder:-

341. Scheduled Castes:-

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

A perusal of the aforesaid provision leaves no room for any doubt, that in the first instance, it was the original President Order, by

which different castes came to be identified and declared as scheduled castes. The aforesaid order was to be State/Union-territory specific. The original Presidential Order was issued on 10.08.1950. At that juncture, the State of Karnataka had not yet come into existence, and accordingly, there is no question of any reference to the Presidential Order dated 10.08.1950, so as to determine an answer to the query posed in the foregoing paragraph.

3. Article 341(2) of the Constitution of India enunciates that after the original Presidential Order was issued under Article 341(1), it was only the Parliament, which had the authority to exclude or include, from the list of scheduled castes, notified by the Presidential Order. The authority to include a caste in the list of scheduled castes, or for the exclusion of an existing caste therefrom therefore, came to be vested exclusively in the Parliament after 10.08.1950.

4. Consequent upon the re-organisation of states, the State of Karnataka came into existence with effect from 01.01.1956. Originally, it was described as the State of Mysore. However, subsequently it was renamed as the State of Karnataka in 1973.

5. In exercise of the powers conferred under Article 341(2) of the Constitution of India, the Parliament enacted the Scheduled Castes and Schedules Tribes Orders (Amendment) Act, 1976. The aforesaid enactment was made enforceable, with effect from 27.07.1977. In the revised list of schedules castes, part VII of the schedule appended to the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 is earmarked to the state of Karnataka. In part VII of the aforesaid schedule Sl. No.78, reference is made to the Moger caste. Therefore, there is no room for any doubt, that 'Moger' caste for the State of Karnataka, is indeed a scheduled caste. The first query posed by us has therefore to be answered in the affirmative, in as much as, in terms of the provisions contained in the Constitution of India and on account of the enactment of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, Moger caste is indeed a schedules caste for the State of Karnataka.

6. The next issue to be determined is, whether or not, persons belonging to the Moger caste, residing throughout the State of Karnataka, are to be treated as scheduled castes, or whether it is to be limited to only those who belong to the Dakshina Kannada District and Kollegal Taluk of Chamarajanagar District. Insofar as the instant aspect of the matter is concerned, reference may be made to the statement of objects and reasons, recorded in the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. The same is being extracted hereunder:

"STATEMENT OF OBJECTS AND REASONS

Under the Scheduled Castes and Scheduled Tribes Orders some communities have been specified as Scheduled Castes or Scheduled Tribes only in certain areas of the State concerned and not in respect of the whole State. This has been causing difficulties to members of these communities in the areas where they have not been so specified. The present Bill generally seeks to remove these areas restrictions. However, in cases where continuance of such restrictions were

specifically recommended by the Joint Committee on the Scheduled Castes and Scheduled Tribes Order (Amendment) Bill, 1976, no change is being effected. The Committee had also recommended exclusion of certain communities from the list of Scheduled Castes and Scheduled Tribes. These exclusion are not being made at present and such communities are being retained in the lists with the present area restrictions. Such of the communities in respect of which the Joint Committee had recommended exclusion on the ground that they were not found in a State are, however being excluded if there were no returns in respect of these communities in the censuses of 1961 and 1971.”

The state of objects and reasons, leaves no room for any doubt, that Moger caste, which has been included at Serial No.78 in part VII of the Schedule appended to the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, must necessarily be treated as a scheduled caste for the entire State of Karnataka as part VII (keeping in mind the statement of objects and reasons) does not confine its applicability to a certain restricted area. The inclusion of the Moger caste as the Scheduled Caste in part VII of the and Schedule must therefore relate to the entire State of Karnataka, and cannot be limited to the areas of Dakkshina Kannada District and Kollegal Taluk of Chamarajanagar District. The aforesaid inference is also inevitable from a reading of the entry at Serial No.78 in conjunction with the entry at Serial No.13 in part VII of the schedule, referred to hereabove. The aforesaid two entries have been extracted hereunder:

“Part VII- Karnataka

13.Bant (in Belgaum, Bijapur, Dharwad and North Kanara districts)
78. Moger”

A perusal of the entry at Serial no.13 of the same list, wherein the Moger caste is mentioned at Serial no.78 reveals, that the “Bant” caste is specifically limited to the residents of the areas of Belgaum, Bijapur, Dharwar and North Kanara Districts. Whereas, there is no such similar restrictions for the “Moger” caste, referred to at Serial no.78. In view of the above, we have no hesitation whatsoever in concluding, that the Moger caste has to be treated as a scheduled caste for the entire State of Karnataka, irrespective of the place of residence of the members thereof. In view of the above, the recommendations made to the contrary, to the State Government are not in consonance with law.

7.In view of the above, we hereby direct the State Government to issue a circular to all concerned officers dealing with the grant of scheduled caste certificates in the entire State of Karnataka to ensure compliance of the conclusion recorded hereinabove. A perusal of the pleadings in the writ petition reveal, that members of the Moger Caste have to struggle extreme hardship to procure scheduled caste certificates. Any such hardship caused to the Moger Community, merely on the premise that the Moger caste is not a scheduled caste for the entire State of Karnataka, would hereafter be a matter of serious concern. The instant writ petition stand allowed in the aforesaid terms.

In view of the disposal of the main writ petition, Misc. W.No.8440/2010 and 111820/2010 do not survive for consideration and stand disposed of.”

6. Therefore, we need now to examine the reasons for protective discrimination. It is correct that centuries of oppression has led to a situation of social engineering, whereby millions were held down in the yoke of prejudice and hardship. To alleviate that, with the constitutional process of India , it was decided by the Assembly that we will have a sort of protective discrimination which will create an equal platform for all. But at the same time Hon'ble Apex Court has held that uncanalised discretion vested in an administrative authority is not permissible as decided in Delhi Transport Corporation vs. Mazdoor Congress reported in AIR 1991 SC 101. Therefore, it is clear that protective discrimination granted must be within certain reasonable parameters which will advance social engineering in correct sense of the term.

7. The applicant submits that he belongs to a community of Moger, which is included at SI.No.78 in the Schedule to the SC and ST (Amendment Act 1976) in respect of Karnataka State.

8. Apparently, the applicant had obtained a caste certificate from the Tahsildar after furnishing necessary information. The Tahsildar being the Revenue authority, has apparently conducted necessary enquiry and after satisfying himself has issued the caste certificate. The applicant also had taken up in WP.No.43169/2002, which was filed against a person of Moger caste in Uttara Kannada seeking permission of the authority to initiate action and cancel the caste certificate issued to them. Apparently the Division Bench after hearing both sides was pleased to dismiss the Writ Petition and held that the certificates issued to persons belonging to Moger community of Uttara Kannada District

cannot be faulted in as much as the President's order does not restrict the reservation only to those persons belonging to Moger caste who are residents of undivided Dakshina Kannada District and Kollegal Taluk. Thus indicating that it is not geographical constraints that must determine the issue.

9. It appears that in W.P.No.11756/2010 filed in High Court of Karnataka in the form of Public Interest Litigation, which came to be allowed. Thereafter the Government of Karnataka filed an SLP.No.36462/2011 on 07.04.2017 the Hon'ble Supreme Court was pleased to request the National Commission for Scheduled Caste and Scheduled Tribe to decide the claim of the applicant herein of Scheduled Caste status and send its report. Apparently, the National Commission had submitted its report, following which the W.P. No.1176/2010 was disposed off.

10. But the State of Karnataka points out that the issue which is germane here has not been dealt with by both the Benches. The issue was whether the Moger who are Rabbit Catchers and Moger the Fishermen are the same.

11. The State Government had filed the reply stating that on two grounds applicants submission made should be held to be non-est (1) after the competent authority, after pertinent significant reasons, removed one element or one caste as it is, from the purview of SC or ST (2) if by conversion to another religion, the oppression or suppression sub served by a particular person in the community as a whole had been removed. They would say that then the matter has to be taken up in reference to Annexure R-4, which we quote:

*D.V. File No. SWR/RRC/564/E.N.No 2/2010
To Jayant Vasant Moger,
Bhatkal.
Control No:
Sub: Document Verification.*

You have attended Document Verification on 12.12.2012 without producing recent SC Certificate. As requested by you 10/15 days time

has been given to you to produce the same. If you do not produce it by 31.12.2012 your candidate will not be considered further.

Please note:

Asst. Personnel Officer/Rectt.)
Railway Recruitment Cell,
South Western Railway, Hubli.

12. They would say that even though the applicant had been qualified in the written examination, he has produced a SC certificate and was taken for appointment. But when required for recent caste certificate, since he did not produce the SC certificate, he could not be appointed.

13. Therefore the question is not whether Moger as such can be considered as SC or not. The question is whether a similarity of nomenclature, called Moger will automatically will be extended to all persons, who claim in the same name. This particularly relates to when we consider that protective discrimination granted by Constitutional process is all an exemption as in the case of all exemption must be on the basis of specificities. There cannot be a general methodology read into this. When an administrative action is *prima facie* unreasonable because there is no desirable principle is justified in shifting the burden to the state to show that the impugned decision is informed decision and in such a case, if reasons are not accorded, the decision will be a strict violation of Article 14 of the Constitution of India as held by the Hon'ble Apex Court in *Kumari Srulekha Vidyarthi & ors vs. State of Uttarpradesh & ors, 1991 (1) SCC 212.*

14. Therefore, what is reasonableness in the decision of the State Government in relation to this distinction in the status of Moger Fishermen and Moger Rabbit Catchers? We had gone through both the High Court Judgments to find out whether

distinction has been answered. Therefore, this is the most crucial question to be answered first of all. Without answering this question, there cannot be a decision in this matter.

15. We will therefore direct the Chief Secretary, Government of Karnataka to send the matter for further consideration for the appropriate authority under constitutional process to have a decision taken on whether both these elements of the community can be said to be the same on the following grounds:

1. **Are there the inter-marriage between the Rabbit Catcher Moger and Fishermen Moger.**
2. **Are both the elements of the community living as one particular group vide their social interaction and accepted in the society as a whole.**
3. **Are there distinction between these two, which disentitle them to be considered as one single community.**

16. All these matters shall be looked into by the concerned authority within 2 months next and appropriate orders issued after giving an opportunity to be heard in the matter. Following the decision of the authority, appropriate certificate can be issued or rejected as the case may be.

OA disposed of. No costs.

17. But in this case, there is another element also. Apparently under Rule 5, an order has been passed. But then that is also a super technical issue. As the applicant also admits that he obtained the employment by protective discrimination umbrella. Then whether or not he is a Moger, will be determined.

This case also will therefore be submitted to the Chief Secretary to be sent to the concerned authority for a decision to be taken. Without doubt the applicant should be heard in the matter, following this appropriate order will be issued by the State Government.

18. At this point Shri B.S. Venkatesh Kumar, learned counsel for the applicant submits that there seems to be district-wise determination also. He says that in this case that may not survive constitutional scrutiny. The concerned authority shall look into this aspect also before passing an order.

OA disposed off. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred to by the Applicant in O.A. No. 401/2017

Annexure-A1: Caste certificate of the applicant
Annexure-A1A: English translation of Annexure A1.
Annexure-A2: Caste certificate of the father of the applicant .
Annexure-A3: Caste certificate of brother of the applicant.
Annexure-3A English translation of Annexure A3.
Annexure-A4: Appointment order of the applicant dated 12.9.2014.
Annexure-A5: Letter of 5th respondent dated 11.7.2016.
Annexure-A5A: English translation of Annexure A5.
Annexure-A6: Resolution dated 28.1.2017.
Annexure-A6A: English translation of Annexure A6.
Annexure-A7: Letter dated 1.3.2017 cancelling the caste certificate.
Annexure-A7A: English translation of Annexure A7.
Annexure-A8: Termination order dated 5.4.2017 passed by R4.
Annexure-A9: Judgment passed by High Court in WP.No.43169/2002 dated 30.11.2004.
Annexure-A10: Judgment passed by High Court in WP.No.11756/2010 dated 20.6.2011.

Annexures with reply statement

Annexure-R1: Letter dated 21.02.2017 to Tahasildar, Bhatkal.
