

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 8TH DAY OF DECEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.48624 OF 2016(GM-RES)

R

BETWEEN:

CODAVA NATIONAL COUNCIL,
PB # 12, MADIKERI - 571 201
KODAGU DISTRICT,
KARNATAKA STATE.
REPRESENTED BY ITS PRESIDENT
SRI N U NACHAPA CODAVA.

... PETITIONER

(BY SRI.B A BELLIAPPA, ADVOCATE)

AND:

1. THE CHIEF SECRETARY
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA, BANGALORE - 01.
2. THE DEPARTMENT OF SOCIAL WELFARE
VIDHANA SOUDHA,
BANGALORE - 01.
BY ITS SECRETARY.
3. THE KARNATAKA STATE COMMISSION
FOR BACKWARD CLASS
NO. 16, 2ND FLOOR. DR DEVARAJ URS BHAVAN,
MILLERS ROAD, TNAK BED AREA,
3RD CROSS, VASANTH NAGAR,
BANGALORE - 01.
4. DEPARTMENT OF BACKWARD CLASS
BY ITS SECRETARY, VIDHANA SOUDHA,
BANGALORE - 560 001.
(AMENDED V.C.O DATED 14/07/2021)

... RESPONDENTS

(BY SRI.B V KRISHNA, AGA FOR R1, R3& R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 14.10.2015 PASSED BY R-1 AT ANNEX-F.

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner, an un-incorporated association of individuals belonging to Kodava community of Coorg is knocking at the doors of Writ Court grieving against the order dated 14.10.2015 at Annexure-F in the WP as originally filed and another order dated 30.9.2021 at Annexure-G in amended WP made by the State Govt. whereby the interim recommendation of the Karnataka State Backward Commission, (hereafter 'Commission') has been rejected; by virtue of this rejection, certain benefits of reservation which otherwise would have availed to this community have been denied.

2. It is pertinent to reproduce the 2010 recommendation of the Commission and the two Govt. Orders whereby the same is not accepted:

(i) The advice contained in the 2010 recommendation of the Commission in the vernacular reads as under:

“ಸಲಹೆ

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಆಯೋಗದ ಅಧಿನಿಯಮ 1995 ರ ಪರಿಚ್ಛೇದ 9(1)ರಲ್ಲಿ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರದಂತೆ ಶ್ರೀ ಎನ್.ಯು. ನಾಚಪ್ಪ ಕೊಡವ, ಅಧ್ಯಕ್ಷರು, ಕೊಡವ ನ್ಯಾಷನಲ್ ಕೌನ್ಸಿಲ್, ಮಡಿಕೇರಿ ಹಾಗೂ ಶ್ರೀ ಮಂಡೇಡಿ ರವಿ ಉತ್ತಪ್ಪ, ಗೌರವ ಕಾರ್ಯದರ್ಶಿ, ಕೊಡವ ಸಮಾಜ, ಬೆಂಗಳೂರು ರವರು ಸಲ್ಲಿಸಿರುವ ಮನವಿಯಂತೆ ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ:ಸ.ಕ.ಇ/225/ಬಿ.ಸಿ.ಎ/2000 ದಿನಾಂಕ:30.03.2002 ರ ಪ್ರವರ್ಗ -3(ಎ) ಕ್ರಮ ಸಂಖ್ಯೆ: 2ರಲ್ಲಿ ‘ಕೊಡಗರು’ ಎಂಬ ಪದವನ್ನು ತೆಗೆದು ಹಾಕಿ ‘ಕೊಡವ’ ಮತ್ತು ‘ಕೊಡವರು’ ಎಂದು ಸೇರಿಸಬಹುದಾಗಿದೆ. ಅಂತೆಯೇ, ಇಂಗ್ಲಿಷ್ ಪಟ್ಟಿಯಲ್ಲಿ ಸದರಿ ಕ್ರಮ ಸಂಖ್ಯೆಯಲ್ಲಿ ‘ಏರಜಚಿರಚಿಡಿಣ’ ಎನ್ನುವುದನ್ನು ತೆಗೆದು ‘ಅರಜಚಿರಚಿ’, ‘ಅರಜಚಿರಚಿಡಿಣ’, ‘ಏರಜಚಿರಚಿ’ ಹಾಗೂ ‘ಏರಜಚಿರಚಿಡಿಣ’ ಎಂದು ಸೇರಿಸಬೇಕೆಂದು ಆಯೋಗವು ಕರ್ನಾಟಕ ಸರ್ಕಾರಕ್ಕೆ ಸಲಹೆ ನೀಡುತ್ತದೆ.”

(ii) The Govt. order dated 14.10.2015 at Annexure-F reads as under:

“ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಆಯೋಗದ ಅಧ್ಯಕ್ಷರುಗಳಾದ ಮಾನ್ಯ ಶ್ರೀ ಸಿದ್ದಗಂಗಯ್ಯ ಇವರ ಮಧ್ಯಂತರ ವರದಿ 2005 ಹಾಗೂ ಡಾ. ಸಿ.ಎಸ್. ದ್ವಾರಕನಾಥ್ ಇವರ ವಿಶೇಷ ವರದಿ 2010ರಲ್ಲಿ ಹಿಂದುಳಿದ ಜಾತಿಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನೀಡಲಾದ ಸಲಹೆ, ಶಿಫಾರಸ್ಸುಗಳ ಬಗ್ಗೆ ಸರ್ಕಾರದ ತೀರ್ಮಾನದ ಪತ್ರ ಹಾಗೂ ಪಟ್ಟಿಯನ್ನು ಉಲ್ಲೇಖ (1)ರ ಪತ್ರದಲ್ಲಿ ಅಗತ್ಯ ಕ್ರಮ ಕೈಗೊಳ್ಳಲು, ಕರ್ನಾಟಕ ರಾಜ್ಯ ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಆಯೋಗದ ಸದಸ್ಯ ಕಾರ್ಯದರ್ಶಿಯವರಿಗೆ ಬರೆಯಲಾಗಿದೆ. ಆದರೆ, ಸದರಿ ಶಿಫಾರಸ್ಸುಗಳನ್ನು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಅನುಮೋದನೆ ಆಗದೇ ಇರುವುದರಿಂದ ಸದರಿ ಪತ್ರ ಹಾಗೂ ಪಟ್ಟಿಯನ್ನು ಸರ್ಕಾರವು ಹಿಂಪಡಿದಿರುತ್ತದೆಂದು ತಮಗೆ ತಿಳಿಸಲು ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿದ್ದೇನೆ.”

(iii) The Govt. Order dated 30.9.2021 at Annexure-G reads as under:

“ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ: ಹಿಂವಕ 04 ಬಿ.ಸಿ.ಎ 2021, ಬೆಂಗಳೂರು, ದಿನಾಂಕ:30.09.2021.

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಲಾದ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಶ್ರೀ ಸಿದ್ದಗಂಗಯ್ಯ ಇವರ ಮಧ್ಯಂತರ ವರದಿ 2005 ಹಾಗೂ ಡಾ.ಸಿ.ಎಸ್.ದ್ವಾರಕನಾಥ್

ಇವರ ವಿಶೇಷ ವರದಿ 2010ರಲ್ಲಿ ಹಿಂದುಳಿದ ಜಾತಿಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ನೀಡಲಾದ ಸಲಹೆ, ಶಿಫಾರಸ್ಸುಗಳು ಸಕ್ಷಮ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಅನುಮೋದನೆ ಆಗದೇ ಇದ್ದುದರಿಂದ ಈ ಹಿಂದೆ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಹಿಂದುಳಿದ ವರ್ಗಗಳ ಅಯೋಗಕ್ಕೆ ಬರೆಯಲಾಗಿದ್ದ ಸರ್ಕಾರದ ಪತ್ರ ಸಂ:ಸಕಿ 212 ಬಿಸಿಎ 2010, ದಿನಾಂಕ:17.12.2011ನ್ನು ಸರ್ಕಾರದ ಪತ್ರ ಸಂಖ್ಯೆ: ಹಿಂವಕ 332 ಬಿಸಿಎ 2015, ದಿನಾಂಕ:14.10.2015ರ ಪತ್ರದಲ್ಲಿ ಹಿಂಪಡೆಯಲಾಗಿದ್ದನ್ನು ಸರ್ಕಾರ ಸ್ಥಿರೀಕರಿಸಿ ಆದೇಶಿಸಿದೆ.”

3. After service of notice, the respondents have entered appearance through the learned AGA; a Co-ordinate Bench of this Court vide interim order dated 18.08.2021 having found the impugned order of 2015 being prima facie unsustainable, had directed the Government to reconsider the recommendation of the Commission, keeping the petition pending; accordingly the recommendation having been “reconsidered”, the Government has passed the second order on 30.09.2021 reiterating the earlier one; therefore, petitioner filed the subject application seeking leave to amend the writ petition for laying a challenge to this order as well; no objections are filed either to the Writ Petition or to the amendment application; the leave to amend as sought for needs to be & accordingly is granted in view of this *pendente lite* development which has indisputably a bearing on the *lis*.

4. This six year old Writ Petition is taken up for final hearing with the consent of both the sides; learned AGA appearing for the respondents vehemently opposes the writ petition contending that: although the Commission is a statutory body, its recommendations *proprio vigor* do not bind the Government; the very essence of “recommendation” or “advice” involves 'discretion to disagree' with the same; in support of this submission he heavily banks upon the text of Sec.9(2) of Karnataka State Commission for Backward Classes Act, 1995; he also submits that the Government being a constitutional functionary, has to be given due credence for its decisions, whether elaborately reasoned or not; which community should be treated in what manner for the purpose of benefits of grant of reservation or the like, is a matter left to the wisdom of the Government and Writ Courts should ordinarily keep away from matters of this kind; so contending, he seeks dismissal of the writ petition.

5. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) A few words about Kodavas:

(i) It is tritely said "Coorg is to Karnataka what Kashmir is to India"; Talakaveri, the birth place of river is in Coorg, it is also known as the "Land of Army Generals"; the Military Greats like Field Marshall K.M.Cariappa and General K.S.Thimayya hailed from this community; innumerable Kodavas serve in the defence of country; of the prominent communities that inhabit this beautiful landscape, 'Kodavas' happens to be one; like a very few martial communities, Kodavas too are exempted from the requirement of license for carrying weapons; this is owing to their religious & cultural disposition, says a Division Bench of this Court in W.P.No.1386/2018 between CAPT. CHETAN Y.K (RETD) VS. UNION OF INDIA, disposed off on 13.8.2019.

(ii) The socio-anthropological studies relating to Kodavas were documented only after the advent of British Rule; it is pertinent to state that there is a copious reference to the history of Kodavas, their lineage & their lifestyle, in "Chikaveera Rajendra", of Sri.Maasti Venkatesh Iyengar (this earned him Jnanpith Award); another researcher Mr.B.D.Ganapathy in his book "KODAVAS", published by

Jyothi Prakashana, Madikeri, First Edn. 1980, at page 12

writes:

"...perhaps the Kodavas are one of the smallest numbering not even a lakh. This microscopic community with its great cultural tradition, with its high watermark of independence, integrity and valour has etched an indelible mark in the annals of Indian history."

Lt. P. Connor in his book "Memoirs of Kodagu Survey" (1817)

says:

"...Though there are no historical data or evidences to establish their origin, there is no doubt that the Kodavas are one of the oldest races. Their land being a forest-ridden area with no outside contact and moreover there being nothing attractive to arrest the covetous eyes of conquerors and even if anyone attempted the forbidding hilly terrain, inclement weather and the heavy monsoon completely thwarted and made outside conquest well nigh impossible. As such it remained for years cut off from the external world and the face preserved its purity, its customs, traditions and culture unsullied..."

What Mr.Erskine Perry another scholar wrote about this miniscule community is also worth adverting:

"...the Kodavas have no resemblance to any of the faces of south India and that it clearly indicates that they must have come from outside. He also describes that the kodavas are by far the finest race he had seen in India in point of independent bearing good looks and all the outward signs of well-being..."

Similarly, Mr.L.A.Krishna Iyer in his book, "The Coorg Tribes and Castes" writes about Kodavas as under:

"...their (kodavas) mode of life, pride of race, impart in their whole being an air of many independence and dignified self-assertion, well sustained by their peculiar and picturesque costumes... they bear no comparison with the other races of South India..."

(b) The Apex Court in **INDRA SAWHNEY Vs. UNION OF INDIA**, (1992) Supp.3 SCC 217 (Mandal Case), has observed as under:

"We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its Advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under Clause (4) of Article 16 itself - or under Article 16(4) read with Article 340 - as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. We direct that such a body be constituted

both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received."

In the light of these observations, the Karnataka State Commission for Backward Classes Act, 1995 has been enacted by the State Legislature *inter alia* "to examine requests for inclusion of any class of citizens as a backward class in the lists... and to ensure their social and economic development"; therefore, its provisions need to be construed keeping in view the social welfare objectives that are sought to be achieved as a State Policy.

(c) The Karnataka State Commission for Backward Classes is a statutory body established by the State Government in terms of Section 3 of the 1995 Act; its Chairman is a person who is or has been a Judge of the High Court or is eligible to be so appointed or a "social scientist"; the Director of Backward Classes and the Minorities Department, happens to be its ex officio Member Secretary; this apart, the Commission consists of five more persons who have "special knowledge" in matters relating to backward

classes and one of them shall be again a “social scientist”; all this is being mentioned to show the stature of the Commission and the pivotal role it plays in matters of the kind; Section 9(1) of the 1995 Act assigns functions to the Commission; it has to examine requests for inclusion of any class of citizens as a backward class in the lists and tender “advice” to the State Government; it also has a duty to supervise the implementation of various welfare schemes meant for these classes; Section 9(2) of the Act makes the advice of the Commission ordinarily binding on the Government; a *pari materia* provision appears *verbatim* in Sec.9(2) of National Commission for Backward Classes Act, 1993, is not a coincidence.

(d) The subject advice of the Commission is contained in its Special Report of the year 2010 which is reproduced above; it recommended that in the OBC Lists published vide Govt. Order dated 30.3.2002, the word 'Kodagaru' both in Kannada and English employed therein to denote the community needs to be deleted and in its stead, the words 'Kodava', 'Kodavaru', in Kannada and 'Codava', 'Codavaru' in English have to be introduced; this recommendation was

made after thorough investigation by the expert statutory body twice i.e., first time in 2005 (Chairman of the Commission Mr.Siddalingaiah) and second time in 2010 (Chairman of the Commission Dr.C.S.Dwarkanath); the purpose of this recommendation was to enable the members of this community to avail a some benefits of reservation under Category IIIA; however, the 2005 Recommendation was kept in cold storage of the Govt., no decision having been taken thereon for sixteen years, is borne out by the impugned order dated 30.9. 2021 itself; the 2010 Advice too was not considered for about five years; be that at the level of Commission or the Government, things moved with the speed of a snail, as has happened with the pendency of this case here; years have rolled not even a leaf being turned; functionaries of the organs of State have to be prompt at least as a concession to the shortness of human life if not as a constitutional imperative.

(e) The vehement submission of learned counsel for the petitioner that when the legislative injunction is couched in a language as employed in Section 9(2) of the 1995 Act, the Government has to treat it as almost binding consistent with

the social object sought to be achieved by the Statute, has force; it is pertinent to advert to the text of this short subsection which runs as under:

“9(2): The Advice of the Commission shall ordinarily be binding upon the Government”.

The contention of learned AGA that the subject provision employs the word “ordinarily” and therefore it is always open to the Government to accept the advice or not to, is difficult to agree, as too broad a proposition of law; the said proposition if accepted may carry one far toward the end of legislative policy; the word “ordinarily” does not have fixed contours of meaning; the meaning of words varies depending upon the text & context of the provision in which they are employed, consistent with the legal maxim *nositur a sociis*; this is not to say that the advice of the Commission would be absolutely binding, invariably; in justifiable cases, the Government may not accept the advice, is also true; however, for not accepting, it has to offer cogent & compelling reasons; otherwise, as a norm advice has to be accepted; an argument to the contrary cannot be sustained without doing violence to the policy content & principal object of the Act.

(f) The above advice of the Commission being as clear as Gangetic waters, does not admit any interpretation nor does it counter any difficulty in the matter of its implementation; it succinctly states that the word 'ಕೊಡಗರು' appearing in the Government Order dated 30.03.2002, a copy whereof is at Annexure-A should be deleted therefrom and in its stead, the words "ಕೊಡವ" and 'ಕೊಡವರು' be introduced in the Kannada List of OBCs and similarly the words 'Codava', 'Codavaru', 'Kodava' & 'Kodavaru' be introduced in the English List of OBCs; this recommendation was made after thoroughly examining the representation of the petitioner – Association and the inputs received from all the relevant quarters; that being the position, the Government could not have declined to accept the advice of the Commission on the sole ground that someone called "Competent Authority" has not approved the same.

(g) The impugned order dated 14.10.2015 states that the recommendation of the Commission was not approved by the "Competent Authority" and therefore, the Govt. did not accept the subject advice; despite vehement submission, learned AGA is not in a position to point out which is that

“Competent Authority” and under which law it is constituted and functioning; the composition of this Authority is also not forthcoming for deciding the probative force of its view; on what ground this authority disapproved the recommendation of the Commission, remains to be as inscrutable as Sphinx; how could a high constitutional functionary like the State Government be swayed away by the view of some so called “Competent Authority” remains to be a riddle wrapped in enigma; in good governance and more particularly when one is dealing with the matter relating to Backward Classes, 'enigmatic reasons' have be treated as 'no reasons'; the reasons to be judicially acceptable have to arise from the viscera of the decision; if they are pasted on the epiderma of the decision, Writ Courts shun them, more particularly when “community rights” as a basis for affirmative action as recognized by the Apex Court in Indra Sawhney supra under Articles 15 & 16 of the Constitution, are involved.

(h) The Co-ordinate Bench of this court had rightly directed the Government to look into the matter afresh, wisely keeping the petition pending; perhaps it had the foresight as to what the Government was going to do; even then, nothing

worth mentioning happened; the authorities of the Government being what they are, what was stated in the impugned order of October 2015 has been mechanically reiterated in the impugned order of September 2021, with only a textual slant.

(i) Even in the order of September 2021, the so called “Competent Authority” remains equally unseen and unseeable; no fresh views were sought for from it; what the said Authority, has stated, and how the Government approached the matter afresh, are militantly lacking; there is no due consideration of the advice tendered by the Commission; no reasons are placed on record even at this stage by producing the file, to justify this latest order, which presumably engineered to pre-empt contempt action; thus, the legal malafide is writ large, as rightly submitted by learned counsel for the petitioner.

(j) Learned counsel for the petitioner is more than justified in submitting that in the scheme of 1995 Act, there is no scope for any other body interjecting as a “Competent Authority” in the matter; an argument to the contrary would undermine the stature & functionality of the Commission and

the efficacy of its advice/Recommendation; Government cannot treat advice of a Commission of this stature as being susceptible to the views of another unknown authority, regardless of its nomenclature; ours is a "Welfare State" and not the East India Company of the bygone era; the public functions of a Welfare Govt. should generate confidence in the mind of right thinking members of the citizenry; what bewilders this Court is the reiteration of the same stand with the duplication of the text of the order, despite a direction issued by a Co-ordinate Bench.

(k) The only reason twice assigned by the Government in the impugned orders is that the Competent Authority declined approval to the advice of the Commission; this reason cannot be called as cryptic because it is not even that; if this sole reason is set at naught, the advice of the Commission eventually becomes imperative warranting grant of the prayer for certiorari coupled with mandamus to "implement the recommendation/advice" of the Commission; after all, the Constitution Bench of the Apex Court in

MOHINDER SINGH GILL VS. CHIEF ELECTION COMMISSIONER, AIR 1978 SC 851 observed as under:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older”

(l) Lastly, the contention of learned AGA that the impugned orders now being set at naught, matter may be remanded to the Govt. for a fresh consideration, is bit difficult to countenance; the scope for such an argument is completely depleted by what the Govt. did pursuant to the interim direction of the Co-ordinate Bench; the conduct of the Govt. does not generate confidence in the mind of this court that petitioner shall not be avoidably driven to one more legal battle, which after being dragged on for years would meet the same fate again; citizens knock at the doors of Writ Court seeking concrete relief; their demand is not for the remand; they are here claiming justice; years have rolled and much water has flowed under the bridges; the request of the AGA if, at this length of time acceded to, the Writ Courts run the risk

of a mass ridicule; the traditional view that judiciary should not undertake something which falls within the domain of the Executive, is founded on the '*doctrine of separation of powers*', is true; however, such a constitutional theory is founded on a presumption that the Executive would discharge its duties promptly as ordained by law; however, the times are different now; it does not need much research to show the rebuttal of such a presumption, a fortiori; the scrupulous litigants should not feel that the constitutional organs of the State are playing badminton, using them as shuttlecock; **Justice Oliver Wendell Holmes** in **DAVIS vs. MILLS**, 194 U.S. 451 (1904) had observed: "*Constitutions are intended to preserve practical and substantial rights, not to maintain theories ...*".

In the above circumstances, this writ petition succeeds; a Writ of Certiorari issues quashing the impugned orders dated 14.10.2015 & 30.09.2021; consequently, a Writ of Mandamus issues to the respondent-Government to accept the subject advice of the Karnataka State Commission for Backward Class and issue corrective orders in terms thereof and further, to report compliance to the Registrar General of

this Court within an outer limit of three months, failing which heavy costs become awardable in the next level of legal battle.

Now, no costs.

**Sd/-
JUDGE**

Snb/