

Agenda Note

17 EM II  
Commission's Meeting on 2-9-2009

Issue: Proposal of Inclusion of 'Medara' community as a synonym of 'Meda' community in the ST List of Karnataka.

Background

Meda community was included in the list of Scheduled Tribes in respect of Karnataka State vide the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1978. During the year 1995, the State Government wrote to the Government of India for inclusion of four synonyms of Meda, namely, Medara, Medan, Gaungia and Burud in the ST list. The matter was processed by the Government of India and vide the SCs & STs Orders (Amendment) Act, 2002, Medari, Gaungia and Burud were included in the list of STs as synonyms of Meda but Medara was left out. In March, 2003, the Government of Karnataka raised the issue with the Government of India requesting that if the non-inclusion of Medara in the ST list was through an oversight, action may be taken to include Medara also as synonym of Meda in the ST list. The matter was examined by the Ministry of Tribal Affairs in consultation with the erstwhile NCSCST and it was found that the recommendations of RGI were not specific in regard to the proposal of inclusion of Medara in the ST list as a synonym of Meda. In June, 2007, the Ministry of Tribal Affairs informed the Commission that RGI had, vide their letter, dated 27.12.06, recommended the inclusion of Medara community as synonym/equivalent of Meda in the ST list of Karnataka. The Ministry requested for the views of this Commission in the matter.

2. The Commission has been examining the above proposal. In this context, a letter, dated 21.09.07 was addressed by the Commission to the Principal Secretary, Social Welfare, Govt. of Karnataka requesting them to confirm whether the social customs, dialect, the way of living, the level of educational and economic development and the religious practices etc. in respect of the people belonging to Medara community are the same as those of Meda community and also whether there is practice of inter-marriage among them. As the requisite information was not received from the Govt. of Karnataka despite reminder, Shri Tsering Samphel, Hon'ble Member, NCST visited the districts of Dharwad, Belgaum, Haveri and Uttar Kannada in the month of January 2008 to conduct a random spot verification of the claim of Karnataka Government that Medara community is a synonym of Meda community. In his report, Member (TS) recommended the proposal.

3. All the above papers were circulated to all concerned in the Commission vide O.M. No.1/3/08-Coord. dated 06.05.2008. The issue came up for discussion in the Commission's meeting on 12.05.2008 and it was decided to remind the Government of Karnataka to furnish the requisite information urgently. The Commission also desired to know the reasons for not including Medara as a synonym of Meda Community at the earlier stage of comprehensive revision of lists of Scheduled Castes and Scheduled Tribes in 1976.

4. The requisite information was obtained from the Government of Karnataka and the Ministry of Tribal Affairs and the matter was again discussed in the Commission's meeting held on 22-01-2009. The Commission expressed the view that the case needs further consideration.

#### Further Examination

5. It has been brought to the notice of the Commission through a Writ Petition No.44932 of 2006 filed in the Madras High Court by the President, Tamil Nadu Scheduled Tribes (Mayak) Peravi, Chennai that the Government of Tamil Nadu sent a recommendation to the Central Government in August, 2006 for inclusion of the communities like Kuruma, Kuruman, Kurumba Gounder, Kurumban and Kurumbar as synonyms of the "Kurumans" in the list of Scheduled Tribes in Tamil Nadu. The Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs are listed as Respondent Nos. 1 & 2 respectively whereas this Commission is listed as Respondent No.6. Concerned authorities of the Government of Tamil Nadu have been made Respondents Nos. 3 to 5. As the proposal of inclusion of the above communities has not been referred to this Commission by Ministry of Tribal Affairs, the Commission has not filed any Counter Affidavit in the High Court. However, on being requested by the Commission about the status of the case, MTA has informed vide their letter, dated 30-06-2009 that the Government of Tamil Nadu has been requested to furnish a copy of the Joint Counter Affidavit filed in the High Court.

6. The proposal of inclusion of the abovesaid communities in the ST list as synonyms of "Kurumans" (figuring at S.No.18 in ST list of Tamil Nadu) has been challenged by the petitioner Association by referring to the judgement, dated 08-07-1994 of a Division Bench of Madras High Court in W.P. Nos.11933 of 1983 and 3238 of 1984 in the matter of K.L. Karibeevan And Another Vs. State of Tamil Nadu and Another wherein it was prayed that the communities like Kurumba, Kurumans, Kurumbar, etc. should be treated as ST being synonyms of "Kurumans". A copy of the above judgement, dated 08-07-1994 is enclosed (Annex.J). It has been, inter-alia, observed by the Madras High Court in the above judgement that only the Parliament can include in or exclude from the list of STs any community through an enactment. It has also been highlighted in para 22 of the judgement (reproduced below) that it is difficult to decide that some communities are synonyms of a particular community.

**"22. The above passages are sufficient to show that no one can assert with certainty that the names "Kurumans", "Kurumbas", "Kurubas" etc. are only synonyms indicating the one and the same community".**

The importance of fulfilment of the criterion of **geographical isolation** by any community for specification as an ST community has also been highlighted in the above judgement (para23) by referring to the Census Book (Volume-IX) which state that the STs are usually found only in **hilly areas the Scheduled Areas**, declared as such. The issues concerned in this case as well as W.P.44932/06 being identical, the recommendations of the Commission have to be consistent with judicial pronouncements to withstand the test of judicial scrutiny

#### **Proposed Suggestion**

As highlighted in the judgement, dated 08-07-1994 of the Division Bench of Madras High Court, cited in para 6 above, **Geographical Isolation** is an important criterion for specification of a community as a Scheduled Tribes community. The communications received so far from the Government of Karnataka do not mention about the fulfilment of the criterion of **geographic isolation** by Medara community. It is, therefore, proposed that the State Government of Karnataka may be requested to furnish their comments about the fulfilment of the criterion of **geographical isolation** by **Medara** community justifying its specification as a synonym of **Meda** community in the ST list of Karnataka, in the light of the decision of the High Court referred above.

## ORDER

Srinivasan, J.

1. The Constitution (Scheduled Tribes) Order, 1950, issued under Art. 342(1) of the Constitution of India declared that "Kurumans" throughout the State of Tamil Nadu except Kanya Kumari District and Shencottai Taluk of Tirunelveli district and "Kurumbas" in Nilgiris District shall be deemed to be Scheduled Tribes. There was no change in the position when the Constitution (Scheduled Tribes) Modification Order, 1956 was issued. The Parliament passed the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. Part XIV of the Second Schedule related to Tamil Nadu. Serial No. 17 mentioned "Kurumbas (in the Nilgiris district)" while Serial No. 18 mentioned "Kurumans". There was no exclusion of Kanyakumari District and Shencottai Taluk of Tirunelveli District. Thus, "Kurumans" throughout the State of Tamil Nadu and "Kurumbas" in the Nilgiris District were declared Scheduled Tribes by the said enactment.

2. Several representations were made by the Kurumans Welfare Association, Madras, that "Kurumans", Kurumba" or "Kurumban" are one and the same community and the Revenue Authorities of the North Arcot District had been issuing community certificates to them as "Kurumans", which were utilised for the purposes of getting employment by them. It was also represented that some other people had misrepresented to the revenue authorities that there was no such community as "Kurumans" in North Arcot District, with the result, the certificates issued earlier were being cancelled and further recruitment on the basis of such certificates was also not made. The Government considered the representations in consultation with the Collector of North Arcot District and accepted the report of the Collector that "Kurumans", "Kurumban" and "Kurumba" were only names of the same community. On that footing the State Government passed G.O. No. 388, Social Welfare Department, dated 6-5-1977 declaring the acceptance of the recommendation of the Collector of North Arcot District. The G.O. also cautioned all the Collectors and the Heads of Departments that "Kurumba" is one of the backward classes recognised throughout the State of Tamil Nadu and that there is every possibility of backward class community people availing of the reservation in public services and other benefits intended for the Scheduled Tribes, depriving the legitimate opportunities of the Scheduled Tribes. With a view to avoid any possible misuse, the G.O. directed issue of instructions to the authorities that while issuing community certificates as "Kurumans" to the persons belonging to North Arcot District and

persons living in other areas of the State, they should personally satisfy themselves by making detailed enquiries regarding the bona fides of the Charants.

10. The validity of the Government Order was challenged in a writ petition filed by Dr. Ambedkar Social Welfare Association, Thirupathur, North Arcot District. This Court granted stay of operation of the G.O. for a period of two months. The Government of India, Ministry of Home Affairs, New Delhi informed the State Government that the lists of Scheduled Castes and Scheduled Tribes were issued by a Presidential Order and that only the Government of India was competent to issue any clarification of the sort referred to above and directed the State Government that the G.O. may be withdrawn. The State Government examined the matter in consultation with the Law Department and cancelled G.O. Ms. No. 388 by G.O. Ms. No. 748, Social Welfare Department, dated 27-10-1977. The writ petition challenging the earlier G.O. was dismissed as infructuous.

11. W.P. No. 1033 of 1983 has been filed by one K.L. Karibeeran, who has described himself as the President, North Arcot Kurumans Kula Sangam. While in the cause title given in the affidavit he is described as the Vice-President, the cause title in the petition describes him as 'President'. The discrepancy is not very material. The prayer in the writ petition is for issue of a writ of certiorari mandamus calling for the records pertaining to G.O. Ms. No. 748, Social Welfare Department, dated 27-10-1977 and to quash the same and further direct the first respondent, the State of Tamil Nadu, to continue to implement its earlier G.O. made in G.O. Ms. No. 388, Social Welfare Department dated 6-3-1977. The first respondent is the State of Tamil Nadu represented by its Commissioner and Secretary, Social Welfare Department and the second respondent is the Union of India represented by the Secretary, Ministry of Home Affairs. It is to be noted that no relief is prayed against the second respondent in the writ petition.

12. In the affidavit, the petitioner claims to belong to the "Kurumans" community. According to him, the mother tongue of the community is 'Canarese' (Kannada) and their primary occupation is sheep rearing and incidental agriculture. It is mentioned that the community's name "Kurumba" is derived from the word "Kur" in Kannada. It is claimed that the name of the community is pronounced in various ways such as "Kuruman", "Kurumans", "Kurumar", "Kurumban", "Kurambar", "Kuruma", "Kuruba", "Kurubar", "Kurabars", "Kurumba", "Kurumbans" and "Kurumbars". Reference is made in the affidavit to the Census Report of the British India published on 17th Feb. 1881, the Mutual Administration of the

Madras Presidency published in 1885 and the report of Dr. Iyyappa, and Anthropologist titled "Report on the Socio and Economic Conditions" of the aboriginal tribes of the Province of Madras in 1949. Reliance is placed on the works of the eminent historians like Edgar Thurstroh, Cox and Stuart and the Census of India, 1961. After referring to the two Government Orders, the affidavit proceeds to refer to the moving of a Private Member Bill in the Lok Sabha in 1978 to include the names Kurumba, Kurumban etc., in the Schedule, as synonyms to the name "Kurumans" and the fact that the Bill was not pressed. In short, the contention of the petitioner in the affidavit is that there is only one community which is a Scheduled Tribe, but it has different names such as "Kurumans", "Kurumba", "Kuruba" etc.

6. The first respondent has filed a detailed counter-affidavit denying the averments found in the petitioner's affidavit. According to the counter-affidavit, "Kurumans" community is different from "Kurumba" Community and each community has its own customs, avocation and life-styles. It is also that "Kurumban" community cannot be treated as a Scheduled Tribe and that a large number of members are well educated and well placed in life. It is stated in the counter-affidavit that the Census Report and the books relied on by the petitioner in themselves prove that the claim of the petitioner is not correct. It is further stated that the social status of "Kurumba", "Kuruba" and "Kurumban" communities is akin to that of other caste Hindus and that their socio-economic status is far better than that of a Scheduled Tribe. It is also contended that the matter cannot be decided by a judicial forum and that the grievances, if any, of the petitioner could be rectified only by the Executive and the Legislature.

7. The Court by order dated 16-7-1993 directed the State Government to file an additional affidavit setting out the reason for reservation for Scheduled Tribes being kept at 1% and the reason for treating the petitioner's community as a backward class and <sup>not</sup> as Scheduled Tribe. Accordingly, an additional counter-affidavit has been filed and in it reference has been made to the reports of two Backward Classes Commissions, the first headed by Thiru Sattanathan and the second headed by Thiru Ambasankar. Reference is also made to the report of Dr. V. Karuppiyan, Lecturer, Department of Anthropology, University of Madras and that of Dr. Subba Reddy.

8. The other writ petition, W.P. No. 3238 of 1984 is filed by one O. Konan, President, Tiruchy District Kurumban's Association, for issue of a certiorarified Mandamus calling for the records pertaining to G.O. Ms. No. 73, Social Welfare Department, Madras, dated 13-1980 and to quash the portion that describes the

"Kurumba" as backward communities and further direct the State Government to treat the members of the petitioner's community as a Scheduled Tribe irrespective of the fact that they are called and described by other synonymous names of "Kurumans" community. This petitioner also claims to belong to "Kurumans" community, whose mother tongue is Canarese (Kannada). The averments in the affidavit are similar to those made in the affidavit filed in the other writ petition. It is averred that until recently, the community people were in the dark and did not know about the constitutional validity. The first respondent in the writ petition is the State of Tamil Nadu and the second respondent is the Union of India. In this writ petition also there is no prayer against the second respondent. A detailed counter affidavit has been filed by the State Government reiterating that "Kurumba" community can only be treated as backward Class and it cannot be treated as a Scheduled Tribe.

9. Both the writ petitions have been argued at length before us. Both the petitioners are represented by the same counsel. He has referred to the Census Reports of 1881, 1901, 1931 and 1961. He has also drawn our attention to the Manual of Administration of the Madras Presidency as well as the Manual of North Arcot District in the Presidency of Madras. He has cited in extenso passages from Caste and Tribes of Southern India by Edgar Thurston. He has placed before us certain documents of title which refer to the community as Kurumans. He has drawn our attention to a letter by the State Government to the Central Government written in 1978 requesting the latter to include Kurumba and 'Kurumbar' communities in the list of Scheduled Tribes throughout the State of Tamil Nadu. He has also referred to some community certificates issued by the Revenue Authorities of North Arcot District to the members of Kurumans community. According to learned counsel, the name 'Kurumans' was not in use in the ancient days and only from 1931, the Census Report used the expression 'Kurumans' to cover the various synonymous names viz., "Kurumbas", "Kurumbas", "Kurubar", "Kuruba", "Kurubars", "Kurumbars", "Kuruman" and "Kurumbas". It is, therefore, his argument that the expression "Kurumans" found in the Schedule to the Act of 1976 would automatically mean and include "Kurumbas", "Kurumba", "Kuruba" etc. He has also referred to several decisions of the Supreme Court and the High Courts. In particular he has placed strong reliance on the judgment of a single Judge of this Court in W.P. No. 1227 of 1974 (S. Sarthi v. The Tahsildar, Turaiyer Taluk), in which it has been held that "Kurumbas", "Kurumbas" and "Kurumbar" are synonyms of "Kuruman", which is a Scheduled Tribe.

10. On the other hand, the learned Advocate General appearing for the State Government contended that this Court cannot add to or subtract from the Presidential

Order or Parliamentary enactment. He has placed reliance on the judgment of the Supreme Court in *Prish Kumar Choudhury v. State of Tripura*, AIR 1990 SC 991 and submitted that the remedy of the petitioners is only to approach the Government. Learned counsel for the Union of India has made a similar submission and pointed out that there being no prayer in the two writ petitions against the Union of India, they have to be dismissed. Alternatively it is submitted by learned counsel that the petitioners have to prove their claims by adducing proper evidence and this is not a matter which can be decided under Art. 226 of the Constitution of India.

11. Before considering the materials placed before us, it is necessary to refer to the position in law. Article 342 of the Constitution of India empowers the President to specify by public notification, after consultation with the Governor, the Tribes or tribal communities or parts or groups within tribes or tribal communities, which shall be deemed to be Scheduled Tribes, for the purposes of the Constitution, in relation to the State or Union Territory concerned. Clause (2) provides that the Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1). The last part of clause (2) declares emphatically that a notification issued under clause (1) shall not be varied by any subsequent notification. A similar provision with regard to Scheduled Castes is contained in Art. 341 of the Constitution. We have already referred to the Presidential Notification of 1950 and the Parliamentary enactment of 1976 and pointed out that the named Scheduled Tribes throughout the State of Tamil Nadu are that of 'Kurumans' and "Kurumbas" in the Nilgiris District only. Thus, "Kurumbas" in the other Districts of Tamil Nadu cannot be deemed to belong to Scheduled Tribes. "Kurumbas" have been included in the list of Backward Classes in the State of Tamil Nadu.

12. In *Naunihal Singh v. Kishorilal Pal* AIR 1961 Madh Pra 184, a Division Bench of that Court held that under Art 341(2) of the Constitution without any law made by Parliament, the original Scheduled Castes Order, 1950, specifying Chamar as a Scheduled Caste in the entire area of Madhya Pradesh, could not be varied by any subsequent notification. By the Presidential Order of 1950, Chamar was notified as a Scheduled Caste throughout the State of Madhya Pradesh. It was modified by the Order issued under Section 41 of the States Reorganisation Act, 1956. Chamar was mentioned in the modification Order as Scheduled Caste in the district of Hoshangabad only. It was held by the Bench that the power under Section 41 of the States Reorganisation Act extended only to making such modification in the original Scheduled Castes Order, as was compatible with the territorial changes and formation of new States, and, it therefore, did not



authorize the President to exclude any person from the category of a scheduled caste, who enjoyed that status under the original Scheduled Castes Order.

15. A Constitution Bench of the Supreme Court dealt with the matter in *Viswanthappa v. Munnichinnappa*, AIR 1965 SC 1260 and stated the law thus (at p. 1271 of AIR) :-

(6) It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order. (Sen Arya (Mala), Dakkal (Dokkalwar) etc.) Therefore, generally speaking it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order. Ordinarily, therefore, it would not have been open in the present case to give evidence that the Vaddar caste was the same as the Bhovi caste specified in the Order for Vaddar caste is not mentioned in brackets after the Bhovi caste in the Order."

However, on the facts of the case, the Court found that there was no caste known as Bhovi in the State of Mysore as it was before the reorganisation of the year 1956 and a resolution was passed by the Vaddar caste in July 1944 at a conference that the name of that caste be changed from Vaddar to Bovi. The Government had accepted the resolution and passed an order in 1946 and, thereafter, in all Government records the Vaddar Caste was known as Bovi. The Court, therefore, held that if the Presidential Order of 1950 referred to Bovi caste, it was only referring to the Vaddar caste. Towards the end of the judgment, the Court took care to clarify the position in the following terms (at p. 1272 of AIR) :-

"We may again repeat that we have referred to the evidence in this case only because there was undoubtedly no caste known as Bhovi in the Mysore State as it was before 1956 and we had to find out, therefore, which caste was meant by the word "Bhovi" as used in the Order. But for this fact it would not have been open to any party to give evidence to the effect that (for example) caste A mentioned in the order includes or was the same as caste B where caste A does exist in the area to which the Order applies."

16. In *Aniloy Pada Saha v. Sudhir Kumar Mondal* AIR 1967 SC 115, the item in the Presidential Order reads as "Sunri excluding Saha". The Court held that the expression "Saha" referred to a smaller caste group within the bigger caste

group of Surti.

15. In *Parasram v. Shivchand* AIR 1969 SC 597, the question was whether Mochi was included in the notified caste of Chamar. The Court referred to the earlier judgments of the Constitutional Bench and held (at pp 599 and 600 of AIR):--

"These judgments are binding on us and we do not therefore think that it would be of any use to look into the gazeteers and the glossaries on the Punjab castes and tribes to which reference was made at the Bar to find out whether Mochi and Chamar in some parts of the State at least meant the same caste although there might be some difference in the professions followed by their members, the main difference being that Chamars skin dead animals which Mochis do not. However that may be, the question not being open to agitation by evidence and being one the determination of which lies within the exclusive power of the President, it is not for us to examine it and come to a conclusion that if a person was in fact a Mochi, he could still claim to belong to the scheduled caste of Chamars and be allowed to contest an election on that basis."

16. In *Bhaiya Ram v. Anirodh*, AIR 1971 SC 2533 the Court held that the name by which a tribe or sub-tribe is known is not decisive and even if the tribe of a person is different from the name included in the Order issued by the President, it may be shown that the name included in the order is a general name applicable to sub-tribes. On the facts it was held that Patars of Tamar District in Bihar are sub-tribe of Mundas and they are not different from Mundas.

17. In *Kishorilal v. Raja Ram* AIR 1972 SC 598, the Court was called upon to decide whether Jatav caste was included in Chamar caste, which was mentioned in Scheduled Caste of Datia District of Madhya Pradesh. After referring to the earlier judgments, the Bench held that it was not open to the party to establish that Jatav caste was the same as Chamar.

18. In *A. K. Thevan v. Union of India* AIR 1986 Ker 15, a single Judge of the Kerala High Court held that an entry in the Presidential Order relating to a Scheduled Caste can be interpreted to understand its coverage.

19. The matter was discussed in detail and all the earlier judgments were referred by the Supreme Court in *Srish Kumar Choudhury v. State of Tripura*, AIR 1990 SC 991. After referring to the two judgments of the Constitutional Bench in *Basavalingappa's case* AIR 1965 SC 1269 and *Bhaiyalal's case* AIR 1965 SC 1557 and extracting passages therefrom, the court said:--

What we have examined above clearly supports the view of the other Constitution Bench, namely, the list is intended to be final.

The Court proceeded to refer to the judgments in Parasram's case AIR 1969 SC 597 and Kishorilal's case AIR 1972 SC 598. The court also referred to Dina v. Narayan Singh (1968) 98 IJR 212 (SC) and Bhaiya Ram's case AIR 1971 SC 2511. (Chhatarji), the Court said (AIR 1990 SC 991 at p 996):--

"16. These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the Court to make any addition or subtraction from the Presidential Order.

20. The two Constitution Bench Judgments indicate that enquiry is contemplated before the Presidential Order is made about any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Desai Tripura which covers the Laskar community, but we consider it appropriate to commend to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant representing the Laskar community to be included in tribes is genuine and should therefore, be entertained."

20. Thus, the last judgment of the Supreme Court referred to above puts the matter beyond doubt. There cannot be any addition to or subtraction from the Presidential Order excepting by a Parliamentary enactment passed under Art. 372(2) of the Constitution of India. In the light of the above principle, we have to examine the materials placed before us by the petitioners to consider whether their prayers in these writ petitions can be granted.

21. It is not clear from the Census Records or the Administration Manuals that there was only one community which had different names such as 'Kurumans', 'Kurumal', 'Kuruba' etc. In the Book "Castes and Tribes of Southern India" by Edgar Thurston, extracts are found from the Census Reports of 1891 and 1901. At page 256, from Madras Census Report, 1891, the following is extracted:--

"The Kurumbas or Kurubas are the modern representatives of the ancient Kurumbas or Pallavas, who were once so powerful throughout Southern India, but

very little trace of their greatness now remains. In the seventh century, the power of the Pallava kings seems to have been at its zenith; but, shortly after this, the Kongu, Chola and Chahukya chiefs succeeded in winning several victories over them. The final overthrow of the Kurumba sovereignty was effected by the Chola king Adondai about the seventh or eighth century A.D. and the Kurumbas were scattered far and wide. Many fled to the hills, and in the Nilgiris and the Wynad, in Coorg and Mysore, representatives of this ancient race are now found as wild and uncivilised tribes. Elsewhere the Kurumbas are more advanced, and are usually shepherds, and weavers of coarse woollen blankets."

"Kuruman. -- This caste is found in the Nilgiris and the Wynad, with a slight sprinkling in the Nilambur and Attapadi hills in Malabar. Their principal occupations are wood-cutting, and the collection of forest produce. The name is merely another form of Kurumban, but, as they differ from the ordinary Kurumbas, it seemed better to show them separately."

At page 157, the following is found:--

"Madras Census Report, 1901-- "Kuruba; Kurumhan. -- These two have always been treated as the same caste. Mr. Thurston (Madras Mus. Bull, II) thinks they are distinct. I have no new information, which will clearly decide the matter. But the fact seems to be that Kurumban is the Tamil form of the Telgu or Canarese Kuruba, and that the two terms are applied to the same caste according to the language in which it is referred to. There was no confusion in the abstraction offices between the two names, and it will be seen that Kuruba is returned where Canarese and Telugu are spoken and Kurumhan where the vernacular is Tamil. There are two sharply defined bodies of Kurumhans -- those who live on the Nilgiri plateau, speak the Kurumba dialect, and are wild junglemen; and those who live in the plains, speak Canarese and are civilised."

Reference is made to Mysore Census Report of 1891 in which Kadu Kuruba or Kurumba is mentioned. At page 185, a quotation from W. R. King's Aboriginal Tribes of the Nilgiri Hills is given as follows:--

"KURUMBAS. -- This tribe is of another race from the shepherd Kurumbas. The Nilgiri tribe have neither cattle nor sheep, and in language, dress, and customs, have no affinity whatever with their namesakes."

A quotation is also given from G. Oppert's "Original Inhabitants of India". Reference is only made to "KURUBAS or KURUMBAS". At page 158 it is stated:--

The above extracts will suffice for the purpose of showing that the distinction between jungle Kurumbas and the more civilised Kurubas, and their relationship towards each other, call for a 'permanent settlement'."

At page 103 it is stated:--

The chief sub-divisions of the Kurumbas on the Nilgiris, and in the Wynad, are said, in the Madras Census Report, 1891, to be "Mulla (thorn), Betta or Vetta (hill), Unai (river, a village), Ten (honey), and Tachanadan Muppan (carpenter, woodman). Of these, the first and last speak Malavalam, and wear a turban in front of their head in the Malabar fashion. The rest speak Canarese. All Kurumbas work in metals."

22. The above passages are sufficient to show that no one can assert with certainty that the names 'Kurumans', 'Kurumbas', 'Kurubas' etc. are only synonyms indicating the one and the same community.

23. Even in the Report on the Socio-Economic Conditions of the Aboriginal Tribes of the Province of Madras by Dr. A. Aiyappan, published in 1948, on which great reliance is placed by the petitioners, it is said:--

"In 1911, however, a difference has been made between Kuruban and Kuruman. In Malabar only were enumerated as Kuruban and none under the name 'Kuruman'. In Nilgiris 889 were shown as Kurubas and 2,2144 as Kuruman. Even this is doubtful for in 1921, a report says that there were 1,300 Kurumba in the Pandalur tirkka of the G. S. Taluk of the Nilgiris district. Separate figures for the Mulla, Ten and Betta Sections are not available."

Thus, it is evident that even from 1911 "Kurumans" were distinctly recognised from "Kurumbas" or "Kurubas". They were treated as separate groups. Again in Census Book Volume-IX, it is said:--

"Unlike the Scheduled Castes, the Scheduled Tribes are usually found only in hilly areas and in Scheduled Areas, declared as such. As the present Madras State contains no Scheduled Areas and not much of hilly areas, the Scheduled Tribes population in the State is also comparatively low".

Referring to the book on Castes and Tribes of Southern India, by Mr Edgar Thurston, in the preface to the "Ethnographic Notes on Scheduled Tribes" it is stated as follows:--

"No one in Madras State has attempted to publish systematic ethnographic study of all Castes and Tribes as has been done in Bengal or Kerala. The most valuable books is that of Thurston on the Castes and Tribes of Southern India in which Scheduled Castes and Scheduled Tribes have also been included. The treatment of Kurumbars of the Nilgiris District and the Kurumbars in the other parts is according to the social customs and manners, traditional occupation, way of living and other characteristics as already stated. Equality before law can be applied to people on the same footing. I submit that the First Backward Classes Commission have also received presentations from the Tamilaga Kurumbar Kula Munnetra Puravai with regard to the treatment of Kurumbars. The main grievance was that when Kurumbas of the Nilgiris District were treated as Scheduled Tribes, their counterparts in the plains were deprived of such concession since they were included in the list of Backward Classes. The First Backward Classes Commission have observed that the representatives of Coimbatore were not able to produce any evidence to substantiate their claim. They have further observed that economically they were no worse of than the "Idayans" and there was no justification in treating them as "Tribe"."

24. In Census of India, 1971, Series-19, Tamil Nadu, Part IX, Census Atlas, under the heading "Ten Numerically Major Scheduled Tribes 1971", it is stated as follows:--

"Kurumans are chiefly found in Dharmapuri, North Arcot and Nilgiris districts. Large numbers of Kurumans live in Tirupattur Taluk (2,773) of North Arcot district, Denkanikotta taluk (1,477) and Krishnaagiri Taluk (1,150) of Dharmapuri district and Gudalur Taluk (1,225) of Nilgiris district.

.....

Nilgiris, the hilly district, in the western part of the State, has almost the entire population of the scheduled tribes of 'Parian' and 'Kurumban'. While Parians are found in Gudalur taluk, Kurumbas are chiefly found in Gudalur as well as Coimbatore taluks with a smaller number in Ootacamund taluk."

The number of Kurumans in the State is said to be 11,269 and the number of Kurumbas, 2,754. The percentage is 3.62 and 0.88 respectively. The documents of title referred to by the petitioner's counsel mentioned the community as Kurumans. They are of the years 1932, 1944, 1958, 1966, 1967, 1968, 1974 and 1976. They do not in any way help the petitioners to show that "Kurumans" are none other than "Kurumbas". Similarly, the Community Certificates issued by the

Revenue Officers in 1975, 1976, 1978, 1979 and other years do not improve the situation.

25. Reliance is placed upon Letter No. 1406, Social Welfare, dated 29-12-1978 written to the Secretary to the Government of India by the State Government. A recommendation is made to include 'Kurumba' and 'Kurumbas' communities in the list of Scheduled Tribes. A reference is made to the said letter in the State Legislative Assembly when a question was put by a Member by name K. Selvaraj as to whether relief will be taken by the Government to include 'Kurumbas' in the State in the list of Scheduled Tribes. The Minister for Adi Dravida Welfare replied that the above letter was written by the State Government to the Central Government and the decision of the Central Government was awaited.

26. Learned counsel has drawn our attention to a judgment of the Central Administrative Tribunal, Madras Bench, dated 30th March, 1987 in G. Karibeeuran v. Union of India, represented by the General Manager, Southern Railway, Madras. The Tribunal has only relied upon G.O.Ms. No. 388 and held that the Certificate issued in favour of the Applicant before it that he belonged to 'Kurumbans' community was a valid one and that he belonged to Scheduled Tribes. A similar judgment was rendered by Sathiadav, J. in W.P. No. 1246 of 1987 -- H. Nagalakshmi v. The Dean, College of Agricultural Engineering, Tamil Nadu Agricultural University, Coimbatore. In that case also, the learned Judge held that the petitioner had proved as a fact that he belonged to 'Kurumbans' community, which is a Scheduled Tribe, and therefore, entitled to continue the course in the College of Agricultural Engineering.

27. None of the materials placed before us by the petitioners proves that the terms 'Kurumbans', 'Kurumbas', 'Kurubas' etc., are all the names of one community or that they are synonymous. Even from the materials available, we find that there were different groups of people, one known by the name 'Kurumbans' and the other known by the name 'Kurumba' or 'Kuruba'. Their lifestyles were different and they were pursuing different avocations. In view of the aforesaid materials placed before us, we are unable to accept the contentions put forward by the petitioners.

28. As has been held in Parasram's case AIR 1969 SC 597, the Court cannot by looking into the Census Reports, Gazeteers or Manuals of Administration come to a conclusion that 'Kurumbans', 'Kurumbans', 'Kurubans' etc., are all referring to one and the same community.

29. We have already referred to the reliance placed on the judgment of a

single Judge of this Court in W.P. No. 1227 of 1984 (K. Santhi v. The Tahsildar, Thiruvaiyur Taluk) order dated 28-8-1993. In fact, these writ petitions were referred to a Division Bench when the learned Judge before whom these petitions were posted in the first instance for hearing could not accept the correctness of the view expressed in W.P. No. 1227 of 1984. In that judgment, the learned Judge has referred to the judgment of the Kerala High Court in A.K. Thevan's case AIR 1986 Kerala 15 and extracted in extenso passages therefrom. Thereafter, the learned Judge has proceeded to refer to the Census Reports and Administrative Manuals as well as the report of Dr. Ayyappan, to which we have already made a reference, and concluded as follows:--

"A survey of the facts, as narrated above and the stand taken by the Government of Tamil Nadu clearly indicate that Kurumban, Kurumbas and Kunimbar are synonyms of Kuruman notified as a scheduled tribes in the Presidential Order. In this view of the matter, it goes without saying that the writ petition deserves to be allowed and accordingly, the same is allowed."

30. With respect, we are unable to accept the view expressed by the learned single Judge. We overrule the judgment of the learned single Judge. As we have pointed out already, the material made available to the learned Judge and also to us are not conclusive or clinching. It is quite possible to infer from the very same materials that the community of 'Kurumans', is different from the community of 'Kurumbas'. Just because the State Government has made a recommendation to the Central Government to include the castes 'Kurumbas' or 'Kurubas' in the list of Scheduled Tribes, it is not open to this Court to hold that 'Kurumans', 'Kurumbas' 'Kurubas' etc., are all referring to the same community.

31. The additional counter-affidavit filed on behalf of the State Government has made a reference to the reports of the two Backward Classes Commissions constituted by the Government of Tamil Nadu. In paragraph 4 it is stated as follows:--

"The Tamilaga Kurumabar Kula Munnetra Peravai represented to the First Backward Classes Commission, headed by Thiru. Sattanathan, that while the Kurumbas of the Nilgiris District were treated as Scheduled Tribes, their counterparts in plains were deprived of such concession since they were included in the list of Backward Classes. But the Association was not able to produce any evidence to substantiate their claim. The Commission observed that they had very few tribal elements in their social life. They were neither considered untouchables nor outsiders of the Hindu fold. Economically they were no worth



at their places and there was no justification in treating them as 'Tribes'. The Commission held that educationally they were definitely backward and recommended that the community might be retained in the list of Backward Classes as 'Kurumba' instead of two entries (i.e.) 'Kuruba' and 'Kurumba' as existed then. The recommendation of the Commission was accepted and 'Kurumba' was retained in the list of Most Backward Classes and also finds a place in the comprehensive list of Backward Classes which includes Most Backward Classes.

Representatives of the community has also represented to the Second Backward Classes Commission, headed by Thiru. Ambasankar, for treating all of them as Scheduled Tribes and to delete the entries in the list of Backward Classes. The Commission observed that while the traditional occupation of the Kurumba community in the plains are rearing Kurumba variety of sheep and production of wool and wool products, those of the people in the Nilgiris District are wood cutting, Collecting honey and forest produce. The Commission held that the special position of the community people in the Nilgiris District and in other parts of Tamil Nadu is quite different from each other. However, as the demand for treating all the Kurumba as Scheduled Tribe has been disputed for long, the Commission recommended to the Government to give a final disposal after conducting a detailed survey through the Adi Dravidar and Tribal Welfare Department and till then the entry in the list of Backward Classes might be retained. The community is accordingly retained in the list of Most Backward Classes and also finds a place in the comprehensive list of Backward Classes which included Most Backward Classes.

In G.O.Ms. No. 2629, Social Welfare, dated 6.11.1982 orders were issued for conducting an Ethnological Survey on the communities Kurumbas and Kurumbans by the Research Cell of the Directorate of Adi Dravidar and Tribal Welfare with the aid of Anthropology Department of the University of Madras.

The Director of Adi Dravidar and Tribal welfare has reported that Professor and Head of Department of Anthropology, University of Madras has suggested Dr. V. Karuppiyan to assist the Research cell for conducting the Ethnological survey.

Dr. V. Karuppiyan, Lecturer, Department of Anthropology, University of Madras has sent a brief ethnological report relating to the issues of Kurumbas, Kurubas and Kurumans of Tamil Nadu. He has also informed that according to these findings the shepherd caste of Kurumba is a part of main stream of the Hindu caste system and is very different from the Tribal community called Kurumbas who live in the Nilgiris.

Dr. Subba Reddy, who was consulted further in the matter on Dr. Karuppiyan's report has reported as follows :--

"As things stand there are so many nomenclatures which have been indiscriminately used in census and other reports in reference to same group of people often unwillingly and perhaps also through the printer's devil because of the similarity of terms Kuruba, Kurumba, Kurumbar, Kurumban, Kurumbas, Kurubar, Kurubas etc. This does not mean that there are so many categories of people in reality and what does not exist distinctly in reality cannot be studied separately."

Dr. Subba Reddy's report is as follows :--

(i) Kuruman and Kurumban in the Nilgiris District alone should be regarded as Scheduled Tribes.

(ii) Kuruman or Kurumban in other parts (North Arcot and Dharmapuri Districts) deserve to be treated as Backward Classes only.)

The Director has also reported that as the number of Kurumbas living in the plains exceed the number of Kurumbas living in the Nilgiris District and as the request has no ethnological background similar to the Nilgiris Kurumba the request deserves to be turned down in order to protect the interest of the real Scheduled Tribes living in the Nilgiris District.

The Collector of North Arcot Ambedkar District has since reported that Kurumans community which has been included in the list of Scheduled Tribes throughout Tamil Nadu except Kanyakumari District and Senkottah Taluk of Tirunelveli District is not in existence in the North Arcot and Ambedkar District.

In view of the several representations being received from various communities requesting to include them in the list of Scheduled Tribes, the Government have constituted a Committee of Anthropologists, with immediate effect, to conduct ethnological survey of the communities, such as Kurumba, Kurumans, Kurubar, Kuruba, Vettaikaran, Shikari nayakkan, Kuruvi-Karunayakan, Bamboo Weavers, Vuduvan, Vedan, Sholagar, Sholagan etc.. The Committee is going into the issue and on Receipt of the Committee's report, the State Government, after examining the proposals, would send a report to Government of India, whose decision on the issue will be final."

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42. In the circumstances, we hold that the petitioners are not entitled to the reliefs prayed for by them in these writ petitions.

43. Hence, the writ petitions suffer a dismissal. However, there will be no order as to costs.

44. Learned counsel for the petitioners prays for leave to file an appeal before the Supreme Court. We have only followed the principles laid down in *Sush Kumar Choudhary v. State of Tripura*, AIR 1990 SC

45. Hence, we do not think that this is a fit case for granting leave to appeal to the Supreme Court. In our opinion, it does not involve any substantial question of law. Nor does the question need to be decided by the Supreme Court.

46. Hence, the prayer is rejected.

47. Petition dismissed.