

Twelfth Kerala Legislative Assembly

Bill No. 228

**THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES)
REGULATION OF ISSUE OF COMMUNITY CERTIFICATES
(AMENDMENT) BILL, 2008**

©

Kerala Legislature Secretariat
2008

KERALA NIYAMASABHA PRINTING PRESS.

Twelfth Kerala Legislative Assembly
Bill No. 228

**THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES)
REGULATION OF ISSUE OF COMMUNITY CERTIFICATES
(AMENDMENT) BILL, 2008**

874/2008.

THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES)
REGULATION OF ISSUE OF COMMUNITY CERTIFICATES
(AMENDMENT) BILL, 2008

A

BILL

to amend the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996.

Preamble.—WHEREAS, it is expedient to amend the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 for the purposes hereinafter appearing ;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Act, 2008.

(2) It shall be deemed to have come into force on the 1st day of February, 2007.

2. *Amendment of section 2.*—In section 2 of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (11 of 1996) (hereinafter referred to as the principal Act), for clause (g), the following clause shall be substituted, namely:—

“(g) ‘Expert Agency’ means an officer or team of officers belonging to the Anthropological Wing in the Kerala Institute for Research, Training and Development Studies for Scheduled Castes and Scheduled Tribes (KIRTADS) of the Scheduled Castes and Scheduled Tribes Development Department of the Government, entrusted with the research, training and developmental studies of the Scheduled Castes and Scheduled Tribes under the control of the Deputy Director (Anthropology) who shall function as the Vigilance Officer of the Vigilance Cell and exercise the powers conferred under sub-section (1) of section 9 and perform such other duties.”.

3. *Insertion of new section 6A.*—After section 6 of the principal Act, the following section shall be inserted, namely:—

“6A. *Cancellation of Community Certificate issued earlier.*—Notwithstanding anything contained in any other provisions of this Act or in 874/2008.

any judgment, decree or order of any court, the rejection of an application for caste certificate by the competent authority under sub-section (1) of section 5 and the rejection of an application under sub-section (2) of section 6 by the Screening Committee shall be treated as cancellation of the certificate, if any, issued earlier by any authority and where any authority mentioned in section 7, on verification finds that the certificate has been obtained fraudulently and consequently the Scheduled Castes and Scheduled Tribes claim of the individual is rejected, such rejection shall also be treated as cancellation of the certificate.”.

4. *Insertion of new section 8A.*—After section 8 of the principal Act, the following section shall be inserted, namely:—

“8A. *Community Certificates, if found bogus, to be cancelled.*—(1) Where on verification, the Scrutiny Committee finds that the community certificate issued in support of the Scheduled Castes or Scheduled Tribes claim of the individual is not genuine, it shall cancel the same and intimate such cancellation to the appointing authority or local authority or head of the educational institution, as the case may be, together with a request to cancel the appointment or admission, as the case may be.

(2) Whenever an intimation is received under sub-section (1), the appointing authority or local authority or head of the educational institution, as the case may be, shall cancel the appointment or admission, without any further notice to the individual concerned and debar him from continuing in office or studying further.”.

5. *Amendment of section 9.*—In section 9 of the principal Act, for sub section (2), the following sub-section shall be substituted, namely:—

“(2) The report of the Expert Agency shall be conclusive proof for or against the Scheduled Castes or Scheduled Tribes claim, as the case may be, of the person reported upon, unless found contrary by the Scrutiny Committee, after due procedure.”.

6. *Amendment of section 11.*—In section 11 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) An order passed by the Scrutiny Committee shall be final and conclusive. No suit or appeal shall lie against the order passed by the Scrutiny Committee.”.

7. *Amendment of section 12.*—In section 12 of the principal Act, sub-section (3) shall be omitted.

8. *Insertion of new section 15A.*—After section 15 of the principal Act, the following section shall be inserted, namely:—

“15A. *Penalty for obtaining a fraudulent community certificate by a Scheduled Caste member as Scheduled Tribe and vice versa.*—Whoever belonging to any of the Scheduled Castes obtains fraudulently a community certificate that he belongs to any of the Scheduled Tribes or whoever belonging to any of the Scheduled Tribes obtains fraudulently a community certificate that he belongs to any of the Scheduled Castes, shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees but which may extend to five thousand rupees.”.

9. *Insertion of new section 16A.*—After section 16 of the principal Act, the following section shall be inserted, namely:—

“16A. *Deferment of pensionery benefits.*—Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force or in any judgment, decree or order of any court, where a person secures any appointment in the Government or any Government Undertaking or local authority or any other authority against a post reserved for Scheduled Caste or Scheduled Tribe, by producing a fraudulent Community Certificate, and if on an enquiry by the Expert Agency it is found that his claim is not genuine and if the incumbent retires while the enquiry by the Government or the Scrutiny Committee is pending, the Government or the Government Undertaking or local authority or any other authority as the case may be, shall have the power to defer and withhold the pensionery benefits of the incumbent pending decision by the Government or the Scrutiny Committee.” .

10. *Insertion of new section 31.*—After section 30 of the principal Act, the following section shall be added, namely:—

“31. *Validation.*—Notwithstanding anything contained in this Act, or in any other law for the time being in force or in any judgment, decree or order of any court, any order passed by the Scrutiny Committee constituted by notification G.O.(P) No.16/95/SCSTDD dated the 8th May, 1995 consequent to the judgment dated the 2nd September, 1994 of the Supreme Court of India in Civil Appeal No. 5854/1994 during the period from 8th day of May, 1995 to the 24th day of April, 2002 shall be deemed to have been issued under the provisions of this Act, as amended by the Kerala (Scheduled Castes and Scheduled Tribes)

Regulation of Issue of Community Certificates (Amendment) Act, 2008 and accordingly anything done or any action taken by the Scrutiny Committee constituted on the 8th May, 1995 in the purported exercise of the powers conferred by or under this Act shall not be deemed to be invalid on the ground that the Scrutiny Committee had not been constituted under the provisions of this Act.

11. *Repeal and Saving.*—(1) The Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Ordinance, 2008 (37 of 2008) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

In compliance with the mandatory directions issued by the Hon'ble Supreme Court in the decision reported in 1994(6) SCC 241 (Kumari Madhuri Pattil and another Vs. Additional Commissioner, Tribal Development and others) the State Government have, as per G.O.(P) No. 16/1995/SCSTDD dated 8th May, 1995 constituted a Scrutiny Committee for verification of the claims as Scheduled Castes and Scheduled Tribes. Later the State Government have enacted the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (11 of 1996) which came into force with effect from 1st December, 1996. In exercise of the powers conferred by section 27 of the Act 11 of 1996, Government have made rules with retrospective effect from 1st December, 1996, as per notification. G.O.(P) No.18/2002/SCSTDD dated 20th April, 2002. In exercise of the powers conferred under section 8 of the Act read with rule 7 of the Rules made thereunder, the Government constituted the Scrutiny Committee for verification of Community Certificates as per G.O.(P) No.20/2002/SCSTDD dated 20th April, 2002 published in the Kerala Gazette Extraordinary No. 547 dated 24th April, 2002.

2. The Hon'ble High Court of Kerala in its judgment in MFA 1318/1999 (N. Natarajan and another Vs. State of Kerala) held that the decision made by the Scrutiny Committee constituted by Government as per order No. G.O.(P). 16/1995/SCSTDD dated 8th May, 1995, after coming into force of Act 11 of 1996 is without jurisdiction and is invalid. Government have, therefore decided to amend the Act by adding a validation clause so that any action taken or any decision finalised by the Scrutiny Committee constituted prior to the enactment shall not be made invalid.

3. In view of the observations and directions in various judgments of the Hon'ble High Court and also the practical difficulties being experienced in the smooth functioning of the Scrutiny Committee and the 'Expert Agency' constituted under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (11 of 1996), Government have also decided to amend certain provisions in the Act immediately so as to achieve the full intention for which the Act was enacted.

4. As the Legislative Assembly of the State of Kerala was not in session, the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of issue of Community Certificates (Amendment) Ordinance, 2007 (4 of 2007), was promulgated by the Governor on the 31st day of January, 2007 and was published in the Kerala Gazette Extraordinary No. 174 dated 1st February, 2007 for the above said purpose.

5. A Bill to replace the Ordinance No. 4 of 2007 published as Bill No. 67 of XII Kerala Legislative Assembly, could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on 2nd March, 2007 and ended on the 29th of the March, 2007. Therefore, the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Ordinance, 2007 (39 of 2007) was promulgated by the Governor on the 30th day of March, 2007 and the same was published in the Kerala Gazette Extraordinary No. 644 dated 2nd April, 2007.

6. A Bill to replace the Ordinance No.39 of 2007 could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 19th day of June, 2007 and ended on the 26th July, 2007. Therefore, the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Ordinance, 2007 (55 of 2007) was promulgated by the Governor on the 30th day of July, 2007 and the same was published in the Kerala Gazette Extraordinary No. 1415 dated 30th July, 2007.

7. A Bill to replace the Ordinance No. 55 of 2007 could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 4th day of September, 2007 and ended on the 20th September, 2007. Therefore, the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Ordinance,

2007 (60 of 2007) was promulgated by the Governor on the 15th day of October, 2007 and the same was published in the Kerala Gazette Extraordinary No. 1855 dated 15th October, 2007.

8. A Bill to replace the Ordinance No. 60 of 2007 could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 20th day of February, 2008 and ended on the 19th March, 2008. Therefore, the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Ordinance, 2008 (10 of 2008) was promulgated by the Governor on the 1st day of April, 2008 and the same was published in the Kerala Gazette Extraordinary No. 663 dated 1st April, 2008.

9. A Bill to replace the Ordinance No. 10 of 2008 could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 23rd day of June, 2008 and ended on the 24th day of July, 2008. Therefore, the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates (Amendment) Ordinance, 2008 (37 of 2008) was promulgated by the Governor on the 1st day of August, 2008 and the same was published in the Kerala Gazette Extraordinary No. 1683 dated 2nd August, 2008.

10. The Bill seeks to replace the Ordinance No. 37 of 2008 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, when enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

A. K. BALAN

EXTRACT FROM THE RELEVANT PORTION OF THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES) REGULATION OF ISSUE OF COMMUNITY CERTIFICATES ACT, 1996 (11 OF 1996)

** ** ** **

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) ‘appointment in public service’ means appointment to a service or post under the State or Central Government and includes appointment to any post of the State or Central Government Undertakings ;

** ** ** **

(g) ‘Expert Agency’ means an officer, or team of officers belonging to the Anthropological Wing of the Scheduled Castes and Scheduled Tribes Development department of the State Government, entrusted with the research, training and developmental studies of the Scheduled Castes and the Scheduled Tribes and also includes the Director of that Department if he belongs to the Anthropology Wing of the Department or is an Anthropologist or Sociologist;

** ** ** **

6. *Constitution of Screening Committee for verification of Community Certificate.*—(1) The applications from members of the Scheduled Castes and the Scheduled Tribes for admission to the seats reserved for the Scheduled Castes and the Scheduled Tribes in educational institutions shall be got scrutinised by a Screening Committee constituted by Government in the prescribed manner, to ensure that the Community Certificate produced in support of the Scheduled Caste or the Scheduled Tribe claim of the applicant is genuine.

(2) The Screening Committee may cause detailed enquiry through the expert agency to ascertain if the applicant actually belongs to the Scheduled Caste or the Scheduled Tribe, as the case may be, and shall reject the application if the applicant does not belong to the Scheduled Caste or the Scheduled Tribe as claimed by him:

Provided that rejection of the application shall be without prejudice to the actions that may be taken under sections 11, 15 and 16.

** ** ** **

8. *Constitution of Scrutiny Committee for verification of Community Certificates.*—Government shall constitute a scrutiny committee for verification of community certificates. Any person belonging to Scheduled Castes or Scheduled Tribes or any appointing authority or local body or heads of educational institutions may make an application in such form and in such manner as may be prescribed by the scrutiny committee for verification of Community Certificates.

9. *Enquiry by Expert Agency.*—(1) The expert agency may conduct such enquiries as it may deem fit into the claim of an individual or group of individuals that he or they belong or belongs to the Scheduled Caste or the Scheduled Tribe in the following circumstances,—

(i) *Suo motu enquiries on the basis of field studies on castes, communities or tribes; or as a part of or auxiliary to anthropological or Sociological Studies or investigations;*

(ii) *On petitions and complaints being received by it, from any source pertaining to the Scheduled Caste or the Scheduled Tribe, claims of non-Scheduled Caste non-Scheduled Tribe as the case may be ;*

(iii) *On reference, requisitions, directions or proposals being received from the State and Central Governments, the competent authorities or the Screening Committee or the Scrutiny Committee.*

(2) *The report of the Expert Agency shall be conclusive proof for or against the Scheduled Caste or the Scheduled Tribe claim, as the case may be, of the person reported upon.*

** ** ** **

11. *Cancellation of false community certificate.*—(1) Where, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes or the Scheduled Tribes has obtained a false community certificate to the effect that either himself or his children belongs or belong to such Caste or the Tribe, the Scrutiny Committee may either suo motu or on a written complaint or report by any person or authority, call for the records and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by order, cancel the certificate after giving the person concerned an opportunity of making a representation, if any.

(2) *The powers of the nature referred to in sub-section (1) may also be exercised by the Government.*

(3) *The Scrutiny Committee while performing its functions for verification and cancellation of community certificates shall follow such procedure as may be prescribed.*

12. *Appeal and review.*—(1) Any person aggrieved by an order passed under sub-section (1) of section 5 by the Competent Authority rejecting an application made to it under section 4 may, within thirty days from the date of receipt of such order, appeal to the next higher Competent Authority and that authority may after giving the appellant an opportunity of being heard, either confirm the order appealed against or set aside the said order by following the prescribed procedure.

(2) *When the Competent Authority rejecting an application for community certificate is the District Collector, the person aggrieved by the said decision of the District Collector, may within fifteen days from the date of receipt of the order of the District Collector, appeal to the Government and the Government may after giving the appellant an opportunity of being heard, confirm the order of the District Collector or arrange for an enquiry through the Expert Agency and issue appropriate orders or directions on the basis of the expert report.*

(3) *Any person aggrieved by an order passed under section 11 by the Scrutiny Committee may within thirty days from the date of receipt of such order appeal to the High Court and the High Court would dispose of the case as expeditiously as possible within a period of three months. In case the writ petition/miscellaneous petition/matter is disposed of by Single Judge no further appeal would lie against that order to the Division Bench, but subject to special leave under Article 136.*

** ** ** **

15. *Penalties.*—*Whoever obtains a community certificate by,—*

(a) *furnishing false information; or*

(b) *filing a false statement ; or*

(c) *by suppressing material facts and relevant evidence pertaining to his caste or tribal status ; or*

(d) *any other fraudulent means ;*

shall, on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees:

Provided that Court may, for adequate and special reason to be recorded in the judgment, impose a sentence of imprisonment for, a lesser term or fine.

(2) Whoever, furnishes false information regarding his personal details of caste or tribal status, to the Expert Agency in an enquiry under section 9 or to the Scrutiny Committee in an enquiry under section 11 or causes any obstruction in such an enquiry proceeding, by preventing the Expert Agency or the Scrutiny Committee from collecting the facts or evidence regarding his personal and caste or tribal status, or tries to frustrate, prevent or interfere in any way with the process of enquiry, shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend upto six months and with fine which shall not be less than five hundred rupees but which may extend upto one thousand rupees.

16. *Benefits secured on the basis of false community certificates to be withdrawn:*—(1) Whoever not being a person belonging to any of the Scheduled Castes or the Scheduled Tribes secures admission in any educational institution against a seat reserved for such Castes or Tribes or secures any appointment in the Government, Government undertakings, Local Authority or in any other Company or Corporation owned or controlled by the Government or in any aided institution against a post reserved for such Castes or Tribes or enjoys any other benefit intended exclusively for such Castes or the Tribes by producing a false community certificate shall, on cancellation of the false community certificate, be removed by cancelling the irregular admission in the concerned educational institution or, as the case may be, removed from the said service forthwith and any other benefit enjoyed by him as aforesaid shall be withdrawn forthwith.

(2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance, stipend or any other financial benefit shall be recovered as if it is an arrear or public revenue due on land.

(3) Any degree, diploma or any other educational qualification acquired by such person after securing admission in any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him.

(4) The Competent Authority or the State Government may also order appropriate measures to prevent such person from further enjoying the benefits of Scheduled Castes or the Scheduled Tribes, including substitution of the real caste name of such person in the public records for the false Scheduled Caste or the Scheduled Tribe name.

(5) Whoever not being a person belonging to any of the Scheduled Castes or the Scheduled Tribes secures any benefit reserved for Scheduled Castes or the Scheduled Tribes other than those mentioned in section 17 by producing a false community certificate shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which shall not be less than one thousand rupees but which may extend upto five thousand rupees:

Provided that the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or fine.

**

**

**

**

30. *Transitional Provision.*—A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act, shall unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.
