

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE B.KEMAL PASHA**

**FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937**

**OP(C).No. 1103 of 2014 (O)**

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**CMA. NO.119/2013 OF ADDITIONAL DISTRICT COURT, THRISSUR.**

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**PETITIONER(S):**

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**V.M. SASI, S/O.VELUTHEDATHU MANI,  
KIZHAKKUMPATTUKARA, THRISSUR.**

**BY ADVS.SRI.DINESH R.SHENOY,  
SRI.H.KIRAN,  
SRI.M.PREMCHAND.**

**RESPONDENT(S):**

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- 1. KISHORE, S/O.KURUPPALATH GANGADEVI,  
KOORKKENCHERY DESOM,  
KOORKKENCHERY VILLAGE,  
THRISSUR TALUK-680 582.**
- 2. PARAMEEKKAVU DEVASWAM,  
THRISSUR SWARAJ ROAD, THRISSUR VILLAGE,  
THRISSUR TALUK, REP. BY ITS PRESIDENT  
KARNAKA KRISHNANKUTTY MENON @ K.K. MENON,  
S/O.KUNJANIAN @ RAMAN MENON,  
MULAMKUNNATHUKAVU, THRISSUR-680 581.**
- 3. PARAMEEKKAVU DEVASWOM,  
THRISSUR SWARAJ ROAD, THRISSUR VILLAGE,  
THRISSUR TALUK, REP. BY ITS SECRETARY,  
RAMACHANDRA PISHARADI,  
S/O.ANAYATH PISHARATH RAGHAVA PISHARADI,  
CHEMBUKKAVU VILLAGE, THRISSUR TALUK-680 020.**

**R1 BY ADV. SRI.ANCHAL C.VIJAYAN.  
R2 & R3 BY SRI.M.RAMESH CHANDER, SENIOR ADVOCATE.  
ADV. SRI.ANEESH JOSEPH.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**rs.**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- P1- TRUE PHOTOCOPY OF I.A.NO.10026/2013 IN OS NO.2628/2013, IIND ADDITIONAL MUNSIF COURT, THRISSUR.
- P2- TRUE PHOTOCOPY OF COUNTER AFFIDAVIT DATED 30.07.2013 FILED BY RESPONDENTS 1 AND 2 IN I.A.NO.10026/2013 IN OS NO.2628/2013, IIND ADDITIONAL MUNSIF COURT, THRISSUR.
- P3- TRUE PHOTOCOPY OF COUNTER AFFIDAVIT DATED 31.07.2013 FILED BY THE 3RD RESPONDENT IN I.A.NO.10026/2013 IN OS NO.2628/2013, IIND ADDITIONAL MUNSIF COURT, THRISSUR.
- P4- TRUE PHOTOCOPY OF BYELAWS OF PARAMEEKKAVU DEVASWOM.
- P5- TRUE PHOTOCOPY OF ORDER DATED 24.09.2013 IN I.A.NO.10026/2013 IN OS NO.2628/2013, IIND ADDITIONAL MUNSIF COURT, THRISSUR.
- P6- TRUE PHOTOCOPY OF THE JUDGMENT DATED 08.04.2014 IN CMA NO.119/2013, ADDITIONAL DISTRICT COURT, THRISSUR.
- P7- TRUE PHOTOCOPY OF RELEVANT PAGES OF NSS CHARITHRAM, VOL.I.
- P8- TRUE PHOTOCOPY OF CERTIFICATE DATED 25.09.2013 ISSUED BY THE NSS KARAYOGAM NO.1990, THRISSUR.
- P9- TRUE PHOTOCOPY OF EXTRACT OF MEMBERSHIP ISSUED BY THE MANAGER, PARAMEEKKAVU DEVASWOM DATED 14.04.2014 FOR PARAMEEKKAVU DESOM IN PARAMEEKKAVU DEVASWOM.
- P10- TRUE PHOTOCOPY OF EXTRACT OF MEMBERSHIP ISSUED BY THE MANAGER, PARAMEEKKAVU DEVASWOM DATED 14.04.2014 FOR KIZHAKKUMPATTUKARA DESOM IN PARAMEEKKAVU DEVASWOM.
- P11- TRUE COPY OF THE NOTIFICATION DATED 06/05/2008 PUBLISHED BY THE 2ND RESPONDENT, WITH APPLICATION.
- P12- TRUE COPY OF THE PRESS RELEASE ISSUED BY THE 2ND RESPONDENT.
- P13- TRUE COPY OF THE HISTORY OF THE PARAMEEKKAVU DEVASWOM PUBLISHED BY THE 2ND RESPONDENT HEREIN.

**RESPONDENT'S EXHIBITS:-**

- EXT.R1A COPY OF THE JUDGMENT IN OP(C) NO.3349/2013 DATED 28/10/2013 OF THIS HON'BLE COURT.

- EXT.R1B COPY OF THE BYELAW OF 1123 M.E.(1948) OF THE 3RD RESPONDENT.
- EXT.R1C COPY OF THE JUDGMENT IN O.S. NO.3018/2009 ON THE FILES OF MUNSIF COURT, THRISSUR.
- EXT.R1D COPY OF THE ANNUAL REPORT OF THE 3RD RESPONDENT DEVASWOM PUBLISHED ON 03/09/2013.
- EXT.R1E COPY OF THE ORDER PASSED BY THE MUNSIF'S COURT, THRISSUR IN I.A. NO.11230/2013 IN O.S. NO.3799/2013 DATED 22/09/2013.
- EXT.R1F COPY OF THE REPORT FILED BY THE ADVOCATE COMMISSIONER AS PER EXT.R1(E).
- EXT.R1G COPY OF THE REPORT DATED 26/12/2007 OF FOREST RANGE OFFICER, PATTIKAD.
- EXT.R1H COPY OF THE COMPLAINT VIDE CRL.M.P. NO.91/2013 ON THE FILES OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR.
- EXT.R1I COPY OF THE ORDER IN CRL.M.P. NO.91/2013 DATED 21/02/2013 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR.
- EXT.R1J COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.14/2013/TSR.
- EXT.R1K COPY OF THE PLAINT IN O.S. NO.2628/2013 ON THE FILES OF IIND ADDITIONAL MUNSIF COURT, THRISSUR.
- EXT.R1L WRITTEN STATEMENT FILED BY DEFENDANTS IN O.S. NO.3018/2009 ON THE FILES OF PRINCIPAL MUNSIF'S COURT, THRISSUR.
- EXT.R1M COPY OF THE PLAINT IN O.S. NO.3563/2013 ON THE FILES OF MUNSIF'S COURT, THRISSUR.
- EXT.R1N COPY OF THE PARTITION DEED DATED 07/06/1986 WHICH IS MARKED AS EXT.A1 IN EXT.P5 ORDER OF THE IIND ADDITIONAL MUNSIF COURT, THRISSUR.
- EXT.R1O COPY OF THE INFORMATION RECEIVED FROM THE PRINCIPAL, GOVERNMENT MODEL BOYS HIGHER SECONDARY SCHOOL, THRISSUR.
- EXT.R1P COPY OF THE LAWYER NOTICE DATED 10/05/2013 ISSUED ON BEHALF OF THE 1ST RESPONDENT.
- EXT.R1Q COPY OF THE REPLY NOTICE ISSUED TO EXT.R1(P) NOTICE.

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- EXT.R1R      COPY OF THE PUBLISHED BY THE NATIONAL COMMISSION  
FOR BACK WARD CLASSED, IN RESPECT OF THE STATE OF  
KERALA.**
- EXT.R1S      COPY OF THE LIST OF SCHEDULE CASTES, SCHEDULE TRIBES  
AND OTHER BACK WARD CLASSES PUBLISHED BY THE KERALA  
PUBLIC SERVICE COMMISSION.**
- EXT.R1T      COPY OF THE COMMUNICATION ISSUED BY THE PRINCIPAL,  
THANTRA VIDYA PEEDHAM, ALUVA, KERALA TO THE  
1ST RESPONDENT.**
- EXT.R1U      COPY OF THE SPECIMEN CONDITION OF NAIR SERVICE  
SOCIETY'S KARAYOGAMS APPROVED BY THE DIRECTOR  
BOARD OF NAIR SERVICE SOCIETY.**
- EXT.R1V      COPY OF THE BYE LAWS OF KERALA VELUTHEDATHU NAIR  
SAMAJAM.**

**//TRUE COPY//**

**PA. TO JUDGE**

**rs.**

**[CR]**

**B.KEMAL PASHA, J.**

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O.P.(C).No.1103 of 2014

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*Dated this the 10<sup>th</sup> day of July, 2015*

**J U D G M E N T**

Can a person belongs to the sect of 'Veluthedathu Nair' be treated as 'Nair' and can he be treated as a 'Malayalee Savarna Hindu' within the meaning of Exhibit P4 By-laws of the '*Paramekkavu Devaswom*'?

2. The 3<sup>rd</sup> defendant in O.S.No.2628 of 2013 of the Munsiff's Court, Thrissur is the petitioner herein. The suit is one filed by the 1<sup>st</sup> respondent as plaintiff for a decree of mandatory injunction for the removal of the name of the petitioner herein, who is the 3<sup>rd</sup> defendant, from the membership register of the *Paramekkavu Devaswom*, on

the ground that the 3<sup>rd</sup> defendant, who belongs to '*Veluthedan*' caste is not coming within the definition of '*Savarna Hindu*' and therefore, he is not qualified and entitled to be a member of the '*Paramekkavu Devaswom*'. Along with the suit, Exhibit P1 I.A. No.10026 of 2013 was filed seeking an order of temporary injunction, thereby restraining the 3<sup>rd</sup> defendant from participating in any of the trusts, committees or administrative body of the '*Paramekkavu Devaswom*', or from contesting the election to any of such bodies or to be a member in any of such bodies. Even though the petitioner and defendants 1 and 2 have seriously challenged the said I.A. through counter affidavit, the court below, through Exhibit P5 order, allowed the I.A., thereby restraining the petitioner herein, through an order of temporary injunction, from contesting the election and from holding any post in the new governing body of the '*Paramekkavu Devaswom*'.

3. The petitioner has challenged Exhibit P5 order, through C.M.A.No.119 of 2013 before the District Court,

Thrissur. The learned 1<sup>st</sup> Additional District Judge, Thrissur has approved the findings entered by the trial court in Exhibit P5 and has virtually recited the order and dismissed the C.M.A., through Exhibit P6 judgment. The said judgment is under challenge.

4. Heard Adv.Sri.Dinesh R. Shenoy, the learned counsel for the petitioner, Adv.Sri. Anchal C. Vijayan, the learned counsel for the 1<sup>st</sup> respondent and Adv.Sri.M. Ramesh Chander, the learned Standing Counsel for respondents 2 and 3.

5. The learned counsel for the petitioner has pointed out that the petitioner has been a member of the committee of the '*Paramekkavu Devaswom*', right from the year 1987 onwards and he has officiated as leader of many of the committees of the '*Paramekkavu Devaswom*' and he has been actively in the leadership for conducting the '*Thrissur Pooram*' Festival every year, for the last many years. It is also pointed out that he is the elected Vice President of the '*Paramekkavu Devaswom*'. It is argued that he is a

*'Malayalee Savarna Hindu'* within the meaning of Clause 3 of Exhibit P4 By-laws of the *'Paramekkavu Devaswom'*. It is further argued that, in order to enter into a finding that such a person cannot be treated as a *'Malayalee Savarna Hindu'*, both the courts below have limited the consideration of the aspect by placing heavy reliance on the fact that the sect of *'Veluthedathu Nairs'* are being treated as an Other Backward Community in the case of Government appointments, appointments to public sector undertakings, and in the matter of education, based on the constitutional perspective. According to the learned counsel for the petitioner, such a view taken by both the courts below is apparently unfounded and incorrect. It is also argued that such a view is not palatable or digestible in this 21<sup>st</sup> century, when we had wiped out the most accursed system of untouchability from this great Nation. The said arguments have been fully endorsed and supported by the learned counsel for respondents 2 and 3.

6. *Per contra*, the learned counsel for the 1<sup>st</sup>

respondent has argued that the petitioner being a '*Veluthedathu Nair*' is of a lower caste when compared to '*Nairs*' and at any stretch of imagination, the petitioner cannot be treated as a '*Malayalee Savarna Hindu*'. It is argued that it is a very special provision mentioned in the By-laws for a qualification to become a member of the '*Paramekkavu Devaswom*' that he should be a '*Malayalee Savarna Hindu*'. It is also argued by the learned counsel for the 1<sup>st</sup> respondent that as per '*Kuzhikkattu Pacha*', which is the '*Thanthrik*' text being educated to persons becoming '*Thanthris*', in case of entry of '*Veluthedathu Nair, Vilakkithala Nair*' etc. near to the place of the sanctum sanctorum in a temple, it would result in desecrating the temple, and in such cases, the purification or sublimation of the temple have to be done. Therefore, according to the learned counsel for the 1<sup>st</sup> respondent, at any stretch of imagination, such a person cannot be considered as a '*Savarna Hindu*'.

7. All other matters considered by the courts below

are merely academic and do not relate to the crux of the matter. From the rival arguments forwarded by both sides, first of all, it has to be considered as to who is a '*Hindu*'? The next question to be considered is the status of a '*Nair*' in the '*Varnas*' and whether the sect of '*Veluthedathu Nair*' will come within the category of '*Nairs*'. The further question to be considered is whether '*Nairs*' can be considered as a '*Savarna Hindu*' and in such case, whether '*Veluthedathu Nair*' also can be considered as a '*Savarna Hindu*'.

8. The learned counsel for the 1<sup>st</sup> respondent has contended that the petitioner is guilty of incorporating the term '*Nair*' also along with the term '*Veluthedathu*' in showing his caste name in the records. The argument is that the petitioner ought to have shown his caste name as '*Veluthedathu*' or '*Veluthedan*' and should not have used the term '*Nair*' by prefixing the term '*Veluthedathu*'.

9. ***Seeds of Modern Public Law in Ancient Indian Jurisprudence*** by ***Rama Jois***, 2<sup>nd</sup> Edition, Page 171 says:-

*“Bharathiya values regarding human rights*

*perhaps have the oldest pedigree. Rigveda which is regarded as the oldest document, declares that all human beings are equal and they are brothers”.*

Mandala-5, Sukta-6, Mantra-5 incorporated in Rigveda, the most ancient of the Vedas, says:

*“No one is superior (Ajyestasa) or inferior (akanishtasa). All are brothers (ete bharataraha). All should strive for the interests of all and should progress collectively”.*

10. In ancient India, equality among human beings was the landmark. Among the members of a particular 'Varna', equality was the landmark and no one was considered as superior or inferior. But in the passage of time, somebody had considered themselves as superiors over others, merely on account of self imposed superiority. They wanted to treat others as inferiors to them.

11. In **P. Ramanatha Aiyar's The Major Law Lexicon: 4<sup>th</sup> Edition 2010 Volume 3 Page 3076**; it was held that:

*“The term Hindu is defined for the application of Hindu Law as a person includes not only; those who are Hindu by religion; but also those who are commonly known as such.”*

**12. MULLA's Principles of Hindu Law (Fourteenth Edition) paragraph 671** was relied on by the Supreme Court in **C.W.T. v. R.Sridharan [(1976) 4 SCC 489]**; wherein it was held in paragraph 17 that:

*“The word 'Hindu' does not denote any particular religion or community. During the last hundred years and more it has been a nomenclature used to refer comprehensively to various categories of people for purposes of personal law. It has been applied to dissenters and non-conformists and even to those who have entirely repudiated Brahminism. It has been applied to various sects and beliefs which at various periods and in circumstances developed out of, or spit off from, the Hindu system but whose members have nevertheless continued to live under the Hindu Law and the Courts have generally put a liberal construction upon enactments relating to the personal law applicable to Hindus.”*

**13. Dr. Whitely Stocks** has pointed out that:

*“The collocation of the words Hindu, Mahomedian, or Budhish makes it reasonably plain that the term Budhish makes it reasonably plain that the term Hindu is used as*

*theological terms and denotes only persons, who profess any faith of the Brahminical religion or the religion of Puranas.”*

14. In ***Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya [AIR 1996 SC 1119]*** it was held that:

*“The historical and etymological genesis of the word “Hindu” has given rise to a controversy among indologists, but the view generally accepted by scholars appears to be that the word “Hindu” is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. “That part of the great Aryan race”, says Monier Willaims, “Which immigrated from Central Asia, through the mountain passes into India, settled first in the district near the river Sindhu (now called the Indus). The Persians pronounced this word Hindu and named their Aryan brethren Hindus. The Greeks, who probably gained their first ideas of India from the Persians, dropped the hard aspirate and called the Hindus “INDOI”. The Encyclopedia of Religion and Ethics, Vol.VI has described Hinduism as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian Empire.”*

15. In ***Commissioner, H.R.C.E. Mysore v. Ratnavarma Heggde [(1977) 1 SC 525]*** in paragraph 43; it was held that:

*“The term 'Hindu' has a fairly wide connotations. In origin it indicated people living in the Indus region. It is only by subsequent usage and extension of meaning that the word acquired a religious sense, therefore in this sense, a more limited significance. The term 'Hindu' though not defined in the Act, may be presumed to stand for people of India with certain religious beliefs held or forms of religious worship practised by people of India originally.”*

16. In ***Bail Patil v. Union of India [AIR 2005 SC 3172]***; it was held that:

*“The word 'Hindu' conveys the image of diverse groups of communities living in India. A 'Hindu' can be identified only on the basis of his caste as an upper caste, Brahmin, Kshatriya or Vaish or of lower caste described in ancient India as shudras. The aboriginals who have no caste were considered as distinct from four castes or varnas of Hindu society and they have been treated in the constitution as scheduled Tribes and the Shudras are included in the Constitution as Scheduled Castes with special privileges and treatment for their upliftment.”*

17. In ***M.P.Gopalkrishnan Nair v. State of Kerala, [AIR 2005 SC 3053]***; it was held that:

*“A 'Hindu' may or may not be a person professing Hindu religion or a believer in temple worship. A Hindu has*

*a right to choose his own method of worship. The term 'Hindu' is a comprehensive expression giving the widest freedom to people of all hues, opinions, philosophies and beliefs to come within its fold."*

From the definitions given to the term Hindu, it can be concluded that '*Hindu*' is a theological term and it denotes only persons who profess any faith of Brahminical religion or religion of Puranas.

18. When dealing with '*Varnas*', it has to be considered that there are only four '*Varnas*' namely, '*Brahmanas*', '*Kshathriyas*', '*Vaisyas*' and '*Shudras*', collectively called "*Chathurvarnyam*". It seems that the '*Nair*' communities as a whole will come within the category of the fourth '*Varna*'. Therefore, *prima facie*, it can be seen that a person, who holds his caste name as '*Nair*' along with other sects, are also persons coming within the fourth category of '*Varna*' among '*Hindu*'. In clause 3 of Exhibit P4, the main qualification for a person to become a member of the '*Paramekkavu Devaswom*' is that he should hail from any of the '*Karas*' known as '*Paramekkavu*', '*Chembukkavu*',

*'Kizhakkumpattukara', 'Veliyannoor' and 'Koorkancherry'.*

Then, the next qualification is that he should be a *'Malayalee'*. Therefore, even if a person is a *Tamil Brahmin*, as rightly pointed out by the learned counsel for the 1<sup>st</sup> respondent, he should not be entitled to become a member of the *'Paramekkavu Devaswom'*, as he is not hailing from the State of Kerala. Admittedly, the petitioner is a *'Malayalee'*. The next qualification is that such a *'Malayalee'* should be a *'Savarna Hindu'*. Who is a *'Savarna Hindu'*?

19. The learned counsel for the 1<sup>st</sup> respondent has seriously canvassed an argument that Exhibit P4 By-laws is of the year 1103 ME; in short, which came into force in the pre-constitution period and therefore, the freedoms guaranteed in the constitution cannot be applied to the qualifications prescribed in Exhibit P4. In the same breath, he argues that when a person is receiving benefits of reservation, such a person cannot be treated as a *'Savarna Hindu'*; because he is of a lower strata, which is considered to be a member of a lower category in the religion and

therefore, he is not a '*Savarna Hindu*'. With respect, it can be said that the said two arguments will not go together.

20. The learned counsel for the petitioner has pointed out that in all the Dictionaries and text books, the word '*Savarna*' is defined as a person coming within any of the four '*Varnas*'. In '***Shabdatharavali***', 9<sup>th</sup> Edition, page No.1704, the term '*Savarna*' has been explained as,

*'A person coming within the same caste or a person coming within an equal caste or a person coming within any of the Varnas in the Chathurvarnyam'.*

The ***New Malayalam Dictionary*** by ***C.Madhavan Pillai***, Volume 1, wherein an '*Avarna*' is defined, in page No.253, as:

*'A person belonging to the deprived caste or a person does not belong to the Chathurvarnyam'.*

Therefore, the term '*Avarna*' is commonly meant as relating to a person who is not coming within any of the four '*Varnas*'. The aforesaid ***New Malayalam Dictionary*** gives

the meaning of the term '*Savarnan*' in page No.991, as:

*'a person coming within the Chathurvarnya,  
that means any of the four Varnas'.*

21. The learned counsel for the petitioner has invited the attention of this Court to '**Sarvavignjanakosam**', Volume 8, which says that depending upon the works being done or the cultivations being carried out by them, persons were categorized differently even when they belong to the same caste. It says that most of the '*Nairs*' were persons not doing any manual work. The persons, who were working at the temple and residing within the temple, were also to be treated as '*Nairs*'. It further denotes that '*Nairs*' are coming within the '*Varna*' of '*Shudra*'. It further says that '*Nairs*' were persons of upper category when compared to persons, who were being treated as untouchables. At the same time, it does not say that those untouchables were not being treated as persons coming within the '*Shudra Varna*'.

22. Over and above all these, the learned counsel for the petitioner has invited the attention of this Court to the

decision in ***Nani Amma v. Kochugovindan Nair [1962 KLT 979]***. The question considered by His Lordship Justice M.Madhavan Nair was with regard to the law of succession applicable to 'Veluthedans' in Cochin Area. In the decision noted (*Supra*), it was held that there are four lower caste 'Nairs', in which 'Veluthedan' (washer men) is the third one. Even though, it is of a lower caste, it seems that 'Veluthedath Nair' is also considered as one of the categories of 'Nairs'. It was held therein that even though such four lower caste 'Nairs' are also there, such four sub divisions is not one contemplated in the legislation. It was held therein that:

*"If Veluthedans form a sub-caste of the Nayar community- whether such sub-caste be of the higher order or lower order is immaterial – they are Nayars and the Cochin Nayar, Act, which applies to all Nayars in Cochin, must necessarily apply to them as well. There is absolutely no warrant to hold that the Act applies only to the higher sub-castes of Nayars and not to the lower sub-castes among them. The Act makes no such distinction; and it is not for the Court to import any against the expression of the*

*Act.”*

From the said discussions, it was concluded that even though '*Veluthedath Nair*' was considered to be a lower category among '*Nairs*', it was held that a '*Veluthedath Nair*' is also a '*Nair*' for all practical purposes and in the eye of law.

23. Going by the decision in ***Nani Amma's case*** (*Supra*), the fact that in ancient days of desecration and untouchability, '*Veluthedans*' were not allowed to enter the temples where '*Nairs*' were allowed free entry, is of little relevance. It seems that such terms of desecration and untouchability etc. are not known to the modern jurisprudence. Even though, '*Thanthris*' or persons associated with '*Thanthrik*' rites or education can afford to have terms like 'untouchability' or 'desecration' etc. in the sense noted in '*Kuzhikkattupacha*', the judicial exercise can only ill-afford it. Such terms in that sense are not known to the modern jurisprudence.

24. ***Nani Amma's case*** (*Supra*) is based on the

decision in ***Velayudhan Krishnan v. Velayudhan Govindan*** (21 TLJ. 851); wherein it was held that 'Veluthedans' are to be known as 'Nairs' and are governed by the Nair Act. In ***Nani Amma's case*** (*Supra*) it was further held that the Memorandum of 'Cochin Nair Mahasamajam' reckons 'Veluthedans' as a sub-sect of the 'Nairs' and that the opinions of the great leaders of the 'Nair' community necessarily tantamount to recognition of the sect of 'Veluthedans' being a sub-sect of 'Nair' community.

25. The learned counsel for the petitioner is relying on Exhibit P7 ***N.S.S. Charithram***, 1<sup>st</sup> Volume, wherein it was noted that there are 18 sub-sects in the 'Nair' community. The first three are 'Kiriyaam', 'Illam' and 'Swaroopam'. In the remaining, persons working at the temples, like the 'Marar' sub-sect, persons handling 'chembu vela', persons applying tiles to the temple, persons making earthen pots, persons known as 'Chakkala Nayar' etc. are also such sub-sects of the Nair community. Persons doing the business of milk wending were known as 'Idacherry Nair,' other persons

doing business in the '*Nair*' community were known as '*Vyapari Nair*'. Likewise, persons doing washing works are known as '*Veluthedath Nair*'. Persons, who are working as barbers were known as '*Vilakkithala Nair*.' Similarly, other sub-sets are also identified by the N.S.S. as persons coming within the '*Nair*' Community.

26. Exhibit P8 is the certificate issued by the '*N.S.S. Karayogam*', which shows that the petitioner is a member of the '*N.S.S. Karayogam No.1990*'.

27. The learned counsel for the 1<sup>st</sup> respondent has produced Exhibit R1(u), which is the By-laws of the '*N.S.S. Karayogam*', which shows that other '*Hindus*', who are well wishers of the '*Karayogam*' can also be enrolled as members of the '*Karayogam*'. Based on that clause, the learned counsel for the 1<sup>st</sup> respondent has put forwarded an argument that even if a person is not a '*Nair*', if he belongs to the Hindu religion, he could also be enrolled as a member of the '*Karayogam*', provided he is a well wisher of the '*Karayogam*' and therefore, the mere membership of the

petitioner in the '*N.S.S. Karayogam*' alone cannot be reckoned for the purpose of categorizing him as a '*Nair*'. The By-laws says that for enrolling any such member, a special sanction from the Registrar is required.

28. The learned counsel for the 1<sup>st</sup> respondent has placed heavy reliance on "*Kuzhikkattu Pacha*", to show that when persons like '*Veluthedath Nair*', who makes an entry near to the sanctum sanctorum of the temple, makes the temple impure, such a person cannot be permitted to be in the administrative body of '*Paramekkavu Devaswom*'. If as a matter of fact, the questions of sublimation or untouchability have any relevancy for deciding the qualification to be a member of the '*Paramekkavu Devaswom*', definitely that should have found a place in the By-laws of the '*Paramekkavu Devaswom*'.

29. As rightly pointed out by the learned counsel for the petitioner, many eminent scholars and several leaders of the '*Nair*' community were the leaders of the '*Paramekkavu Devaswom*'. It was during the tenure of such eminent

persons, who were ruling the '*Paramekkavu Devaswom*' that the present petitioner was also enrolled as a member of the '*Paramekkavu Devaswom*' and was elected in the administrative body of the '*Paramekkavu Devaswom*' in the year 1987. If as a matter of fact, such a person was considered to be a person, whose presence could impure or desecrate the temple, definitely such a qualification should also have been incorporated in the By-laws of the '*Devaswom*'. At the same time, the By-laws of the '*Devaswom*' deals with the qualification of a person to become a member of the '*Devaswom*' as a '*Malayalee Savarna Hindu*'. The same is carefully worded, by making '*Avarnas*' alone as persons, who are not qualified to be a member of the '*Devaswom*'. If a person is a '*Savarna Hindu*', he is qualified to be a member.

30. From the forgoing discussions, it has come out that the petitioner belongs to the sub-sect of '*Veluthedath Nair*' is, no doubt, a '*Nair*' for all practical purposes and therefore, he cannot be treated as an '*Avarna Hindu*'. When

he belongs to a sub-sect of the '*Nair*' community, he squarely falls within the category of the fourth '*Varna*' namely '*Shudra*' and therefore, he is a '*Savarna Hindu*'. The terms like untouchability etc. are alien to Exhibit P4 By-laws of the '*Paramekkavu Devaswom*'. It does not deal with the question of impurity, untouchability etc., whereas, it deals with the question of '*Avarna*' or '*Savarna Hindus*'. When the petitioner is a person belongs to a '*Savarna Hindu*', he is entitled to be a member of the '*Paramekkavu Devaswom*'.

31. It seems that both the courts below were carried away by holding a person as not a '*Savarna*', in case, he is entitled to some sort of reservation in education or appointments based on the constitutional protections granted to some weaker sects. Merely because of such a constitutional protection, it cannot be said that those persons are '*untouchables*' or '*Avarnas*'. By enjoying such a constitutional protection available to the weaker strata, one cannot become an '*Avarna*'. Even when they are '*Savarnas*', weaker sections are entitled to such

constitutional protections.

32. Finally, the learned counsel for the 1<sup>st</sup> respondent has argued that earlier there was a suit before the Munsiff court, Thrissur as O.S.No.3018 of 2009 by challenging the qualification prescribed for persons to become the member of the '*Paramekkavu Devaswom*' in the By-laws. It was argued that in that suit, the '*Paramekkavu Devaswom*' had filed a written statement by contending that persons, who are enjoying reservation in the question of education or employment, are not entitled to become members of the '*Paramekkavu Devaswom*' as they are not '*Savarna Hindu*'. '*Paramekkavu Devaswom*' cannot take such a stand. '*Paramekkavu Devaswom*' has to go by its own By-laws. They will have to decide the question independently as to whether a person is a '*Savarna Hindu*' or an '*Avarna*'. Such a decision should be based on accepted legal principles and not in common parlance by considering that a person, who is enjoying a reservation considers himself to be an '*Avarna*'. Such an interpretation of the term is not permissible in the

eye of law. Whatever be such contentions taken by the '*Paramekkavu Devaswom*', the petitioner is not bound by any such concession even if made by the '*Paramekkavu Devaswom*'.

33. It seems that the appellate court has simply endorsed the findings entered by the trial court as gospel truths. In fact, the order passed by the learned Munsiff was repeated and recited as such by the appellate court without applying mind.

34. From the discussions made above, it has come out that the decisions taken by the trial court, which has been approved by the appellate court in the C.M.A., have resulted in substantial miscarriage of justice. The said decisions rendered by both the courts below are against known legal principles. Therefore, both the said orders passed by the courts below are liable to be set aside. I.A.No.10026 of 2013 is liable to be dismissed. Of course, it is open to the 1<sup>st</sup> respondent to challenge the eligibility of the petitioner to become a member or office bearer of the

*'Paramekkavu Devaswom'* on any grounds other than the ground taken up here. The question whether the petitioner is a *'Savarna Hindu'* or not does not arise for consideration in any further debate in the matter.

With the aforesaid observations, this Original Petition is allowed. The orders passed by the courts below on I.A.No.10026 of 2013 are set aside. I.A.No.10026 of 2013 stands dismissed.

**B.KEMAL PASHA**  
**JUDGE**