

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WA.No. 1269 of 2015 ()

WP(C) 30863/2013 of THIS HONOURABLE COURT

APPELLANT/PETITIONER :

**ASWATHY A.V.
RESIDING AT ASWATHY, PLAVARA, IRINCHAYAM P.O.
NEDUMANGADU, THIRUVANANTHAPURAM - 695 541.**

**BY ADVS.SRI.N.S.GOPAKUMAR
SRI.VADAKARA V.V.N.MENON**

RESPONDENTS/RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY,
SC/ST DEVELOPMENT DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE COMMISSIONER OF ENTRANCE EXAMINATIONS,
HOUSING BOARD BUILDINGS, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE VIGILANCE OFFICER,VIGILANCE CELL,
DIRECTORATE OF KIRTADS, KOZHIKODE - 17.**

BY SPL. GOVERNMENT PLEADER SMT. LALY VINCENT

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2015
THE COURT ON 25-06-2015, DELIVERED THE FOLLOWING:**

bp

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.A.No.1269 of 2015

Dated this the 25th day of June 2015

J U D G M E N T

Shaffique,J

This appeal is filed by the writ petitioner challenging judgment dated 12/06/2015 in W.P.C.No.30863 of 2013 by which the writ petition was dismissed. The writ petition was filed challenging Exts.P8, P10 and P12 and for a declaration that the petitioner is a member of Scheduled Tribe. Ext.P8 is the anthropological report prepared by the Vigilance Cell of KIRTADS on 25/03/2007 in respect of the caste status of the petitioner. After considering the claim of the petitioner, it was found that the petitioner, who is born to an inter-caste marriage between a father belonging to Nair community and mother belonging to Scheduled Tribe Ulladan community has not suffered the disabilities of a Scheduled Tribe and therefore she cannot be given the status of a Scheduled Tribe. Ext.P10 is the communication issued by the Vigilance Officer, KIRTADS to Commissioner of Entrance Examinations on 17/06/2013 indicating

that their enquiry revealed that the petitioner was born and brought in her father's place and she was socialized and living in milieu and circumstances of her father's community and therefore she cannot claim Scheduled Tribe status even going by the Government Order G.O.(M.S) No.109/2008 dated 20/11/2008. Ext.P12 is the proceedings of the Commissioner for Entrance Examinations dated 11/07/2013 by which the Screening Committee accepted the report of KIRTADS and rejected the ST claim of the petitioner for admission to professional Degree courses.

2. The petitioner claims that she continues to be a member of Hindu Ulladan community which is included in the list of Scheduled Tribe and that Exts.P8 and P10 were prepared behind the back of the petitioner. Further the Screening Committee has taken the view without taking into consideration the documents produced by the petitioner. During the pendency of the writ petition, petitioner filed I.A.No.7324/2015 inter alia contending that her result in the entrance examination for MDS was withheld. It is contended that she was entitled to admission for MDS course in the Scheduled Tribe category. Petitioner also produced certain additional documents to contend that materials

were available to prove that she belongs to Scheduled Tribe community.

3. The learned Single Judge heard the above case along with another writ petition W.P.C.No.16423/2015 wherein the said petitioner made a claim that if the seat reserved by directions issued in W.P.C.No.30863/2013 is released, she, being a Scheduled Caste candidate would stand to get that seat as there was no other Scheduled Tribe candidate available in the list. The learned Single Judge, having considered the entire issue, formed an opinion that in the light of Ext.P8 report of KIRTADS, burden rests on the shoulders of the petitioner to prove that she has in fact suffered the disabilities of the community and was brought up in the social milieu of the Scheduled Tribe community. The petitioner has not chosen to approach the Scrutiny Committee under Section 8 of The Kerala (Scheduled Castes And Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (hereinafter referred to as 'the Act') nor has approached the Government under Section 13 of the Act, hence she is not entitled to a direction, as sought for. Further it was held that the petitioner had sufficient opportunity to adduce evidence before the Scrutiny Committee and having not availed of that benefit, it

was not open for the petitioner to challenge the caste certificate at this point of time.

4. The learned Single Judge, therefore left open the remedies available to the petitioner before the Scrutiny committee and the Government.

5. In view of the aforesaid judgments, learned counsel appearing for the appellant submits that taking into consideration the entire facts and circumstances available on record, this Court ought to have considered the question as to whether the petitioner belongs to Scheduled Tribe or not. It is argued that sufficient materials were available to show that the petitioner was treated as a Scheduled Tribe candidate all along which was accepted by the Scheduled Tribe society. She was living among the Scheduled Tribe community and the contrary contentions are absolutely baseless. She had been in the fold of her mother's community and had suffered all the disabilities of the Scheduled Tribe. Learned counsel also relied upon judgment of the Supreme Court in **Commissioner of Income Tax and Others v. Chhabil Daas Agarwal** [(2014) 1 SCC 603] to contend that even though an alternate remedy was available under the Act, it is open for this Court to interfere when the statutory authority had not acted

in accordance with the provisions of the Statute. Therefore, according to the learned counsel for the appellant, appropriate directions ought to have been issued by the learned Single Judge to direct the result to be declared and to permit the petitioner to join the course.

6. On the other hand, Smt.Laly Vincent, learned Special Government Pleader supported the stand taken by the authorities and contended that the burden is upon the petitioner to prove that she belongs to Scheduled Tribe community. The impugned orders have been passed after hearing the petitioner and therefore the remedy is only to invoke either Section 8 or 13 of the Act.

7. It is apparent that the material now produced by the petitioner cannot be scrutinized by this Court to arrive at a finding different from what has been found by the Screening Committee or the KIRTADS as the case may be. It is the settled position of law that the petitioner will have to adduce evidence to prove her caste status. Statute clearly provides a mechanism for adducing evidence despite the existence of KIRTADS' report. The learned Single Judge did not commit any error in finding that the Scrutiny committee alone could interfere with the findings entered by the

expert agency. Though the learned counsel for the appellant requested us to go into the factual materials relied upon to arrive at a different finding and requested for appropriate direction to permit the petitioner to get admission under the Scheduled Tribe quota, we do not think that any such positive direction can be issued in the case on hand. The materials now relied upon by the petitioner and if at all there are any other materials, the same have to be considered by the competent authorities, on the petitioner invoking the provisions under Section 8 or 13 of the Act. It is always open for the petitioner to invoke such a remedy.

In the said circumstances, we do not find any ground to interfere with the judgment of the learned Single Judge or the directions issued thereunder. Accordingly, the Writ appeal is dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

