

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WA.No. 1715 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 22574/2015 DATED 30-07-2015)

APPELLANT(S)/PETITIONERS:

1. **ARDRA SUDHAKARAN,D/O. SUDHAKARAN.G,
SASTHAMKKAVU PADNIJANTTETHIL,
PATHIRICKAL P.O., PATHANAPURAM - 689 6995,
KOLLAM.**
2. **SUDHAKARAN.G.,
SASTHAMKKAVU PADNIJANTTETHIL, PATHIRICKAL P.O.,
PATHANAPURAM - 689 6995, KOLLAM.**

**BY ADVS.SRI.JOBY CYRIAC
SRI.K.BIJILAL**

RESPONDENT(S)/RESPONDENTS:

1. **THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
2. **THE COMMISSIONER OF ENTRANCE EXAMINATIONS/CONVENOR
SCREENING COMMITTEE,5TH FLOOR, HOUSING BOARD BUILDING,
SANTHI NAGAR, THIRUVANANTHAPURAM - 695 001.**
3. **THE DIRECTOR, KERALA INSTITUTE FOR RESEARCH TRAINING &
DEVELOPMENT STUDIES OF SCHEDULED CASTE AND SCHEDULED
TRIBES (KIRTHADS) CHEVAYUR, KOZHIKODE - 673 017.**
4. **THE THASILDAR,
PATHANAPURAM TALUK, KOLLAM DISTRICT- 695 305.**
5. **MEDICAL COUNCIL OF INDIA,
POCKET 14, SECTOR & DWARKA, NEW DELHI - 110 077.**
6. **KERALA UNIVERSITY OF HEALTH SCIENCE,
REPRESENTED BY ITS REGISTRAR, THRISSUR - 680 001.**

W.A.NO.1715/2015

**7. DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM - 695 001.**

**R1 TO R4,R7 BY SR GOVERNMENT PLEADER SRI.P.I.DAVIS
R5 BY ADV. SRI.TITUS MANI VETOM, SC, MEDICAL COUNCIL OF INDIA
R6 BY ADV. SRI.P.SREEKUMAR,SC,KERALA UTY.**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

ASHOK BHUSHAN, C.J.

&

A.M.SHAFFIQUE, J.

.....

W.A.No.1715 of 2015

.....

Dated this the 5th day of August, 2015

JUDGMENT

A.M.Shaffique, J.

This writ appeal has been filed against the judgment dated 30.07.2015 in W.P(C) No.22574 of 2015. The writ petition was filed seeking to quash Ext.P8 report of the Kerala Institute for Research, Training and Development Studies [for short, 'KIRTADS'] and Ext.P9 proceedings of the Commissioner of Entrance Examinations by which the 1st petitioner was not given the status of Scheduled Caste [for short, 'SC'].

2. The learned counsel for the petitioners/appellants contended that the 1st petitioner, the candidate, who sought for caste status as SC claimed that she belongs to Hindu Pulaya community. She wrote the entrance examination for the professional degree course for the year 2014 – 2015 claiming SC status. In the meantime her caste status was enquired by KIRTADS. The Commissioner of entrance examination, as per proceedings dated 22.06.2015, relying

upon Ext.P8 report of KIRTADS, observed that the 1st petitioner is not entitled for the caste status as Hindu Pulaya, as she is born to an inter-caste married couple and was not living with the disabilities and disadvantages of Hindu Pulaya. Therefore, she was not entitled for the benefit of SC reservation in the examination. The learned single Judge, after considering the contentions raised on behalf of the petitioners/appellants, dismissed the writ petition, which is under challenge in this writ appeal.

3. The learned counsel for the appellants while impugning the aforesaid judgment contends that since it is an admitted fact that the 2nd appellant, who is the father of the 1st appellant belongs to Hindu Pulaya community, the basic presumption that has to be raised is that, the daughter also belongs to the Pulaya community, unless there is some cogent evidence to speak otherwise. It is pointed out that, Ext.P8 report of KIRTADS, indicates that the enquiry proceeded on the basis of the documents of the school records of the candidate herself proves that her caste status is shown as 'Ezhava-OBC'. Further it is observed that the genealogical and documentary evidence reveals that the candidate, who is an

offspring of parents, wherein father belongs to Pulaya community and mother belongs to Ezhava (OBC) community and they were living in a neo-local residence at Pathirickal. Further the report indicates that the local enquiry has revealed that the claimant is devoid of the milieu and circumstances to be declared as a member of SC, Pulaya community. The local enquiry also reveals that the candidate's family has not suffered from the socio-culture backwardness of the SC community. It is based on these materials that KIRTADS had prepared the report. The Commissioner of entrance examinations after hearing the parties, relying upon the aforesaid report and also the Full Bench decision of this Court in **Indira v. State of Kerala** [2005 (4) KLT 119 (FB)] opined that, no further materials were produced to indicate that the candidate belongs to SC community.

4. The learned counsel for the appellants would however submit that sufficient materials have already been produced to indicate that the candidate suffered all the disadvantages of SC community and therefore, the learned single Judge ought to have at least permitted the petitioner to participate

in the selection process as a SC candidate subject to any further decision by Scrutiny Committee in terms of Section 8 of the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 [for short, 'Act of 1996'].

5.The question as to whether a person has suffered the disabilities of the Hindu Pulaya community, is purely a question of fact, which cannot be decided by this Court in a proceeding under Article 226 of the Constitution of India. The contention that, it is without any material that KIRTADS and the Commissioner of entrance examination have arrived at the said finding does not seem to be correct. The KIRTADS in fact relied upon the school certificate of the candidate herself; wherein the caste has been shown as Ezhava, and had come to the conclusion that she has to follow her mother's community. That by itself prima facie indicates that the parents never want the child to live as a Hindu Pulaya member. Further local enquiries were also conducted by KIRTADS.

6.Under such circumstances, it may not be possible for this

Court to sit in judgment as if it is an appellate court, where special remedies has already been provided under the 'Act 1996'. Section 8 of the Act 1996 reads as follows :

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.

Having regard to the fact that, the Scrutiny committee is entitled to take evidence and arrive at a different finding from that has been opined by KIRTADS or the Commissioner of Entrance Examinations, we are of the view that remedy of the appellants is to approach the Scrutiny committee under Section 8 of Act, 1996. The claim of the appellants for admission under the category of SC community cannot be granted at this stage of the proceedings on account of the

prima facie findings that the candidate has not suffered the milieu and disadvantage of the SC, though, being a daughter of a father, who belongs to a Hindu Pulaya community. Hence, we do not find any error in the judgment of the learned single Judge, accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, Chief Justice.

Sd/-
A.M.SHAFFIQUE, Judge.

AMV/06/08/

/TRUE COPY/

P.A.TO JUDGE