

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WA.No. 1609 of 2014 () IN WP(C).26499/2014

AGAINST THE JUDGMENT IN WP(C) 26499/2014 of HIGH COURT OF KERALA
DATED 21-10-2014

APPELLANT(S)/WRIT PETITIONER:

ANIL KUMAR S.,
CHARUVILA PUTHEN VEEDU, PALLICKAL.P.O, KOTTARAKKARA
KOLLAM DISTRICT.

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO DEPARTMENT OF
SCHEDULED CASTE DEVELOPMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. DISTRICT COLLECTOR,
COLLECTORATE, KOLLAM-691001.
3. TAHSILDAR,
TALUK OFFICE, KOTTARAKKARA-691506.
4. KERALA INSTITUTE OF RESEARCH,
TRAINING AND DEVELOPMENT STUDIES OF SCHEDULED
CASTES AND SCHEDULED TRIBES(KIRTADS)
REPRESENTED BY ITS DIRECTOR, CHEVAYOOR
KOZHIKODE-673017.

BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

dlk

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

W. A. No. 1609 of 2014

Dated this the 5th day of June, 2015

J U D G M E N T

Anil K. Narendran, J.

The appellant is the petitioner in WP(C) No.26499/2014. He has filed the above writ petition seeking a writ of certiorari to quash Exts.P5 and P6 orders and seeking a writ of mandamus commanding the 3rd respondent to issue community certificate to him dehors Ext.P6 order. By judgment dated 21.10.2014, of the learned Single Judge of this Court the writ petition was disposed of with the following directions;

“i) Petitioner is at liberty to approach the Scrutiny Committee invoking Section 8 of the Act within a period of fifteen days from the date of receipt of a copy of this judgment. Petitioner shall file necessary representation and produce necessary documents to substantiate his claims.

ii) Scrutiny Committee shall consider the claim of the petitioner and pass appropriate orders within a period of three months from the date of receipt of the representation.

iii) If the Scrutiny Committee finds that the petitioner belongs to Nayadi community, 3rd respondent shall issue necessary certificate to the petitioner in that regard.”

2. The appellant has filed this Writ Appeal aggrieved by

the judgment of the learned Single Judge to the extent it refuses to issue directions to grant provisional certificate till the disposal of the matter by the Scrutiny Committee. On 11.11.2014, this Court admitted the Writ Appeal and granted an interim order, which reads thus;

"Admit. Government Pleader takes notice for the respondents. It is submitted by the learned counsel appearing for the appellant that Ext.P6 order dated 11.11.2013 issued by the Government declaring that all the persons who claim to belong to Nayadi community, a scheduled caste, and who reside at Mylom Village, Kottarakkara Taluk, Kollam District, would not be entitled to get Certificate showing that they belong to Nayadi Community of the Scheduled Caste, is illegal and without jurisdiction.

2. We put a query to the learned Government Pleader as to whether there is any provision in the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (hereinafter referred to as 'the Act') empowering the Government to pass an order like Ext.P6 declaring persons belonging to a particular caste and residing in a particular area as persons who do not belong to scheduled caste. The learned Government Pleader submitted that Section 11 of the Act gives ample power to the Government to pass an order like Ext.P6. Section 11 of the Act

provides for cancellation of false community certificate. It gives power to the Scrutiny Committee either suo motu or on a written complaint or report by any person or authority, to enquire into the correctness of any false community certificate obtained by a person who does not belong to scheduled caste or scheduled tribe. It also gives the power to the scrutiny committee to pass an order cancelling the certificate after giving the person concerned an opportunity of making a representation, if any. Sub-section (2) of Section 11 provides that the powers of the nature referred to in sub-section (1) may also be exercised by the Government. Sub-section (4) of Section 11 provides that the 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. On a fair reading of Section 11, it is not possible, prima facie, to accept the contention put forward by the learned Government Pleader. The contention put forward by the appellant in this regard needs further examination in detail in the Writ Appeal.

3. It is seen from Ext.P1 that the caste of the appellant is shown as Nayadi in the Secondary School Leaving Certificate. Ext.P2 is the extract of admission register in respect of Subbayan, father of the appellant. The religion and caste of Subbayan is shown as Hindu Nayadi in Ext.P2. Ext.P2 shows that the father of the appellant left the school on

10.6.1970. Ext.P3 certificate issued by the Tahsildar, Kottarakkara to the appellant on 28.4.2009 shows that the appellant belongs to Hindu Nayadi community. Ext.P4 is a similar certificate dated 02.02.2010 issued by the Tahsildar. As against Exts.P1 to P4, in the impugned order issued by the Tahsildar (Ext.P5), he relies on Ext.P6 order passed by the Government where a declaration has been made that all persons claiming to be scheduled caste and residing in Mylom Village really belonged to 'Kodangi Naicken' and not Nayadi. Prima facie, there is nothing to indicate that any individual notice was given to persons like the petitioner residing at Mylom. It is also not shown prima facie that any public notice was issued giving wide publicity to make people at Mylom know about the proceedings to be taken by the Government. It is seen from Ext.P6 that the Government would take steps to include 'Kodangi Naicken' community in OBC category. There is no case that 'Kodangi Naicken' was so included in OBC category.

4. At present, going by Ext.P6 Government Order and P5 order issued by the Tahsildar based on Ext.P6, the appellant does not belong to a community of OBC and does not belong to any forward community. His status as a citizen is denied by Ext.P6 order, the validity of which is challenged in the Writ Appeal.

5. The appellant was included in the list published by the Kerala Public Service Commission

for being appointed as Police Constable. The Public Service Commission has directed him to produce Community Certificate. Ext.P11 dated 28.10.2014 issued by the Public Service Commission shows that the appellant was granted five days' time to produce the Community Certificate. In these circumstances, we are of the view that an interim order should be passed directing the Tahsildar, Kottarakkara to issue a Community Certificate to the appellant. The Tahsildar, Kottarakkara is directed to issue a Community Certificate to the appellant showing his community status as shown in the S.S.L.C book of the appellant, within a period of 15 days from today. This Community Certificate shall be purely provisional and subject to the decision in the Writ Appeal or any further orders passed by this court.

6. We also issue a direction to the appellant to comply with the direction in the judgment of the learned Single Judge to approach the Scrutiny Committee under Section 8 of the Act within two weeks from today. In such an event, the other directions contained in the judgment of the learned Single Judge shall follow. It is made clear that the Community Certificate issued provisionally to the appellant will not confer on him any right to which he is not otherwise entitled to. In other words, the community certificate to be issued by the Tahsildar as per this interim direction is only for the purpose of production of the same before the Kerala Public Service Commission as per Ext.P11.

Hand over copy to the learned counsel for the appellant and the learned Government Pleader.”

3. Heard the arguments of the learned counsel for the appellant and also the learned Senior Government Pleader appearing for the respondents.

4. As we have already noticed, the main grievance of the appellant in this appeal is that the learned Single Judge while disposing of the Writ Petition refused to issue directions to grant provisional certificate till the disposal of the matter by the Scrutiny Committee. That grievance of the appellant has already been redressed by the interim order granted in this Writ Appeal dated 11.11.2014, by which the Tahsildar, Kottarakkara was directed to issue a community certificate to the appellant showing his community status as shown in his SSLC Book. In the said order, this Court has made it clear that the community certificate so issued shall be purely provisional and subject to the decision in this Writ Appeal or any further orders passed by this Court. It was also made clear that the community certificate so issued will not confer him any right to which he is not otherwise entitled to and it is only for the purpose of production of the same before the Kerala Public Service Commission as per Ext.P11 communication

dated 28.10.2014.

5. In such circumstances, we find absolutely no grounds to interfere with the judgment of the learned Single Judge dated 21.10.2014 and this Writ Appeal is dismissed with the observation that the appellant shall be governed by the interim order passed by this Court dated 11.11.2014, till a decision is taken by the Scrutiny Committee, on the caste status of the appellant pursuant to the judgment of the learned Single Judge.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

Sd/-

ANIL K. NARENDRAN, JUDGE.

Pn