

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 20143 of 2013 (P)

PETITIONER :

**KEERTHI P. REMAN, AGED 18 YEARS,
D/O.P.REMANAN AND BINDU RANI S., T.C. 2/2265,
T.P.J.NAGAR 178, PLAMOODU, PATTOM,
THIRUVANANTHAPURAM-695 004.**

**BY SRI.MATHAI M PAIKADAY, SENIOR ADVOCATE
ADVS.SRI.M.P.KRISHNAN NAIR
SRI.V.B.NARAYANAN
SRI.ANIYANKUNJU VARGHESE
SMT.MINI V.MENON**

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. THE CHAIRMAN,
SCRUTINY COMMITTEE FOR VERIFICATION OF COMMUNITY
CERTIFICATES & PRINCIPAL SECRETARY (SC/ST) DEVELOPMENT
DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695 001.**
- 3. THE VIGILANCE OFFICER,
VIGILANCE CELL, DIRECTORATE OF KIRTADS,
KOZHIKODE - 673 017**
- 4. SRI.MANI BHOOSHAN,
VIGILANCE OFFICER, VIGILANCE CELL,
DIRECTORATE OF KIRTADS, KOZHIKODE - 673 017.**
- 5. THE DIRECTOR OF SC & ST DEPARTMENT,
THIRUVANANTHAPURAM-695 001.**
- 6. THE DISTRICT TRIBAL WELFARE OFFICER,
THIRUVANANTHAPURAM-695 001.**
- 7. THE TAHSILDAR, TALUK OFFICE,
THIRUVANANTHAPURAM-695 001.**

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8. THE TAHSILDAR, TALUK OFFICE,
PATHANAPURAM - 689 695.
9. THE JOINT COMMISSIONER (ACADEMIC),
THIRUVANANTHAPURAM-695 001.
10. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,
(CONVENOR, SCREENING COMMITTEE),
HOUSING BOARD BUILDINGS, SANTHINAGAR,
THIRUVANANTHAPURAM-695 001.

R1 TO R3,R5 TO R10 BY GOVERNMENT PLEADER SMT. LALY VINCENT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE CERTIFICATE NO.4535/76, DATED 18-5-1976
ISSUED BY THE DEPUTY IN-CHARGE, TALUK OFFICE, TRIVANDRUM.
- EXT.P2 - TRUE COPY OF THE LETTER NO.EDN.A3-42369/76 DATED 21-9-1976
ISSUED BY THE DIRECTOR OF HARIJAN WELFARE, TRIVANDRUM.
- EXT.P3 - TRUE COPY OF THE CASTE CERTIFICATE NO.K.DIS.4276/77, DATED
23-5-1977 ISSUED BY THE 8TH RESPONDENT.
- EXT.P4 - TRUE COPY OF THE CASTE CERTIFICATE NO.A5-11405/89 DATED
30-6-1989 ISSUED BY THE 7TH RESPONDENT.
- EXT.P5 - TRUE COPY OF THE CERTIFICATE NO.A6/23708/04 DT. 5-10-2004
ISSUED BY THE 7TH RESPONDENT.
- EXT.P6 - TRUE COPY OF THE COMMUNITY CERTIFICATE NO.A9/8761/07 DATED
18-6-2007 ISSUED BY THE 7TH RESPONDENT.
- EXT.P6(A) - TRUE COPY OF THE COMMUNITY CERTIFICATE NO.G1-3972/09 ON
26-2-2009 ISSUED BY THE TAHSILDAR, THIRUVANANTHAPURAM.
- EXT.P6(B) - TRUE COPY OF THE CERTIFICATE NO.A5-11405/89 DATED 30-6-89
ISSUED BY TAHSILDAR, THIRUVANANTHAPURAM.
- EXT.P6(C) - TRUE COPY OF THE CERTIFICATE ISSUED BY TAHSILDAR,
THIRUVANANTHAPURAM VIDE NO.A9/68195/12/K.DIS DATED 4-10-2012
- EXT.P7 - TRUE COPY OF THE TRANSFER CERTIFICATE NO.1185 DT. 2-6-2007
ISSUED BY THE PRINCIPAL ARYA CENTRAL SCHOOL, PATTOM,
THIRUVANANTHAPURAM TO THE 2ND PETITIONER.
- EXT.P8 - TRUE COPY OF THE TRANSFER CERTIFICATE NO.A0346 DATED
2-6-2009 ISSUED BY THE PRINCIPAL, INSTITUTE OF HUMAN
RESOURCES DEVELOPMENT.
- EXT.P9 - TRUE COPY OF THE COMMUNITY CERTIFICATE NO.A9/3581/07 DATED
28-2-2007 ISSUED BY THE 7TH RESPONDENT.
- EXT.P9(A) - TRUE COPY OF THE CERTIFICATE NO.15/1930/86/K.DIS. DATED
27-5-1981 ISSUED BY JOINT DIRECTOR, STATE PLANNING BOARD.
- EXT.P9(B) - TRUE COPY OF THE SSLC CERTIFICATE OF SMT.A.VASANTHA.
- EXT.P9(C) - TRUE EXTRACT COPY OF THE ADMISSION REGISTER OF
GOVERNMENT U.P.S. PATTOM DATED 6-12-72 OF SRI.MOHANAN,
PATERNAL UNCLE OF THE PETITIONER.

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- EXT.P9(D) - TRUE COPY OF THE SSLC CERTIFICATE PAGE 1 OF P.GIRISAN**
- EXT.P9(E) - TRUE COPY OF THE ADMISSION EXTRACT IN THE NAME OF 'KANCHANAMALA', PATERNAL AUNT.**
- EXT.P10 - TRUE COPY OF THE TRANSFER CERTIFICATE NO.17630 DATED 6-6-2013 ISSUED BY THE PRINCIPAL, ARYA CENTRAL SCHOOL, PATTOM, THIRUVANANTHAPURAM-4.**
- EXT.P11 - TRUE COPY OF THE LETTER NO.CEE.B3/3152/09 DATED 21-12-2009 ISSUED BY THE 10TH RESPONDENT TO THE PETITIONER'S FATHER P.REMANAN**
- EXT.P12 - TRUE COPY OF THE CBSE - NATIONAL ELIGIBLE CUM ENTRANCE TEST-UG, 2013 RESULTS.**
- EXT.P13 - TRUE COPY OF THE LETTER NO.B-3-500/13/CEE(160) DATED 21-2-2013 ISSUED BY THE 10TH RESPONDENT.**
- EXT.P14 - TRUE COPY OF THE STATEMENT DATED 12-3-2013 SUBMITTED BY THE PETITIONER FATHER TO THE 3RD RESPONDENT.**
- EXT.P15 - TRUE COPY OF THE ADMISSION EXTRACT NO.3898, DATED 26-10-1972 ISSUED BY GOVERNMENT GIRLS HIGH SCHOOL, PATTOM.**
- EXT.P16 - TRUE COPY OF THE LETTER NO.V.65/09 DATED 25-3-2013 ISSUED BY THE 3RD RESPONDENT.**
- EXT.P17 - TRUE COPY OF THE ANTHROPOLOGICAL REPORT NO.V5/2013/ST REJ-22 DATED 10TH MAY 2013 ISSUED BY THE 3RD RESPONDENT.**
- EXT.P18 - TRUE COPY OF THE JUDGMENT DATED JANUARY 2013 IN MFA.56/2005 FILED BY P.S.VIJAYAN AND 4 OTHERS.**
- EXT.P19 - TRUE COPY OF THE ORDER NO.B3-500/13/CEE(3) DATED 6TH JUNE, 2013 ISSUED BY THE 10TH RESPONDENT.**
- EXT.P20 - TRUE COPY OF THE ADMIT CARD ISSUED BY THE 10TH RESPONDENT TO THE PETITIONER.**
- EXT.P21 - TRUE COPY OF THE NOTICE DATED 27/5/14 ISSUED BY THE 10TH RESPONDENT TO THE PETITIONER.**
- EXT.P22 - TRUE COPY OF THE BRIEF ANTHROPOLOGICAL REPORT DATED 1/5/2014**
- EXT.P23 - TRUE COPY OF THE ORDER NO.B3-589/14/CEE(11) DATED 16/6/14 ISSUED BY THE 10TH RESPONDENT**
- EXT.P24 - TRUE COPY OF THE JUDGMENT DATED 9/7/14 IN WA.NO.908/14 OF THE HON'BLE HIGH COURT**

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- EXT.P25- TRUE COPY OF THE LETTER DATED 17/9/14 ISSUED BY THE 2ND RESPONDENT.
- EXT.P26- TRUE COPY OF THE ORDER DATED 26/09/14 IN SLP NO.25114/14 PASSED BY THE HON'BLE SUPREME COURT.
- EXT.P27- TRUE COPY OF THE LETTER DATED 20/12/14 ISSUED BY THE JOINT COMMISSIONER (ACADEMIC) OFFICE OF THE COMMISSIONER OF ENTRANCE EXAMINATIONS
- EXT.P28- TRUE COPY OF THE LETTER DATED 15/05/09 OF THE VIGILANCE OFFICER TO THE COMMISSIONER OF ENTRANCE EXAMINATIONS, THIRUVANANTHAPURAM ALONG WITH LIST OF CANDIDATES WHO CLAIMED SCHEDULED TRIBES AND FOUND GENUINE
- EXT.P29- TRUE COPY OF THE LETTER DATED 21/12/09 OF THE COMMISSIONER OF ENTRANCE EXAMINATIONS, ISSUED TO THE FATHER OF THE PETITIONER.

RESPONDENT(S)' EXHIBITS AND ANNEXURES:

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- EXT.R3(A): TRUE COPY OF THE EXTRACT FROM THE ADMISSION REGISTER
- EXT.R3(B): TRUE COPY OF THE CERTIFICATE FROM THE TALUK OFFICE DATED 18/5/1976
- EXT.R3(C): TRUE COPY OF THE TRANSFER CERTIFICATE OF KIRAN P. REMAN
- EXT.R3(D): TRUE COPY OF THE LETTER NO.B1-8012/2009 DATED 5/8/2009 OF DIRECTOR, ST DEVELOPMENT DEPARTMENT.
- EXT.R3(E): TRUE COPY OF THE LETTER OF REMANAN P SUBMITTED TO THE DIRECTOR, ST DEVELOPMENT DEPARTMENT
- EXT.R3(F): TRUE COPY OF THE ENQUIRY REPORT AND CONCERNED DOCUMENT OF THE VIGILANCE CELL.
- ANNEX A COPY OF THE PROCEEDINGS OF THE COMMISSIONER OF THE ENTRANCE EXAMINATION.

/TRUE COPY/

P.S.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J

WPC No.20143 of 2013

Dated this the 27th day of March, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P17 which is an Anthropological report prepared by the Vigilance Officer, KIRTADS pursuant to a notice issued by the Commissioner of Entrance Examination and Ext.P19 which is the proceedings dated 6.6.2013 of the Commissioner for Entrance Examinations in respect of the petitioner based on Ext.P17 report.

2. The petitioner was born in an intercaste wedlock. The petitioner alleges that her father P.Remanan is the daughter of late Thankamma Ally who belonged to Malai Pandaram community which is a Scheduled Tribe community. The petitioner's mother Bindu Rani belongs to Ezhava community. The petitioner points out that the Deputy Tahsildar, Thiruvananthapuram as per Certificate No.4535/76 dated 18.5.1976 issued a certificate to the paternal

grandmother of the petitioner that she belonged to Hindu Malai Pandaram community. She further points out that the 8th respondent who was the Tahsildar of Pathanapuram also issued a caste certificate dated 23.5.1977 certifying that the paternal grandmother of the petitioner was the resident of Achancoil in Arienkavu village of Pathanapuram Taluk.

3. The petitioner also points out that the 7th respondent, who is the Tahsildar, Thiruvananthapuram had issued a caste certificate dated 30.6.1989 certifying that the paternal grandmother of the petitioner Thankamma Ally belonged to Hindu Malai Pandaram community which is recognised as Scheduled Tribe in Kerala State which migrated to the Taluk about 40 years ago from Pathanapuram Taluk. She further points out that the 7th respondent who is the Tahsildar, Thiruvananthapuram has issued another certificate dated 5.10.2004 in the name of the petitioner

certifying that she belongs to Hindu Malai Pandaram which is recognised as Scheduled Tribe. She further points out that the 7th respondent issued a certificate dated 18.6.2007 to the brother of the petitioner certifying that he belongs to Hindu Malai Pandaram which is recognised as Scheduled Tribe. According to the petitioner, she studied in Arya Central School, Pattom and in the school records, the caste of the petitioner is recorded as Hindu Malai Pandaram.

4. The grievance of the petitioner is that she applied for the entrance examination for professional degree course 2013, but the Commissioner for Entrance Examinations, Thiruvananthapuram referred her caste certificate to KIRTADS for enquiry. After enquiry by the Vigilance Officer and based on the Anthropological survey, it was reported that the petitioner belongs to Ezhava community which is an OBC community. On the basis of Ext.P17, the Commissioner for Entrance Examinations, Thiruvananthapuram rejected the application of the

petitioner for admission to professional degree course 2013 vide Ext.P19. It is with this background, the petitioner has come up before this Court.

5. In the counter affidavit filed by the respondents, they maintained the stand that as per the Anthropological study, the petitioner was brought up as a member of the Ezhava community which is a caste of her mother and she was not suffering from any kind of disability. Therefore, the Vigilance Officer of the KIRTADS had prepared Ext.P17 and on the basis of the same, the Entrance Commissioner has rejected the petitioner's application vide Ext.P19 which, according to the respondents, is in accordance with law.

6. Arguments have been heard.

7. The learned counsel for the petitioner placed reliance on Exts.P1, P5, P6 and P9(a) to substantiate that the petitioner and her family members were given certificates by the competent authorities treating them as Malai Pandaram which comes under

Scheduled Tribes. According to the learned counsel for the petitioner, such documents were issued after conducting necessary enquiry and therefore, a presumption has to be drawn under Section 114(e) of the Evidence Act. It was pointed out that the petitioner's brother was given status of the Scheduled Tribe pursuant to an enquiry by the very same agency and he is pursuing his studies in professional course. However, a diametrically opposite finding has been entered into in the case of the petitioner and therefore, according to the learned counsel for the petitioner, Exts.P17 and P19 will not stand the test of reason.

8. The learned Special Government Pleader, per contra, would submit that the screening committee constituted for clearance and verification of SC/ST claim as authorised by Section 6 of the Act referred the claim of the candidate for ST status to the Vigilance Officer of KIRTADS for a detailed enquiry and report. As per the said report the paternal

grandfather of the petitioner belonged to Hindu Ezhava community. He married Ally who belonged to Pandaram community. Most of the relatives of the petitioner, especially, the brothers and sisters of the petitioner's father were married to persons belonging to Hindu Ezhava community. One person was married to a member of Hindu Pulaya community. The petitioner's father is working as a Chargeman in the KSRTC. His caste status is shown as Hindu Malai Pandaram Community. The report further states that the petitioner was brought up as a member of Ezhava community.

9. It was pointed out by the learned Special Government Pleader that previously, caste status of the children of intercaste couple was assessed through paternal line. It was further pointed out that when KIRTADS received another letter from the Director, ST Development Department for an enquiry in the year 2009, the Vigilance Cell conducted a detailed investigation to confirm the community

status of Ally who is the petitioner's grandmother. The said enquiry revealed that the claimant's father did not belong to ST Community. He is an offspring of Ezhava father and Hindu Veerasaiva (Pandaram) mother. Four of their children got employment in various organizations. Hence, report was submitted to the Screening committee rejecting the ST claim of the candidate's father and brother after completing all formalities as contemplated under the Act.

10. As per the report of the KIRTADS now available, the petitioner cannot claim ST status. Since the petitioner has a rival claim, the only option before the petitioner is to give evidence before the scrutiny committee in support of the petitioner's claim. Admittedly, no action has been taken by the petitioner to adduce any evidence regarding her claim before the scrutiny committee. It is not at all possible for this Court to enter into a finding on the disputed questions of facts, especially, when there is an authority constituted under the statute.

11. A Full Bench of this Court in **Indira v State of Kerala** (2005(4) KLT 119) held that in order to get the benefit of Article 15(4), 16(4) or 16(4A) read with Articles 341 and 342 of the Constitution, the person born to an intercaste married couple has to establish that the person still uses the caste of Scheduled caste or Scheduled Tribe, as the case may be, and is subject to same disabilities, disadvantages, sufferings etc. of that caste or tribe. To establish the same, evidence has to be adduced. Therefore, this Court is of the view that this writ petition can be disposed of permitting the petitioner to approach the Scrutiny Committee under Section 8 of the Kerala Scheduled Castes and Scheduled Tribes Act, 1976.

In the result, this writ petition is disposed of permitting the petitioner to approach the scrutiny committee under Section 8 of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996. In the event of filing such a petition within a period of two weeks

from today, the scrutiny committee shall consider the same and pass appropriate orders within a period of one month thereafter, after affording the petitioner an opportunity of being heard.

It is hereby made clear that the opportunity of hearing includes the opportunity to adduce evidence by the petitioner, regarding her genealogy. It is also hereby made clear that it shall be open to the petitioner to appear before the scrutiny committee either directly or through an authorised representative/advocate.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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P.S.TO JUDGE