

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 24839 of 2010 (D)

PETITIONER :

**ATHIRA M.V.,
D/O. K.R. RADHAMANY, AGED 18 YEARS,
RESIDING AT MANASSERIL HOUSE, POLASSERY
VAIKOM, PIN - 686 141.**

BY ADV. SRI.P.A.ABDUL JABBAR

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY
SC/ST DEVELOPMENT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS,
5TH FLOOR, HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE TAHASILDAR,
TALUK OFFICE, VAIKOM, KOTTAYAM DISTRICT.**
- 4. THE DIRECTOR
SCHOOL OF MEDICAL EDUCATION
MAHATMA GANDHI UNIVERSITY,
GANDHI NAGAR, KOTTAYAM, PIN - 686 008.**

**R1 TO R3 BY SPL. GOVT. PLEADER SNT. LALY VINCENT
R4 BY ADVS. SRI.VARUGHESE M. EASO, SC
SRI. T.A. SHAJI, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE CASTE CERTIFICATE ISSUED BY THE THASILDAR,
VAIKOM
- EXT.P2 COPY OF THE 1ST PAGE OF THE SSLC BOOK OF THE PETITIONER.
- EXT.P3 COPY OF THE GOVERNMENT ORDER NO. GO(MS) 25/05/SC/ST/DD.
- EXT.P4 COPY OF THE GOVERNMENT ORDER G.O.(MS) NO. 109/SC ST DD.
- EXT.P5 COPY OF THE JUDGMENT IN WP(C) 5134/2009 OF THIIH HONOURABLE
COURT.
- EXT.P6 COPY OF THE PROVISIONAL COMMUNITY CERTIFICATE ISSUED BY
THE 3RD RESPONDENT.
- EXT.P7 COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER.
- EXT.P8 COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER.
- EXT.P9 COPY OF THE ADMIT CARD FOR ENGINEERING /MEDICAL ENTRANCE
EXAMINATION 2010 TO THE PETITIONER.
- EXT.P10 COPY OF THE LETTER ISSUED FROM THE DIRECTORATE OF
KIRTHADS TO THE PETITIONER.
- EXT.P11 COPY OF THE ADMIT CARD ISSUED TO THE PETITIONER FOR THE
SPECIAL ENTRANCE EXAMINATION.
- EXT.P12 COPY OF THE ADMISSION COUNSELING MEMO CARD ISSUED TO THE
PETITIONER BY THE 4TH RESPONDENT.
- EXT.P13 COPY OF THE APPLICATION FOR CASTE CERTIFICATE SUBMITTED
BEFORE THE 3RD RESPONDENT.

(Contd...)

WP(C).No. 24839 of 2010 (D).

- EXT.P14 COPY OF THE RECEIPT ISSUED BY KERALA MALA ARAYA SABHA.
- EXT.P15 COPY OF RECEIPT ISSUED BY MALA ARAYA KSHETHRA
SAMRKSHANA SAMITHI.
- EXT.P16 COPY OF VIVAKA PATHIRIKA ISSUED TO THE PETITIONER'S MOTHER
BY HER SABHA.
- EXT.P17 COPY OF THE LETTER RECEIVED FROM THE PLANTATION
CORPORATION OF KERALA LTD.

RESPONDENT'S ANNEXURES :

- ANNEXURE I COPY OF ANTHROPOLOGICAL REPORT NO. V.25/09
REG. ST-13 DATED 21.5.2009.
- ANNEXURE II COPY OF ORDER OF THE SCREENING COMMITTEE
NO.B3 650/09/CEE (87) DATED 15.6.2009.

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.24839 of 2010 - D

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Dated this the 13th day of July, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner was not being issued with a caste certificate, showing her, as a person belonging to Hindu Mala- Arayan community, which is admittedly a Scheduled Tribe. The petitioner is the progeny of an inter-caste marriage, where the father is Hindu-Dheevara and the mother a Scheduled Tribe. The petitioner's claim is with respect to her belonging in the mother's community.

2. The petitioner had applied for the professional degree courses in the Entrance Examination conducted in 2009. The petitioner's caste status was doubted by the Commissioner of Entrance Examination and the same is referred for expert opinion under the Kerala (Scheduled Castes & Scheduled Tribes)

Regulation of Issue of Community Certificates Act, 1996. An Anthropological report was prepared by the Kerala Institute for Research, Training and Development Studies (KIRTADS), the authority constituted under the Act. The KIRTADS by Annexure 1 Anthropological report specifically found that the application of the petitioner for the professional degree courses 2009 against the quota reserved for Scheduled Tribe of Kerala State may be rejected. However, it is seen that despite such an Anthropological report, the Screening Committee admitted the petitioner's status as a Scheduled Tribe. The petitioner however did not obtain any admission in the said year.

3. In the subsequent year, also the very same dispute arose and the petitioner was admittedly not permitted to be considered under the Scheduled Tribe quota. The petitioner obtained an interim order in the above writ petition and the petitioner was admitted to the B.Sc. Nursing course and subsequently she moved to the B.Sc Forestry course.

4. The petitioner has completed her course. In fact it

is to be noticed that on 16.08.2010 when she was granted an interim order, the petitioner has specifically submitted before Court that any benefit obtained by the petitioner on the basis of the provisional certificate issued would ultimately depend upon determination of the writ petition. Subsequently when appearing for an interview to the Plantation Corporation of Kerala, the petitioner was again directed to be issued with a provisional certificate by an interim order dated 25.03.2015. The petitioner would on the ground of the Screening Committee having accepted her case in 2009 and subsequent action of the KIRTADS in calling her for special training, on the basis that she is a Scheduled Tribe, contend that the petitioner's caste as a Mala-Arayan is undisputed.

5. This Court is of the view that no such assumption can be made on the basis of the subsequent action of the KIRTADS or on the basis of the action of the Screening Committee in having accepted her caste status in the year 2009. As to the Screening Committees; orders under the Act of 1996 by

virtue of Section 6, the said Committee does not have the power to consider the report submitted by the expert agency. The enquiry by the expert agency is as per Section 9 of the Act of 1996. Section 9(2) of the Act of 1996 makes the report of the expert agency conclusive proof for or against the Scheduled Caste or Scheduled Tribe claim. Any interference can only be made by the Scrutiny Committee as is again provided in Section 9(2) of the Act of 1996.

5. In such circumstance, the Anthropological report of the petitioner stands against the petitioner. The acceptance of the caste status of the petitioner by the Screening Committee for the year 2009 is of no consequence. The Screening Committee could not have deferred or found against the report of the expert agency. In any event the petitioner did not get admission in the said year. The petitioner's present writ petition is on the basis of the admissions sought in the next year, which was also declined for the very same reason. It could not have been otherwise, since the Anthropological report of the KIRTADS was against the

petitioner and it stood in the way of the petitioner's consideration as a Scheduled Tribe. Necessarily, the petitioner would have to move the Scrutiny Committee for appropriate orders.

6. Considering the decision of the Hon'ble Supreme Court reported in **State of Maharashtra v. Milind and other [2001(1) SCC4]**, the petitioner having completed the graduate course cannot be disentitled from the said qualification. However any concession in fees availed of from the State would have to be refunded, if the petitioner's application before the Scrutiny Committee goes against her. The petitioner's appointment, if any, obtained on the basis of the provisional certificate issued by virtue of an interim order dated 25.03.2015, would also be subject to such decision of the Scrutiny Committee.

7. In such circumstance, the writ petition would stand dismissed however with liberty left to the petitioner to approach the Scrutiny Committee. This Court would not speak on the

merits of the matter since that remedy is still available to the petitioner. The petitioner shall approach the Scrutiny Committee within one month from the date of production of the certified copy of this judgment. If not, the petitioner's caste status will stand concluded as per Annexure-1 Anthropological report of the KIRTADS. Any benefit availed of by the petitioner on the basis of the provisional certificate would also stand withdrawn. However, if the petitioner approaches the Scrutiny Committee within the time specified, the authorities shall wait for the orders to be passed by the Scrutiny Committee and if the same goes against the petitioner, necessary consequences would follow.

The writ petition would stand dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.