

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 23997 of 2011 (Y)

PETITIONER(S):

C.V.ANILKUMAR
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY
COCHIN-22 RESIDING IN LEJI MANZIL, KULAYATTIKKARA
ERNAKULAM DISTRICT.

BY ADV. SRI.ANANDAN PILLAI

RESPONDENT(S):

1. THE PRINCIPAL SECRETARY & OTHERS
SC-ST DEVELOPMENT DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE CHAIRMAN, SCRUTINY COMMITTEE FOR
VERIFICATION OF COMMUNITY CERTIFICATE, SECRETARIAT
THIRUVANANTHAPURAM-695001.
3. SRI.V.R.PADMANABHAN, SECRETARY TO
GOVERNMENT OF KERALA, SC/ST DEVELOPMENT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.
4. THE REGISTRAR, COCHIN UNIVERSITY OF
SCIENCE AND TECHNOLOGY, KOCHI- 682022.
5. THE VIGILANCE OFFICER, DIRECTORATE OF
KIRTADS, KOZHIKODE-673517.

R,R4 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAI,SC,COCHI U
R4 BY ADV. SRI.P.M.A.KALAM,SC,COCHIN UNIVERSITY OF SCIENCE
AND TECHNOLOGY
R4 BY ADV. SRI.MILLU DANDAPANI, SC, COCHIN UNIVERSITY
R BY GOVERNMENT PLEADER SMT. LALY VINCENT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 23997 of 2011 (Y)

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT-P1:** TRUE COPY OF THE COMMUNITY CERTIFICATE DATED 25.6.1990 ISSUED BY THE TAHSILDAR, KANAYANNUR IN RESPECT OF THE PETITIONER.
- EXHIBIT-P2:** TRUE COPY OF THE S.S.L.C. CERTIFICATE ISSUED IN RESPECT OF THE FATHER OF THE PETITIONER.
- EXHIBIT-P3:** TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT DATED 1ST AUGUST 2000 IN OP NO.23012/1999.
- EXHIBIT-P4:** TRUE COPY OF THE ORDER OF THIS HON'BLE COURT DATED 12TH JULY 2002 IN CMP NO.32144/2000 IN OP NO.2989/2000.
- EXHIBIT-P5:** TRUE COPY OF THE REPORT NO.V.2/97 DATED 30/3/2000 SUBMITTED BY THE 5TH RESPONDENT.
- EXHIBIT-P6:** TRUE COPY OF THE ARGUEMENT NOTE DATED 5/3/2011 SUBMITTED BY THE COUNSEL FOR THE PETITIONER.
- EXHIBIT-P7:** TRUE COPY OF THE ARGUMENT NOTE DATED 20/5/2011 SUBMITTED BY THE COUNSEL FOR THE PETITIONER.
- EXHIBIT-P8:** TRUE COPY OF THE ORDER NO.20276/G2/1999/SCST DD DATED 23/8/2011 OF THE SCRUTINY COMMITTEE.
- EXHIBIT-P9:** TRUE COPY OF GOVERNMENT ORDER G.O(M.S) NO.11/77/DD DATED 25.01.1997 (PRODUCED ALONG WITH REPLY AFFIDAVIT)
- EXHIBIT-P9:** TRUE COPY OF G.O(M.S) NO.136/2011/SC-ST DD DATED 19.12.2011. (PRODUCED ALONG WITH I.A NO.20686/11)

RESPONDANTS'S EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE.

SB

'CR'

K. VINOD CHANDRAN, J.

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W.P.(C) No.23997 of 2011 - Y

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Dated this the 4th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with the decision of the Scrutiny Committee constituted under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, produced at Ext.P8 in the above writ petition. The petitioner claims Scheduled Caste status and asserts his belonging to the Kanakkan community, on the basis of such community status of his father. The petitioner admittedly is the son of an inter-caste marriage, the petitioner's father as is evident from Ext.P1 was certified as belonging to Hindu-Kanakkan community, which is a Scheduled Caste as per the Constitution (Scheduled Caste) Order 1950, within the State of Kerala. The petitioner's father's S.S.L.C certificate also evidences the same as is seen from Ext.P2, is the contention.

2. The petitioner obtained a job in the Cochin University of Science and Technology, on the strength of the claim raised with respect to his belonging to the Scheduled Caste community. On an enquiry being initiated by the Government as to the veracity of the Scheduled Caste claim, the matter was referred to the Kerala Institute for Research, Training and Development Studies (KIRTADS), the expert agency, constituted under the Act of 1996.

3. The genealogical report of investigation is produced at Ext.P5. The paternal descend of the petitioner has been traced to find that the petitioner's father belongs to the Paravan community. Paravan community is also a Scheduled Caste community within the State of Kerala.

4. Specifically, under the heading 'Infiltration', the petitioner's father's caste status was explained. It is indicated that Kanakkan and Paravan communities have distinct origin, culture and hierarchy. The members of the Paravan community

were distributed in the erstwhile parts of Travancore and those of the Kanakkan community in the erstwhile Cochin State. Sometime in the 1940s, the petitioner's father's family, belonging to the Paravan community, who were residents of Vaikam Taluk, Kottayam District, a part of the erstwhile Travancore; had migrated to Cochin. The Kanakkan community was treated as a depressed class within the Cochin State for educational concessions, while the Paravans' had no such status either in Travancore or Cochin.

5. It is noticed that the ascending generations of Paravan community members found in the southern parts of the Cochin State, adjoining the erstwhile Travancore State styled themselves as Kanakkan and availed benefits as such. In any event, the petitioner's father is a Scheduled Caste member since as on the introduction of the Constitution (Scheduled Caste) Order 1950 both Paravan and Kanakkan were included as a "Scheduled Caste". The same does not at all militate against the

fact that the petitioner's father's community was eligible for reservation. The finding that the petitioner's father's caste status was not clear, cannot be countenanced, since whether the petitioner's father be Paravan or Kanakkan, definitely the petitioner's father belonged to a Scheduled Caste community.

6. The petitioner's Scheduled Caste status has been declined for reason of his being the progeny of an inter-caste marriage, his father belonging to the Scheduled Caste and mother to the Ezhava community. The compelling evidence, which stood against the petitioner's claim as seen from the report of the expert agency at Ext.P5 is the fact that the petitioner was described as belonging to the Ezhava community in his S.S.L.C certificate. The petitioner had three other siblings who also were shown as Ezhava in their school records. The petitioner is also said to have been married to an Ezhava, which according to this Court may not be very relevant for consideration of his Scheduled Caste status.

7. With respect to the children of inter-caste marriages, the Hon'ble Supreme Court has in **Rameshbhai Dabhai Naika v. State of Gujrat [(2012) 3 SCC 400]** held that the caste of the father would raise a presumption that the progeny belongs to that caste. In the case of the petitioner, such presumption is available in his favour. The petitioner's father admittedly being a member of the Scheduled Caste community, the petitioner should be presumed to be belonging to that community. However, the declaration in the school records, which is reflected in the S.S.L.C certificate shows that the petitioner was declared as a member of the Ezhava community going by his mother's caste status. The presumption available to the progeny of an inter-caste marriage is rebuttable even as per the aforecited decision and the petitioner's caste status has to be examined in that perspective.

8. The enquiries conducted by the expert agency, as is revealed in Ext.P5, in the locality in which the petitioner was

brought up also indicates that the petitioner was brought up as an Ezhava and not as a Scheduled Caste. There can be no dispute that the eligibility for reservation could only be, to a person belonging to a particular community and who has lived in such circumstances, which would indicate such individual having suffered the indignities and disadvantages, of such belonging, in the early years of his life. The petitioner also did not co-operate with the enquiry, despite notices having been issued to the petitioner. The petitioner in such circumstance, did not refute the evidence collected by the KIRTADS; which upset the presumption available, by way of rebuttal.

9. The question then arises as to what is the evidence to upset such presumption. The S.S.L.C certificate shows the declaration of the petitioner as an Ezhava. The petitioner does not offer any explanation to that end. The petitioner's siblings were also declared as Ezhava and the assertion of the KIRTADS that he had been brought up as a member of the Ezhava

community remains unchallenged for reason of the petitioner not having appeared before the KIRTADS.

10. The petitioner was brought up as a member of the Ezhava community was the clear finding of the expert agency, after conducting local enquiries in the area. All the siblings of the petitioner were also shown to be belonging to the Ezhava community as per their school records. A younger sister of the petitioner, who was a student in GUP school, Keecheri was found to have entered her caste status as Ezhava in the school records. She is said to have changed her caste name as Kanakkan midway, which was found to be without any basis. The petitioner's S.S.L.C book also clearly showed that he was an Ezhava. Hence, even though the petitioner was born in an inter-caste marriage with his father belonging to a Scheduled Caste, there was absolutely no evidence to find that he had been brought up in the social milieu of the Scheduled Caste community. Hence, the petitioner obviously has not suffered any

indignities or disadvantages in his life by reason only of his belonging to a Scheduled Caste community.

11. It was also found that neither the petitioner nor his siblings had enjoyed any benefits or concessions earmarked for Scheduled Caste during their school education. The field investigation too revealed the petitioner to be devoid of affinity of conditions or acceptance as a member of a Scheduled Caste community; to be deemed to be Scheduled Caste. The petitioner had merely relied on the caste status of his father as declared in the father's S.S.L.C book, which was Kanakkan. Though the expert agency found that the petitioner's father actually belongs to Paravan community, the said community also is a Scheduled Caste. However, the overwhelming evidence with respect to the belonging of the petitioner as declared in the school records and his having been brought up as an Ezhava stood uncontroverted. The presumption available to the petitioner stands rebutted. The Scrutiny Committee too accepted the report of the expert agency

and this Court does not find any reason to interfere with the same.

12. Apposite would be the metaphor used by **Cochran, J., in Stumpf v. Mantgomery [(1924) 101 OKL 256 page 85]**; which according to the Hon'ble Supreme Court **(Ashok Leyland Ltd. v. State of Tamil Nadu [(2004) 3 SCC 1])**, pithily states the law:

"Presumptions may be looked upon as the bats of law, flitting in the twilight; but disappearing in the sunshine of facts"

13. One other factor which is relied on by the petitioner is Ext.P4, which is an interim order in O.P. No. 2989 of 2000 filed by the brother of the petitioner. The very same issue came up, when the brother of the petitioner applied for admission to Medical P.G. Course in the year 2000. This Court by an interim order directed the respondents to accept the claim of Scheduled Caste Paravan for the purpose of consideration of his application for admission to Medical P.G Course 2000. It is

obvious that the same was only a provisional order and cannot confer any right on the petitioner therein to claim such status. The affirmation of the claim would depend upon the final orders passed in the writ petition.

14. This Court had called for the Judges papers of the above case and it is reveled that O.P No.2989 of 2000 was dismissed on 04.01.2006, wherein it is recorded so:-

It is submitted that the original petition has become infructuous. It is accordingly dismissed.

Hence, the petitioner's brother can only be deemed as having given up the claim of Scheduled Caste in the said case.

15. Herein, it is to be noticed that there are many instances, where candidates have obtained provisional orders from this Court to be treated as a Scheduled Caste or Scheduled Tribe and admission or appointment, having been secured on the basis of such orders. The writ petition however, subsequently would be treated as infructuous and dismissed on the

submission of the petitioner itself. This Court cannot but observe that on such dismissal being effected, the interim applications also stand dismissed and the provisional order would have no effect after that. Any benefits of reservation cornered by way of such provisional orders would also stand negated and it is only appropriate that the Government take further action in the matter, since, ineligible persons cannot be allowed to continue enjoying the benefits of reservation, which is an affirmative action by the State as permitted by the Constitution to uplift and liberate those people, who suffered indignities and disadvantages in their early life by reason only of belonging to a particular caste or tribe.

16. In the petitioner's case no reliance can be placed on Ext.P4 interim order, since the original petition eventually stood dismissed. The petitioner's brother also can only be taken as having given up the claim of belonging to a Scheduled Caste community.

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For all the above reasons, this Court does not find any reason to interfere with the impugned orders. The writ petition would stand dismissed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge.