

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. 25185 of 2010 (W)

PETITIONER(S) :

**ANENDH C.JACOB,
CHAKALAYIL VEEDU, MANAKARA,
SASTHAMKOTTA, KOLLAM DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SMT.REVATHY P.NAIR**

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
KOLLAM.**
- 2. THE TAHSILDAR,
KUNNATHOOR TALUK, SASTHAMKOTTA P.O.,
KOLLAM.**
- 3. STATE OF KERALA,
REPRESENTED BY SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**

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:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE (SSLC) OF THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED BY THE TAHSILDAR TO THE PETITIONER'S FATHER.

EXHIBIT P3: TRUE COPY OF THE APPLICATION DATED 22.08.2007.

EXHIBIT P4: TRUE COPY OF THE APPLICATION DATED 06.09.2007.

EXHIBIT P5: TRUE COPY OF THE ORDER NO.A3-9895/07 DATED 19.09.2007.

EXHIBIT P6: TRUE COPY OF THE JUDGMENT DATED 13.09.2007.

EXHIBIT P7: TRUE COPY OF THE JUDGMENT DATED 30.09.2009 IN W.P.(C).NO.31484/2007.

EXHIBIT P8: TRUE COPY OF THE ORDER NO.A3-514/08 DATED 05.05.2010.

EXHIBIT P9: TRUE COPY OF THE CERTIFICATE BEARING NO.A1-354/10/AEE DATED 21.05.2010.

EXHIBIT P10: TRUE COPY OF THE CERTIFICATE ISSUED BY ANOTHER GAZETTED OFFICER.

EXHIBIT P11: TRUE COPY OF THE CERTIFICATE OF BAPTISM DATED 20.02.2006 ISSUED BY THE PARISH PRIEST OF ST.THOMAS, SASTHAMKOTTA.

RESPONDENT(S)' EXHIBITS :

EXHIBIT R2(A): A TRUE COPY OF THE LETTER FROM THE PARISH PRIEST ST.THOMAS (CATHOLIC) CHURCH.

EXHIBIT R2(B): A TRUE COPY OF THE ORDER NO.D1-704/2010 DATED 19.04.2010.

EXHIBIT R2(C): A TRUE COPY OF THE VIDE LETTER NO.A3 514/08 DATED 05.05.2010.

//TRUE COPY//

PA.TO JUDGE.

K. VINOD CHANDRAN, J

W.P(C) No. 25185 of 2010

Dated this the 04th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner has been denied OBC status and declined Creamy Layer certificate by the Tahsildar as per Exts.P5 and P8. The petitioner relies on Ext.P1 Secondary School Leaving Certificate wherein his religion is shown as Christian (Latin Catholic). Ext.P2 is the certificate issued to the father of the petitioner which indicate that his father is a Latin Catholic. The petitioner filed Ext.P3 application for a caste certificate claiming reservation of jobs for other backward classes as per Ext.P3. In Ext.P5, the Tahsildar found that the petitioner and his family are professing the Pentecost belief and there can be no certificate issued on the basis of Latin Catholic Community Origin.

2. This Court directed re-consideration of the issue

which was considered in Ext.P8. The caste certificate of the petitioner's father, Baptism certificate of the petitioner, the caste certificate issued to the petitioner in the year 1983, the marriage certificate of the petitioner's parents and the Secondary School Leaving Certificate as also the Transfer Certificate issued from the school were produced before the authority. The Tahsildar is said to have conducted enquiries and also enquired with the Priest of the Parish of the petitioner to find that the petitioner is no more practicing the Latin Catholic faith, and is infact professing Pentecost belief. The Tahsildar in Ext.P8 also relied on the report of the Kerala Institute for Research, Training and Development Studies [for brevity "KIRTADS"], KIRTADS also found that the petitioner cannot be issued with a caste certificate, as belonging to the Latin Catholic Community, for the aforesaid issue.

3. The learned Special Government Pleader (SC/ST) would also rely on Ext.R2(a) certificate issued by the Parish Priest

as also the opinion of the KIRTADS at Ext.R2(b) and the order of the Tahsildar again produced at Ext.R2(c) to contend that the petitioner's community claim cannot be allowed.

4. There can be no reliance placed on Ext.R2(a) certificate issued by the Parish Priest. The mere fact that the petitioner or his family members had not been attending church, would not be a matter of consequence in considering the caste claim of the petitioner. The OBC Status has been conferred on a community for reason of the backwardness of the community and it does not depend upon the faith professed by its members. Even a person who does not believe in God, born in a backward community would be a member of the community and de hors his belief or dis-belief in the concept of God; would be entitled to avail of the benefits; which have been conferred on the community only on account of the backward status of the community in the Society.

5. As per the documents produced at Ext.R2(b), it is

doubtful as to whether the KIRTADS is entitled to examine the question on whether a backward community member belongs to that community or not. KIRTADS though may be competent to conduct an enquiry, an enquiry conducted with respect to other backward community member, cannot be said to be a statutory one. KIRTAD is constituted under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 [for brevity “Act of 1996”] only as an expert agency, to examine the Scheduled Caste/Scheduled Tribe status. The reliance placed by the Tahsildar in Ext.P8 (produced also as Ext.R2(c)) on the aforesaid finding cannot be sustained.

6. There is absolutely no dispute as to the fact that the petitioner had his origin in the Latin Catholic Community. In such circumstance, the petitioner was born into the status of that community and had also suffered backwardness of the community which alone need be looked into in granting caste certificate.

7. In such circumstance, Ext.P8 is set aside. The petitioner is declared to be one entitled to be considered as a Latin Catholic community member for the purpose of being included in the list prepared by the State for the other backward classes in the State of Kerala. Provisional certificate if any, issued by virtue of the interim order shall be regularised. Any benefits conferred on the petitioner by reason of such certificate shall also be upheld.

Writ petition is disposed of.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge