

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 24411 of 2013 (B)

PETITIONER(S):

1. AMAL P.M., AGED 16 YEARS,
MINOR, THROUGH FATHER, GUARDIAN
MANOJ, S/O.BHARATHAN, PULIKKAL
PARIYARAMKUNNU, MANANTHAVADY-670 645
WAYANAD DISTRICT.

2. ATHIRA P.MANOJ AGED 15 YEARS
MINOR, THROUGH FATHER, GUARDIAN
MANOJ, S/O.BHARATHAN, PULIKKAL
PARIYARAMKUNNU, MANANTHAVADY-670 645
WAYANAD DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR

RESPONDENT(S):

1. THE TAHSILDAR, MANANTHAVADY
MANANTHAVADY-670 645, WAYANAD DISTRICT.

2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF SC/ST DEVELOPMENT
THIRUVANANTHAPURAM-695 001.

3. THE DIRECTOR
DIRECTORATE OF KIRTADS, KOZHIKODE-673 017.

R1 BY SPL. GOVERNMENT PLEADER SRI. C.K. JAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1- A TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED TO THE GRANDMOTHER OF THE PETITIONERS.**
- P2- A TRUE COPY OF THE INTER-CASTE MARRIAGE CERTIFICATE ISSUED BY THE FIRST RESPONDENT IN CONNECTION WITH THE MARRIAGE OF THE PETITIONERS' PARENTS.**
- P3- A TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE FIRST RESPONDENT AGAINST THE FATHER OF THE PETITIONERS.**
- P4- A TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED BY THE ADDITIONAL TAHSILDAR, MANANTHAVADY UNDER RULE 4 OF THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES) REGULATION OF ISSUE OF COMMUNITY CERTIFICATE RULES 2002.**
- P5- A TRUE COPY OF THE TECHNICAL HIGH SCHOOL LEAVING CERTIFICATE OF THE FIRST PETITIONER.**
- P6- A TRUE COPY OF THE TRANSFER CERTIFICATE ISSUED TO THE FIRST RESPONDENT BY THE TECHNICAL HIGH SCHOOL MANANTHAVADY.**
- P7- TRUE COPY OF THE ADMISSION REGISTER ABSTRACT OF THE GOVERNMENT MODEL HIGH SECONDARY SCHOOL VELLAMUNDA, WHERE THE FIRST PETITIONER IS PURSUING HIS STUDIES.**
- P8- A TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED TO THE FIRST PETITIONER RECORDING THE CASTE OF THE FIRST PETITIONER AS HINDU PARAVAN.**
- P9- A TRUE COPY OF THE ADMISSION REGISTER OF THE ST.JOSEPH T.T.J.MANANTHAVADY WHERE THE 2ND PETITIONER WAS ADMITTED FOR SCHOOLING.**
- P10- TRUE COPY OF THE TRANSFER CERTIFICATE ISSUED BY THE ST.JOSEPH T.T.J., MANANTHAVADY.**
- P11- TRUE COPY OF THE ADMISSION REGISTER ABSTRACT OF THE GOVERNMENT TECHNICAL HIGH SCHOOL MANANTHAVADY.**
- P12- A TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED BY THE FIRST RESPONDENT STATING THAT THE 2ND PETITIONER BELONGS TO HINDU PARAVAN COMMUNITY.**
- P13- TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED 23.7.2013.**
- P14- A TRUE COPY OF THE LETTER OF THE DIRECTORATE OF KIRTADS DATED 17.12.2007.**

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**P15- A TRUE COPY OF THE LETTER ISSUED BY THE DIRECTORATE OF KIRTADS
DATED 21.6.2008.**

P16- A TRUE COPY OF THE G.O. DATED 20.6.2005.

P17- A TRUE COPY OF THE GOVERNMENT ORDER DATED 20.11.2008.

**P18- A TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN W.P[C]NO.18292
OF 2011, DATED 6TH JULY 2011.**

**P19- COPY OF THE COMMUNITY CERTIFICATE DATED 14.07.2014 ISSUED TO THE
2ND PETITIONER.**

P20- COPY OF THE ADMISSION CARD ISSUED TO THE FIRST PETITIONER .

RESPONDENT(S)' EXHIBITS:

EXT.R3(a): COPY OF THE G.O.(MS) NO. 109/2008/SCSTDD DATED 20.11.2008

EXT.R3(b): COPY OF THE JUDGMENT.

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P.(C) No. 24411 of 2013 (B)

Dated this the 23rd day of July, 2015

J U D G M E N T

The petitioners admittedly are children born in inter-caste marriage. The petitioners' father is one Manoj, who is said to be born of Bharathan and Saradha. The community certificate of Saradha is produced at Ext.P1, which is Hindu-Paravan. The community certificate of Bharathan, however, is not seen produced. The petitioners contend that there was no such community certificate issued to the paternal grandfather and he left this world long back.

2. In any event, the petitioners' father's caste status was examined by the Kerala Institute for Research, Training and Development Studies (KIRTADS). It was found that he was a Hindu-Paravan belonging to Scheduled Caste community of the State of Kerala. Ext.P2 is the inter-caste marriage certificate issued to the father of the petitioners,

which indicates that the father is a Hindu-Paravan and the mother a Hindu-Viswakarama (OBC). The petitioners were also issued with caste certificates indicating their caste to be Hindu Paravan, which is evidenced at Exts.P8 and P12. The petitioners all along have been entered in the school records as belonging to Hindu-Paravan community. When the petitioners, at one point, applied for a community certificate; the Taluk Office, Mananthavady referred the same to KIRTADS. The KIRTADS found in Exts.P14 and P15 that a second generation inter-caste progeny cannot claim Scheduled Caste status. Essentially, it is to be noticed that there is no restriction to such a claim being raised. And in the instant case the petitioners admittedly are first generation progenies from an inter-caste marriage.

3. The issue of caste of progeny of inter-caste marriage couple was considered by this Court after referring to a number of decisions of the Hon'ble Supreme Court in judgment dated 7.11.2013 in W.P.(C)

No.19867/2013. The principles in deciding such caste status was culled out as follows:

- “(i) In the case of an offspring of an inter-caste marriage there is a strong presumption that the offspring takes the caste of the father, but, however, all the same a rebuttable presumption.
- (ii) Act 11/1996 casts the burden of proof on the claimant and it is for the claimant to establish his/her claim of being included as a member of the Scheduled Caste/Scheduled Tribe.
- (iii) This burden cast on the claimant has to be harmonized with the presumption, stated above, which has been judicially recognized by binding decisions of the Hon'ble Supreme Court. Hence, if the father belongs to a forward community and the claim is based on the mother's caste status, then the claimant has to establish that the claimant was brought up by the mother, within the fold of the Scheduled Caste/Scheduled Tribe to which the mother belongs and prove that the claimant suffered the deprivations,

indignities, humiliations and handicaps like any other member of his mother's community. If the claimant relies on the caste of his father to substantiate his claim of belonging to a Scheduled Caste/Scheduled Tribe, then on establishing the caste of his father, the claimant discharges the burden cast on him and the presumption takes effect. This presumption, however, is rebuttable by the State or in the present case by the Expert Agency constituted under Art 11/1996.

- (iv) The Caste Certificate issued by the Competent Authority is not conclusive as per the provisions of Act 11/1996 and is subject to verification by the Screening Committee and the Scrutiny Committee.
- (v) The report of the Expert Agency is conclusive proof, for or against the Scheduled Caste or Scheduled Tribe claim, unless the same is found contrary by the Scrutiny Committee.
- (vi) Though not conclusive when the Competent Authority under the Act has issued a Community Certificate after due process, then to unsettle the claim there should be

sufficient cogent material evidence to disprove the claim.”

Hence, there is a presumption that the progeny takes the caste of his father unless otherwise proved by the authority constituted under the Act that the progeny was brought up in the social milieu of the mother, who is from another caste.

4. In the present case, there is no evidence as to what is the caste of the grandfather and merely on surmises it cannot be said that the petitioners are second generation inter-caste progenies. In any event, there is no restriction as far as a second generation inter-caste progeny; as long as the father's caste remains to be the same. In the present case, there can be no dispute now raised as to the caste status of Manoj, the petitioners' father, which is evidenced by Exts.P3 and P4. The progeny of Manoj would definitely have his caste, unless otherwise proved by the KIRTADS.

The KIRTADS also has merely referred to a second generation inter-caste progeny, being declined of taking the reservation of Scheduled Caste. Admittedly, the 2nd petitioner had approached this Court with similar writ petition and therein by judgment dated 23.7.2014 in W.P. (C) No. 17690/2014, the same was referred to the Scrutiny Committee. The matter is said to be pending before the Scrutiny Committee.

5. On an overall consideration of the issues, this Court is of the opinion that subject to such consideration the petitioners' can be provisionally issued with such caste status. Hence, the petitioners shall be issued with a community certificate provisionally, showing them to be belonging to Hindu-Paravan community. It is made clear that the observations made herein need not necessarily govern the Scrutiny Committee, but however, due weightage has to be given to that, while considering the issue.

The writ petition hence would stand disposed of with the above direction. The petitioners' caste ultimately shall depend upon the decision of the Scrutiny Committee.

Sd/-
K.VINOD CHANDRAN,
JUDGE