

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 22574 of 2015 (V)

PETITIONER(S) :

- 1. ARDRA SUDHAKARAN,
D/O.SUDHAKARAN G, SASTHAMKKAVU PADINIJANTTETHIL,
PATHIRICKAL P.O., PATHANAPURAM, KOLLAM- 6896995.**
- 2. SUDHAKARAN.G,
SASTHAMKKAVU PADINIJANTTETHIL, PATHIRICKAL P.O.,
PATHANAPURAM , KOLLAM-6896995.**

BY ADV. SRI.JOBY CYRIAC

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REP. BY ITS CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.**
- 2. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS/CONVENOR,
SCREENING COMMITTEE, 5TH FLOOR, HOUSING BOARD BUILDING,
SANTHI NAGAR, THIRUVANANTHAPURAM- 695 001.**
- 3. THE DIRECTOR,
KERALA INSTITUTE FOR RESEARCH TRAINING & DEVELOPMENT
STUDIES OF SCHEDULED CASTE AND SCHEDULED TRIBES(KIRTHADS)
CHEVAYUR, KOZHIKODE, PIN- 673 017.**
- 4. THE THASILDHAR,
PATHANAPURAM TALUK, KOLLAM DISTRICT- 691 305.**
- 5. MEDICAL COUNCIL OF INDIA,
POCKET 14, SECTOR, & DWARKA,
NEW DELHI- 110 077.**
- 6. KERALA UNIVERSITY OF HEALTH SCIENCE,
REP. BY ITS REGISTRAR, THRISSUR.**

WP(C).No. 22574 of 2015 (V)

**7. DIRECTOR OF MEDIAL EDUCATION,
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM.**

**R1 TO R4 & R7 BY SPL.GOVERNMENT PLEADER SMT.P.K.SANTHAMMA
R5 BY ADV. SRI.TITUS MANI VETTOM, S.C
R6 BY ADV. SRI.P.SREEKUMAR, S.C;**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-07-2015, THE COURT ON 30-07-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE CASTE CERTIFICATE OF 2ND PETITIONER WITH NO.C1-5592/15 DATED 20/06/2015 ISSUED BY THE 4TH RESPONDENT.**
- P2: TRUE COPY OF THE SSLC MARK LIST OF THE 1ST PETITIONER CONDUCTED IN MARCH 2011.**
- P3: TRUE COPY OF THE CERTIFICATE ISSUED BY THE KPMS, PATHIRIKKAL BRANCH NO.1251 TO THE EFFECT THAT 1ST PETITIONER BELONGS TO SCHEDULED CASTE COMMUNITY.**
- P4: TRUE COPY OF THE INTER CASTE MARRIAGE CERTIFICATE NO.G4-27345/13/K.DIS DATED 09/01/2014 ISSUED BY THE 4TH RESPONDENT.**
- P5: TRUE COPY OF THE RELEVANT PAGE OF THE SSLC BOOK SHOWING THE CASTE OF THE 2ND PETITIONER.**
- P6: TRUE COPY OF THE APPLICATION WITH NO.1117422 SUBMITTED BY THE 1ST PETITIONER BEFORE THE COMMISSIONER OF ENTRANCE EXAMINATIONS.**
- P7: TRUE COPY OF THE NOTICE OF THE SCREENING COMMITTEE ON 22/06/2015.**
- P8: TRUE COPY OF THE ANTHROPOLOGICAL REPORT DATED 12/06/2015 WITH NO.V 851/2015 OF THE THIRD RESPONDENT.**
- P9: TRUE COPY OF THE ORDER NO.B3-644/15/CEE(3) DATED 22/06/2015 OF THE 2ND RESPONDENT.**
- P10: TRUE COPY OF THE CERTIFICATE DATED 12/07/2015 ISSUED BY THE SECRETARY OF KPMS, PATHIRIKKAL BRANCH NO.1251 WITH RESPECT TO PATERNAL GRANDFATHER OF 1ST PETITIONER.**
- P11: TRUE COPY OF THE EXTRACT OF ADMISSION REGISTER ISSUED FROM MOUNT TABOUR GIRLS HIGH SCHOOL, PATHANAPURAM WITH RESPECT TO THE PATERNAL GRANDMOTHER OF 1ST PETITIONER.**
- P12: TRUE COPY OF THE CERTIFICATE DATED 12/07/2015 ISSUED BY THE SECRETARY OF KPMS, PATHIRIKKAL BRANCH NO.1251 WITH RESPECT TO PATERNAL GRANDMOTHER OF 1ST PETITIONER.**

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WP(C).No. 22574 of 2015 (V)

**P13: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
W.P.(C).NO.20904/2015 DATED 20/11/2008.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. Vinod Chandran, J

W.P.(C).No.22574 of 2015-V

Dated this the 30th day of July, 2015

JUDGMENT

The petitioners are daughter and father, claiming “Scheduled Caste” status on the alleged belonging to Hindu-Pulaya community. The 2nd petitioner admittedly belongs to the Hindu-Pulaya community and the 1st petitioner is the progeny of an inter-caste marriage, her mother belonging to Hindu-Ezhava community, which is a socially and economically backward community. The petitioners assert, on the basis of the Caste Certificate issued to the 2nd petitioner, that in similar circumstances Exhibit P13 judgment has been passed by this Court. Though the Kerala Institute for Research, Training and Development Studies [for brevity “KIRTADS”] has found against the Scheduled Caste status of the 1st petitioner, the learned counsel would contend that there is absolutely no evidence to rebut the presumption, which has been specifically noticed in Exhibit P13 judgment. The principles noticed by this Court in Exhibit P13, being a presumption in favour of the progeny of an inter-caste marriage belonging to Scheduled Caste community,

if the father belongs to such a community, is asserted. There is no rebuttal in the enquiry report of the KIRTADS, is the specific contention.

2. The learned Special Government Pleader, however, would contend that the facts herein are not similar to that of Exhibit P13 and Exhibit P13 dealt with a question of conversion from Christianity to Hinduism and the evidence available therein to find the Scheduled Caste status to the student, who also was a progeny of an inter-caste marriage. The overwhelming evidence relied on by the Court in Exhibit P13, is absent herein, is the contention.

3. This Court not being inclined to consider an interim order for issuance of a provisional community certificate, heard the matter finally, on consent of both counsel.

4. The 1st petitioner's father admittedly belongs to the Pulaya community, as is evident from Exhibits P1, P2 and P4 caste certificates. However, the 1st petitioner was declared to be a person belonging to "Hindu-Ezhava", as is evident from her school records. Obviously such declaration was not made by the 1st petitioner, but by her parents when admitting her to

the school. Only at the point of admission for professional degree courses in the year 2015, the 1st petitioner asserted her caste to be a 'Scheduled Caste Pulaya', as is evident from Exhibit P6 application. Doubt having expressed by the Commissioner for Entrance Examinations, the matter was referred to the KIRTADS, as provided under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 [for brevity "Act of 1996"]. Exhibit P8 is the Anthropological Report and Exhibit P9, the Screening Committee order, accepting the Anthropological Report. It would not have been otherwise since the Screening Committee is bound by the report of the Expert agency as per the Act. The petitioners would further herein contend, on the basis of the caste certificate issued to the paternal grandmother of the 1st petitioner, produced at Exhibit P11, to again assert the Scheduled Caste status.

5. True, the facts in the aforesaid case as also in Exhibit P13 disclose the issue of the caste of a progeny of an inter-caste marriage. However the similarity ends there. In Exhibit P13 judgment, the father asserted his belonging to

“Hindu-Cheramar” community and the mother to the Ezhava community. Therein also, the child was declared as an Ezhava in the school registers, as is specifically noticed in the judgment. The father in the said case was born a Christian for reason of his parents having converted to Christianity. However, the petitioners therein raised a case of conversion into Hinduism. This Court found, on the binding precedent of ***K.P. Manu v. Chairman, Scrutiny Committee for Verification of Community Certificate [(2015) 4 SCC 1]***, that on conversion the caste status would revert back to that available to the convertes as per their original belonging in the Hindu religion. The school certificate and the declaration made therein was the ground on which the student in the aforesaid case was found to be not belonging to the Scheduled Caste community, by the KIRTADS. This Court dealt with the said issue in the following manner, in paragraph 12:

“Even going by Ext.P8 report of the KIRTADS the 2nd petitioner's community is asserted to be Christian Cheramar and not of her mother, which is Ezhava OBC. The evidence of the 2nd petitioner being an Ezhava, is the school admission register of the

petitioner which indicates that the mother had authenticated the details as is evident at Ext.P31, wherein the religion of the 2nd petitioner is shown as Hindu Ezhava. **Admittedly, the pupil's name shown in Ext.P31 is Aleeda Joseph which indicates a Christian identity. Ext.P29 is the extract of the ration card produced by the petitioner, which shows that the 2nd petitioner along with her father, siblings and mother were living with the paternal grandmother. Hence, there is no doubt that the petitioner had been brought up in the circumstance of the paternal house, wherein all belonged to the Christian Cheramar community. The 2nd petitioner being the daughter of a Christian Cheramar has to be presumed to have belonged to that community. There is absolutely no evidence to show that the petitioner had been brought up in the circumstances of the mother. The Anthropological Report also does not make any such indication. The Scheduled Caste status has been declined because the candidate's father belonged to Cheramar converted to Christianity and who had only subsequently embraced Hinduism".**

6. This Court, however, is unable to find any such material to controvert the assertions made by the parents of the 1st petitioner at the time of admission to the school. The further

dissimilarity in the two cases is that in Exhibit P13 the student had been issued with a caste certificate by the competent authority, which is absent in the above case. The certificate issued by the Competent Authority under the Act has its relevance in affording further credence to the presumption available. In any event, the student herein also would be entitled to a presumption on the basis of the caste status of the father, even if not as available in Exhibit P13, where the Competent Authority had on enquiry issued a certificate. One has to examine how the same has been dealt with by the KIRTADS.

7. The KIRTADS, on an enquiry conducted, found that the 2nd petitioner's parents belong to Hindu-Pulaya community; but were practising Christianity. However, the mere assertion cannot lead to such finding, since, admittedly, the 2nd petitioner is shown as Hindu-Pulaya in his Secondary School Leaving Certificate and also in the certificate issued by the Competent Authority under the Act of 1996. The mother of the 1st petitioner belongs to "Other Backward Community-Ezhava" community. Reliance placed on document No.6 by the

KIRTADS referred to in its report, is the Secondary School Leaving Certificate of the 1st petitioner, which declares her to be Hindu-Ezhava. Hence, the 1st petitioner, all through her studies, claimed the caste status of Hindu-Ezhava community and did not claim any benefits available to the Scheduled Caste community. There is nothing indicated, as is referred to in paragraph 12 of Exhibit P13 extracted above, to show that the 1st petitioner was brought up in the social milieu of the Scheduled Caste community.

8. The KIRTADS found so in its report:

“The enquiry reveals that the claimant is brought up in the social circumstances of her mother's community ie, Ezhava. She is not socialized in the cultural background of the SC Pulaya community. The totality of the situation reveals that the candidate does not fulfill the criteria stipulated in the G.O.(MS).No.109/2008/SCSTDD dated on 20.11.2008 to consider her as a member of Scheduled Caste. Thus the candidate's claim SC, Hindu Pulaya is against the facts as she has not been “subjected to the same social disabilities and also following the same customs and traditions of the Hindu Pulaya community”.

The report also refers to the 1st petitioner having been brought up in the locality at Pathirikkal, wherein the enquiry conducted reveal that the claimant was brought up as an Ezhava, outside the milieu and circumstances of the Scheduled Caste community and not exposed to the disadvantages inherent when brought up in the social milieu of a Scheduled Caste.

9. In view of the findings of the KIRTADS, which the petitioners have not been able to upset, as of now, this Court is not inclined to grant an order to consider the 1st petitioner as a Scheduled Caste member in the entrance examination conducted by the Commissioner of Entrance Examinations, termed 'KEAM 2015'. The 1st petitioner's results, however, shall be declared as a "general candidate". The issue of the caste status shall be left open, since the 1st petitioner has a remedy under Section 8 before the Scrutiny Committee and under Section 13 before the Government, as per the Act of 1996. The consideration under the Act shall be made untrammelled by the observations herein, which are made only to decline the provisional certificate claimed by the 1st petitioner, keeping the findings of the KIRTADS in abeyance. This Court is conscious

of the fact that, if the claim raised by the petitioners is affirmed later, then the 1st petitioner would lose the benefit of reservation in the present year. But balanced with the aspect of another Scheduled Caste candidate, having comparable merit, being denied of the benefit of reservation, this Court has no other option but to decide so, to advance the cause of reservation enshrined in the Constitution.

The writ petition would stand dismissed, leaving liberty as declared above.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]