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(2021) 01 KL CK 0025

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20509 Of 2019, 12922 Of 2020

Anjana C And Ors — APPELLANT

Vs

State Of Kerala And Ors — RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:
Kerala (Scheduled Castes And Scheduled Tribes) Regulation Of Issue Of Community Certificates Act, 1996 — Section 6, 6(2), 9

Citation : (2021) 01 KL CK 0025

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : M.R. Anison, V. Bhargavi, P.A. Rinusa, M.K. Robin Raj

Final Decision : Disposed Of

Judgement

1. These writ petitions have been filed by the same petitioner, based on the same issue. Therefore, these writ petitions are heard together and disposed of by a common judgment. W.P.(C) No.20509/2019 has been filed seeking to quash Ext.P27 Report of Vigilance Officer, Directorate of KIRTADS, Ext.P30 order of the Scrutiny Committee for Verification of Community Certificates and Ext.P31 order of the Additional Secretary to Government of Kerala. W.P.(C) No.12922/2020 has been filed seeking to quash Exts.P3, P4 and P16 reports. The petitioner also seeks to quash Ext.P17 order and Ext.P19 report. The parties and documents are referred to in this judgment as they appear in WP(C) No.12922/2020.

2. According to the petitioner, her paternal ancestors belonged to ''Puthirai Vannan'' community and migrated from Tamil Nadu to Kerala before the year 1930 and settled at Moongalar Estate in Idukki District. As per the Constitution Scheduled Castes Order, the community Puthirai Vannan is a Scheduled Caste in both the States of Tamil Nadu and Kerala. The grandfathers of the petitioner had no elementary education. In Ext.P1 School Admission Register in respect of the petitioner's father, the community is shown as Puthirai Vannan in the year 1979. The petitioner's mother belonged to Nair Community. Father was employed in

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Harrison Company and was transferred to Wayanad. The family was residing in quarters, in Wayanad District ever since.

3. The petitioner's father purchased property in Wayanad District utilising funds made available to members of the Scheduled Caste. For the sale deed, stamp duty was exempted since the petitioner's father belonged to Scheduled Caste. The petitioner has been continuously enjoying the benefits available to the members of the Scheduled Castes since her birth. In the year 2018, the petitioner applied for Medical Entrance Examination. The Screening Committee suspected veracity of community certificate issued to the petitioner by the Tahsildar and referred the issue to the Vigilance Cell of the Screening Committee. The petitioner appeared before the Screening Committee.

4. The Screening Committee as per Section 6 of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 accepted the report of KIRTADS and rejected the Scheduled Caste claim of the petitioner, as per Ext.P3 order. Invoking Section 6(2) of the Act,1996, the Screening Committee rejected the application of the petitioner for admission to Professional Degree Courses, 2018. The petitioner challenged Ext. P3 order filing W.P(C) No.27606/2018. The said writ petition was disposed of directing the 2nd respondent to consider the Revision Petition filed by the petitioner.

5. By Ext.P4 order dated 04.07.2019, the Screening Committee again rejected the Scheduled Caste claim of the petitioner and application for admission to Professional Degree Course, 2019. The petitioner filed W.P.(C) No.19215/2019, challenging Ext.P4 report of the Screening Committee. The said writ petition was disposed of as per Ext.P5 judgment dated 07.08.2019, wherein this Court granted liberty to the petitioner to approach the Scrutiny Committee. The Scrutiny Committee was directed to examine the grievance of the petitioner. This Court further directed that copies of all reports/documents relied upon by the Scrutiny Committee shall be made available to the petitioner.

6. The 2nd respondent-Scrutiny Committee again rejected the claim of the petitioner as per an order dated 15.07.2019. A consequential order was also passed on 16.07.2019, rejecting petitioner's Scheduled Caste status. These orders are under challenge in W.P.(C) No.20509/2019. Based on Ext.P5 judgment, the 2nd respondent heard the petitioner on 03.09.2019. The petitioner produced additional documents including certificate issued by local MLA, letter issued by the President of Vandiperiyar Panchayat, Ward Member, Chairman, Health and Education Standing Committee and two other local residents. Exts.P11 to P13 Community Certificates issued to the petitioner's family members were also produced. The Scrutiny Committee however issued Ext.P16 order dated 20.02.2020 holding that none of the documents submitted by the petitioner are sufficient to change the decision of the Committee and there is no reason to disagree with the findings of KIRTADS. The Scheduled Castes and Scheduled Tribes Development Department, Government of Kerala, consequently issued Ext.P17 order dated 22.06.2020 clarifying as follows:-

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"(i) Kum.Anjana C., D/o.Isakkimuthu S., Cholayil House, Choondale Estate, Choondale P.O., Wayanad and her sibling do not belong to Scheduled Caste (Puthirai Vannan) community.

(ii) She/her sibling will not be eligible for any of the benefits exclusively intended for members of the Scheduled Castes. If she/her siblings had availed any benefits meant for member of the Scheduled Castes, all such benefits will be stopped.

(iii) Schedule Caste Certificates will not be issued to her/her sibling hereinafter. All the Scheduled Caste certificates secured by her/her sibling, are treated as cancelled.

(iv) If she/her sibling got appointment/admission on consideration as member of Scheduled Caste community, it will be cancelled and another eligible member of the Scheduled Caste community will be admitted against the resultant vacancy."

The petitioner has also challenged Ext.P19 order dated 04.04.2019 of the Vigilance Officer-in-Charge, Directorate of KIRTADS, by which the claim of the petitioner stands rejected.

7. The respondents resisted the writ petition filing counter affidavit. The respondents submitted that according to the Anthropological Report submitted by the Vigilance Cell, KIRTADS, the petitioner is an offspring of an inter-caste married couple. Her father originally was a native of Idukki District, belonged to Puthirai Vannan community of Tamil Nadu and her mother, a resident of Wayanad District, belonged to Nair community in Kerala. On 05.04.2019, the Scrutiny Committee heard the petitioner. After considering all the documents, the Scrutiny Committee found no reason to disagree with the report of the expert agency and hence rejected the Scheduled Caste (Puthirai Vannan) claim of the petitioner.

8. As the petitioner raised grievances relating to non-consideration of 34 documents produced by her to prove her caste status, the Scrutiny Committee again heard the petitioner on 03.09.2019. Thereupon the Scrutiny Committee decided to seek clarification from KIRTADS. After getting report from KIRTADS, the Scrutiny Committee on 11.02.2020 found that there are no sufficient materials to hold that the petitioner belonged to Scheduled Caste.

9. The respondents stated that petitioner's paternal family belonged to Tirunelveli of Tamil Nadu and came to Kerala after 1950. The paternal grandparents of the petitioner are now staying in Moongalar Estate, Periyar Village, Idukki District. The petitioner's father was transferred to Anchoor Estate in Wayanad on 01.09.1995 and later to Choondale Estate in the year 1997. In the year 1999, he married a Nair woman. The genealogical and documentary evidence as well as District Field Level Enquiry reveal that the claimant and her family are living in Cholayil House Choondale, Wayanad and her socialisation process was in Wayanad District.

10. The respondents urged that the petitioner is living in the milieu and

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circumstances of Nair community. The social stigma and disabilities of the Puthirai Vannan community has never been inflicted in the social setting they are in. The petitioner is away from paternal culture and rites. The Revenue Authorities issued community certificates without going into the merits of the case and without conducting a proper enquiry. In the circumstances, the petitioner cannot legally claim the status of member of a Scheduled Caste community. The writ petitions are therefore liable to be dismissed, urged the respondents.

11. Heard the learned counsel for the petitioner and learned Government Pleader appearing for the respondents.

12. The case of the petitioner is that her paternal ancestors belonged to Puthirai Vannan Community. According to the petitioner, the Puthirai Vannan community is Scheduled Caste in Tamil Nadu from where the petitioner's forefathers migrated, as well as in Kerala. The learned Government Pleader would contend that only if the petitioner's ancestors belonged to Puthirai Vannan community in Tamil Nadu and had migrated to Kerala prior to 1950, then alone the petitioner can claim Schedule Caste status in Kerala. The petitioner states that her forefathers migrated to Kerala before the year 1930. This is seriously disputed by the respondents.

13. Ext.P1 extract of admission register of petitioner's father would show that he was admitted in the School showing that he belonged to Hindu Puthirai Vannan community with Scheduled Caste status. The petitioner's father was admitted to the school on 26.05.1975. Therefore, it is clear that the petitioner's father was treated as belonging to Scheduled Caste Puthirai Vannan community more than 45 years ago. Still that may not be sufficient to show that the petitioner's father actually belonged to Scheduled Caste. Because unless the petitioner's forefathers migrated to Kerala prior to 1950, the petitioner cannot claim that she belongs to Scheduled Caste community of Puthirai Vannan in Kerala.

14. The fact that the petitioner's father and the petitioner were treated as belonging to Scheduled Caste community at least from the year 1974, is undisputable. The petitioner's father received financial support available only to Scheduled Castes, for purchasing land. This is evident from Ext.P2. A local MLA of Kalpetta in Wayanad District has certified that the petitioner's father belonged to Puthirai Vannan community eligible for Scheduled Caste benefits.

15. By Ext.P8 certificate, the Chairperson, Health and Education Standing Committee of Vandiperiyar Grama Panchayat has certified that the certifier's father had informed her that the petitioner's forefathers were working in the Moongalar Estate since 1930. Two natives of Moongalar Estate have certified that they know the forefathers of the petitioner and they were living as Puthirai Vannans following their traditional avocation. The said two natives also certified that they know other relatives of the father of the petitioner. Ext.P5 Community Certificate dated 05.04.2005 (in W.P.(C) No.20509/2019) issued to the

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petitioner's paternal grandmother would show that the Tahsildar, Peermadu treated her as belonging to Scheduled Caste.

16. In Ext.P6 (in W.P(C) No.20509/2019), the President of Vandiperiyar Grama Panchayat has certified that the petitioner's father belongs to Puthirai Vannan community and his ancestors have been following the traditional avocation of the Community. Exts.P12, P13, P14 and P15 Community Certificates and Exts.P17 to P19 certificates (in W.P(C) No.20509) would show that the petitioner's siblings were also given Schedule Caste Certificates by Tahsildar.

17. As regards the petitioner, she was issued Exts.P11, P12, P13 and P14 certificates of the Tahsildars concerned certifying that the petitioner belongs to Puthirai Vannan Scheduled Caste community. Ext.P1 extract of school admission register of the petitioner produced in W.P.(C) No.20509/2019 would show that petitioner was admitted in a school on 17.05.2006, as a Hindu Puthirai Vannan. Ext.P2 SSLC certificate also would show that the petitioner is a Scheduled Caste belonging to Puthirai Vannan community. Therefore, it is beyond dispute that the authorities treated the petitioner and her father as belonging to SC Puthirai Vannan community at least since the year 1974.

18. Still, unless there is some evidence to show that the forefathers of petitioner migrated from Tamil Nadu to Kerala prior to 1950, the Scheduled Caste status of the petitioner can not be confirmed. Under Section 9 of the Kerala (Scheduled Castes and the Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, the KIRTADS, the Expert Agency, is the authority competent to hold anthropological study in respect of a person and to decide whether such person belongs to Scheduled Caste or not. Though the Screening Committee formed under the Act 1996 is competent to decide on the caste status of a candidate for the purpose of admission to professional courses, the designated authority to decide caste status of a candidate is the expert agency namely KIRTADS.

19. The findings of the Vigilance Cell of KIRTADS in their Anthropological Report (Ext.P27 in W.P.(C) No.20509/2019) and Ext.P16 proceedings of the Scrutiny Committee, as regards the petitioner, are as follows:-

1. In her immediate milieu, the petitioner is considered as belonging to Nair community.

2. The paternal side of the petitioner who belong to Puthirai Vannan community, came to Kerala after 1950's.

3. The petitioner and her siblings are brought up at her mother's place and according to their rites.

4. The genealogical and documentary evidences as well as the District Field Level Enquiry reveals that their socialisation process was in Wayanad District.

5. The claimant's paternal grand parents still live in Idukki but the petitioner and her mother have no connection with them. They occasionally visit their paternal

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side.

These are the premises based on which the Expert Agency found that the petitioner does not belong to Scheduled Caste community.

20. One reason given by the 2nd respondent to decline Scheduled Caste status to the petitioner is that the immediate milieu of the petitioner shows that she belongs to Nair community. There is nothing on record to show that the petitioner followed the customs and practices of Nair Community. Ext.P16 does not give any instances in that regard. The only indication in this regard as found in Ext.P27 Anthropological report is that the marriage of petitioner's father and mother was solemnised in a Devi Temple. The said fact is not sufficient to hold that the petitioner or her father followed the customs of Nair Community. This Court therefore specifically required the learned Government Pleader to make available the District Field Level Enquiry Report said to be made in the case. However, the Government Pleader, on instructions submitted that such a report is not available now. Ext.P16 nowhere states as to how the petitioner was found to be following the customs of Nair community.

21. The major reason advanced in Ext.P16 report to deny Schedule Caste status to the petitioner, is that the grandparents of the petitioner migrated to Kerala only after 1950. In this regard also no materials are available. Neither Ext.P16 nor the pleadings would indicate as to the basis on which such a conclusion is arrived at. There is no material whatsoever to show that with whom the officials in the enquiry team made enquiries and on what basis the District Field Level Enquiry Team came to the conclusion that the grandparents of the petitioner migrated to Kerala only after 1950.

22. Ext.P8 certificate issued by the Chairman of Standing Committee, Vandiperiyar Grama Panchayat would disclose that the certifier's father had intimated the certifier that the petitioner's forefathers migrated from Tamil Nadu to Idukki in the year 1930. When such a certificate is made available by the petitioner, one would normally expect that the District Field Level Enquiry Team would approach the said Chairman of Standing committee and would attempt to obtain definitive information relating to the migration of the petitioner's grandparents to Idukki District in the year 1930. No such attempt is seen to be made by the Enquiry Team.

23. The petitioner had also made available two certificates (Exts.P9 and P10) given by natives of Idukki District certifying that they know the forefathers of the petitioner who were residing in Moongalar Estate and have been carrying on with their traditional occupation. Had the respondents or the District Field Level Enquiry Team made any attempt to extract information from those two natives, the respondents could have obtained some definitive information relating to the year of migration of the petitioner's grandfathers to Moongalar Estate. However no such attempt has been made.

24. Therefore, it is evident that the 2nd respondent has not made any serious

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attempt to honestly study the anthropological history of the petitioner. No enquiry worth mentioning was made to find out as to the year of migration of the petitioner's grandparents from Tamil Nadu to Kerala. Apart from bald statements that the petitioner is following the customs of Nair community, there is no material to show that as to which Nair custom the petitioner or her siblings were following. Ext.P16 therefore lacks any factual foundation to come to a conclusion that the petitioner does not belong to Scheduled Caste community.

25. There are sufficient materials to show that the petitioner's father was admitted in a school in the year 1974 showing that he belongs to Scheduled Caste community. For the last 46 years, the petitioner's father, the petitioner and her siblings were treated as Scheduled Caste and were extended the benefits available to the community. When the petitioner has produced prima facie materials to show that she belongs to Scheduled Caste as her grandparents migrated to Kerala much before 1950, the respondents cannot brush aside the claim without a proper enquiry and study. Ext.P27 Anthropological Report (in W.P.(C) No.20509/2019) and Ext.P16 proceedings of the Scrutiny Committee are devoid of any substance. In the absence of any material, oral or documentary, to support conclusions, Ext.P27 (in W.P.(C) No.20509/2019) and Ext.P16 cannot stand the scrutiny of law.

26. In the circumstances, the orders impugned in the writ petitions are liable to be set aside. Exts.P27, P30 and P31 in W.P.(C) No.20509/2019 and Exts.P3, P4, P16, P17 and P19 in W.P.(C) No.12922/2020 are therefore set aside. The petitioner will be entitled to all consequential benefits.

The writ petitions are disposed of as above.

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