

(1993) 11 KL CK 0047
In the High Court Of Kerala
Case No : O. P. No. 14958 of 1993

Bijumon A.V. and others

APPELLANT

Vs

Commr. for Entrance Exam and another

RESPONDENT

Date of Decision : 15-11-1993

Acts Referred:

Constitution of India, 1950 — Article 341, 341(2), 366(24)

Citation : (1994) 1 KLJ 170

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : T.M. Chandran. P.V. Narayanan Nambiar and P.K. Suresh and Pirappancode V. Sreedharan Nair and S.P. Aravindakshan Pillai, for the Appellant;

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—In these four original petitions common questions are raised. I heard all the counsels for the petitioners and the Government Pleader and I dispose of these petitioners by a common judgment. All these petitioners seek admission to M.B.B.S. Course against the seats reserved for schedule/caste. The petitioners have passed the entrance examination conducted for admission to M.B.B.S./BDS/BVSc./Agriculture Course for 1993-94, Petitioners are children of inter-caste married couple. According to these petitioners they are to be treated is schedule/caste for the purpose of reservation to admission to M. B. B. S. Course. In each of the petitioner's case one of the parents belongs to a caste included In the list of schedule/caste.

2. In O. P. 15163/93 petitioner's father Dr. C. B. Viswambaran belongs to Hindu Pulaya community which is included in the list of scheduled/caste. Petitioner's mother C. U. Anna is a member of the Syrian Catholic community. It seems that the petitioner was brought up as a member of the Roman Catholic Community. In the SSLC book of the petitioner his caste name is mentioned as Syrian Catholic. The 5th respondent conducted an anthropological study and filed Ext. P4 report and it shows that the field enquiry revealed that the candidate is identified as a

Christian. Petitioners brother Visal is a student of the Arts College, Trivandrum. His caste name is also mentioned as Syrian Catholic. Petitioner appeared for M.B.B.S. Course during 1992-93 under open - quota and he could not secure admission.

3. In O P. 15102/93 petitioner's father belongs to Viswakarma community which is not included in the list of Scheduled caste. Petitioner's mother belongs to Hindu-Pulaya community which is included in the list of schedule caste. In this case the second respondent "KIRTADS" conducted an enquiry and in Ext. P1 report it is slated that the petitioner's father Madhavan married Chinnamma and three children including the petitioner were born in that wedlock. in the school records of the three children caste name is mentioned as Viswakarma - OBC. The petitioner is a final year student of B.Sc. and in his SSLC Book also caste name is Shown as Viswakarma. It is further stated that the petitioner was brought up under non-scheduled caste identity and either the petitioner nor his siblings had ever claimed any benefits which are conferred on scheduled caste..

4. In OP. 15137/1993, petitioner's mother KK. Sobadra belongs to Pulaya community which is included in the list of scheduled caste and petitioner's father belongs to Veluthedathu Nair community. In Ext. P8 anthropological report of the KIRTADS it is stated that in the wedlock of Gopalakrishnan and Subadra, four children including the petitioner were born. Petitioner has passed Pre-Degree Examination and in his SSLC book his caste name is shown as Nair. In respect of other children also their caste name is mentioned as Nair. Petitioner's mother deposed before the 4th respondent that her children had not availed any benefits that were due to the member of the schedule caste. The report further states that the petitioner and other members of the family are leading life as members of Nair community

5. In O. P. 14958/93 petitioners father Ramachandran Nair belongs to Nair community and petitioner's mother Leela belongs to Hindu-velan community. Hindu-Velan is a caste included in the list of scheduled caste. The petitioner's caste name has been mentioned in the SSLC book as Nair. In this case also the KIRTADS had conducted an enquiry and found that the petitioner and other members of his family were leading life as members of Nair community.

6. Petitioners pray that they shall be admitted to M.B.B.S. Course as if they are members of the scheduled caste. Petitioners raise their claim on the basis of various government orders and the note appended to the prospectus issued for the year 1993-94 to regulate the admission to medical and agricultural courses.

The note appended to the prospectus reads as follows:

In the case of Children of Inter-caste married couple, if one of the parents belongs to any community eligible for reservation, they can claim reservation under that community. They should mention the Community under which reservation is claimed in column. 9, 10 or 11 as the case may be of the application form and the words son/daughter of inter-caste married couple

should be noted against the name of community. They should produce a separate Community Certificate in the following Pro forma from the Village Officer concerned (in a separate sheet of paper). They need not produce the Income Certificate and Community Certificate in the Pro forma given in page 4 of the application form. But in the case of children of inter-caste married couple, if one of the parents belongs to any community eligible for reservation under SC/ST quota they should produce the community certificate in the pro forma given page 4 of the application form prescribed for Scheduled Caste and Scheduled Tribe Candidates from a Revenue Officer not below the rank of Tahsildar in addition to the community certificate in the pro forma given below.

7. The application submitted by all these petitioners were rejected by the screening committee on the basis of the report submitted by KIRTADS. Then these petitioners filed separate original petitions and this Court directed to consider the question of admission of these petitioners as children of inter-caste married couple in view of the note appended to the prospectus; The screening committee again considered the matter and by separate orders denied admission to the petitioners. In O, P. 15127/93 - Ext. P 12, in O. P. 15163/93 - Ext. P 10, in O P,15102/93 - Ext. P8 and in O. P. 14958/93 - Ext. P 10 are the orders passed by the screening committee denying the admission to the petitioners for M. B. B S. Course against the seats reserved, for Scheduled Caste. The counsel for the petitioners contended that in view of the note appended to the prospectus and various Government Orders passed from time to time petitioners are to be treated. as scheduled caste and therefore they are entitled to get admission to the reserved seats earmarked for scheduled caste. These petitioners relied on the Government Orders passed in G. O. (Ms.)298/61/Rev. dated 23-3-1961, G. O. (Ms.) 11/77/DD dated 23-1-1977 and G. O. (Ms.)155/76 H. Edn. dated 7-10-1976.

8. G.O. (Ms.) 298/61/Rev dated 23-3-1961 stated that "with a view to extend the concession to a larger number of people and for encouraging inter-caste marriages Government direct that in future children born of inter-caste marriage will be allowed all. educational concessions given to Scheduled Castes or Scheduled Tribes, provided either the father or the mother belongs to a Scheduled Caste or Scheduled Tribe Community and the annual income of the child's parents does not exceed Rs. 1,880/- for pre-matriculation studies and Rs. 1,440/- for post-matriculation studies and technical courses."

9. The executive authority can issue such a direction to encourage Inter-caste marriage and the State can confer any concession to the concerned people but this Government Order does not say that they will be treated as scheduled caste. It only says that educational concessions given to SC/ST would be given to such students.

10. G.O. (Ms.) 11/77/DD dated 25-1-1977 appears to be a certification issued by the Government in answer to a question raised by the Kerala Public Service Commission. The Kerala Public Service Commission requested for a clarification

whether the children born of parents one of whom is a member of Scheduled Caste/Scheduled Tribe community may be treated as belonging to either the mother's community or father's community. Government replied that after examining all aspects of the case the principle enunciated in G. O. (Ms.) 298/61/Rev. dated 23-3-1961 will be adopted for determining the case of the caste of the children born of inter-caste marriage for all purposes, according to which the children will be treated as belonging to scheduled caste or scheduled tribe community, if either of the parents belongs to that community.

11. This Government Order creates some problems. In case whether children born of inter-caste married couple and they are brought up as a non-scheduled caste, it can not be said that such children should be treated as scheduled caste. For example, if a member of Nair community which is a non-scheduled caste community marries a member of the scheduled caste community and all the children born in that wedlock are brought up as members of Nair community and all members of the family lead a life of non-scheduled caste identity, it cannot be said that such children would belong to scheduled caste. Scheduled caste is defined under Article 366 (24) as follows:

Scheduled Caste means such castes, races or tribes or parts of or groups within such castes races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this constitution.

A combined reading of Article 366 (24) and 341 of the Constitution shows that only members of the caste specified in the Presidential notification alone are entitled to be treated as Scheduled Caste and the parliament alone is given power to exclude any caste from the Presidential notification. The G.O. (Ms.) 11/77/DD dated 25-1-1977 is to the effect that all children born of parents of which one of whom is a member of the SC/ST community have to be treated as scheduled caste cannot be accepted in toto. If the children are not members of any of the caste included in the list of scheduled caste they cannot contend that they are to be treated as Scheduled Caste.

12. G.O. (Ms.) 155/76 H. Edn. dated 7-10-1976 is another government order which confer educational concession and reservation benefits to children born of inter-caste marriage. This Government Order suffers from the very same infirmity pointed out by me earlier. There is nothing wrong in conferring educational concession to any section of the community but by an executive order it cannot be said that a person who is not included as any of the members of the caste specified in the presidential proclamation would be treated as scheduled caste.

13. In the instant case all the petitioners were born and brought up as members of a caste other than scheduled caste. Petitioner in O. P. 15102/93 was brought up as a member of the Viswakarma Community. Petitioners in O. P. 14958/93 and 15127/93 were born and brought up as members of Nair community and petitioner in O. P. 15163/93- was born and brought up as a member of the

Syrian Catholic Community. All these students did not avail any benefits either during their studies in the pre-matriculation stage or for the Pre-Degree Course as members of the Scheduled Caste community. They declared their caste identity not as a member of the scheduled caste but as members of forward community. The Supreme Court in various decisions held that in order to become members of scheduled, caste it must be established that he was being accepted as a member of that community.

14. In these cases the petitioners do not contend that they belong to any of the castes included in the scheduled caste list issued by the President of India under Article 341 of the Constitution. They only seek admission as scheduled caste on the basis of the note appended to the prospectus and various government orders. The petitioners all along maintained that they are members of the other community and it is clear that they now contend, that they are to be treated as scheduled caste only as a resort to get mundane wordly benefits such as reservation in the matter of admission to M.B.B.S course. The screening committee considered the question and held that petitioners are not members of scheduled caste. If the petitioners are not members of the scheduled caste they are definitely not entitled to get admission to M. B. B. S. Course against the seats reserved for scheduled caste.

15. The counsel for the petitioner further contended that they submitted application on the basis of the note appended to the prospectus and therefore they are entitled to get admission as if they are members of scheduled caste. I do not know whether there are any seats reserved for such candidates. But one important factor to be noticed is that such candidates were also directed to produce a community certificate in the pro-forma given in the application form prescribed for scheduled caste/scheduled tribe candidates from a revenue officer not below the rank of Tahsildar, in addition to" the pro forma given therein. It evidently indicates that the candidate should have been treated as a member of the scheduled caste despite the inter-caste marriage of his/her parent. So in any view of the matter, I do not think that the petitioners could be said to be Scheduled caste and if they are not really scheduled caste, the Government cannot by any executive order say that they could be deemed to be a schedule caste. Whether any caste or members of any community should be included in the list of scheduled caste is a prerogative of the Parliament and to be exercised under Article 341 (2) of the Constitution of India. The State by its executive orders cannot say that so and so should be" treated as Scheduled Caste, if in fact such candidate is not really a scheduled caste. Under the above circumstances, the decision of the screening committee that these petitioners are not entitled to get admission to M.B.B.S. Course against the seats, reserved for scheduled caste is perfectly correct and I declare to interfere with this Impugned order. The original petitions are without any merit and they are dismissed.