

(2000) 09 KL CK 0021

In the High Court Of Kerala

Case No : W.A. No. 2440 of 1999 (D) and O.P. No. 11028 of 1996

Kerala Public Service Commission, thiru Vananthapuram

APPELLANT

Vs

Dr. Sreekala K.R. and Others

RESPONDENT

Date of Decision : 06-09-2000

Acts Referred:

Citation : AIR 2001 Ker 133

Hon'ble Judges : R. Rajendra Babu, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : G.V. Radhakrishnan, S.C. KPSC, for the Appellant; R. Rajasekharan Pillai, for Respondent No. 1, K. Ramakumar, S.C.G.S.C. for Respondent No. 2 and Government Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—W.A. No. 2440 of 1999 is filed by the Kerala Public Service Commission against the interim order dated 30-9-1999 in C.M.P. No. 7368 of 1999 in O.P. No. 11028 of 1996 directing the Public Service Commission to advise Dr. K.R. Sreekala, for appointment as Assistant Civil Surgeon, provisionally, accepting the caste status claimed by her. If she is otherwise entitled to. When the Original Petition came up for hearing, learned single Judge referred the Original Petition for being heard along with the appeal. Hence we are disposing of the appeal as well as the Original Petition by a common order. We narrate the facts as stated in the Writ Petition.

2. Petitioner is a practising allopathy doctor. She passed her M.B.B.S. and was aspiring for higher studies. She applied for admission to P.G. Medical Course in the year 1992. She applied in the quota earmarked for Scheduled Tribe. Petitioner's mother belongs to Hindu Malai Arayan community, which is a Scheduled Tribe community recognised by the Presidential Order. Petitioner's father belongs to Valan community, a Other Backward Class community in the State. In pursuance to her application she was permitted to appear for the examination. She appeared, but the result was not published. Instead, Petitioner was served with Ext. P6 letter dated 20-5-1992 from the Office of the

Commissioner for Entrance Examinations stating that the Screening Committee entertained some doubts whether Petitioner could be considered for admission to the seats ear-marked for Scheduled Caste/Scheduled Tribe and therefore it was decided to refer the said question to KIRTADS. It was pointed out that the Screening Committee would take further action only after getting a report from the KIRTADS. Petitioner then sent all the relevant documents to KIRTADS to show that her mother belongs to Hindu Malai Arayan community, therefore entitled to get the benefit of reservation for admission to educational institutions. Petitioner did not get any reply. Consequently, she did not apply for the year 1993.

3. Petitioner during the year 1994-95 submitted an application dated 12-4-1994 for admission to Post-Graduate Medical Course. Petitioner then received a reply dated 12-4-1994 stating that her application dated 12-4-1994 was considered by the Screening Committee and the Screening Committee entertained some doubts as to whether Petitioner is eligible for consideration to the seats reserved for Scheduled Caste/Scheduled Tribe. Petitioner was therefore informed that the matter had been referred to KIRTADS. She was also informed that her application would be considered only after getting a report from the KIRTADS. The officers of the KIRTADS made an enquiry after issuing notice to the Petitioner's father on her behalf. KIRTADS noted that the candidate's claim for S.T. status rests on her mother. Investigating officers of the KIRTADS had interviewed the candidate's father, mother and family members. In the enquiry the KIRTADS found that the Petitioner's mother belongs to Malai Arayan community. It was also noted that the claim of the Petitioner rests on G.O. (MS) No. 11/77 dated 25-1-1977. Dealing with the merits of the case, KIRTADS stated as follows:

The claim of the candidate for Scheduled Tribe Malai Arayan status rests on G.O. (MS) No. 11/77 dated 25th January 1977, wherein it has been stated that:

The children will be treated as belonging to Scheduled Castes or Scheduled Tribe community if either of the parents belongs to that community.

Just a few months later the Government of India quoting the legal view, vide letter No. 39/77/73/SCST/1 dated 21st May 1977, has directed all State Governments to determine the caste status of the off springs born of a couple where one of the spouses is a member of a Scheduled Tribe, subject to the legal view expressed by various High Courts and Supreme Court of India and also in the light of existing facts and circumstances in such cases.

The KIRTADS in its report held as follows:

The candidate's father belongs to the Valan OBC community and the mother belongs to the Scheduled Tribe Malai Arayan Community. The marriage between the candidate's father and mother was held at the Sree Mahadevar Temple, Ettumanoor, in 1960. The candidate was first admitted in school in the year 1970 wherein her caste name was declared as Valan (Documents 6 and 8). In her SSLC book also the caste name is shown as Valan (Document-9). The caste

name of her sister is also shown as Valan (Document Nos. 4 and 5). Her father is Valan by caste (Document-2). She is married to a person belonging to the Arayan community (Document-11). Thus she was brought up in the cultural milieu of her non-scheduled Tribe father and naturally her caste name has been declared as "Valan". She is married to a man belonging to the non-Scheduled Tribe community. The field investigation has also revealed that in Vaikom she is known and identified as one belonging to the Valan community. In short, in society she bears a non-Scheduled Tribe identity as "Valan". In view of the above facts, the matter to be decided is whether a person having the above background can get Scheduled Tribe Community certificate or not.

The report finally concluded as follows:

In view of the above facts, the claim of the candidate Smt. Sreekala, K.R. Vattatjara House, V.M.C. Ward 4, Vaikom, Kottayam District, for Scheduled Tribe malai Arayan status cannot be conceded. As already mentioned, there has been procedural errors even in the issuance of the community certificate. The legal views which have been brought to the notice of the authorities who are empowered to issue Scheduled Caste/Scheduled Tribe community certificates by the Government of India clearly show that the candidate is devoid of tribal traits, identity, etc., of the community to which she seeks membership. The caste name shown in her SSLC book as "Valan" is correct. Therefore the candidate's application for P.G. Medical Courses against the quota reserved for Scheduled Tribes may be rejected.

It is evident from the above mentioned report that there was a clear finding that Petitioner's mother belongs to Malai Arayan community, a Scheduled Tribe community in the State of Kerala.

4. Petitioner had earlier submitted an application for appointment to the post of Assistant Surgeon in pursuance to a notification dated 3-11-1992 issued by the Health Services Department. In the application she had claimed her community as Malai Arayan/ST. However, in the copy of the third page of S.S.L.C. book, her community was note as "Valan". She had also submitted a separate caste certificate from Tahsildar, Taluk Office, Vaikom, along with the application, showing her community as "Malai Arayan". On the basis of the Petitioner's application, she was admitted for written test. In the interview memo she was directed to produce fresh community certificate from Tahsildar quoting G.O. (MS) No. 63/79/PD dated 16-4-1979 and Gazette notification to prove that she belongs to Hindu Malai Araya/ST. The Interview was on 19-10-1995. Petitioner however did not produce the required documents at the time of interview and the rank list was finalised on 17.11.1995. Petitioner's name was however included in the rank list provisionally at rank No. 10 in the Supplementary List of Scheduled Tribe. Petitioner's turn arose for advice on 13-12-1995, but was not advised from the Supplementary list, since she failed to produce the necessary certificate before the appointing authority.

5. Petitioner was subsequently served with Ext. P14 show cause notice dated 23-1-1996 informing her that her name could not be considered against the S.T. turn since she had not proved her community status. Committee also informed its proposal to delete her name from the rank list and gave an opportunity to the Petitioner to file objection if any against the proposal. She replied stating that she had already submitted certificate No. C2.1744/96-1772 from the Tahsildar Vaikom, which would show that she belongs to Hindu Malai Arayan community. Petitioner did not get any reply since then.

6. Petitioner later received a show cause notice Ext. P11 dated 23-2-1996 from the SC/ST Dev. (E) Department, relying upon the report of the KIRTADS dated 21-11-1995. The Petitioner was then informed as follows:

And whereas your action in having made the false claim as member of Malai Arayan community is actionable as per GO (P) No. 16/95/SCSTDD dated 8-5-95, you are hereby required to show cause why your ST claim as member of Malai Arayan community should not be refused by Scrutiny Committee for verification of ST claims the SC/ST certificates wrongfully secured by you confiscated and further action as per the aforesaid Government order recommended to be taken against you and the member of your family.

The show cause notice also referred to the notice dated 12-4-1994 from the Commissioner for Entrance Examinations.

7. Petitioner then submitted Ext. P12 reply dated 11-3-1996 to the said show cause notice refuting all the allegations and also annexed various documents to establish her case. Petitioner stated that the basis of the Petitioner's claim for S.T. status is under G.O. (MS) No. 11/77 dated 25-1-1977. She stated that since she was admitted in the School for the year 1970 evidently father could not produce any certificate on the strength of G.O. dated 25-1-1977. It was also stated that Petitioner is in close contact with her mother's kith and kin and was brought up under the influence of her mother and her relatives who are members of Malai Arayan community. She also pointed out that no proper investigation was made by the office of the KIRTADS. She also refuted all allegations raised in the notice as well as in the report. She therefore claimed that she is eligible to get benefit of reservation on the strength of her mother's community and entitled to get selection for P.G. Medical Course since her mother belongs to Malai Arayan community. Petitioner stated that since her mother belonged to Malai Arayan Community she was always treated as member of that community. She was also brought up as member of her mother's community.

8. Reliance was also placed on Malayalam Encyclopedia published by the institute of Encyclopedia Publication, Volume II pages 157 - 159 and submitted that both Malai Arayan and Arayan have the same background. Further it was also pointed out that the recommendation of the Government of Kerala for inclusion of Arayan in the S.C. list is pending before the Government of India. According to the Petitioner, Arayan (Valan) are following the same custom of Hindu Malai Arayan,

there is no difference in the Petitioner's upbringing. Reference was also made to the various document's produced by her before the scrutiny committee.

9. Petitioner, however, received Ext. P13 order dated 29-3-1996 from the Commissioner for Entrance Examinations (Convenar, Scrutiny Committee) rejecting her application for admission to P.G. Medical Course for the year 1994-95 stating as follows:

The field investigation has revealed that the candidate was brought up in the cultural milieu of her non ST father who is Valan by caste. She has not been identified as "Malai Arayan". By her way of life she is identified as Valan in the society. She is married to a man belonging to Araya community which is a non ST community. The candidate herself has stated that the Akhila Thiruvithamkoor Malai Araya Mahasabha has declined to issue her a certificate to the effect that she belongs to Malai Araya community. This has proved that she has not been recognised as Malai Araya by that community.

She had in the meanwhile received a communication Ext. P14 dated 23-1-1996 from the Public Service Commission informing her of the proposal of the Public Service Commission to delete her name from the rank list for the post of Assistant Civil Surgeon since she had not proved her community as Malai Arayan. Petitioner was also directed to show cause why her name shall not be deleted from the rank list. Petitioner replied to the show cause notice stating that she had already produced a certificate dated 22-3-94 from the Tahsildar, which would show her eligibility since her mother belongs to Malai Arayan community.

10. Petitioner again applied for admission to P.G. Medical Course for the year 1996, which was also rejected by the Commissioner for Entrance Examinations, by Ext. P17 dated 6-4-1996 reiterating reason for which it was rejected earlier. Later Petitioner received in response to her explanation dated 11-3-1996 a letter dated 19.6.1997 from the SC and ST department directing her to appear before the Scrutiny Committee on 5-7-1997. Aggrieved by Exts. P13, P14 and P17, She preferred this writ petition on 9-7-96. She also prayed for a declaration that she is entitled to be considered for admission to P.G. Medical Course. A direction was also sought for against the 5th Respondent to advise her for the post of Assistant Civil Surgeon. She also wanted to quash all prosecution proceedings initiated against her.

11. Petitioner in response to Ext. P13 notice submitted a detailed written statement before the Scrutiny Committee. Certain documents were also filed before the Scrutiny Committee. Petitioner's representative was heard on 20-12-1997. It was pointed out that the Petitioner's mother belongs to Scheduled Tribe community and she has been maintaining close contact with her mother's house at Thalanad. Further it was pointed out she and her mother are following the customs of Malai Arayan community, and therefore eligible for the status of that community. With regard to the statement that in the school records she was shown as belonging to Valan community, she stated that since

the application was made by her father, she was shown as Valan. But it was contended that the said conduct would not make her ineligible to claim the benefit of Ext. P4. The Scrutiny Committee however took the view that applicant does not belong to Scheduled Tribe Malai Arayan Community, but belongs to Valan Community, which is included in the OBC list in Kerala. She was informed accordingly by Ext. P21 order dated 20-12-1997, the operative portion of which is extracted below for easy reference:

The committee has gone through the statement of defence filed by Sreekala and the report filed by the Director, KIRTADS. It is found that there is no doubt respective communities of the claimant's father and mother. Her father belongs to "Valan"(Arayan) community included in the Other Backward Community and her mother belongs to "Malai Arayan". So claimant is a child born in the intercaste marriage of a "Malai Arayan" (Schedule Tribe) with an "Arayan" (Other Backward Community). To which community she belongs, i.e., whether in Schedule Tribe community or Other Backward Community is the issue to be answered. It is seen that the claimant was educated at Vaikom and not at Thalanadu in Meenachil Taluk, the birth place of her mother. The community of the children are shown as "Valan" in school records as per the application filed by her father. It is also seen that she has not claimed the status of "Malai Arayan" which is included in the list of Schedule. Tribe till her application for admission to Medical College. It is also found that her association is with the members of her father's community and not with her mother's community. It is further found that claimant is married to one Bijudas, S/o. Sri. C. Das, who belongs to "Arayan" community. The doc. No. 3. i.e., judgment in O.P. No. 274 of 1980 produced by her has no relevance in this case because in the above case the community of the Petitioner herself was entered wrongly in the school records unlike that of claimant's case. The committee found that even though her mother belongs to be "Malai Arayan" Schedule. Tribe community the claimant or her sisters have no association with the above community and are free the stigma attached to "Malai Arayan" community. Her marriage with Sri. Bijudas makes it more clear.

The Scrutiny Committee also informed the Petitioner that report has already been forwarded to the Government for appropriate action.

12. Later, Government also vide Ext. P22 order dated 25-4-1998 accepted the report of the Scrutiny and declared that Petitioner and members of her family do not belong to ST Malai Arayan community, but belongs to Other Backward Class community. It was also ordered as follows:

1. It is declared that Smt. Sreekala, K.R., Vattathara House, VMC Ward No. IV., P.O. Vaikom, Kottayam Dt. and the members of her family do not belong to Schedule. Tribe Malayarayan community which is a Schedule. Tribe, but belong to Valan (OBC) community.
2. None of the members of this family shall be eligible for any of the benefits

exclusively intended for members of the Schedule Tribe. If any of the members of the family of Smt. Sreekala, K.R. have availed of any of the benefits shall be stopped and the financial benefits if any availed of shall be recovered.

3. If the caste entry in respect of any of the members of this family as recorded in their academic records is Malayarayan (ST) it shall be got corrected as Valan (OBC).

4. Schedule Tribe Certificates shall not be issued to any of the members of this family hereafter. All the Schedule Tribe certificates secured by them as members of Malayarayan community shall be treated as cancelled.

Petitioner subsequently amended the original petition and prayed for to quash Exts. P21 and P22 as well and also prayed for other consequential reliefs.

13. Counsel for the Petitioner, Sri. R. Rajasekharan Pillai, submitted that in the matter of admission as well as employment, Petitioner is entitled to get the benefit of Ext. P4 Government order dated 25-1-1977, which gives benefit to children born out of inter-caste marriage for the purpose of educational concession as well as for appointment in public services. Counsel submitted that for getting the benefit of Ext. P4, the question as to whether Petitioner was brought up as a member of the Scheduled Tribe or not is immaterial. Counsel submitted that for deciding the question, as to whether Petitioner is entitled to get the benefit of Ext. P4, the only question to be considered is whether Petitioner was born out of intercaste marriage and either of her parents belongs to SC/ST. Reliance was placed on a Bench decision of this Court in K. Deepthy v. State of Kerala ILR (2000) Ker. 845.

14. A detailed counter affidavit has been filed on behalf of the second Respondent in support of the impugned orders. Shri Poly Matthai, who appeared for the State Government, tried to justify the findings entered into by the Scrutiny Committee and also Government order accepting the report of the Scrutiny Committee. Learned Government Pleader submitted that since Petitioner was brought up as a member of the Valan community, she is not entitled to get the benefit of ST-Malai Araya community, even though her mother belongs to that community. Learned Government Pleader further¹ submitted that in the SSLC book she was also described as a member of the Valan community. According to him, only members of SC and ST alone are entitled to get the benefit of Ext. P4. Counsel submitted that the caste status of a person could be determined only in the light of recognition that a member gets from the members of the caste to which he or she seeks entry. Counsel submitted that since there is no evidence to show that she was brought up as a member of the ST she is not entitled to get the benefit of the Government order, Ext. P4. Learned Government Pleader also submitted that Ext. P4 order was not intended to confer any status on the Petitioner. The Government Order only says that children born out of inter-caste marriage would be treated as belonging to SC and ST community, if either of the parents belongs to that community.

15. The scope of the Government order dated 25-1-1977 granting the benefit to the children born out of inter-caste marriage came up for consideration before this Court in DEEPATHY (ILR 2000 Ker. 845) (supra) and this Court held as follows:

As per Government Order dated 25th January 1977, children born to inter-caste married couple were made eligible for reservation for admission to educational institutions as available to Scheduled Castes/ Scheduled Tribe as the case may be provided either parent of the candidate belongs to Scheduled Caste/ Scheduled Tribe as the case may be. While granting such benefit to offsprings of inter-caste married couples the only criteria which is relevant is whether the Applicant is an offspring of an inter-caste married couple. The question whether that offspring was brought up as a member of Scheduled Caste or not is immaterial. On the birth of an offspring of an inter-caste married couple, the child need not be subjected to the same disabilities, indignities, restrictions, prohibitions or sufferings once suffered by a member of a Scheduled Caste/Tribe.

In this connection it is profitable to refer to the earlier Government order dated 23-3-1961 issued for granting the benefit to children born out of inter-caste marriage. The relevant portion is extracted below:

At present children born of inter-caste marriages are treated as belonging to the mother's community which is entitled to any special concessions, the children born of her will also be eligible for those concessions irrespective of father's community. With a view to extend the concessions 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

The above mentioned Government order encouraged inter-caste marriages. Subsequently, the Public Service Commission sought clarification from the Government as to whether children born of parents of whom is a member of the Scheduled Caste/Scheduled Tribe community can be treated as belonging to either the mother's community or the father's community. After examining all the aspects of the matter, Government ordered as follows vide order dated 25-1-1977:

After examining all aspects of the case, Government order that the principle enunciated in the G.O. read as first paper above will be adopted for determining 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.

The above Government order makes, it clear that the children born out of inter-caste marriage will be entitled to get the benefit for all purposes if either of parents belongs to Scheduled Caste/Scheduled Tribe. We are of the view that there is no necessity to independently show that candidate as such belongs to either Scheduled Caste or Scheduled Tribe. A candidate need only to prove that

either of her parents belongs to Scheduled Tribe or Scheduled Castes as the case may be. We are in agreement with the learned Govrenment Pleader that by virtue of the above mentioned Government Orders, Government could only treat the children born out of inter-caste marriage as a member of either of the parent's community, for the purpose of educational concession and appointment in public services. Ext. P4 order does not confer any status as such on a person born out of an inter-caste marriage. Petitioner could claim the benefit available under Ext. P4, and nothing more, and nothing less. We are of the view if an off-spring of an inter-caste marriage couple wanted to confer a status as a member of SC/ST, he/she has to independently establish the same.

16. Question whether Petitioner could be conferred with the status of ST or OBC is not a matter which is germane for our consideration. In fact that was not a matter which was referred to the KIRTADS by the Commissioner for Entrance Examination. Question that was referred to the KIRTADS was whether the Petitioner could get the benefit of Ext. P4 for admission to the educational institutions. In this case, admittedly, Petitioner's mother belongs to Scheduled Tribe community, and father belongs to Valan Community, which is included in Other Backward Classes. For deciding the above mentioned issue, question as to whether a child was brought up in the cultural milieu of the Scheduled Tribe mother, or OBC father is immaterial. The question to be decided is whether Petitioner is born out of inter-caste marriage and whether either of her parents belongs to either Scheduled Caste or Scheduled Tribe in order to claim the benefit of Ext. P4.

17. While deciding the said question the KIRTADS has completely misdirected in thinking that in order to claim the benefit of Ext. P4 an applicant should establish caste status. KIRTADS concluded that since she was not brought up in the cultural milieu of her Scheduled Tribe mother she is not entitled to get benefit of reservation for admission in the educational institutions. When the Commissioner for Entrance Examinations, refers the question as to whether the applicant is entitled to get. the benefit of Government Order Ext. P4 the only question that should have been gone into by the KIRTADS is whether either of her parents belongs to SC or ST for which we have already indicated that the status of a candidate as such is immaterial. We notice that the KIRTADS relied upon the Government of India letter No. 39/47/73/SSSTI dated 21-5-1997 which directed all the State Governments to determine the status of a child born of inter-caste married couple. We are of the view even if the status of the Petitioner was not that of Malai Aaryan which was Scheduled tribe even then she is entitled to get benefit of Ext. P4 order since her mother belongs to Malai Arayan Community. Therefore the decision taekn by the KIRTADS in the light of the above mentioned letter of Government of India is of no consequence for claiming the benefit of Ext. P4. In this case KIRTADS has completely misdirected in taking the view that only if the candidate establishes her caste as SC or ST as the case maybe then only she would be entitled to get benefit of Ext. P4. This finding, according to us, is absolutely illegal.

18. We also notice the report of the Scrutiny Committee as well as Government Order have stated that none of the Petitioner's family members belong to Malai Arayan community. This finding cannot be sustained. Admittedly Petitioner's mother belong to Malai Arayan community. The Government as well as Scrutiny Committee has also decided to cancel all the certificates issued to the Petitioner and the other family members claiming ST status. This finding also cannot be sustained. We have already indicated that since she is an off-spring of an intercaste married couple she is entitled to get the benefit of ST community since her mother belongs to ST community. Under such circumstance the authority is bound to issue certificate to the Petitioner treating her as a member of the ST community since her mother belongs to ST community.

19. Under the above mentioned circumstances we are inclined to set aside Exts. P10, P11, P13, P14, P17, P18, P21 and P22 orders. We declare that Petitioner is entitled to be treated as member of the Scheduled Tribe community for the purpose of Ext. P4. We make it clear that mere fact that she is entitled to get the benefit of Ext. P4 would not confer any caste status on the Petitioner.

If she wanted to have the status of Scheduled Tribe as such she has to independently establish the same before appropriate authotities when situation warrants.

20. We accept the learned Government Pleader's submission that Government Order only treat a person as a member of the SC/ST as the case may be for the benefit of Ext. P4. In other words, the said order would not confer any status as such, but only makes a person eligible to claim the benefit if either of her parents belongs to ST or SC.

21. Petitioner also sought a direction to the first Respondent to consider Ext. P1 letter dated 14-10-86 to confer SC status to Arayan, Velan community. We are of the view such a prayer cannot be granted. We leave it to the wisdom of the concerned authority.

22. In view of the above findings we declare that Petitioner is entitled to get benefit of Ext. P4 for the purpose of getting admission to the Post Graduate Medical Course. We notice that a post has already been earmarked for the Petitioner for appointment to the post of Assistant Civil Surgeon in the Health Service Department. She has already been included as rank No. 10 in the supplementary list and she was not advised because of the pendency of these proceedings. Under such circumstance we are inclined to give a direction to the Kerala Public Service Commission to advise the Petitioner forthwith for the post of Assistant Civil Surgeon subject to the completion of other formalities.

Original petition is allowed accordingly. In view of our judgment in O.P. 11028/96, W.A. 2440/1999 has no merits and the same is dismissed.