
(2015) 07 KL CK 0078

In the High Court Of Kerala

Case No : Writ Petition (C). No. 20904 of 2015 (K)

M.A. Chandraboss and Others

APPELLANT

Vs

Controller of Entrance Examination and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 — Section 13

Citation : (2015) 4 KHC 203

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : G. Krishnakumar, for the Appellant; Santhamma, Spl. Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—The 2nd petitioner is the daughter of the 1st petitioner who has appeared for the entrance examination conducted by the Commissioner of Entrance Examinations termed as "KEAM 2015", for admission to professional degree courses. The 2nd petitioner seeks admission as a Scheduled Caste candidate in the reservation set apart for such Scheduled Castes.

2. The petitioners' Scheduled Caste status was, in the earlier year, rejected by the Anthropological Report of the Kerala Institute for Research, Training and Development Studies (KIRTADS) for Scheduled Castes and Scheduled Tribes constituted under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (for brevity the "Act"). The same is produced at Ext. P8. The petitioner filed a revision under Section 13 of the Act which has also been unsuccessful, as is evident at Ext. P20. The petitioners assail Exts. P8 and P20.

3. Though the petitioners seek for an interim order, this Court is of the opinion that the matter itself has to be heard since declining the interim order would prejudice the 2nd petitioner, if, eventually the writ petition is allowed. A

provisional order for treatment as a Scheduled Caste would prejudice another eligible candidate, if, ultimately the writ petition is found to be unsustainable. Especially since the Statutory Authority has already considered the issue and there would be no scope for a further counter affidavit, on agreement of both sides the matter is heard finally.

4. The 1st and the 2nd petitioners admittedly were born as Christians, since the father of the 1st petitioner had converted to Christianity. The family of the 1st petitioner is said to have belonged originally to Hindu Cheramar community, which, admittedly comes under the Schedule and is treated as a Scheduled Caste in the State of Kerala. The paternal grandfather and grandmother were practising christians and so were the 1st and 2nd petitioners. However, in the year 2009, the 1st petitioner and his family is said to have reconverted to Hinduism by undergoing a "Shudi Karma" under the auspices of Arya Samaj. The petitioners are said to have been accepted to the community of Hindu Chelamar, which the petitioners seek to establish by certain certificates produced as Exts. P13 to P17. The petitioners contend that despite their conversion to Christianity, they retained the essential character of the caste, to which they belonged and suffered the disabilities and disadvantage of the other caste members. The petitioners also would seek to buttress their claim with the community certificates issued to them as "Christian Cheramar". The petitioners rely on *Ponnamma v. Regional Director - 1983 KLT 1057*, *The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao*, AIR 1976 SC 1904 : (1976) 3 SCC 411 : (1976) 3 SCR 1046 : (1976) 8 UJ 471 and *K.P. Manu Vs. Chairman, Scrutiny Committee for Verification of Community Certificate*(2015) 3 AD 269 : AIR 2015 SC 1402 : (2015) 2 RCR(Civil) 168 : (2015) 3 SCALE 1 : (2015) 4 SCC 1 : (2015) 1 SCC(L&S) 757 : (2015) 3 SCJ 617 : (2015) 2 SCT 7 to substantiate their claim, on conversion to Hinduism.

5. The learned Special Government Pleader (SC/ST) would however rely on the Anthropological Report of the KIRTADS and submits that both the petitioners, having been born into Christianity and having lived as christians till their reconversion, are to be treated as christians and not as a Scheduled Caste. The conversion is a measure of convenience, so as to enable the 2nd petitioner to be treated as a Scheduled Caste candidate, in the entrance examination. Only in 2009 the petitioners thought of converting back into their original caste and in such circumstance they cannot be said to have suffered the disadvantages and disabilities inherent to a member of that caste. The learned Special Government Pleader also specifically points out that the petitioner is the progeny of an inter-caste marriage and her mother belongs to the Ezhava Community. The 2nd petitioner had declared herself to be an Ezhava, as is evident from the school registers. Even if the petitioner is said to have been brought up as an Ezhava, the 2nd petitioner would be eligible only for reservation as available to Socially and Economically Backward (SEB) Communities and not as a Scheduled Caste candidate. The learned Special Government Pleader argues that the writ petition is unsustainable and has to be dismissed and the petitioners are attempting to

perpetrate a fraud on the very concept of reservation.

6. Admittedly, the petitioners were born as Cheramar Christians. The 1st petitioner and his family, comprising of the 2nd petitioner also, had converted to Hinduism, as is evident by a certificate issued by the Arya Samaj. The 1st petitioner and his children have also changed their names by publication in the Gazette as is indicated at Ext. P2. The Tahsildar, Meenachil, by Ext. P5 has certified that the 1st petitioner and his family ordinarily resides in Ramapuram Village, Kottayam District of Kerala State and belongs to the Hindu Religion, Cheramar Caste.

7. The 1st petitioner was formerly known as Joseph Augustine, till his conversion. The 1st petitioner's school admission register shows his religion as Cheramar Christian, as does his SSLC which are produced respectively as Exts. P6 and P7. The 1st and 2nd petitioners were also issued caste certificates as is evidenced at Exts. P9 and P10, which again asserts their caste status as Christian-Cheramar. Ext. P11 is the certificate which was produced by the 2nd petitioner to appear for the entrance examination to professional degree courses in Kerala in the year 2014, which was referred by the Commissioner of Entrance Examination to KIRTADS.

8. The Anthropological Report of the KIRTADS at Ext. P8 traces the genealogy of the petitioners and finds the father and the mother of the 1st petitioner to be of the same community ie, Christian Cheramar. The details as to the birth of the petitioner and his siblings are referred to. The maternal descent of the 2nd petitioner has also been traced and the mother is said to be belonging to Hindu Ezhava Community included in the Other Backward Community (OBC) list in Kerala. The 2nd petitioner's birth to an inter-caste couple; the father belonging to Christian-Cheramar and mother to Ezhava community were found and the 2nd petitioner's caste was asserted to be Ezhava for reason of her school admission register having disclosed her caste to be an Hindu Ezhava. The subsequent conversion was said to be an attempt to grab the constitutional privileges earmarked for the Scheduled Communities. On the merits of the case it was found that the genealogy and the documentary evidences indicate that the 2nd petitioner is born to inter-caste married parents, where her father belongs to Hindu Cheramar converted to Christianity and who later reconverted to Hinduism and the mother belongs to the Ezhava OBC. The issue as to the 2nd petitioner's claim of belonging to Scheduled Caste Cheramar community status was found to rest on the community status of her father. However, the fact that the father of the 2nd petitioner and the paternal grandparents belonged to the christian community of Cheramar origin and mother and maternal grandparents belonging to Ezhava community was found to stand against the petitioner's claim of belonging to a Scheduled caste community. It was found that a child born out of inter-caste marriage should be able to prove that she has been subjected to the very same social disabilities of the community to which he/she claims to belong and in that circumstance, the claim of the 2nd petitioner was rejected.

9. The revisional authority being the Government also affirmed the Anthropological Report of the KIRTADS. The revisional authority found that the 1st petitioner and his siblings had their upbringing as Christian Cheramars and this had provided them access to improved education awareness and superior legal counsel (with practising lawyers in their own family). There being no evidence of the 1st petitioner having suffered any of the disadvantages or discriminations of a Scheduled Caste Community, the claim was declined. The claim of conversion also was negated on the ground that the 1st petitioner was still using his former name, being Joseph Augustine. It was found that there is nothing to show that the claimants had obtained educational assistance in the school years, on the basis of a Village Officer's certification. The claimant was found to have been unable to furnish any documentary or other evidence to prove that she or her family had ever suffered social, economic and educational disabilities due to the caste status.

10. Essentially it has to be noticed that it is an admitted fact that the petitioner's father belongs to Christian Cheramar community. The petitioner is also born to inter-caste couple with her father belonging to Christian Cheramar community and her mother to Ezhava OBC. The issue of the 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."

11. The aforesaid principles would indicate that the caste of the progeny of inter-caste married couple is presumed to be that of the father. The presumption definitely is rebuttable but such rebuttal evidence has to be convincing and has to be brought in by the authority who asserts otherwise. In the State of Kerala an expert agency has been constituted by an enactment being the KIRTADS. Herein, the Competent Authority under the Act had issued a caste certificate to the 2nd petitioner declaring her caste status to be Hindu-Cheramar. The presumption also favours the 2nd petitioner insofar as she has been assigned with her father's caste status. (The conversion aspect will be dealt with shortly.) There should be cogent material evidence, hence, to unsettle the claim of the 2nd petitioner, which at the first instance stands vindicated by the Competent Authority.

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 Chelamar converted to Christianity and who had only subsequently embraced Hinduism.

13. Now we come to the conversion aspect. In that context it is also to be noticed that Christianity, as it is generally understood, does not have any caste discrimination and the very fact that the 1st and 2nd petitioners were all along issued with community certificates as belonging to Christian-Cheramar, would

indicate that they had their origin in the Hindu-Cheramar community. Considering the question of a Christian convert reconverted to Hinduism, this Court in Ponnammamma's case (supra) held that the child of parents who converted to Christianity at the time of the birth of the child, could always convert back to Hinduism and claim the rights of the caste of her forefathers once she converts back to Hinduism. The rights of a child born as a Christian; to Scheduled Caste parents who converted to Christianity, to reconvert to Hinduism and claim the rights available to a Scheduled Caste/Scheduled Tribe, was affirmed by the Constitutional Bench of the Hon'ble Supreme Court in *The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao*, AIR 1976 SC 1904 : (1976) 3 SCC 411 : (1976) 3 SCR 1046 : (1976) 8 UJ 471 . An identical situation also arose recently in the case of *K.P. Manu Vs. Chairman, Scrutiny Committee for Verification of Community Certificate*(2015) 3 AD 269 : AIR 2015 SC 1402 : (2015) 2 RCR(Civil) 168 : (2015) 3 SCALE 1 : (2015) 4 SCC 1 : (2015) 1 SCC(L&S) 757 : (2015) 3 SCJ 617 : (2015) 2 SCT 7 .

14. Manu's case (supra) was on almost identical situation when the applicant therein asserted his belonging to Hindu Pulaya community, again a Scheduled Caste community. His claim was declined on the ground that he did not have a Hindu origin and he was born to Christian parents. Therein also the great grandfather of the applicant belonged to the Hindu Pulaya community and the paternal grandfather converted to Christianity and accepted a new name. The said grandfather then married a Christian who belonged to Hindu Ezhava community, but again a convert to Christianity. The claimant therein was the son of the Christian convert Pulaya and Ezhava. It was the applicant therein who got himself converted to Hindu religion and changed his name. The Hon'ble Supreme Court emphasized the requirements in such case as is seen in paragraphs 38 and 39:

"38. In our considered opinion, three things that need to be established by a person who claims to be beneficiary of the caste certificate are: (i) there must be absolutely clear-cut proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Castes) Order, 1950; (ii) there has been reconversion to the original religion to which the parents and earlier generations had belonged; and (iii) there has to be evidence establishing the acceptance by the community. Each aspect according to us is very significant, and if one is not substantiated the recognition would not be possible.

39. In the case at hand, as far as the first aspect is concerned, as we have stated hereinbefore, there is no dispute. If a person who is born to Christian parents who had converted to Christianity from the Scheduled Caste Hindu can avail the benefit of the caste certificate after his embracing Hinduism subject to other qualifications, there cannot be any soundness of logic that he cannot avail the similar benefit because his grandparents were converted and he was born to the parents who were Christians. They must have belonged to that caste and after conversion, the community has accepted. Our view is fortified by the

authority in S. Anbalagan. Thus, the reasoning as ascribed by the Scrutiny Committee as well as by the High Court on this score is unacceptable."

15. Therein, this Court's judgment against the Anthropological Report was overturned. The conclusion of the KIRTADS in that case was that the claimant's father and mother belonged to Christian community of Pulaya origin and that the applicant, after becoming a major, embraced Hinduism and revived his caste status. The claimant and his children were found to have been not following the Christian religion. The fact that the claimant therein married a Christian lady was found to be of no consequence.

16. Similarly, the fact that the 1st petitioner's siblings had been continuing as Christians or that there were practising lawyers in the family would not at all efface the caste status of the 1st petitioner. Though the KIRTADS finds that the mother of the 2nd petitioner was an Ezhava, there is no finding that the 2nd petitioner belongs to the Ezhava community or was brought up in the social milieu of such community. The 2nd petitioner definitely was brought up in her father's house, may be as a Christian; but a Christian-Cheramar as was noticed above. There being generally no accepted caste discrimination in Christianity, the identity in the Cheramar community was essentially retained. This would have to be accepted on the binding precedent in K.P. Manu's case.

17. The Government also would contend that though the petitioner had applied as a Scheduled Caste Cheramar, since her claim as a Scheduled Caste was rejected at the earlier instance and she was unable to obtain any order from the Government when the results were published, she had applied for publishing her results as a general candidate. That would not stand against her because valid proceedings against the Anthropological Report were pending consideration. The petitioner admittedly has applied as a Scheduled Caste candidate. Her results were withheld only for reason of her not substantiating her claim as a Scheduled Caste candidate. Any anxious student desirous of getting into a professional course would hence see that her results be declared at least as a general candidate. Her claim as a Scheduled Caste candidate having been accepted by this Court, the results also has to be declared as a Scheduled Caste candidate.

18. In such circumstance, the findings in the Anthropological Report, Ext. P8, is found to be not sufficient to overthrow the claim of the 2nd petitioner which has been allowed by the original authority, which granted the community certificate at Ext. P11. Ext. P28 would hence be of no consequence and Ext. P20 is set aside. The petitioner's claim as a Hindu Cheramar has to be accepted. The petitioner's result would be declared and the petitioner would be considered as belonging to the Scheduled Caste community.

Writ petition allowed.