
(2020) 12 KL CK 0184

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 2961 Of 2018, 21173 Of 2019

Mary J. And Ors

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 11-12-2020

Acts Referred:

Citation : (2020) 12 KL CK 0184

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, A. Aruna, Thulasi K. Raj, Varun C. Vijay, Rashmi K.M., Dr. K.P. Satheesan, P. Mohandas, S. Vibheeshanan, K. Sudhinkumar, S.K. Adhithyan, Sabu Pullan, Riya Raymol Iype, Maitreyi Sachidananda Hegde, Aleena Nelson, G. Sreekumar

Final Decision : Disposed Of

Judgement

1. Though reliefs sought for in these two writ petitions filed by the same petitioner are different, the issues arising therein are the same and hence the writ petitions are heard together and being disposed of together.

2. In W.P.(C) No.2961/2018, the petitioner seeks to quash Exts.P18 to P20 and to declare that the caste status of the petitioner as Latin Catholic

cannot be changed by the respondents. In W.P.(C) No.21173/2019, the petitioner seeks to quash Ext.P26 and to direct the respondents to abstain

from proceeding further on the basis of Ext.P26. The respondents will be referred to in this judgment in the order they are arrayed in W.P.(C)

No.21173/2019.

3. The petitioner states that her father was a Latin Catholic, born and brought up in Kottayam District. He migrated to Palakkad District in the late

70s. The petitioner's father left his ancestral home and married a Hindu

woman named Rajamma, who belonged to Kalari Panikkar, which is also an OBC community. The petitioner was born on 07.04.1981. The petitioner's father was so detached from his parental family that he did not disclose much about his paternal or maternal family, to his wife or children. The petitioner's father passed away in 2013.

4. The petitioner was treated as belonging to Latin Catholic throughout her life. This will be evident from Exts.P8 to P17 documents produced in W.P.

(C) No.21173/2019. The petitioner was included in the supplementary list of Latin Catholic for appointment as LD Typist. The 9th respondent was placed below the petitioner in the rank list. The petitioner was appointed as LD Typist based on her seniority in the select list. As the appointment of the petitioner would mar her chance to get appointment, the 9th respondent filed a complaint dated 19.05.2017 to the District Collector. The said false complaint triggered all the reports/orders impugned in these writ petitions.

5. By Ext.P18 report in W.P.(C) No.2961/2018, the Village Officer recommended that the issue of caste status of the petitioner be referred to the

Backward Class Development Department and KIRTADS. Consequently, the Tahsildar, as per Ext.P19, referred the issue to the Commissioner of

Backward Class Development Department as also to the Director of KIRTADS. As per Ext.P20, the Director of Backward Class Development

Department held that the petitioner is not entitled to Latin Catholic Non-creamy Layer Certificate. By Ext.P26 report in W.P.(C) No.21173/2019, the

Director of KIRTADS held that the petitioner is not entitled to community certificate of Christian Latin Catholic.

6. The learned counsel for the petitioner argued that the petitioner was always treated as belonging to Latin Catholic. Her father died in the year 2013.

After the demise of her father, now the petitioner is being outcasted alleging that the petitioner's father did not belong to Latin Catholic

Community. In fact, the 9th respondent is exploiting the peculiar circumstances in which the petitioner is placed. The long delay on the part of the 9th

respondent in filing complaint against the petitioner is fatal and the respondents should not have acted on the basis of a belated and frivolous complaint.

7. The counsel for the petitioner further argued that Rule 3C of Part I KS & SSR would apply to the case and after one year of Advice Memo,

appointment of the petitioner cannot be cancelled. The documents produced by

the petitioner in this writ petition would amply prove the case of the petitioner that she belongs to Latin Catholic community. As regards the community of the petitioner's father, there is ample evidence to show that the petitioner's father is a Latin Catholic and was cremated on his demise following Latin Catholic rites.

8. The learned counsel for the petitioner further argued that KIRTADS which is an Anthropological Expert Agency under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996, is incompetent to decide the community status of Latin

Catholics. Therefore, based on a report of KIRTADS, the petitioner cannot be outcasted from her community and terminated from service. The

impugned orders are hit by Wednesbury unreasonableness due to non-application of mind. The impugned orders are therefore liable to be set aside by appropriate orders of this Court, contended the counsel for the petitioner.

9. The 3rd respondent-District Collector opposed the writ petition filing counter affidavit. The Kerala State Commission for Backward Classes

(KSCBC) has entrusted KIRTADS with the task of conducting community studies for inclusion of castes in OBC category. Therefore, Ext.P26 report

of the KIRTADS is legal and valid. As per Government Order dated 04.11.2010, only those who were following Latin Catholic faith prior to 1947 and

their successors are eligible for getting Latin Catholic Community Certificate. In the petitioner's case, there is no evidence to show that the father

of the petitioner followed Latin Catholic faith prior to 1947. Therefore, the Latin Catholic Non-creamy Layer Certificates issued to the petitioner are

liable to be cancelled, contended the 3rd respondent.

10. The 9th respondent stated that the Kerala Public Service Commission published a rank list for appointment to the post of Lower Division Typist on

17.05.2012. The petitioner was included as rank No.5 under the Latin Catholic Community quota. The 9th respondent was included as rank No.8.

Rank Nos.6 and 7 relinquished their claim. Therefore, if the petitioner's appointment is found to be irregular, the 9th respondent will get

appointment. The rank list expired on 30.08.2016.

11. Out of suspicion about the community of the petitioner, the 9th respondent filed a complaint before the PSC and the District Collector requesting

them to ascertain the community of the petitioner. Pending this complaint, the

petitioner was appointed as LD Typist on 07.09.2016 in the Revenue Department. The 9th respondent thereupon filed O.A. No.82/2018 before the Kerala Administrative Tribunal.

The Tribunal has issued notice to the petitioner in the said application. It was thereafter that the petitioner filed W.P.(C) No.2961/2018 and obtained interim order against termination of her service.

12. The Public Service Commission did not verify the authenticity and claim of the petitioner that she belongs to Latin Catholic community while including her name in the rank list. The petitioner had obtained community certificate by misrepresentation. The petitioner's father was not Latin Catholic and the petitioner's mother was a Hindu. The petitioner's father was born and brought up in Nallepilli Village. The petitioner had submitted Ext.P4 certificate claiming that her father is Latin Catholic, contended the 9th respondent.

13. The advise of the PSC was on 14.06.2016, much after the death of her father on 27.10.2013. The 9th respondent could have made a complaint only on 14.06.2016 when the cause of action arose. The complaint therefore is not belated, contended the 9th respondent. None of the documents produced by the petitioner would establish that the petitioner's father belonged to Latin Catholic community. Unless and until the community of the father is accepted, a child cannot claim community status.

14. Admittedly, the petitioner's father was baptised at Bharananganam Church, which is not a Latin Catholic Church. Another sister of the petitioner was baptised at St. Anthony's Church, Athicode, which is also not a Latin Catholic Church. The Parish Priest of St. Anthony's Church, has given a certificate to the effect that neither the petitioner's father nor mother received Holy Communion in the said Church. In the records maintained by the Church regarding Baptism, Holy Communion, Confirmation and Marriage, the name and address of the parents of the petitioner are not included. The petitioner has obtained appointment by producing bogus documents. The orders impugned by the petitioner are legal and valid and hence the writ petitions are liable to be dismissed, contended the 9th respondent.

15. I have heard learned counsel for the petitioner, learned Government Pleader and learned Senior Counsel assisted by the counsel for the 9th respondent.

16. Certain facts are undisputed in the pleadings. The petitioner's father V.T.John belonged to Kottayam District. He migrated to Palakkad District

and married one Rajamma, who belonged to another OBC Hindu community. The petitioner was born out of the said wedlock. Ext.P6 document

produced by the petitioner would show that the Parish Priest of St. Anthony's Church coming under Latin Catholic Diocese of Sultanpet has

certified that the petitioner's mother along with three daughters including the petitioner were residing at Athicode, which comes under the jurisdiction

of St. Anthony's Church, Athicode. Ext.P6 bears the seal of Bishop of Sultanpet, Palakkad.

17. Ext.P8, which is extracted from the register of baptisms maintained by the said St. Anthony's Church would show that the petitioner was

baptised at the said Church on 12.05.1993. Ext.P9 certificate issued by the Diocesan Commission for Family, Coimbatore would evidence that the

petitioner, who is from Latin Catholic St. Anthony's Church, Athicode, has attended the marriage preparation course held in the year 2000.

18. Ext.P10 certificate issued by the Parish Priest of the St. Anthony's Church would show that the petitioner was baptised at the said Church as

per the baptism records kept in the Church. Ext. P11 extract of admission register issued by the Headmaster of Government UP School, Athicode

shows that the petitioner is Christian Latin Catholic. Ext.P11 was issued in the year 2012. Ext.P12 SSLC of the petitioner would also show that the

petitioner's place of birth is Athicode and she belongs to Latin Catholic OBC caste.

19. Based on all these documents, the Village Officer concerned has issued Ext.P13 certificate dated 03.02.2009 stating that the petitioner belongs to

Christian Latin Catholic community and she does not belong to the category of 'Creamy Layer'. Ext.P14 community certificate dated 09.10.2002,

Ext.P15 Non-Creamy Layer Certificate dated 06.03.2010, Ext.P16 Non-Creamy Layer Certificate dated 18.02.2012 and Ext.P17 Non-creamy Layer

Certificate dated 12.08.2016, all issued by the concerned Village Officer would also show that the petitioner has been treated as Latin Catholic and

community certificates were issued to her accordingly.

20. The community of the petitioner has been doubted for the sole reason that she could not produce sufficient evidence to show that her father was a

member of Latin Catholic community. As per Government Order dated

04.11.2010, only those persons who were of Latin Catholic faith prior to 1947 and their successors can claim community certificate of Latin Catholics. Ext.P4 is a copy of a certificate issued by St. Anthony's Church,

Athicode to the petitioner's father. In Ext.P4 Family Card issued to petitioner's father, it has been stated that the place of baptism of

petitioner's father is PARANGANAM, which can be a case of mis-spelling for Bharananganam, a place in Kottayam District.

21. Ext.P5 is extract from a Register of Burials maintained by the Parish Priest of St. Antony's Church, Athicode. Ext.P5 would show that the

petitioner's father was buried on 23.10.2013 at St. Antony's Church, Athicode. These documents would prima facie show that the petitioner's

father belonged to Latin Catholic faith.

22. However, on the basis of the complaint made by the 9th respondent, the Village Officer submitted Ext.P18 report to the effect that on his enquiry

at Athicode Lakshamveedu Colony, he learnt that the petitioner's father migrated from Kottayam District. From the Family Card issued to the

petitioner's father, the Village Officer noted that the baptism of the petitioner's father was at Bharananganam Church, which is a Church of Syro-

Malabar faith. On these premises, the Village Officer recommended that the caste status of the petitioner should be referred to Kerala Backward

Class Development Department and KIRTADS.

23. The conclusion of the Village Officer for reference of the case to KIRTADS suffers from a patent error. Ext.P4 Family Card issued to the

petitioner's father only indicates that the place of baptism of the petitioner is Bharananganam. Ext.P4 does not speak of any particular Church in

Bharananganam where the petitioner's father was baptised. However, in Ext.P18 report, the Village Officer came to an erroneous assumption

that Ext.P4 discloses that the Church, where the father of the petitioner was baptised, was Bharananganam Church, which belongs to Syro-Malabar

faith. Such conclusion is patently erroneous.

24. Ext.P19 letter of the Tahsildar addressed to the Commissioner of Backward Class Development Department and to the Director of KIRTADS

also suffers from the same mistake. Ext.P19 also proceeds on an assumption that the petitioner's father was baptised at Bharananganam Church, Pala

belonging to Syro-Malabar sect, whereas the Family Card, on the basis of which

such assumption is arrived at, does not speak of any particular

Church at Bharananganam where the petitioner's father was baptised. Ext.P20 letter of the Director of Backward Class Development

Department which found that the petitioner is not entitled to Latin Catholic Non-creamy Layer Certificate, relies solely on the report of the Tahsildar

for arriving at such conclusion. Ext.P20 also therefore cannot stand the scrutiny of law.

25. By Ext.P26 proceedings, the KIRTADS came to a conclusion that the petitioner is not eligible to get Christian Latin Catholic community

certificate. The conclusion is based on the following findings:-

(1) The petitioner's father, as per family card, was baptised at Barananganam Church belonging to Syro-Malabar sect. But at the same time, enquiries

revealed that there is no documentary proof to show that the petitioner's father was baptised at Barananganam Church.

(2) The petitioner's mother originally belonged to Hindu Kalari Panicker community, and was later converted into Christian religion. There are no

records to show that mother's baptism and wedding were held at St. Antony's Church Athicode. At the same time, she was cremated in the

said Church on the basis of a letter from a Roman Catholic Church at Thrissur District.

(3) The petitioner and her siblings were baptised at St. Antony's Church, Athicode but were married to Christians of Roman Catholic

denomination.

(4) As the petitioner and her siblings were baptised in the year 1993 only, the Parish Priest has opined that they cannot make a claim of belonging to

Latin Catholic community till 1993.

(5) No information is available in respect of the father of the petitioner to show that he belonged to Latin Catholic community. It is the duty of the

claimant to provide sufficient evidence in this regard.

It is based on such conclusions that the KIRTADS has found against the petitioner.

26. This Court is of the opinion that based on the said conclusions, the petitioner cannot be denied community status.

27. Firstly, the KIRTADS also fell into an error that the Family Card of the petitioner's father showed that he was baptised at Bharananganam

Church. Ext.P4 Family Card only states that the petitioner's father was baptised at place Bharananganam. No name of any Church at

Bharananganam has been mentioned in Ext.P4. At the same time, the KIRTADS also found that there is no evidence to show that the petitioner's

father was baptised at Bharananganam Church of Roman Catholic community.

28. The father and mother of the petitioner were cremated at St. Antony's Church, Athicode which is a Latin Catholic Church. Though the

KIRTADS found that the petitioner's mother was cremated there on the basis of letter issued from a Roman Catholic Church of Thrissur District,

there is nothing to show that the said Roman Catholic Church certified that the petitioner's mother belonging to Roman Catholic faith.

29. The petitioner and her two siblings were baptised at Latin Catholic Church. If later they were married to persons belonging to other communities,

that by itself cannot take away the community status of the petitioner and her siblings. The year of birth of the petitioner is 1981. She was baptised in

Latin Catholic Church in the year 1993. The ritual of baptism may be conducted sooner or later after birth. The fact that baptism of the petitioner was

after 12 years of her birth, cannot disentitle the petitioner the community status till baptism. If the petitioner's father is Latin Catholic, the petitioner

would also belong to Latin Catholic community, howsoever lately may be her baptism is performed. The KIRTADS fell into an error in relying on late

baptism of the petitioner, in order to ascertain petitioner's caste status.

30. The major reason for denying the Latin Catholic caste status to the petitioner projected by the KIRTADS is that the petitioner failed to prove that

her father belonged to Latin Catholic community. In this regard, it has to be noted that a Family Card was issued by a Latin Catholic Church to the

petitioner's father. The petitioner was born in the year 1981. She was admitted in a Government School in the year 1986, where her parents described

her community status as Latin Catholic OBC. The petitioner as a primary and secondary student continued to be treated as belonging to Latin

Catholic. The SSLC certificate issued to the petitioner also describes the petitioner as Latin Catholic OBC. On the basis of enquiries made by

Revenue Authorities, the petitioner was issued Exts.P13 to Ext.P17 certificates certifying that the petitioner belongs to Latin Catholic community.

31. Thus, it is clear that from her very birth till the respondents passed the

impugned orders in the year 2018 and 2019, there was no doubt in the mind of any person or Authority that the petitioner belonged to Latin Catholic community. The petitioner has now attained the age of 37 years. After living 37 years as belonging to Latin Catholic Church, after her siblings and herself taking baptism in a Latin Catholic Church, and after cremating both of her parents in a Latin Catholic Church, respondents 1 and 5 cannot declare that the petitioner does not belong to Latin Catholic faith for the sole reason that the petitioner at this distance of time cannot produce evidence to establish the caste status of her deceased father.

32. This Court is of the firm opinion that if a person belonging to any community lives his/her life for considerably long years as being belonging to that community, and such belonging is acknowledged by the general public as well as by the Governmental Authorities, then after long lapse of time, such person cannot be outcasted from that community by Governmental action, unless there is sufficient proof to show that such community status was obtained by such person by fraud or misrepresentation. In the petitioner's case, she was baptised in a Latin Catholic Church in the year 1993. In her birth records, she was described as belonging to Latin Catholic community. Her SSLC also certified that she is a Latin Catholic. The Revenue Authorities from time to time issued community certificates and Non-creamy Layer Certificates to the petitioner certifying that she belongs to Latin Catholic community. She competed for Public Service and obtained an appointment on the basis of her merit. Now at this distance of time, the respondents cannot in law declare that the petitioner does not belong to Latin Catholic Community.

33. In the circumstances of the case, the impugned orders cannot be sustained. Exts.P18 to P20 in W.P.(C) No.2961/2018 and Ext.P26 in W.P.(C) No.21173/2019 are therefore quashed.

Writ petitions are disposed of as above.