
(2015) 01 KL CK 0269

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27261 of 2009 (C)

P.T. Mohanan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 — Section 10, 4

Citation : (2015) 01 KL CK 0269

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : K.J. George Kunnumpurath and Vineesh P. George, for the Appellant; Laly Vincent, Spl. Government Pleader, Advocates for the Respondent

Judgement

C.K. Abdul Rehim, J—The Petitioners are the father, son and daughter of a family. It is stated that all the ancestors of the petitioners' family belonged to Hindu-Cheramar Community, which is recognized as Scheduled Caste. Some of the ancestors, including parents of the 1st petitioner, had embraced Christianity. The 1st petitioner had re-converted into Hinduism by performing "Sudhi Karma" at the Arya Samaj, Thiruvananthapuram and he was admitted to "Vedic Hindu Dharma" after performance of "Sudhi Karma". Ext. P1 certificate issued by the "Arya Samaj" will evidence the above facts. Ext. P2 is the Gazette Notification published to the effect that the 1st petitioner had embraced Hinduism and changed his name from John P.T. to P.T. Mohanan. Exts. P3 to P5 are community certificates issued to the petitioners certifying that each of them belongs to Hindu-Cheramar Community recognized as Scheduled Caste. But later the 2nd respondent had refused community certificates to the petitioners certifying them as Hindu-Cheramars. Therefore the 1st petitioner approached this court in an earlier writ petition, WP(C) No. 4430/2008. This court disposed of the said writ petition through judgment dated 22/02/2008 directing the 2nd respondent to consider the application put in by the petitioner for caste certificate and to take an appropriate decision. Thereafter the 2nd respondent conducted a hearing and

rejected the application observing that the petitioner had failed to produce any documents of local religious organisation in support of his claim. Aggrieved by the said decision the petitioner had preferred an appeal before the 3rd respondent and the 1st petitioner had filed further writ petition as WP(C) No. 6542/2009, which was disposed of by this court directing the 3rd respondent to consider the appeal and to dispose of the same. But the appeal was also rejected. Thereafter the 2nd petitioner had filed WP (C) No. 16030/2009 seeking direction for issuance of caste certificate for producing before the Kerala Public Service Commission. This court directed the 2nd respondent to dispose of the said application. The Tahsildar conducted a personal hearing in the matter. Meanwhile a further application for issuance of caste certificate in favour of the 3rd petitioner was also submitted before the 2nd respondent. Having found that the documents and evidence submitted by the petitioner were fabricated, both the applications were rejected by the Tahsildar, through proceedings dated 01/07/2009. Thereafter a revision petition was filed before the Government. This writ petition was originally filed seeking direction for speedy disposal of the revision petition. Through an interim order this court issued direction for disposal of the revision petition by the Government. Ext. P9 is the consequential order passed by the Government, rejecting the revision petition and declaring that the petitioners and none of their family members are eligible for any benefits exclusively intended for members of Scheduled Caste, because the family do not belongs to Hindu-Cheramar community which is recognized as Scheduled Caste and Government had issued direction for correction of academic records of the family members of the 1st petitioner by rectifying the caste name as "Christian" instead of Scheduled Caste. The petitioners are challenging Ext. P9 order through amendment brought into this writ petition.

2. In Ext. P9 it is observed that the 2nd respondent, had conducted an enquiry through the Village Officer concerned. It is mentioned in the report of enquiry, which is supported by statement of four witnesses, that though the 1st petitioner had performed "Sudhi Karma" he does not lead a life in accordance with Hindu belief and faith. Moreover it was found that the petitioner and his family are regularly attending prayers at the "Believers" Church" at Niravu in the Chathantharakara, Kollamula Village. It is further observed in Ext. P9 that pursuant to direction issued by this court the Government had afforded opportunity to the petitioner to establish his claim. The Government noticed that Ext. P1 certificate was not authenticated by any witnesses. It was found that the witness named in Ext. P1 certificate had deposed during the enquiry that he had no connection with the "Sudhi Karma". Further, it was found that, the local enquiry conducted had revealed that the petitioners are leading "Christian" way of life. The petitioners have produced a certificate issued by the "Akhila Kerala Cheramar Sanghom". But the said certificate was issued by the Punchavayal branch of the said organisation, which is situated about 20 Kms away, in another district. From all the circumstances the Government found that the claim cannot be accepted.

3. Contention of the petitioners is that the decision taken by the Government is not on the basis of any proper enquiry conducted. Learned counsel for the petitioners contended that, by virtue of Exts. P1 and P2 there is ample evidence to the effect that the 1st petitioner had embraced Hinduism and is eligible for getting community certificate certifying that the family belongs to Hindu-Cheramar community. The denial to grant community certificate is based on flimsy grounds, is the contention.

4. Per contra, learned Special Government Pleader appearing on behalf of the respondents pointed out that, by virtue of Section 10 of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of issue of Community Certificates Act, 1996 the burden is on the applicants to prove that they belong to the Scheduled Caste. Section 10 provides that where an application is made to the competent authority under Section 4 for issue of a community certificate in respect of a Scheduled Caste as well as in any enquiry conducted by the competent authority, the burden of proving that he belongs to Scheduled Caste shall be on the claimant. It is further pointed out that with respect to re-conversion to Hinduism by those who have embraced Christianity from Scheduled Caste communities, the Government have issued specific orders and circulars. GO (MS) No. 34/87 dated 27/07/1987 issued by the Scheduled Castes/Scheduled Tribes Development Department is pointed out in this regard. It insists that, community certificate can be issued with respect to re-converts by complying procedure requiring production of Gazette Notification with respect to the conversion, certificate from approved Hindu Organisations who conducted the re-conversion, name and address of persons who had participated in the re-conversion (Sudhi Karma) and certificates obtained from responsible persons in the area to the effect that the re-converted persons were accepted by the majority in the community and that the person was living as a Hindu and not as a Christian after the re-conversion and also documents to prove that the ancestors of the reconverted persons belongs to Scheduled Caste/Scheduled Tribe. Circular No. 18421/E2/87/SCSTDD issued by the Scheduled Castes/Scheduled Tribes Development Department had elaborately provided specific procedures to be followed for issuance of community certificate with respect to persons who re-embraces Hinduism after converting into Christianity from Scheduled Caste/Scheduled Tribe. Going by specific procedures prescribed therein it is evident that the petitioners have failed in proving all the requisite evidence for issuing community certificates certifying that they belong to Hindu-Cheramar Community, which is recognized as a Scheduled Caste. Further it is evident from Ext. P9 that enquiry conducted by the competent authority had revealed that there is no clear proof regarding the "Sudhi Karma" (re-conversion) and that there is no evidence to show that the petitioners' family was accepted by majority of the Scheduled Caste community and that they are living as such by following Hinduism. Therefore, this court do not find any sustainable reason to hold that the impugned proceedings of the Government is vitiated on any of the legal or factual aspects.

5. However, going by the Government Order and Circular referred in the foregoing paragraphs it is evident that the procedure prescribed in this regard insists that if the competent authority is intending to reject the application, the matter need to be referred for opinion of the Director of Scheduled Castes/ Scheduled Tribes Development Department and that the Director has to conduct a detailed enquiry on the basis of the report of the competent authority and to inform the competent authority about the decision based on such enquiry. The above procedure was not seen followed, presumably because the petitioners had approached this court on repeated occasions and obtained specific orders directing the Tahsildar to take an appropriate decision.

6. Under the above mentioned circumstances, while dismissing the above writ petition this court makes it clear that the petitioners will be at liberty to approach the competent authority with all requisite documents and evidence to substantiate their claim and if any such fresh application is received supported by all requisite documents, the said authority shall consider the same in accordance with the procedure contemplated under the relevant Government Order and Circulars referred above.

7. In this regard it is pertinent to note that the Honourable Supreme Court in the decision in *Kailash Sonkar Vs. Smt. Maya Devi*, AIR 1984 SC 600 : (1983) 2 SCALE 1211 : (1984) 2 SCC 91 : (1984) 2 SCR 176 : (1984) 16 UJ 262 observed that the main test which should be adopted in the case of re-conversion to Scheduled Caste/Scheduled Tribe is regarding the genuine intention of the re-convert to abjure his new religion and to completely disassociates himself from it, and that the re-conversion is not a ruse or pretext or a cover to gain undue benefits. The convert must exhibit a clear and genuine intention to back to his old faith and adopt the customs and practice of the said faith without any protest from the members of his erstwhile caste. There should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste. If no exception or protest is lodged by the community members the caste would revive on the re-conversion of the person to his old religion. It is needless to observe that while taking any fresh decision in the matter the competent authority should keep in mind basic and cardinal aspects which are required for proving the re-conversion as enumerated in the above said decision. Needless to observe that the competent authority if conducting an enquiry should consider all the above said aspects.