



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 15TH DAY OF MARCH 2024 / 25TH PHALGUNA, 1945

WP(C) NO. 920 OF 2023

PETITIONER:

SHEEBA C.K
AGED 50 YEARS
W/O.THOMAS M.D.
MALEKKALPARAMBIL, MEMMURI.P.O., KURUPPUMTHARA,
KOTTAYAM DISTRICT, PIN - 686611
BY ADV K.V.BHADRA KUMARI

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT COLLECTOR, KOTTAYAM, COLLECTORATE,
KOTTAYAM DISTRICT, PIN - 686002
- 3 THE REVENUE DIVISIONAL OFFICER, PALA,
OFFICE OF REVENUE DIVISIONAL, PALA,
KOTTAYAM DISTRICT -, PIN - 686575
- 4 THE TAHSILDAR, VAIKKOM TALUK OFFICE, VAIKKOM,
KOTTAYAM DISTRICT, PIN - 686141
- 5 THE VILLAGE OFFICER, MANJOOR VILLAGE OFFICE,
MANJOOR, KOTTAYAM DISTRICT, PIN - 686603

SRI. S.VISHNU (ARIKATTIL) (AMICUS CURIAE),
SRI. ROBIN RAJ, SPL. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner, who is stated to belong to 'Pulaya Community' has approached this Court impugning Ext.P6 order, whereby, her application for a Community Certificate in favour of her minor daughter, as belonging to the said community, has been rejected on the ground that her husband belongs to the Christian community and that he has not converted himself into Hinduism until now.

2. The petitioner asserts that as is evident from Exts.P3 and P4, her daughter grew up as part of the Pulaya Community, suffering all attended prejudices and rigour; and that this is manifest from the fact that she was given such Certificate earlier, certifying that she belongs to the said community, as evident from Ext.P2. She says that, however, when it came to the application made by her for the purpose of Education of her daughter, it has been rejected through Ext.P6; and therefore, that it is illegal and unlawful.

3. Smt.Bhadra Kumari - learned counsel for the petitioner, submitted that the findings in Ext.P6, that her client's daughter has not suffered any prejudice - though not stated specifically but whisperingly - is factually untenable and incorrect particularly because, they belong to a very low financial strata, with her husband virtually bedridden and



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unable to work for himself. She added that the reasons stated in Ext.P6, that her client's husband has not converted to Hinduism, is totally untenable, very uncharitable and beyond the ambit of any of the Government Orders; and hence prayed that it be set aside.

4. Noticing the importance of the issues involved, I had requested Sri.S.Vishnu - learned counsel of this Court to assist this Court as an Amicus Curie. He has now filed a report, wherein, he has reflected his opinion as under:

“The petitioner is essentially challenging the non-issuance of community certificate in favor of her daughter. The petitioner belongs to the Hindu 'Pulaya' community and she married a person who belongs to the Christian 'Cheramer' community. According to the petitioner, herself, her husband and 3 children have been living as per the rights of Hindu 'Pulaya' community. The petitioner contends that her family have been subject to the social disadvantages and sufferings as that of the 'Pulaya' community, which is a community included as a Scheduled Caste. She also states that they are suffering from financial, social and educational backwardness.

2. In the aforesaid background, the petitioner submitted an application for issuing a community certificate to her daughter. Exhibit P3 is the report dated 11.07.2022 issued by the village officer concerned, where it is reported that the petitioner's daughter is entitled to be issued a caste certificate with respect to the Hindu 'Pulaya' community based on the caste of the petitioner. Exhibit P4 is another report by the village officer concerned in which it is stated that on enquiry, the village officer is satisfied that the marriage between the petitioner and her husband had taken place in accordance with the hindu rites and that they are currently living in accordance with the practices of the Hindu 'Pulaya' community. Exhibit P4 also interestingly reports that the family of the petitioner faces all the financial, social and educational backwardness as faced by the Hindu 'Pulaya' community. Based on the above findings, the village officer recommends that the petitioner's daughter is entitled to be issued a community certificate in accordance with GO(MS No. 109/2008/SCST dated 20.11.2008.

3. The petitioner complained that despite the above favorable reports from the village officer, the Tahsildar had refused to issue a community



certificate to the petitioner's daughter. This apparently had forced the petitioner to submit Exhibit P5 petition before the District Collector, Kottayam. The District Collector appears to have forwarded the same to the RDO concerned for conducting an enquiry. The RDO appears to have conducted an enquiry and passed Exhibit P6 order.

4. By virtue of Exhibit P6 order, the RDO has concluded that the petitioner's daughter is not entitled to be issued with a community certificate with reference to the Hindu 'Pulaya' community. The sum and substance of the findings of the RDO in Exhibit P6 is that the marriage between the petitioner and her husband being an inter-religious marriage does not fall within the category of inter-caste marriage. The RDO also notes that there is no evidence before him to show that the petitioner's husband had converted his religion. The RDO is ultimately concluded that the benefits of the GO(MS) No.109/2008/SCST dated 20.11.2008 is only applicable to inter-caste marriages, and the marriage between the petitioner and her husband being an inter religious marriage would not be covered by the aforesaid GO. It is based on the above reasoning that the RDO has rejected the petitioner's application for community certificate. The petitioner also challenges the above order of the RDO.

5. The 4th Respondent has filed a statement in support of the order of the RDO and the stand taken therein. It is stated that *"as the petitioner belongs to the Hindu Pulaya caste and her husband to the Christian Cheramar caste, they would not come under the purview of inter-caste marriage couple as they belong to different religion"*. It is also stated that in India, the caste system exists only in the Hindu, Sikh and Buddhist religion and marriage between persons of different castes of any of the above religion can only be considered as inter-caste marriage and that between a person of one religion and another religion cannot be considered as inter-caste marriage. For this, reliance is placed on Section 246 of the Kerala Land Revenue Manual. Under the premise that the marriage between petitioner and her husband is an inter-religious marriage and not an inter-caste marriage, the 4th respondent contents that the petitioners daughter is not entitled to issuance of caste certificate in accordance with GO (MS) 109/08/SCST dated 20.11.2008. According to the Government, the said Government order does not stand to benefit, persons like the petitioner's daughter.

Issue:

6. From the facts stated above the following issues are germane for consideration of this Honourable Court:

- a. whether a daughter whose mother belongs to Schedule Caste and her father belongs to Christian ('Cheramer') community can claim the benefits of affirmative action, based on the Scheduled Caste status of her mother.
- b. if yes, then what are the conditions under which she can be granted such benefits.



c. If she is otherwise eligible for such benefits, can she be denied the same, merely because she is born out of an inter-religious marriage, and not an inter-caste marriage.

Precedents:

7. Though there are various precedents covering the wider issues, 1 have chosen to refer only to those precedents which are the closest to the issue at hand.

8. The precedent which is closest to the point in issue is the decision of the Honourable Supreme Court in *Rameshbhai Dabhai Naika v. State of Gujarat*. The question therein, as framed by the Court, was regarding the status of a person, one of whose parents belong to Scheduled Caste/Scheduled Tribes and the other does belong to Scheduled caste and Scheduled Tribes. The question was raised in the contest of entitlement of such a person to the benefits of affirmative action sanctioned by the Constitution.

9. The judgment impugned before the Court in *Rameshbhai (supra)*, followed the early decisions of the Hon'ble Supreme Court in *Valsamma Paul v. Cochin University*, *Punit Rai v. Dinesh Chaudhari* and *Anjan Kumar v. Union of India*. Based on the above decisions, the judgment impugned in the present case, denied the scheduled caste status to the applicant therein on the sole ground that his father was a non tribal. The High Court had read the aforementioned decisions as laying down the rule that in all cases, regardless of other considerations, the off-spring of an inter-caste marriage or a marriage between tribal and non tribal would take his or her father's caste. The Supreme Court in *Rameshbhai Dabhai Naika (supra)*, reversed the finding of the High Court.

10. The apex court held that it is incorrect to read *Valsamma (Supra)*, *Punitra (Supra)* and *Anjan Kumar (Supra)* as laying down the rule that in an inter-caste marriage or a marriage between the tribal or non tribal, the child must always been deemed to take his or her father's caste, regardless of the attending facts in circumstances of each case. The court emphasized that there is no inviolable rule that in case of an inter-caste marriage or marriage between tribal or non tribal the child must always take the caste of the father.

11. The apex court also in paragraph 36 has illustrated the principles as follows:

"It is also clear to us that taking it to the next logical step and holding that the off-spring of such a marriage would in all cases get his/her caste from the father is bound to give rise to serious problems. Take for instance the case of a tribal woman getting married to a forward caste man and who is widowed or is abandoned by the husband shortly after marriage. She goes back to her people and the community carrying with her an infant or may be a child still in the womb. The child is born in the community from where her mother came and to which she went back and



is brought up as the member of that community suffering all the deprivations, humiliations, disabilities and handicaps as a member of the community. Can it still be said that the child would have the caste of his father and, therefore, not entitled to any benefits, privileges or protections sanctioned by the constitution (emphasis supplied)

12. After observing as above, the apex court summarized the following legal position: (paragraph 43)

a. In an inter-caste marriage or a marriage between tribal and a non tribal, the determination of the caste of the off-spring is essentially a question of fact to be decided on the basis of the facts adduced in each case.

b. The determination of caste of a person born of an inter-caste marriage or a marriage between tribal or non tribal cannot be determined in complete disregard of the attending facts of the case.

c. In an inter-caste marriage or a marriage between tribal or non tribal there may be presumption that the child has the caste of the father. This presumption may be stronger in cases where in inter-caste marriage or marriage between a tribal or non tribal the husband belongs to a forward class. But by no means the presumption is conclusive and it is open to the child in such marriage to lead evidence to show that:

i. He was brought up by his mother who belongs to the scheduled caste/scheduled tribes.

ii. By virtue of being a son of a forward caste father, he does not have the advantages to start in life but on the contrary suffers the deprivations, indignities, humiliations, and handicaps by any other member of the community to which his or her mother belongs.

iii. He additionally has to show that he has always been treated as a member of the community to which his or her mother belongs, not only by that community but also by the people outside the community as well.

13. Earlier, a Full Bench of this Hon'ble court, in *Indhira v. State of Kerala*, has also laid down similar principles and has also been approved by the Apex Court in *Rameshbhai* (supra). In *Indhira* (supra) the full bench of this Hon'ble court held that even if a child inherits the caste of his Scheduled Caste father, by operation of personal law, the said child has to further establish that he is still uses the caste of his father subject to the same disabilities, disadvantages and sufferings etc. of that caste. The inheritance of the caste from his father by itself would not be sufficient to show that he is still subject to the same disadvantages.

14. It is further observed in *Indhira* (supra) that even if the father belongs to the Scheduled Caste/Scheduled Tribes the child could be brought up in the company of the mother who belongs to the forward caste without subjecting him to any sufferings, disadvantages, incapacities, ignominities normally would be suffered by a member of the Scheduled Caste and Scheduled Tribes. The contrary situation is also taken note of where mother



belongs to Scheduled Caste/Scheduled Tribes and father belongs to non Scheduled Caste communities and the child is brought up by the father, would not be subject to the disadvantage, suffering as if they are a member of Scheduled Caste/Scheduled Tribes.

15. The court, in *Indhira* (supra) also considered the harsh situation that would result if a contrary interpretation is adopted. The court took into consideration the case of a deserted SC/ST woman bringing up her child whose father is a non SC/ST. She would be put to the same handicap, suffering, disadvantages attached to the Scheduled Caste and it would be too harsh to deny the benefit to that child, on the mere reason that the child's father belongs to a non Scheduled Caste/Scheduled Tribe community.

16. Later, this Hon'ble court in, *Lavya A. v. Director of Medical Education*, has summarized the Legal position and rendered certain guidelines.

17. The above decisions, lays down the following cardinal principles which are also relevant in the present case:

a. A child of an inter-caste marriage or a child born out of a marriage between a scheduled caste man and a non scheduled caste woman, does not ipso facto become a member of the scheduled caste.

b. The critical aspect for determining the caste of such a child is the indignities, humiliations, and social handicaps that he is faced with, as being a member of Scheduled Caste Scheduled Tribe Community.

c. One other fact which according to the apex court is to be taken into consideration is that he has been treated as the member of the Scheduled Caste and Scheduled Tribe community to which his mother (or one of his parents) belonged.

18. The pivotal principle emanating from the above decisions, which is relevant for the present discussion can be paraphrased as follows:

If one of the parents belongs to SC/ST, the caste of the father is not the determining factor but the determining factor is whether the child is subject to the same social disabilities and following the same customs and traditions, as that of the parent belonging to the SC/ST community. It is also relevant that the child has been accepted as a member of such a community, by persons within the community and otherwise.

19. Therefore, for a child, one of whose parents belong to SC, the pivotal questions are that of (i) disabilities/handicap/suffering et al attached to the scheduled caste; (ii) acceptance as a member of said caste. The question is whether the above conditions can be equally applied to a child born out of inter-religious marriage, as they are applied to a child born out of an inter-caste marriage. To answer the question, it is necessary to refer to certain basic principles of affirmative action under our Constitution.

20. The constitutional devices for *affirmative action* are contained essentially in Articles 15(4) and 16(4) of our Constitution. Though in the



earlier years of our constitution, Article 15(4) and 16(4) were considered to be exceptions to the equality principles under Article 14, 15(1) and 16(1), the paradigm shift took place in *State of Kerala v. N. M. Thomas*, where the majority observed that "*Article 16(4) is not in the nature of an exception to Article 16(1). It is a facet of Article 16(1), which fosters and furthers the idea of equality of opportunity with special reference to an underprivileged and deprived class of citizens.....*" For ensuring equality, the State, in certain situations, might have to treat unequally situated persons unequally. The state might have to grant some additional support to the underprivileged or deprived class, in order to ensure that they compete on equal terms with the other members of the community at large. This in simple terms is affirmative action, which fosters equality, in the true sense of the term.

Conclusion:

21. In the above background, the question is whether a child, who suffers from all the disabilities/handicap attached to the caste of her mother (who belong to a scheduled caste), be deprived of the benefits of affirmative action, merely because she is born out of an inter-religious marriage and not an inter-caste marriage. The above question, in my humble opinion, is to be answered in the negative.

22. As the determinative factors are that of (0) disabilities/handicap/suffering (et al) attached to the scheduled caste; (ii) acceptance as a member of said caste, the fact whether the marriage is an inter-caste marriage or an inter-religious marriage, according to me, blurs into insignificance. If the child is subject to the disabilities of his/her mother being a member of a Scheduled Caste, the question whether the marriage between his/her parents is an inter-caste marriage or an inter-religious marriage, in my humble opinion, is of inconsequential.

23. A contrary view, would mean that a child, who is otherwise subject to a disability of a scheduled caste (as acquired from one of her parents), would be denied the benefits of affirmative action, merely because she was born out of an inter-religious marriage. This would mean that though she is suffering from such disabilities, she would not be rendered the necessary support by the State to enable her to compete on an equal pedestal. This, in my humble opinion, is not in tune with the principles of equality enshrined in our Constitution.

Suggestions:

24. In the light of the above, it is suggested that the daughter of the petitioner may not be denied the community/caste certificate with reference to the caste of her mother, only because she is born out of an inter-religious marriage. This is subject to her satisfying the conditions laid down in *Rameshbhai* (supra), *Indhira* (supra) and the guidelines in *Lavya A.* (supra). In the process, the provision of the Kerala (Scheduled Castes And Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996



may also be taken into consideration, wherever applicable.

Humbly placed for the consideration of this Honourable Court.”

5. The learned Special Government Pleader – Sri.Robin Raj, submitted that he accepts the afore assertions of the learned Amicus Curiae; but that the question, whether the petitioner’s daughter suffers from any inability or inhibition on account of her affinity to the “Pulaya Community”, is one that has to be established through evidence, which has not been done yet. He submitted that, therefore, unless a proper enquiry is conducted on this issue, no relief can be granted to the petitioner, particularly because Ext.P6 only records that her husband is a Christian and hence that her daughter cannot obtain a Caste Certificate automatically because, her parents are not an inter-caste married couple.

6. I am afraid that I cannot find favour with the afore submissions of the learned Government Pleader because, as rightly argued by Sri.S.Vishnu, it is the indignities, humiliations and the social handicaps that a person faces as member of a disadvantage community, that should guide the Authorities to grant or refuse the Community Certificate. As also rightly argued by him, merely because one of the parents alone belong to SC/ST community, it cannot be automatically taken that it is the caste of the father which is the determinant factor;



but whether the child born to them, suffers the same social disabilities and follows the same customs and traditions as the parent belonging to the SC/ST Community. In fact, the learned Amicus Curiae pointed out, from the pleadings on record, that it is evident that the petitioner's daughter has been accepted as a member of such a community; and therefore, that the question whether the parents are inter-caste couple or otherwise, would be irrelevant and pale into insignificance.

7. I have no doubt that the learned Amicus Curiae has expatiated the law and the provisions very lucidly because, the acme question, whether a child or a person has suffered from the indignities and handicap of a disadvantageous community, is inherent to the factum of such person having affinity to the said Community, without any reference if his/her parents were inter-caste married couple or inter-religion married couple.

8. To paraphrase, if the child/person is subject to the disabilities of his/her mother being a member of a Scheduled Caste, the factum of his/her father being from a different religion, would be of no relevance at all because, as rightly pointed out by Sri.S.Vishnu, a contrary view would deny eligible benefits to a person who is otherwise subjected to the disability and this would be an anathema to the doctrine of "affirmative action".



9. The learned Amicus Curiae points out that Exts.P3 and P4 establishes to some extent that the petitioner's daughter certainly had to suffer prejudices attached to a member of a SC/ST Community; and that unless there is any enquiry conducted to prove to the contrary, it would be unfair to deny her benefit, particularly when she had been granted a Certificate in the past, as evident from Ext.P2.

10. I am certain that this Court will be justified in fully accepting the opinion of the learned Amicus Curiae, since, as I have already said above, there can be little doubt that he has proceeded on correct assessment and evaluation of law.

In the afore circumstances, I allow this writ petition and set aside Ext.P6; with a consequential direction to the 4th respondent to reconsider the application of the petitioner and grant the necessary Caste Certificate to her daughter as per law, subject to every other requirement in law being satisfied, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.

I place on record the deepest commendation of this Court for Sri.S.Vishnu, learned counsel, who has commendably assisted this Court as an Amicus Curiae and for the comprehensive manner in which he has dealt with the issue impelled, which is evident from his report



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extracted above in this judgment.

Sd/ -

DEVAN RAMACHANDRAN

JUDGE

MC/18.3

**APPENDIX OF WP(C) 920/2023****PETITIONER EXHIBITS**

- Exhibit-P1 A TRUE COPY OF THE RELEVANT PAGES OF SECONDARY SCHOOL LEAVING CERTIFICATE OF THE PETITIONER ISSUED BY THE H.M. OF A.J.J.M.G.H.S, THALAYOLAPARAMBU IS PRODUCED HERewith AND MARKED AS EXHIBIT-P1.
- Exhibit-P2 . A TRUE COPY OF THE COMMUNITY CERTIFICATE ISSUED TO THE PETITIONER'S DAUGHTER, THANU THOMAS BY THE TAHSILDAR, VAIKKOM DATED 17.05.2018 IS PRODUCED HERewith AND MARKED AS EXHIBIT-P2.
- Exhibit-P3 A TRUE COPY OF THE REPORT ISSUED BY THE VILLAGE OFFICER, MANJOOR ALONG WITH THE APPLICATION SUBMITTED BY THE PETITIONER FOR ISSUING CASTE CERTIFICATE RECEIVED UNDER THE RTI ACT IS PRODUCED HERewith AND MARKED AS EXHIBIT-P3.
- Exhibit-P4 A TRUE COPY OF THE REPORT DATED 27.07.2022 ISSUED BY THE VILLAGE OFFICER, MANJOOR TO TAHSILDAR, VAIKKOM RECEIVED UNDER THE RTI ACT IS PRODUCED HERewith AND MARKED AS EXHIBIT-P4.
- Exhibit-P5 A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE DISTRICT COLLECTOR, KOTTAYAM IS PRODUCED HERewith AND MARKED AS EXHIBIT-P5.
- Exhibit-P6 A TRUE COPY OF THE ORDER PASSED BY THE R.D.O., PALA DATED 11.11.2022 REJECTING THE APPEAL FILED BY THE PETITIONER IS PRODUCED HERewith AND MARKED AS EXHIBIT-P6.
- Exhibit-P7 A TRUE COPY OF THE RELEVANT SECTION, SEC.246 OF KERALA LAND REVENUE MANUAL - VOLUME VI IS PRODUCED HERewith AND MARKED AS EXHIBIT-P7.
- EXHIBIT-P8 A true copy of the G.O (M.S) NO:109/2008 SC ST DD dt. 20/11/2008 is produced here with and ,marked as Exhibit-8