



2023:KER:39057

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

MONDAY, THE 10TH DAY OF JULY 2023 / 19TH ASHADHA, 1945

WP(C) NO. 27063 OF 2019

PETITIONER:

REBEKA MATHAI
AGED 19 YEARS
D/O.N.V.MATHAI, NEDIYANIKKUZHIYIL HOUSE, T2/12
STAFF QUARTERS, GOVERNMENT MEDICAL COLLEGE P.O.,
THRISSUR-680 596.

BY ADVS.

KALEESWARAM RAJ
KUM.THULASI K. RAJ

~~SMT. RIFA RAYMOE LYFE~~

~~SMT. M. IREEM SACHIDANANDA NEGEER~~

~~SMT. ALEENA NELSON~~

~~SMT. K. C. P. SHARMA~~

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, SCHEDULED
CASTES/SCHEDULED TRIBES DEVELOPMENT DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 KERALA INSTITUTE FOR RESEARCH TRAINING AND
DEVELOPMENT,
REPRESENTED BY DIRECTOR, CHEVAYUR, KOZHIKODE-673
017.
- 3 THE DIRECTOR, KERALA INSTITUTE FOR RESEARCH
TRAINING AND DEVELOPMENT,
CHEVAYUR, KOZHIKODE-673 017.
- 4 TAHSILDAR, TALUK OFFICE,
TOWN HALL, PALACE ROAD, THRISSUR-680 001.
BY ADV GOVERNMENT PLEADER

OTHER PRESENT:

GP - SUNILKUMAR KURIAKOSE

**THIS WRIT PETITION (CIVIL) HAVING COME UP
FOR ADMISSION ON 10.07.2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

**VIJU ABRAHAM, J.**

W.P.(C) No.27063 of 2019

Dated this the 10th day of July, 2023

JUDGMENT

The above writ petition is filed challenging Exts.P7, P12, P14 and P15 and for a declaration that the petitioner belongs to the Paniya caste and is entitled to all the benefits of Paniya caste and for issuance of a community certificate.

Averment in the writ petition is as follows:-

2. The petitioner is a B.Com student at Vimala College, Thrissur. She belongs to 'Paniya' community, which is a recognised Scheduled Tribe community as per Second Schedule to the Constitution (Scheduled Tribes) Order, 1950. Relevant pages of the same produced as Ext.P1, would show that Paniya community is included as Serial No.33 in the Second Schedule. The petitioner was born in Paniya community and was raised, following the tribal traditions with all the disadvantages attached to the tribe. The petitioner was residing at Nenmani, Sultan Bathery inside the Govindamala Tribal colony. Ext.P2 is the certificate issued by the Tribal Extension Officer, Sulthan Bathery dated 22.06.2011, which reveals that the mother of the petitioner has been granted an



amount to the tune of Rs.42,000/- for construction of a residential building in a Scheme specifically meant for the members of the Scheduled Tribe community. Ext.P3 is the caste certificate issued to the mother of the petitioner, which would also reveal that she belongs to Hindu Paniya community. The father of the petitioner belongs to Orthodox Syrian Christian Community. Theirs was a love marriage and the petitioner was born out of an inter-caste marriage. The petitioner's parents were in fact excommunicated by the petitioner's paternal relatives and had no cordial relationship with them ever since their marriage. The petitioner, being a child of an inter-caste marriage and petitioner's mother being from the Paniya tribe, she and her family were never accepted by her paternal side of the family and was raised as a part of and within the cultural bounds of the Paniya Tribe and this has resulted in them being discriminated socially as well as culturally and has contributed to their socio-economic backwardness. Ext.P4 birth certificate would also reveal that she was born at Wayanad. Exts. P5 and P6 documents, which are the school admission register and SSLC certificate, would reveal that the petitioner's caste shown as Christian converted from Hindu Paniyan Community. While so, the petitioner has applied for a caste certificate on 30.06.2015 before



the 4th respondent. By Ext.P7 order, the 4th respondent rejected the request of the petitioner for the reason that it was found in the enquiry that the petitioner and her family leads a life distant from the way of life and social circumstances of the Paniya community. She has been residing since her birth at Nenmani, Ward No.2 in Paniya Colony and has lived in Wayanad from 2000 to 2006. The mother of the petitioner has constructed a house as well after receiving financial assistance for Scheduled Tribes from the Government authorities. The petitioner's mother has also received amounts from the Government granted to inter-caste marriage couple, as is evident from Ext.P8. As a Scheduled Tribe, the petitioner's mother is also covered under the Rice Distribution Scheme for Scheduled Tribes, as is evident from Ext.P9 Rice Distribution Card, issued by the Tribal Extension Officer, Sulthan Bathery. The Head(Moopen) of the Govindamala Tribal Colony has issued Ext.P10 certificate dated 08.02.2017 stating that the community follows a matrilineal system. By Ext.P11 certificate, the Head (Moopen) has also certified that the petitioner belongs to the Paniya community and she was born and brought up in that community. The petitioner submits that based on all these documents, it is beyond doubt that the petitioner belongs to Paniya



community. Later on, KIRTADS enquired into the matter and submitted Ext.P12 report against the petitioner, without affording an opportunity of being heard to the petitioner. Challenging Exts.P7 order and P12 report, the petitioner has approached this Court by filing W.P.(C) No.21152/17 which was disposed of by Ext.P13 judgment, whereby KIRTADS (the 5th respondent therein) was directed to reconsider the matter after affording an opportunity of being heard to the petitioner. Thereafter the petitioner and her parents were heard in the enquiry conducted. Thereafter Ext.P14 report was submitted, holding that the petitioner does not belong to the Scheduled Tribe Paniya community of Kerala and she belongs to Orthodox Syrian Christian community. Following Exts.P14, Ext.P15 show cause notice was issued by the Scheduled Caste and Scheduled Tribe Department, to which Ext.P16 reply was submitted by the petitioner. In the said reply the petitioner contended that she has been raised according to the tenants and customs of the Paniya Community and that their residence is located in the Purampokku which is a part of the Govindamala Tribal Settlement in which the petitioner's mother and maternal grandmother have been raised and been a part of. They are now staying at Thrissur in the Medical College Staff



Quarters only in connection with the petitioner's father's occupation, who is a Last Grade employee in the Thrissur Medical College and for the educational purpose of the petitioner and her sibling. The petitioner has no contact with her paternal relatives during her lifetime as their father stands excommunicated from that side of the family. Thereupon Ext.P17 order was issued, whereby the Scrutiny Committee also rejected the Scheduled Tribe Paniya claim of the petitioner and cancelled all community certificates issued to that effect. As a consequent to Ext.17, Ext.P18 order was issued by the Government holding that the petitioner does not belong to the Scheduled Tribe Paniya community and that the petitioner as well as her siblings are not eligible for any of the benefits extended to the members of the Scheduled Tribe community. It is aggrieved by the same, the petitioner has approached this Court. The petitioner submits that while entering into a finding that the petitioner does not belong to the Scheduled Tribe community in Ext.P14 report, they largely relied on general circumstances prevailing inasmuch it is stated in Ext.P14 report, *as in case of inter-caste marriages, it could only be interpreted as a lower social ranked women marrying a higher ranked man and it evidently revealed that socialisation process of*



the offspring of such couples is more attached to the higher ranked father and in this case the offspring of the inter-caste/culture couple are gradually waving away their Scheduled Tribe Paniyan and are free from the social stigma that a Scheduled Tribe community supposedly is carrying forward. The petitioner submits that this assumption which forms the basis of the report is prima facie vitiated. The specific contention of the petitioner is that the general assumption cannot be made that the offspring will be attached towards one caste status rather than the other. It is further submitted by the petitioner that the finding in the report that the petitioner's mother is also a byproduct of an inter-caste marriage, and the Tribal status of the petitioner's mother cannot be said to be true is also without any basis. The petitioner submits that the caste disability do not vanish even someone marries a person belonging to a higher caste. The petitioner's parents being excommunicated by her father's side, is an validation of the said fact. The petitioner relies on the judgment in ***Valsamma Paul v. Cochin University [1996 (3) SCC 545]*** in support of his contentions. The petitioner also relies on judgment of the ***Apex Court in Sunita Singh v. State of Uttar Pradesh[2018 (2) SCC 493]*** to contend for the position that the caste of a person is



determined by birth and that it cannot be altered by marriage. The petitioner also relies on the judgment of this Court in ***Indira v. State of Kerala [2005 (4) KLT 119]*** to substantiate her contentions. The petitioner submits that while issuing Ext.P17 order also, none of the contentions raised by the petitioner was properly considered by the Scrutiny Committee. No independent examination or cross examination has taken place while submitting a report by the KIRTADS or by the Scrutiny Committee. The Government while issuing Ext.P18 also, did not independently considered any of the contentions raised by the petitioner, but has mechanically accepted the recommendation of the Scrutiny Committee. The petitioner relying on Ext.P31 Government Order dated 20.11.2008, submits that none of the parameters which has been laid down in the said Government Order has been considered while issuing the impugned orders. The said Government Order specifically mandates that each case has to be examined individually in the light of the existing facts and circumstances and shall also ensure that the claimant has suffered disabilities - socially, economically and educationally and the society has accepted the claimant to their original fold as one among them and is living in the same social tenet.



3. The 1st respondent has filed a counter affidavit wherein it is stated that the petitioner has suppressed relevant facts. The paternal kinsmen of the petitioner are the members of Orthodox Syrian Christian community. The maternal grand father of the petitioner belongs to Christian community, converted from Pulaya community which is not enlisted in the Scheduled Caste list of Kerala. Certificate of Burial of grandfather of the petitioner issued by the Parish Priest of St. Thomas Jacobite Syrian Christian Church Malankarakunnu, Sulthan Bathery clearly indicates that till the death of the petitioner's maternal grandfather, he had been following Christianity in all his rites de passages. The maternal grandmother of the petitioner Ammini Mariyam claims that she belongs to Scheduled Tribe (Paniya) Community and she was baptized at St.Thomas Jacobite Syrian Christian Church, Malankarakunnu, Sulthan Bathery and the petitioner's grandparents' marriage was solemnized on the same date, in the same Church, ie., 21.05.1990 as is evident from Exts. R1(a) and R1(b). It is also stated that the maternal grandmother of the petitioner also converted to Christianity after marriage and was absorbed by the cultural settings of Christian converted from Pulaya fold. In the school records, the petitioner's mother's name is



recorded as 'Ammini and caste is entered as 'Christian Jacobite. From the genealogical proforma of the petitioner it is established that all her maternal kinsmen were married to members other than Scheduled Tribe Paniya converted to Christian community. Therefore, it is evident from the petitioner's mother's generation that they were away from the cultural background of Scheduled Tribe Christian Paniya community. From the marriage of the parents of the petitioner, the cultural belief of her mother deviated to Orthodox Christian, as the father of the petitioner belongs to said community. The petitioner's younger brother was baptized in the family church, ie., St.Mary's Orthodox Syrian Valiyapally, Onakoor, Piravom and her paternal family actively participated in all these rites. Therefore, the cultural values and ethos accumulated and socialization process accomplished by the petitioner are largely borrowed from the paternal side. It is also stated that Ext.P2 certificate issued by the Tribal Extension Officer, Sulthan Bathery cannot be considered as a valid document to prove the petitioner's Paniya claim. Ext.P3 Community Certificate issued by the Tahsildar to the mother of the petitioner is also without conducting proper enquiry. KIRTADS is the Expert Agency and the authority competent to conduct enquiry into the caste status of a



person. Even if the petitioner and her sibling were born at Sulthan Bathery, they were brought up at Piravom, Ernakulam at their father's place and they had their schooling at Piravom. Relying on the judgment of the Apex Court in ***Kumari Madhuri Patil v. Addl. Commissioner [1994 SCC (6) 241]*** it is contended by the 1st respondent that the entries in school and college certificates of the appellants are not conclusive. It is also stated that the petitioner's mother Sosamma had done her schooling at Government L.P.School, Kunthani and her name was entered in the school records as Ammini and in the school admission register her caste status is entered as Christian Jacobite as is evident from Ext. R1(d). On the basis of the same, it is clear that the mother of the petitioner is not treated as Christian converted from Hindu Paniyan from her childhood and mother of the petitioner is an off-spring of inter caste and inter religious married couple. The marriage of the petitioner's parents was solemnized at St.Mary's Orthodox Pilgrim Centre, Sulthan Bathery, as is evident from Ext.R1(e). The petitioner as well as her younger brother were baptised at St. Mary's Orthodox Cathedral Pilgrim Centre and at St.Mary's Orthodox Syrian Valiyapally, Onakoor, Piravom respectively, as is evident from Exts. R1(f) and R1(g). The KIRTADS has prepared the



report after giving ample opportunities for hearing and adducing evidence and after a detailed anthropological and field enquiry and genealogical analysis. The Scrutiny Committee perused the entire case records and all the relevant documents, the petitioner's representations and enquiry report of the Expert Agency and after due deliberation, found that the petitioner does not belong to Scheduled Tribe Paniya community. The Government has accepted the recommendations of the Scrutiny Committee and rejected the Scheduled Tribe Paniya claim by the petitioner and issued Ext.P18 order. Local enquiry was conducted by the KIRTADS in a proper manner and in accordance with the power conferred by the relevant provisions of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996. It is also submitted that going by R1(h) genealogical proforma, the paternal kinsmen of the petitioner are members of Orthodox Syrian Christian community. It is only after a valid enquiry and based on the report submitted by the KIRTADS that Scrutiny Committee as well as the Government have taken a decision that the petitioner does not belong to Scheduled Tribe community.

4. Heard the learned counsel for both sides.

5. Going by the decision in ***Indira v. State of Kerala [AIR***



2006 KER 11, even if one of the parent belonging to Scheduled Caste/Scheduled Tribe community, the child is entitled for the benefit of the said community, but the crucial aspect to be considered is as to whether the claimant has suffered disability socially, economically and educationally and the society has accepted the claimant to their original fold as one among them and is living in the same social tenet. The petitioner on the basis of Ext.P2 certificate issued by the Tribal Extension Officer, Sulthan Bathery, dated 22.06.2011 would submit that the petitioner's mother was granted Rs.42,000/- for construction of a residential building, considering her Scheduled Tribe status. In Ext.P3 community certificate issued as early as on 23.11.1999, the caste of the petitioner's mother is shown as Paniya community, which is a Scheduled Tribe community. The petition's specific case is that she was residing in a building which was constructed in Paniya Oorukootam in Nenmeni Grama Panchayat and her Birth Certificate would show that she was born at Sulthan Bathery. The petitioner has also produced Exts.P10 and P11 documents which are certificates issued by the Head (Moopan) of the Govindamala Paniya Tribal Colony intimating that the community follows a matrilineal system and that the petitioner belongs to the Paniya



community and she was born and brought up in that community. It is seen that while issuing Exts.P12 and P14 reports, none of these contentions were properly considered by the 2nd respondent. Though stated in the report as well as in the counter affidavit that the field verification and enquiries were conducted in this regard, the report does not reveal that any such enquiry or statement of any of the persons was recorded before the issuance of Ext.P14 report. A perusal of the report clearly shows that the KIRTADS proceeded on the basis of the general statements that generally in case of inter-caste marriage, the socialization process of the offspring of such couples is more attached to the high ranked father. The relevant portion of the report is extracted below:

“Even if the Claimant and her sibling were born at Sulthan Bathery, they were brought up at Piravam, Ernakulam at their father's place. Both of them also had done their schooling at Piravom. Just as her grandmother, the mother of the claimant has also engaged in inter caste/culture marriage. The trend of marital practices for this type of inter caste marriage can be interpreted as: a lower social ranked women marrying a higher ranked man. It evidently reveals that the socialization process of the offspring of such couples is more attached to the high ranked Father. Or in other words, in this case the offspring of the inter caste/culture couple (Christian converted from Pulaya & Paniya), are gradually waving away their Scheduled Tribe



Paniyan, and are freed from the social stigma that a Scheduled Tribe community supposedly is carrying forward.”

In view of the above, I am of the opinion that the report has been prepared without adverting to the relevant facts and circumstances of the particular case. The Scrutiny Committee as well as the Government has accepted the report in toto without adverting to the objections raised by the petitioner as per Ext.P16 reply statement. Even the certificates issued by the head(Moopan) of the Govindamala Paniya Tribal Colony, which are produced as Exts.P10 and P11, were also not taken into consideration while issuing Ext.P14 report. The petitioner relying on the judgment in ***S.Paul Raj v. Tahsildar [2021 SCC Madras Online 6091]***, would contend that conversion from one religion to another religion will not change a caste of a person, which he belongs and therefore, it was contended that the petitioner was baptised as per the christian rites, is not a reason to hold that there is a change of the caste of a person which he/she belongs to. Taking all theses aspects into consideration, I am of the opinion that Exts.P12 and P14 reports by the 2nd respondent has been finalised without adverting to the crucial and relevant facts and without conducting a proper enquiry. Therefore, the said report as well as the



consequential order passed by the Scrutiny Committee as well as the Government are liable to be interfered with. Therefore, Exts. P7, P12, P14, P15 and P17 are set aside with a direction to the 2nd respondent to reconsider the matter and submit a report, after affording an opportunity of being heard to the petitioner and after conducting a proper enquiry in the matter. The petitioner will be free to submit argument notes producing all the relevant documents in support of her claim that she belongs to the Scheduled Tribe community, Paniya. The Scrutiny Committee and the 1st respondent State shall issue further orders in this regard after receipt of the report to be submitted by the 2nd respondent as directed above after affording reasonable opportunity to the petitioner for a hearing. The proceedings as directed above shall be finalised at the earliest, at any rate, within an outer limit of six months from the date receipt of a copy of this judgment.

With the above said direction and observation, the writ petition is disposed of.

Sd/-
VIJU ABRAHAM
JUDGE

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**APPENDIX OF WP(C) 27063/2019**

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RELEVANT PAGES OF THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 1976.
- EXHIBIT P2 TRUE COPY OF THE CERTIFICATE ISSUED BY THE TRIBAL EXTENSION OFFICER, SULTHAN BATHERY.
- EXHIBIT P3 TRUE COPY OF THE CASTE CERTIFICATE DATED 23.11.1999 ISSUED BY THE TAHSILDAR TO THE MOTHER OF THE PETITIONER.
- EXHIBIT P4 TRUE COPY OF THE BIRTH CERTIFICATE OF THE PETITIONER.
- EXHIBIT P5 TRUE COPY OF THE EXTRACT OF THE SCHOOL ADMISSION REGISTER.
- EXHIBIT P6 TRUE COPY OF THE SSLC CERTIFICATE OF THE PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE ORDER DATED 03.10.2016.
- EXHIBIT P8 TRUE COPY OF THE REPORT DATED 14.12.2000 BY THE TRIBAL DEVELOPMENT OFFICER, SULTHAN BATHERY.
- EXHIBIT P9 TRUE COPY OF THE RICE DISTRIBUTION CARD ISSUED BY THE TRIBAL EXTENSION OFFICER, SULTHAN BATHERY.
- EXHIBIT P10 TRUE COPY OF THE CERTIFICATE DATED 08.02.2017.
- EXHIBIT P11 TRUE COPY OF THE CERTIFICATE DATED 08.02.2017.
- EXHIBIT P12 TRUE COPY OF THE REPORT DATED 26.08.2016 BY KIRTADS.
- EXHIBIT P13 TRUE COPY OF THE JUDGMENT IN WPC NO.21152 OF 2017 DATED 05.07.2018.
- EXHIBIT P14 TRUE COPY OF THE ANTHROPOLOGICAL ENQUIRY REPORT (AER) DATED 12/03/2019 ISSUED BY KERALA INSTITUTE OF RESEARCH, TRAINING AND DEVELOPMENT STUDIES.
- EXHIBIT P15 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 11.04.2019 ALSO ISSUED TO THE PETITIONER BY SC/ST DEVELOPMENT DEPARTMENT.
- EXHIBIT P16 TRUE COPY OF THE REPLY TO EXT.P15.
- EXHIBIT P17 TRUE COPY OF THE ORDER ISSUED BY CHAIRMAN, SCRUTINY COMMITTEE DATED 6.1.2020
- EXHIBIT P18 TRUE COPY OF G.O.(MS) NO.3/2020/SCSTDD DATED 21.1.2020



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- Exhibit P20 A COPY OF THE HALL TICKET FOR UNIVERSITY OF HYDERABAD ENTRANCE EXAMINATION CONDUCTED ON 05-09-2021.
- Exhibit P21 A COPY OF THE NOTIFICATION NO.UH/ACAD/EE/2021/43 DATED 05-10-2021 ISSUED BY THE OFFICE OF THE CONTROLLER OF EXAMINATIONS OF THE UNIVERSITY OF HYDERABAD.
- Exhibit P22 A COPY OF THE JNUEE-2021 ADMIT CARD OF THE PETITIONER FOR APPEARING IN THE JAWAHARLAL NEHRU UNIVERSITY ENTRANCE EXAMINATION THAT WAS CONDUCTED ON 23-09-2021.
- Exhibit P23 A COPY OF THE RELEVANT PAGES OF THE MINUTES DATED 20-07-2021.