



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 2ND DAY OF FEBRUARY 2024 / 13TH MAGHA, 1945

WP(C) NO. 2126 OF 2023

PETITIONER:

CHANDINI C K, AGED 29 YEARS, D/O M.CHANDRAKUMAR,
KANANJARTHODI HOUSE, MANJAPRA P.O., PALAKKAD
-678685, NOW RESIDING AT: "NAVAMI", D 7/20,
C H COLONY, CHEVAYOOR, VELLIMADUKUNNU P O.,
KOZHIKODE, PIN - 673012

BY ADVS.
R.REJI KUMAR
P.R.JAYAKRISHNAN

RESPONDENTS:

- 1 THE STATE OF KERALA, REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, BACKWARD CLASSES DEVELOPMENT (A) DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT COLLECTOR, CIVIL STATION, WAYANAD RD, ERANHIPPALAM, KOZHIKODE, PIN - 673020
- 3 THE SUB COLLECTOR, O/O OF THE SUB COLLECTOR, CIVIL STATION, WAYANAD RD, ERANHIPPALAM, KOZHIKODE, PIN - 673020
- 4 THE TAHSILDAR, KOZHIKODE THALUK, CIVIL STATION, WAYANAD RD, ERANHIPPALAM, KOZHIKODE, PIN - 673020
- 5 THE VILLAGE OFFICER, VILLAGE OFFICE, CHEVAYUR VILLAGE, CHEVAYUR, KOZHIKODE, PIN - 673017
- 6 THE VILLAGE OFFICER, VILLAGE OFFICE, KANNAMBRA II VILLAGE, KANNAMBRA PO, PALAKKAD, PIN - 678686
- 7 THE DIRECTOR, DIRECTORATE OF KIRTARDS, CHEVAYUR, KOZHIKODE, PIN - 673017
- 8 THE SECRETARY TO GOVERNMENT, SC /ST DEVELOPMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001



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9 THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001

10 THE DIRECTOR, BACKWARD CLASSES DEVELOPMENT
DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.02.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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JUDGMENT

Claims for issue of ‘Non-Creamy Layer’ certifications are nothing new to this Court – with several such being impelled ubiquitously.

2. However, sometimes, ingenuity knows no bounds – in a manner of speaking – when applicants clothe such claims with interpretations and facets that are truly inventive.

3. The petitioner impugns Exts.P9 and P12 orders issued by the 4th respondent – Tahsildar and 3rd respondent – Sub Collector respectively, whereby, she has been denied a ‘Non-Creamy Layer Certificate’, finding that even as per the Genealogical Study conducted, she is liable to be included only in the community of ‘Hindu Naickan’ and not ‘Tuluva Naickan’. She says that even if this is true, it would be no consequence, as far as her case is concerned because, her father is a mason; and therefore, that notwithstanding whether she is categorized as



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a 'Naickan' or a 'Tuluva Naickan', she would stand excluded from the rigour of the notification dealing with the 'Creamy Layer' categorization. She, therefore, prays that the impugned orders be set aside.

4. Sri.Reji Kumar R. - learned counsel for the petitioner, vehemently argued that, even if his client's caste is taken to be 'Hindu Naickan'; since her father belongs to a family which is involved in the traditional work of masonry, and thus being called 'Masons', the provision of Annexure B of Ext.P6 notification would apply, thus rendering the Rules of exclusion applicable to her. He added that, when these facts are uncontested, Exts.P9 and P12 are rendered erroneous because, they have proceeded on the misdirected assumption that since his client is not a 'Tuluva Naickan' – which is one of the 'OBC' communities included in Tamil Nadu from where the said community originated – she would stand excluded from the benefit of Ext.P6 notification. He thus reiteratingly prayed that



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the impugned orders be set aside.

5. Sri.Robin Raj – learned Special Government Pleader, however, refuted the afore submissions of the learned counsel for the petitioner, arguing that the Genealogical Study conducted, namely, Ext.P2 – which the petitioner also relies upon – has found that her ancestors belong to Tamil Nadu, to the community of ‘Hindu Naickan’, which is not included in the ‘OBC’ list, statutorily approved by the Central Government and that only ‘Tuluva Naickan’, which is so included therein. He explained that, however, ‘Tuluva Naickan’ is not included in the ‘OBC’ category in Kerala and therefore, that Exts.P6 and P9 cannot be found to be at fault. He added that, in any event, the petitioner cannot obtain any benefit even as per Ext.P6, because it is conceded that her parents retired from service as ‘Class B Officers’ of the Government of Kerala, thus being completely disentitled to any benefit, even as per it.

6. In reply, Sri.Reji Kumar pointed out that the caste of



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‘Tuluva Naickan’ is included in the ‘OBC’ list of Kerala and that, therefore, his client is entitled to be included as such because, her parents belong to such community. He thus prayed that the alternative plea of his client, that she be considered as ‘Tuluva Naickan’, be allowed by this Court through an appropriate declaration.

7. I have considered the afore rival submissions very carefully and have also gone through the various materials available on record.

8. I must say at the outset that, even going by the document relied upon by the petitioner, namely Ext.P1, her father’s caste name has been shown to be ‘Tuluva Naickan’; while that of his father to be ‘Manicken’. The Vigilance Officer has, thereafter, settled Ext.P2, wherein, with respect to the father of the petitioner, he has found that her father’s parents were involved in the traditional calling of masonry and that the mentioning of his caste as ‘Tuluva Naickan’ in Ext.P1 is an error



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or a mistake. It has thus been concluded therein that the petitioner's father is a 'Hindu Naickan', while her mother an 'Ezhava'; and after finding so, it concludes that the school records of the petitioner and her brother show their caste name as 'Hindu Naickan' and therefore, that only such a certificate is eligible to her.

9. Pertinently, the petitioner has not challenged Ext.P2, but on the contrary, relies upon the same, to argue that, as per Ext.P6 – particularly Annexure B thereof, since her father belongs to the traditional avocation of 'Mason', he is to be excluded from its rigour. She relies upon the Rules of Exclusion, as stipulated under Clause 7 of Annexure I of Ext.P6, in substantiation and argues that, as long as her father is uncontestedly a 'Mason', she cannot be denied the benefit of a 'Non-Creamy Layer Certificate', notwithstanding the fact that he had retired as Class II Officer from the Government of Kerala.

10. I am afraid that I cannot find favour with the afore



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submissions of the learned counsel for the petitioner because, no doubt, Ext.P6 contains the Rules of Exclusion with respect to those who continue in avocations mentioned in Annexure B thereof. The work of ‘Mason’ certainly is included therein, but Rule 7 of Annexure I of Ext.P6, then stipulates that the aforementioned Rules of Exclusion will apply only to those persons who are working as Artisans or engaged in hereditary occupations. Obviously, it means that the exclusion would apply only in the case of persons who are actually working as or engaged in one of the callings mentioned in Annexure B.

11. In the case at hand, the petitioner unequivocally admits that both her parents are retired Government servants, with neither of them, in any manner, having been exposed to any other calling, including ‘Masonry’, or such other. When one juxtaposes this with the specific provisions of Rule 7 of Annexure I of Ext.P6, it is not very difficult to conclude that, as long as the petitioner’s father, or at least one of the parents, had been



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working as an Artisan or engaged in any of the occupations mentioned in Annexure B thereof, she would not be able to obtain a 'Non-Creamy Layer Certificate', under the benefits of the Rule of Exclusion mentioned therein.

12. The only other question which remains is whether the petitioner can now be considered to be a 'Tuluva Naicken' and whether the same is included in the 'OBC' List applicable to Kerala. Even if the latter is assumed and is taken that 'Tuluva Naicken' is included as 'OBC' *qua* Kerala, it would still not inure benefit to the petitioner unless she is able to establish that she belongs to it, which she tries to establish solely on the basis of Ext.P1 Education Certificate of her father. However, the findings in Ext.P2, which she relies upon, has found that her father's certificate was in error and that she and her brother have been shown to be 'Hindu Naicken' in all their educational records; and this being uncontested and without being assailed, one fails to understand how she now maintains that she should



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still be treated as a 'Tuluva Naicken'.

13. In the absence of any challenge to Ext.P2 and when it has been relied upon by the petitioner as already stated above, I can only conclude that her contentions are solely intended to get over the rigour of Ext.P6, even when her parents are both Class II Officers. This is more so because, even if this Court is to take that she belongs to 'Tuluva Naicken' community, her right of obtaining 'Non-Creamy Layer Certificate' would stand denuded because both her parents are Class II Officers; and therefore, expressly excluded from the ambit for being granted any such certificate, as per the admitted Statutory Scheme.

14. At this time, Sri.R.Reji Kumar interjected to argue that, as per Ext.P14, the Additional Chief Secretary has certified that his client is entitled to be granted a Non Creamy Layer Certificate, even if she is construed to be a Hindu 'Naickan'. He added that, therefore, the State cannot now resile from this.

15. However, Sri.Robin Raj – learned Special Government



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Pleader, submitted that Ext.P14 is a product in error because, the Officer concerned appears to have been misdirected by the fact that the traditional avocation of the petitioner's father and sisters was 'Masonry'. He explained that this mistake appears to have gripped the Officer concerned only because of the submissions of the petitioner to such effect; but that, as already found by this Court above, the applicable Government Orders will not support it, particularly because the person concerned must be engaged or working as an artisan or in hereditary occupation. He submitted that, therefore, in such view and being aware of the fallacy committed, the Government has recalled Ext.P14, through a subsequent order dated 27.03.2023, which he says has been placed on record along with his Memo dated 02.02.2024.

16. Of course, Sri.R.Reji Kumar – learned counsel for the petitioner, opposed the afore submissions, contending that the aforementioned order has been issued by the Government only as



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an afterthought and pending this lis; and therefore, that Ext.P14 should be construed to be still in effect.

17. I am afraid that I cannot find favour with either Ext.P14 or the afore contentions of the petitioner, for the reasons I have already indited above, especially that her father was a Class II Government Officer concededly, without being ever engaged in or involved in the traditional avocation of his ancestors, namely 'Masonry'.

This Writ Petition is thus dismissed.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

RR/akv



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APPENDIX OF WP(C) 2126/2023

PETITIONER EXHIBITS

- Exhibit P.1 TRUE COPY OF FIRST PAGE OF THE SSLC OF PETITIONER'S FATHER
- Exhibit P.2 TRUE COPY OF REPORT DATED 11-10-2022 SUBMITTED BY 7TH RESPONDENT TO 4TH RESPONDENT
- Exhibit P.3 TRUE COPY OF FIRST PAGE OF SSLC OF PETITIONER'S MOTHER
- Exhibit P.4 TRUE COPY OF PETITIONER'S CLASS X CERTIFICATE
- Exhibit P.5 TRUE COPY OF RELEVANT PAGES OF GAZETTE NOTIFICATION DATED 10-09-1993 ISSUED BY MINISTRY OF SOCIAL WELFARE, GOVERNMENT OF INDIA
- Exhibit P.6 TRUE COPY OF GO DATED 26-09-2009 ISSUED BY 1ST RESPONDENT
- Exhibit P.7 TRUE COPY OF REPORT DATED 21-06-2022 SUBMITTED BY 6TH RESPONDENT TO 5TH RESPONDENT
- Exhibit P.8 TRUE COPY OF RELEVANT PAGE OF REVENUE GUIDE 2018 ISSUED BY REVENUE DEPARTMENT, GOVERNMENT OF KERALA
- Exhibit P.9 TRUE COPY OF ORDER DATED 24-11-2022 ISSUED BY 4TH RESPONDENT
- Exhibit P.10A TRUE COPY OF LETTER DATED 06-12-2022 ISSUED BY 1ST RESPONDENT TO 10TH RESPONDENT
- Exhibit P.10B TRUE COPY OF OFFICE MEMORANDUM DATED 08-09-1993 ISSUED BY DEPARTMENT OF PERSONNEL & TRAINING GOVERNMENT OF INDIA
- Exhibit P.11 TRUE COPY OF REPRESENTATION DATED 09-12-2022 SUBMITTED BY PETITIONER BEFORE 3RD RESPONDENT
- Exhibit P.12 TRUE COPY OF ORDER DATED 15-12-2022 ISSUED BY 3RD RESPONDENT
- Exhibit P.13 TRUE COPY OF RELEVANT PAGES OF NOTIFICATION DATED 10-09-1993 ISSUED BY DOPT, GOVERNMENT OF INDIA



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RESPONDENT EXHIBITS

- EXHIBIT R1(a) TRUE COPY OF THE G.O (P)
No.81/09/SCSTDD DATED 26.09.2009
- EXHIBIT R1(b) TRUE COPY OF GOVERNMENT OF KERALA
CIRCULAR NO.27396/F3/07/SCSTDD DATED
14.06.2010
- EXHIBIT R1(C) TRUE COPY OF THE ENTIRE SAID OFFICE
MEMORANDUM ISSUED BY GOVERNMENT OF
INDIA DATED 08.09.1993

PETITIONER EXHIBITS

- Exhibit P.14 TRUE COPY OF THE LETTER DATED 08-12-
2022 ISSUED BY THE 8TH RESPONDENT TO
THE 10TH RESPONDENT
- Exhibit P.15 TRUE COPY OF THE LETTER DATED 08-12-
2022 ISSUED BY THE 10TH RESPONDENT TO
THE 4TH RESPONDENT
- Exhibit P.16 TRUE COPY OF THE REPRESENTATION DATED
15-01-2024 SUBMITTED BY THE PETITIONER
BEFORE THE 4TH RESPONDENT