

**Lithin Thampy vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1310786](https://sooperkanoon.com/1310786)

**Court :** Kerala

**Decided On :** Feb-01-2024

**Judge :** Honourable Mr. Justice T.R.Ravi

**Appeal No. :** WP(C)/32355/2019

**Appellant :** Lithin Thampy

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 WP(C) NO. 32355 OF 2019 PETITIONER: LITHIN THAMPY AGED 33 YEARS S/O.T.J.THAMPY, THOPPIL HOUSE, KANJIKUZH, MATTAMBALAM, KOTTAYAM, PIN-686004. BY ADVS. SRI M.POLY MATHAI SRI.VIMAL K.CHARLES RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY ITS SECRETARY, SC/ST DEVELOPMENT DEPARTMENT, THIRUVANANTHAPURAM-695033. 2 THE CHAIRMAN, SCRUTINY COMMITTEE FOR VERIFICATION OF COMMUNITY CERTIFICATES, SC/ST DEVELOPMENT

DEPARTMENT, THIRUVANANTHAPURAM, PIN-695033. 3 THE  
CONVENOR, SCREENING COMMITTEE, COMMISSIONER OF  
ENTRANCE EXAMINATIONS, SHANTI NAGAR,  
THIRUVANANTHAPURAM, PIN-695001. 4 THE DIRECTOR, KIRTADS,  
CHEVAYOOR, KOZHIKODE-17, PIN-673017. BY SRI ROBIN RAJ (SPL.  
GOVERNMENT PLEADER- SC/ST)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
22.11.2023, THE COURT ON 01.02.2024 DELIVERED THE  
FOLLOWING:

**T.R. RAVI, J.**

----- W.P.(C)No.32355 of 2019  
----- Dated this the 1st day of February,  
2024

## **JUDGMENT**

The petitioner has approached this Court being aggrieved by Exts.P1, P5, P10, and P11 whereby the KIRTADS, the Screening Committee, the Scrutiny Committee, and the Government have held that the petitioner and his family do not belong to the Hindu Sambava Community, which is a Scheduled Caste Community. The petitioner applied for the Common Entrance Examination for admission to the five-year LLB Course during 2018-19 under the SC quota. Doubting the caste status of the petitioner, the matter was referred to KIRTADS for a report. KIRTADS submitted its report on 17.08.2018. The Screening Committee thereafter passed orders on 31.03.2018 rejecting the claim of the petitioner under the SC quota. The petitioner filed a review petition before the Government on 04.02.2019 under the provisions of Act 11 of 1996. The Government referred the matter to the Scrutiny Committee, which heard the petitioner on 28.05.2019. The Screening Committee rejected the claim of the petitioner by order dated 09.08.2019, and the Government thereafter issued Exts.P11 order on 22.10.2019 declaring that the petitioner and his family members were not persons belonging to

the Scheduled Caste Community.

## 2. The petitioner submits that the Screening

Committee had passed Ext.P5 order even without giving a copy of the KIRTADS report to the petitioner. The petitioner obtained a copy of the report by filing an application under the

Right to Information Act. According to the petitioner, the Expert Agency, as well as the Scrutiny Committee, ignored the fact that the petitioner's father belongs to a Scheduled Caste Community, and even if it were to be held that the petitioner's mother did not belong to a Scheduled Caste Community, the petitioner is entitled to the benefits available to the children born out of inter-caste marriage.

## 3. Reliance is placed on the Full Bench decision of this

Court reported in *Indira v. State Kerala* [2005 (4) KLT 119], wherein this Court has held that if a child is born out of inter-caste marriage and brought up with the same handicap, disadvantage and suffering, it will be harsh to deny the SC benefit to the child for the reason that one of his parents does not belong to an SC. The judgment of the Full Bench was upheld by the Hon'ble Supreme Court in *Rameshbhai Dabhai Naika v. State of Gujarat* (Civil Appeal No.654/2012); it is contended.

## 4. Coming to the facts of the case, the petitioner's

paternal grandfather, Sri Yohannan Thopppil, belonged to the Scheduled Caste Sambava Community, and he had converted to Christianity. He had married the late Saramma, who was a native of Puthanangadi, Kottayam, belonging to the Scheduled Caste Sambava Community, who had also converted to Christianity. Seven children were born out of the wedlock, and the petitioner's father, T.J.Thampi, is one among them.

## 5. KIRTADS noted in its report that the siblings of

Thampy T.J., named John, Santhamma, David, Lailamma, Jacob, and Wilson, have married persons who had converted to Christianity from the Hindu Sambava

Community. It is also noted in the report that T.J.Thampi had reconverted to the Hindu religion when he was 24 years of age through Kerala Hindu Mission, Thiruvananthapuram, on 18.07.1994, and the same had been notified in the Gazette on 10.09.1974. Though such a conscious decision to re-convert was taken by Sri T.J.Thampi, the report proceeds to say that it is clear that the petitioner's father is nurtured and socialised as a Christian and that he had accepted Hinduism later.

6. The report also says that on the maternal side of

the petitioner, the maternal grandfather, who belonged to the Scheduled Caste Sambava Community, had converted to Christianity, and he married Saramma, who was also a member of the Sambava Community who had converted to Christianity. The School Leaving Certificate showed the caste status of the mother of the petitioner as Christian Sambava. The report further says that the petitioner's Secondary School

Leaving Certificate shows his caste as Hindu Sambava. The conclusions in the report, however, leave many unanswered questions. It is not understood how the report concluded that the candidate's father was born and brought up as a member of a Christian Community of Sambava origin. There cannot be a Christian Community of Sambava origin. The report says that in a discrete enquiry it was revealed that even though the petitioner's father had embraced Hinduism,

he did not continue to be a Hindu, as claimed. It is further stated that the petitioner was born and brought up and spent his childhood in Mavelikkara, Alappuzha, along with his maternal kin, and hence he was nurtured and socialised in the Christian way. It is not understandable as to how the report concludes that the investigation reveals that the petitioner's

'belief' is that of a Christian. It is in evidence that the petitioner had studied in Mavelikkara only for a few years and that the Hindu rituals were followed in the case of the children of T.J.Thambi. The concerned organization of the community had also certified that T.J. Thambi belonged to the Hindu Sambava Community.

7. The petitioner had contended that documents which are referred to in the orders were not actually made available to him. The Government Pleader has, along with a memo,

produced three letters as documents 1 to 3. The first document is a letter from the Commissioner for Entrance Examinations to the petitioner, informing about the reference to the KIRTADS. Document No.2 is a letter issued by the Vicar of CSI St.Mark's Church stating that the Church Members Register shows that Jacob T.J. Thoppil, Saramma Jacob, Majo John Jacob, Jacob T. Wilson, Leelamma Wilson, Ajay Jacob Wilson, Aleena Merin Wilson, Lailamma Chacko and Jeril Chacko James are persons who belong to Sambava Christian Community. The above said persons are close relatives of the petitioner. The third document produced is a letter from one Lalu Johns, who is the brother of the petitioner's mother, which says that the petitioner had studied in Mavelikara during his school days. The letter, however, also says that the petitioner

was following the Hindu way of life. It also says that Hindu ceremonies were conducted of the children of the petitioner's sister on completion of 28 days of birth. The Scrutiny Committee and the order of the Government also endorse the same reasons, and there are no further reasons stated.

8. Heard Sri Poly Mathai on behalf of the petitioner and Sri Robin Raj, Special Government Pleader (SC/ST) on behalf of the respondents.

9. The question involved in this case is no longer res

integra. The Honble Supreme Court had occasion to consider the effect of reconversion to Hinduism in the decision in Manu K.P. v. Chairman, Scrutiny Committee for Verification of Community Certificate [(2015) 4 SCC 1]. The Honble Supreme Court held as follows:

36. We have referred to the aforesaid materials and the

observations singularly for the purpose that there has been detailed study to indicate that the Scheduled Caste persons belonging to Hindu

religion, who had embraced Christianity with some kind of hope or aspiration, have remained socially, educationally and economically backward. The Constitution Bench in *Y. Mohan Rao [Guntur Medical College v. Y. Mohan Rao,*

(1976) 3 SCC 411] has clearly laid down that if a

person born to Christian parents, who, belonging to Scheduled Caste had converted themselves to Christianity, the said person on reconversion to his religion and on acceptance by his community with a further rider that he would practise the customs and traditions of the caste, would be treated as a member of the said Scheduled Caste and if the said caste is one of the castes falling within the Constitution (Scheduled Castes) Order, 1950, then he will be treated as a Scheduled Caste. 37.2. In *S. Anbalagan [S. Anbalagan v. B. Devarajan, (1984) 2 SCC 112]* which we have referred to in extenso earlier, has laid down that if the caste disappears, it disappears only to reappear on reconversion and the mark of caste does not seem to really disappear even after some generations after conversion. As has been held therein, the process goes on continuously in India and generation by generation the lost sheep to return to their caste fold are once again assimilated to that fold. The three-Judge Bench has commented that the members of the Scheduled Castes who had embraced another religion in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity; and thereafter stated that it does not think that any different principle would apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion. This view, in our considered opinion, is in consonance with the Constitution Bench in *Y. Mohan Rao [Guntur Medical College v. Y. Mohan Rao, (1976) 3 SCC 411]* and does not run counter to it. One may raise a question how does

one find out about the forefathers. There can be a false claim but that would be the subject-matter of inquiry. Therefore, the principle of definitive traceability may be applied during the inquiry and the onus shall be on the person who claims the benefit after reconversion. To elaborate, he has to establish beyond a shadow of doubt that his forefathers belonged to the Scheduled Caste that comes within the Constitution (Scheduled Castes) Order, 1950 and he has been reconverted and his community has accepted him and taken him within its fold.

38. In our considered opinion, three things that need to

be established by a person who claims to be a beneficiary of the caste certificate are: (i) there must be absolutely clear-cut proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Castes) Order, 1950; (ii) there has been reconversion to the original religion to which the parents and earlier generations had belonged; and (iii) there has to be evidence establishing the acceptance by the community. Each aspect according to us is very significant, and if one is not substantiated, the recognition would not be possible.

10. The above judgment was rendered in a case where

the court was examining the caste status of a person who was born to Christian parents who had embraced Christianity, giving up their community status as Hindu Pulaya. The appellant before the Honble Supreme Court had reconverted to Hinduism at the age of 24 by undergoing the process of conversion, and the concerned social organisation had accepted him as a member of Pulaya community and issued him with a certificate to that effect. The Honble Supreme Court held that the issuance of the certificate was sufficient to show that the community had accepted him. The Court also

**held that the mere fact that a person was born of Christian**

parents does not disentitle him to reconvert or convert to Hinduism.

11. In *Jibin C.Baby v. Commissioner for Entrance*

*Examinations & Ors.* [2016 (1) KLJ 683], a learned Single Judge of this Court considered the issue extensively making particular reference to the decision in *Manu (supra)*. The learned Judge was considering a case where the petitioner challenged the legality of the rejection of his claim for Scheduled Caste (Hindu Sambava) status for admission to a professional course. It is also a case wherein the father of the petitioner therein, who earlier belonged to the Sambava Community, had converted to Christianity and later re-

converted to Hinduism. The Court found that since the petitioner therein was born to a Hindu father and he continued to be a Hindu, reservation cannot be denied. The case on hand also relates to a person whose father had reconverted to Hinduism after his earlier conversion from the Hindu Sambava community to Christianity. The Full Bench of this Court in *Indira (supra)* held that if a child is born out of inter-caste marriage and brought up with the same handicap, disadvantage, and suffering, it will be harsh to deny the SC benefit to the child since one of his parents does not belong to an SC.

12. In the case on hand, admittedly, the petitioner's father had re-converted to Hinduism by performing 'Shudhikarma' () on 10.09.1974. Ext.P2 is the certificate issued by the Kerala Hindu Mission regarding the

reconversion. The Kerala Hindu Sambava Mahasabha, Kottayam Town Branch, which is the organisation of the community in the locality has issued Ext.P3 certificate to the petitioner's father on 16.02.1984 stating that the petitioner's father belongs to Hindu Sambava Mahasabha. The petitioner's father had published the above fact of embracing Hinduism in

the official Gazette on 22.01.1985. It is stated that the petitioner's father had married the petitioner's mother on

11.01.1986 and the Hindu rites were followed. Thus, it is a case where the petitioner is born out of a marriage in which one of the parents is Hindu Sambava, which is a Scheduled Caste community. In view of the decisions in *Manu (supra)*

and Jibin (supra), the claim of the petitioner for being treated as a Scheduled Caste Sambava has to be upheld.

13. In the above circumstances, this writ petition is

allowed. Exts.P1, P5, P10 and P11 are quashed. It is declared that the petitioner belongs to the Hindu Sambava Scheduled Caste community and is entitled to the benefits available to the said community.

Sd/- T.R. RAVI JUDGE dsn APPENDIX OF WP(C) 32355/2019 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE REPORT FILED BY R4 ALONG WITH THE DOCUMENTS THEREIN. EXHIBIT P2 TRUE COPY OF THE CERTIFICATE ISSUED BY HINDU MISSION DATED 10.09.1974. EXHIBIT P3 TRUE COPY OF THE CERTIFICATE ISSUED BY HINDU SAMBAVA MAHASABHA DATED 16.2.1984. EXHIBIT P4 TRUE COPY OF GAZETTE NOTIFICATION DATED 22.1.1985. EXHIBIT P5 TRUE COPY OF THE PROCEEDINGS PASSED BY THE 3RD RESPONDENT DATED 31.8.2018. EXHIBIT P6 TRUE COPY OF THE LETTER FROM INFORMATION OFFICER DATED 17.11.2018. EXHIBIT P7 TRUE COPY OF THE STATEMENT GIVEN BY MATERNAL UNCLE BEFORE THE 4TH RESPONDENT. EXHIBIT P8 TRUE COPY OF THE CERTIFICATE ISSUED BY MADOONA U.P.SCHOOL, KOTTAYAM DATED 8.1.2019. EXHIBIT P9 TRUE COPY OF THE TRANSFER CERTIFICATE ISSUED BY M.D.SEMINARY SCHOOL, KOTTAYAM DATED 7.6.2004. EXHIBIT P10 TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 9.8.2019. EXHIBIT P11 TRUE COPY OF THE G.O. DATED 22.10.2019 ISSUED BY THE 1ST RESPONDENT. EXHIBIT P12 TRUE COPY OF CERTIFICATE ISSUED BY AKHILA KERALA HINDU SAMBAVAR MAHA SABHA, KOTTAYAM UNIT DT.7.3.2020.

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