

Aswathy. a.V Vs. State of Kerala

Aswathy. a.V Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/52271

Court : Kerala

Decided On : Jun-12-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Aswathy. a.V

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN FRIDAY, THE 12TH DAY OF JUNE 2015 22ND JYAISHTA, 1937 WP(C).No. 30863 of 2013 (G)

----- PETITIONER(S): -----

ASWATHY.A.V., D/O.K.VENUGOPALAN, 'ASWATHY', PLAVARA IRINCHAYAM P.O., NEDUMANGADU, THIRUVANANTHAPURAM DISTRICT. BY ADVS.SRI.N.S.GOPAKUMAR SRI.VADAKARA V.V.N.MENON RESPONDENT(S) : ----- 1. STATE OF KERALA, REPRESENTED BY SECRETARY, SC/ST DEVELOPMENT DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.

2. COMMISSIONER OF ENTRANCE EXAMINATIONS, HOUSING BOARD BUILDINGS, SANTHI NAGAR, THIRUVANANTHAPURAM, PIN-695 001.

3. THE VIGILANCE OFFICER, VIGILANCE CELL DIRECTORATE OF KIRTADAS, KOZHIKODE-17. BY SPL.GOVERNMENT PLEADER SMT.LALY VINCENT THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON , ALONG WITH W.P.(C).NO.16423 OF2015 THE COURT ON1206-2015 DELIVERED THE FOLLOWING: Msd. WP(C).No. 30863 of 2013 (G)

----- APPENDIX PETITIONER(S)' EXHIBITS -----
EXHIBIT P1: TRUE COPY OF THE CERTIFICATE NO.1380/94/C1 DATED2505/1994 ISSUED BY THE THAHSILDAR UDUMBANCHOLA. EXHIBIT P2: TRUE COPY OF THE CERTIFICATE NO.B3 3096/94 DATED2805/1994 ISSUED BY THE THAHASILDAR NEDUMANGAD. EXHIBIT P3: TRUE COPY OF THE SECONDARY LIVING CERTIFICATE EXAMINATION, WITH A REGISTER NO.208079, MARCH, 2004. EXHIBIT P4: TRUE COPY OF THE ENQUIRY REPORT DATED1902/2007 ISSUED BY THE VILLAGE OFFICER, ANAD. EXHIBIT P5: TRUE COPY OF THE REPORT OF THE INDIAN EXPRESS DAILY DATED2305/2006. EXHIBIT P6: TRUE COPY OF THE KERALA KAUMUDY DAILY REPORT DATED2305/2006. EXHIBIT P7: TRUE COPY OF THE MATHRUBHUMI DAILY REPORT DATED2305/2006. EXHIBIT P8: TRUE COPY OF THE REPORT DATED2503/2007 OF THE3D RESPONDENT. EXHIBIT P9: TRUE COPY OF THE

JUDGMENT

DATED1501/2013 IN W.P.(C).NO.20809/2007 OF THIS HON'BLE COURT. EXHIBIT P10: TRUE COPY OF THE REPORT DATED1706/2013 OF THE3D RESPONDENT. EXHIBIT P11: TRUE COPY OF THE DETAILED EXPLANATION DATED0306/2013, SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT (WITHOUT ANNEXURES). EXHIBIT P12: TRUE COPY OF THE

ORDER

DATED1107/2013 OF THE2D RESPONDENT. ADDITIONAL EXHIBIT P13: TRUE COPY OF THE RELEVANT PAGES OF THE RESULT PUBLISHED BY2D RESPONDENT. ADDITIONAL EXHIBIT P14: TRUE COPY OF THE CASTE CERTIFICATE DATED1812.2014. ADDITIONAL EXHIBIT P15: TRUE COPY OF THE CASTE CERTIFICATE DATED1709.2014. WP(C).No. 30863 of 2013 (G)
----- ADDITIONAL EXHIBIT P16: TRUE COPY OF

CERTIFICATE DATED 24.02.2013 ISSUED BY THE SECRETARY OF 'MALAVARGA MAHAJANA SANGAM'. ADDITIONAL EXHIBIT P17: TRUE COPY OF THE REPRESENTATIONS SUBMITTED BY THE PETITIONER ON 10.03.2015 TO THE 2D RESPONDENT. ADDITIONAL EXHIBIT P18: TRUE COPY OF THE CATEGORY COMMUNITY WISE LIST (PROVISIONAL) OF THE ENTRANCE EXAMINATION FOR ADMISSION TO POST GRADUATE COURSES IN DENTAL SURGERY (MDS) 2015. ADDITIONAL EXHIBIT P19: TRUE COPY OF THE LIST OF CANDIDATES FOR FIRST COUNSELING ON 12.12.2013. ADDITIONAL EXHIBIT P20: TRUE COPY OF THE RANK LETTER SHOWING RANK OBTAINED BY CANDIDATES QUALIFIED IN AIPG MDS, 2014. ADDITIONAL EXHIBIT P21: TRUE COPY OF THE LIST OF S.T. STUDENTS (GIRLS) SELECTED FOR BHARAT DARSHAN 2004-2005. ADDITIONAL EXHIBIT P22: TRUE COPY OF THE EXTRACT OF THE ADMISSION REGISTER FROM THE GOVERNMENT U.P.S. RAMAPURAM WHERE I HAVE STUDIED FROM STD. I TO VII. ADDITIONAL EXHIBIT P23: TRUE COPY OF THE COMMUNITY CERTIFICATE NO. B2-43443/13 DATED 07.12.2013 ISSUED TO THE PETITIONER BY THE TAHSILDAR, NEDUMANGAD TALUK. ADDITIONAL EXHIBIT P24: TRUE COPY OF THE COMMUNITY CERTIFICATE NO. 3926395 DATED 25.09.2013 ISSUED TO PETITIONER'S HUSBAND RAHUL PADMAN. ADDITIONAL EXHIBIT P25: TRUE COPY OF THE MARRIAGE CERTIFICATE NO. 4249/2014 DATED 25.07.2014 ISSUED FROM ANAD GRAMA PANCHAYATH. ADDITIONAL EXHIBIT P26: TRUE COPY OF THE REPRESENTATION DATED 16.01.2015 TO THE 3D RESPONDENT. ADDITIONAL EXHIBIT P27: TRUE PHOTOCOPY OF THE NOTIFICATION NO. CEE/3993/2014/MDS-2015/TFO. ADDITIONAL EXHIBIT P28: TRUE PHOTOCOPY OF THE GO(MS) NO. 25/2005/SC. ST DD DATED 20.06.2005. ADDITIONAL EXHIBIT P29: TRUE PHOTOCOPY OF THE GO(MS) NO. 109/2008 SC ST DD DATED 20.11.2008. WP(C). No. 30863 of 2013 (G) ----- ADDITIONAL EXHIBIT P30: TRUE COPY OF THE

JUDGMENT

IN W.P.(C).NO.17546/2006(L) DATED 01.06.2010. ADDITIONAL EXHIBIT P31: TRUE PHOTOCOPY OF PETITIONER'S APPLICATION FOR ADMISSION TO

M.D.S. 2015 IN THE S.T.QUOTA. ADDITIONAL EXHIBIT P31(A): TRUE COPY OF THE COMMUNITY CERTIFICATES NO.B2-39062/14 DATED1812.2014 ISSUED TO THE PETITIONER BY THE TAHSILDAR, NEDUMANGADU. ADDITIONAL EXHIBIT P31(B): TRUE COPY OF THE INTER-CASTE MARRIAGE CERTIFICATES OF PETITIONER'S PARENTS ISSUED BY THE TAHSILDAR, NEDUMANGADU WITH NO.B2 39016/14 DATED1712.2014. ADDITIONAL EXHIBIT P32: TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS FOR P.G.DENTAL (MDS) ENTRANCE EXAMINATION, KERALA, 2015 (PAGE NOS.1,12,13,17 AND18. RESPONDENT(S)' EXHIBITS ----- NIL //TRUE COPY// P.A.TO JUDGE. Msd. K. VINOD CHANDRAN, J.

===== W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C
===== Dated this the 12th day of June, 2015

JUDGMENT

The petitioners in both the writ petitions claim the one seat directed to be reserved by an interim order dated 24.03.2015 in W.P.(C)No. 30863 of 2013. The one seat so directed to be reserved in the MDS course for the academic year 2015-16; is one earmarked for the Scheduled Tribes. The petitioner in W.P.(C) No.30863 of 2013 assert her claim to the said seat for the academic year 2015-16, though the writ petition is one filed in the year 2013 against the order of a Screening Committee, which declined her Scheduled Tribe status for the admissions carried on for the year 2007-08, in the entrance examinations for admission to a professional degree course in the said academic year.

2. The petitioner in W.P.(C) No. 16423 of 2015 claim 2 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C the very same seat reserved in the other writ petition, since the said petitioner admittedly is a Scheduled Caste candidate, who would stand to get that seat; since no other Scheduled Tribe candidates are available in the list. The claim of the said petitioner is that on no Scheduled Tribe candidates being available, the seat earmarked for them ought to be conceded to the Scheduled Caste and he would then stand to gain, insofar as he is the next candidate among the Scheduled Castes. The disposal of W.P.(C) No. 30863 of

2013 would in fact dispose of the other writ petition also, hence, initially the consideration is made of the said writ petition.

3. The reference made hereafter are to the averments and the documents in W.P.(C) No. 30863 of 2013. The petitioner therein admittedly is born to parents of inter-caste marriage with the father from the Hindu - Nair community and the mother hailing from Hindu - Ulladan community. The father undisputedly belongs to the forward community and the mother 3 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C to a Scheduled Tribe, as recognised under the Constitution Amendment (Scheduled Tribe) Order 1950 further amended under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Rules, 2002. The petitioner asserts on the basis of her mother's community that the petitioner also had suffered the disabilities of a member of the Scheduled Tribe and had been recognised all through her academic career as a person entitled to reservation available to Scheduled Tribes. The petitioner having suffered the disabilities of the community in which she asserts her belonging, would also be entitled to avail of the benefits, by way of reservation to such community members in admission to educational courses, is the contention.

4. The petitioner relies on Ext.P1 certificate issued by the Tahsildar, Taluk Office, Udumbanchola dated 25.05.1994 and Ext.P2 certificate issued by the Tahsildar, Taluk Office, Nedumangad dated 28.05.1994, wherein she is treated as 4 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C belonging to the Hindu - Ulladan community recognised as a Scheduled Tribe within the State of Kerala. The declaration in the school register also being in tandem with such belonging, she relies on Ext.P3 Secondary School Leaving Certificate, wherein also she is shown as a member of the said Scheduled Tribe. The petitioner had applied for the entrance examination to the professional courses for the academic year 2007-08 for which she had obtained a certificate from the Village Officer, Anad, produced at Ext.P4 declaring her Scheduled Tribe status.

5. The dispute arose in the said examination wherein on the application being made; the same was scrutinised by a Screening Committee constituted by the Government under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation

of Issue of Community Certificates Act, 1996 and the Rules of 2002 framed thereunder. The Anthropological Report, from the expert agency, being the Kerala Institute for Research, Training and Development Studies (KIRTADS) under the Act and Rules, went 5 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C against the petitioner. The same is produced at Ext.P8. Obviously an order of the Screening Committee would have been passed pursuant to the report, which is not produced herein.

6. The learned Counsel for the petitioner would assert the petitioner's claim as a Scheduled Tribe on the basis of the admitted position that her mother belongs to the Scheduled Tribe and she being a progeny of an inter-caste marriage. The learned Counsel for the petitioner would contend that the Screening Committee's findings are bad insofar as the Screening Committee having referred to a notification of 2005 produced at Ext.P28, which has been subsequently amended by Ext.P29. The contention is that though the Government Order of 2005 directed the issuance of community certificates to the children born out of inter-caste marriages; only as per the caste/community of his or her father, there was considerable deviation therefrom in the Government Order of 2008, wherein it 6 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C was directed that the caste status of the father alone would not be relevant and the same cannot be the sole consideration, when a claimant is subjected to social disabilities and is found to have been following the same customs and traditions of the community in which he/she claims to belong in.

7. The learned Counsel would also rely on the decision of the Hon'ble Supreme Court reported in Rameshbhai Dabhai Naika v. State of Gujarat [(2012) 3 SCC400, to contend that the caste status of the father would not govern the issue of the status of the children of inter-caste marriages. The learned Special Government Pleader however would contend that the petitioner's attempt to claim a seat for admission to a P.G course in the year 2015-16 in a writ petition of the year 2013 against a decision taken for the academic year 2007-08; would not be maintainable.

8. The learned Special Government Pleader would also contend that, there are alternate remedies available under 7 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C the Act before a Scrutiny Committee as provided under Section 8 and before Government itself under Rule 13. The petitioner is guilty of laches insofar as having not proceeded for such consideration and the jurisdiction of this Court would be confined in dealing with an order of the Screening Committee, which is bound to follow the expert agency's report, is the argument.

9. There is considerable force in the submission of the learned Special Government Pleader that, the petitioner has agitated her cause arising in the year 2015-16 in a writ petition which challenges the decision of the Screening Committee arising with respect to the admissions of 2006-07. True the petitioner's Scheduled Tribe status could not be agitated afresh in the academic year 2015-16 for reason of the Screening Committee report in the year 2007 being against her. The petitioner ought to have been vigilant in availing the remedies, which were available under the Act and Rules. Since an interim 8 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C order has been passed, reserving one seat for the academic year 2015-16, it is only proper that, this Court consider the claim in the writ petition and on agreement of both parties, the writ petition itself has been heard.

10. Earlier, the issue was raised by the petitioner in W.P.(C) No.20809 of 2007, the judgment of which is annexed at Ext.P9. Since no order pursuant to Ext.P8 was produced in the instant writ petition, this court called for the Judges Papers of W.P.(C) No. 20809 of 2007 and perused the same. The respondent State had produced Ext.R2(a), the copy of the decision of the Screening Committee, pursuant to Ext.P8. The petitioner was not granted any interim order in the said writ petition and the matter remained before this Court till 2013 and when it came up for hearing, this Court found that the matter is infructuous. However, noticing that the petitioner would have to establish her rights for future purposes, this Court directed the Screening Committee to scrutinise the Anthropological Report 9 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C and take a final decision on the caste status of the petitioner. It was also directed that the petitioner would be heard and would be permitted to produce evidence in support of her contentions.

An order was passed by the Screening Committee after getting a further report from the expert agency, which are respectively produced herein as Exts.P12 and P10. The objections of the petitioner are also seen at Ext.P11. The matter remained so from 2013 onwards and it is an admitted fact that the petitioner had joined for a Bachelor degree course in Dentistry in a private college as a general category candidate itself and had finished her studies thereon.

11. When the entrance examination to P.G courses in Dentistry was scheduled for the year 2015-16, the petitioner applied and after the results were published, filed an interlocutory application in the above writ petition, claiming that she is entitled to the Scheduled Tribe status. The petitioner asserts that she applied in 2015-16 as a Scheduled Tribe 10 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C candidate producing Ext.P31(a) & (b) certificates, respectively the community certificate and the certificate of having born in an inter-caste marriage. It is not clear as to how Ext.P31(a) was issued in the wake of her Scheduled Tribe status having been found against in 2007. In any event Ext.P31 application produced by the petitioner itself, shows her as a general candidate. In the interlocutory application, noticing the fact that no counter affidavit had been filed by the State till date, this Court was pleased to direct by order dated 24.03.2015 that one seat earmarked for the Scheduled Tribe be kept vacant. The petitioner claims that she is entitled to be admitted to the said seat reserved for the Scheduled Tribes.

12. At the out set, it is to be noticed that the proceedings initiated under the Act of 1996 and Rules of 2002 have not culminated as provided therein, since the petitioner's claim was only considered by the Screening Committee. In fact the petitioner's claim was considered by the Screening 11 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C Committee twice and the petitioner should have been vigilant at the time of disposal of the earlier writ petition at Ext.P9 to point out to the Court that it is not to the Screening committee that a further proceeding would have to be taken, but to the Scrutiny Committee.

13. In a different context, wherein, the admitted position was that the claimant's father was a member of the Scheduled Caste, this Court had considered the decisions of the Hon'ble Supreme Court and specifically the decision aforecited by

the learned Counsel for the petitioner. The following extracts were made from Rameshbhai (supra). "It is, thus, clear that it is wrong and incorrect to read Valsamma, Punit Rai and Anjan Kumar as laying down the rule that in an inter-caste marriage or a marriage between a tribal and a non-tribal, the child must always be deemed to take his/her caste from the father regardless of the attending facts and circumstances of each case". 12 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C xxx xxx xxx "In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated as a member of the community to which her mother belonged not only by that community but by the people outside the community as well".

14. This Court culled out the following principles from 13 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C the decisions of the Hon'ble Supreme Court; in the judgment dated 07.11.2013 in W.P.(C) No.19867 of 2013: (i) In the case of an offspring of an inter-caste marriage there is a strong presumption that the offspring takes the caste of the father, but, however, all the same a rebuttable presumption. (ii) Act 11/1996 casts the burden of proof on the claimant and it is for the claimant to establish his/her claim of being included as a member of the Scheduled Caste/Scheduled Tribe. (iii) This burden cast on the claimant has to be harmonized with the presumption, stated above, which has been judicially recognized by binding decisions of the Hon'ble Supreme Court. Hence, if the father belongs to a forward community and the claim is based on the mother's caste status, then the claimant has to establish that the claimant was brought up by the mother, within the fold of the Scheduled Caste/Scheduled Tribe to which the mother belongs and prove that the claimant suffered the deprivations,

indignities, humiliations and handicaps like any other member of his mother's community. If the claimant relies on the caste of his father to substantiate his claim of belonging to a Scheduled Caste/Scheduled Tribe, then on establishing the caste of his father, the claimant discharges the burden cast on him and the presumption takes effect. This presumption, however, is rebuttable by the 14 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C State or in the present case by the Expert Agency constituted under Art 11/1996. (iv) The Caste Certificate issued by the Competent Authority is not conclusive as per the provisions of Act 11/1996 and is subject to verification by the Screening Committee and the Scrutiny Committee. (v) The report of the Expert Agency is conclusive proof, for or against the Scheduled Caste or Scheduled Tribe claim, unless the same is found contrary by the Scrutiny Committee. (vi) Though not conclusive when the Competent Authority under the Act has issued a Community Certificate after due process, then to unsettle the claim there should be sufficient cogent material evidence to disprove the claim.

15. Therein the claimant being the progeny of an inter-caste marriage and the father admittedly belonging to the Scheduled Caste, had a presumption in her favour, which was found to have been not rebutted by the authorities under the Act and Rules. In the present case, there is a distinction insofar as the petitioner's father admittedly belongs to the forward community and the burden is on her to prove that she belongs to the Scheduled Tribe; the community of her mother. 15 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C16 The petitioner herein does not have any presumption in her favour, since her father belongs to a forward community. Though she had been issued with a certificate by the competent authority under the Act of 1996, Section 6 of the Act requires the applications claiming such reservation in admissions to be scrutinised by a Screening committee constituted by the Government. If the Screening Committee is of the opinion that any applicant, who made such a claim does not belong to the Scheduled Caste or the Scheduled Tribe, it is also provided by sub-section 2 of the Act that, the claim for reservation shall be rejected, subject however to the remedies available under Sections 8 and 13 of the Act.

17. In this context, the futility of the petitioner's exercise at litigation before this Court assumes significance. The Screening Committee in scrutinising the claim for reservation had sought for an expert opinion from the expert agency appointed under the Act, being the KIRTADS. The 16 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C Anthropological report with respect to the petitioner herein is produced as Ext.P8. The KIRTADS found on enquiry that there is nothing to indicate that the petitioner had suffered the disabilities of the community of her mother. It was also found that she was not brought up as a member of the community. The specific finding in the enquiry report was that, her father was a native of Trivandrum and her mother from Idukki. The mother admittedly belongs to a Scheduled Tribe by name Hindu-Ulladan and hails from Idukki. But, however after marriage, the mother migrated to Trivandrum. The petitioner is also said to have been born and brought up in Trivandrum, without suffering the disabilities of the community of her mother.

18. In the context of the enquiry report, the certificate issued by the competent authority pales into insignificance; since there is no conclusiveness attached to the certificate. The burden hence rests squarely on the shoulders of the petitioner to prove that she had in fact suffered the disabilities of the 17 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C community and was brought up in the social milieu of the particular Scheduled Tribe. The petitioner could have gone before the Scrutiny Committee as constituted under Section 8 of the Act or before the Government as provided under Section 13 of the Act. The petitioner chose however to file a writ petition before this Court.

19. In the said writ petition of the year 2007, the Anthropological Report was produced and it was argued that the petitioner in fact belongs to the Scheduled Tribe community and is entitled to the reservation. The Government filed a counter affidavit and on verification of the Judges Papers, it is found that they had produced the copy of the decision of the Screening Committee dated 30.06.2007, which was communicated to the petitioner also, as Ext.R2(a) in that writ petition. The Screening Committee accepted the report of the enquiry agency and it could not have done otherwise since the enquiry conducted by the expert agency is as provided under Section 9 of the Act. 18 W.P.(C) No.30863 of 2013 - G and 16423

of 2015 - C Section 9(2) of the Act provides that the report of the expert agency shall be conclusive proof for or against the Scheduled Caste or Scheduled Tribe claim, unless found contrary by the Scrutiny Committee. Hence the expert agency's report could have been only challenged before the Scrutiny Committee. Probably due to the expediency of the situation brought about by the impending admissions for the year 2007-08, the petitioner approached this Court. But the subsequent events reveal the futility in having pursued the matter before this Court.

20. The petitioner did not obtain any interim order, in the writ petition of 2007. The matter remained as such before this Court for six years. In the meanwhile, it is admitted that the petitioner had obtained admission for B.D.S course in the general quota and now has completed her degree course. The earlier writ petition came up for hearing in 2013 and the Judges Papers indicate that after issuing notice on 18.07.2007, the petitioner had not pursued the matter diligently. When the 19 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C matter came up for hearing, this Court found that the petition had become infructuous. None brought to the notice of the Court that there is an order of the Screening Committee. The Court directed that the Anthropological Report dated 25.03.2007 be considered by the Screening Committee. The Screening Committee had already considered the same and as noticed above, the order was produced as Ext.R2(a) in the counter affidavit of the Government. That report was dated 30.06.2007 and also communicated to the petitioner.

21. The petitioner never chose to file a review but chose to go before the Screening Committee once again. The Screening Committee again considered the objections of the petitioner and rejected it by Ext.P12 order, which is the subject of challenge in the instant writ petition. The present writ petition also was not diligently pursued. In the year 2015, when the entrance examinations were scheduled, the petitioner alleges that she applied as a Scheduled Tribe candidate. She could not 20 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C have done so since there would not have been any certificate produced for reason of the Anthropological Report of the year 2007 and the findings of the Screening Committee by which her claim for reservation as a Scheduled Tribe candidate

stood negatived.

22. In any event, the petitioner fully knowing of such orders against her, is said to have applied under the Scheduled Tribe category. The petitioner then having appeared for the examination and when the results were published, turned around and filed an interlocutory application before this Court, seeking for reservation of one seat earmarked for the Scheduled Tribe.

23. The learned counsel for the petitioner even now would urge that, the Screening Committee had not considered the evidences produced by the petitioner pursuant to the judgment of this Court as is indicated in Ext.P11. As was noticed above, the Screening Committee could not have differed from the opinion of the expert agency. That power was specifically 21 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C conferred on the Scrutiny Committee and the petitioner never chose to take that remedy. The petitioner is guilty of laches insofar as having approached the Screening Committee for a second time when there was already an order of the Screening Committee, which was never set aside by this Court.

24. The learned Counsel for the petitioner would fervently plead that, this Court could look into the evidences and pass a declaration. However, the discretionary remedy available under Article 226 of the Constitution of India is to be invoked sparingly, especially not when alternate remedies are available. Further the evidences produced herein do not commend such a pre-emptive declaration. Exts.P1 and P2 were issued, way back in the year 1994 and the same were as per the then existing Government Orders. At that point of time there was also considerable flux, as to the determination of caste status of a progeny of an inter-caste marriage. Ext.P3 and the various instances where the petitioner asserts to have been conferred 22 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C with a benefit of a Scheduled Tribe, in the school years, would only indicate that she had enjoyed that benefit, when she was pursuing her academics, at the school level. That alone would not suffice to indicate that the petitioner in fact suffered the disabilities of the community in which her mother belonged and was brought up in such social milieu. The petitioner was also born and brought up at Trivandrum,

distant from the Idukki, where her mother's family resided.

25. Ext.P4 certificate of the Competent Authority being not conclusive was found to be bad by the expert agency and also by the Screening Committee. The petitioner could not have reiterated the claim of a Scheduled Tribe candidate in the academic year 2015-16 without interference to the findings of the Screening Committee in the year 2007.

26. The learned Counsel for the petitioner would also strenuously contend that the petitioner is the only Scheduled Tribe candidate available and she would be deprived of her 23 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C rightful claim if this Court does not consider the issue on merits. The fact that the petitioner is the only Scheduled Tribe, who is allotted to the PG course would be secondary to the consideration of whether she is in fact a Scheduled Tribe. The reservation is specifically conferred on the persons, who have suffered disabilities and the spirit and principle of such reservation granted, would be violated if it is conferred on a person who has not, in fact, suffered such disabilities. The Hon'ble Supreme Court too has often emphasised the need to ensure reservation to those who are rightfully entitled to it and cautioned against conferring such benefit to those not legally eligible.

27. Further, though a Scheduled Tribe candidate is not available in the list, there is a Scheduled Caste candidate waiting in queue, who admittedly has suffered the disabilities and is eligible to reservation. The policy of reservation being such that which enables seat reserved to one community being conceded 24 W.P.(C) No.30863 of 2013 - G and 16423 of 2015 - C to another, would render insignificant the fact that the petitioner is the only Scheduled Tribe candidate.

28. This Court already has expressed its opinion about the inability or rather the disinclination of this Court to exercise the discretionary extra ordinary remedy under Article 226 to interfere with the orders of the Screening Committee. The petitioner had sufficient efficacious remedies, which the petitioner failed to avail. True the writ petition was admitted and was pending long before this court, but even then it may not be proper for this Court to, at all look into the Anthropological Report or the opinion of the Screening committee, since that would require

examination of facts. The Screening Committee's findings cannot be interfered with, since the expert agency's report as far as the Screening Committee is concerned with, would be conclusive. The report of the expert agency is based on the enquiry committed and facts revealed on such enquiry. The Scrutiny Committee alone, could interfere with the factual findings entered into by the expert agency. The voluminous evidences, alleged to be produced before the Screening Committee is of no consequence and does not at all commend the reversal of the factual findings in the report of the expert agency.

29. In such circumstance, the writ petition would stand dismissed leaving open the remedies available to the petitioner before the Scrutiny Committee and the Government. This Court is conscious of the fact that such a remedy at this point of time would be grossly delayed and would not in effect be helpful to the petitioner, atleast for the admission to the P.G course. The petitioner could definitely take the remedies available under the Act even at this delayed point, since the report discloses that the petitioner has a brother, younger to her and he also would stand to be disentitled for reservation if the findings against the petitioner becomes conclusive. The petitioner would be entitled to raise the issue before the Scrutiny Committee, within a period of one month from the date of receipt of the certified copy of this judgment. The writ petition in W.P.(C) No. 30863 of 2013 would stand dismissed.

30. In the context of the dismissal of the earlier writ petition in which there was a reservation of one seat earmarked for the Scheduled Tribes, necessarily the next candidate in the Scheduled Tribe community or in the community to which the seat is conceded should get admission. In W.P.(C) No. 16423 of 2015, it is asserted that the petitioner is the next candidate eligible for admission, being a Scheduled Caste candidate. If it is so and the petitioner therein satisfies that criteria, the admission to the reserved seat should definitely go to him. The Government shall take a decision on the same within one week from the date of receipt of a copy of this judgment. The allotment hence shall be made and the next eligible student admitted, de hors the fact that the last date of admission is over. The situation occurred only by reason of the 27 W.P.(C) No.30863 of 2013 - G and 16423 of

2015 - C interim order passed by this Court and an eligible student should not be disentitled for that reason alone. In the result, W.P.(C) No. 30863 of 2013 would stand dismissed with the above reservation and W.P.(C) No.16423 of 2015 is disposed of with directions. Sd/- K. VINOD CHANDRAN, JUDGE SB // true copy // P.A to Judge.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com