
(2013) 01 KL CK 0031

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18984 of 2012

Aebrin K. Paul

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 ILR (Ker) 354 : (2013) 2 KHC 361 : (2013) 2 KLJ 158

Hon'ble Judges : K.M. Joseph, J;K. Harilal, J

Bench : Division Bench

Advocate : S. Sreekumar, K. Abdul Jawad and Mathew A. Kuzhalanadan, for the Appellant;

Final Decision : Allowed

Judgement

K. Harilal, J.—The petitioner is an aspirant for admission to the Medical Course, namely Bachelor of Medicine and Bachelor of Surgery (MBBS) course for, the year 2012. He appeared for the Entrance Examination 2012 and secured Rank No. 4675. He is a Christian by faith and belongs to Orthodox Syrian Community. As per the scheme of admission, the respondents 1 and 2 had approved a quota namely minority/community quota in private self financing colleges belonging to each community. Out of 50% seats available in Government quota, 30% will be allotted to the candidates belonging to the respective community of such colleges. Malankara Orthodox Syrian Church Medical College, Kolenchery is the only college in private self financing sector run by the religious denomination of the petitioner. The petitioner is entitled to claim the said quota. For the said purpose, it is stipulated by the second respondent that candidates should register their names in the prescribed proforma along with a community certificate issued by the Village Officer. The petitioner registered his claim and submitted Ext.P1 application in the prescribed proforma within the time. He also produced Ext.P2, the original community certificate issued by the Village Officer. As per the instructions, the 2nd respondent has not stated that the certificate of the Vicar

should be attached in original. On the other hand. Ext.P3 general instructions by the 2nd respondent clearly shows that the original certificate should be produced before the Principals concerned after the allotment. In the above context, the petitioner produced a copy of the said certificate attested by a Gazetted officer before the 2nd respondent. Ext.P4 is the true copy of the Vicar's community certificate and Ext.P4(a) is the true copy of the concerned notification dated 20/06/2012 of the 2nd respondent. Ext.P4 (a) has not required the production of original certificate by Vicar. The petitioner has a valid claim in minority quota. He submitted the application with the certificates in time. But the second respondent without giving any opportunity rejected the application of the petitioner on the reason that the original of the Vicar's certificate is not produced along with the application. The rejection of the application was also not properly communicated. The petitioner came to know about the same when his name was not considered in the third round allotment. When the petitioner made an enquiry personally at the 2nd respondent's office at Thiruvananthapuram, he was furnished with Ext.P5 common communication kept with them. In the third allotment the 2nd respondent gave allotment in the minority quota for Malankara Orthodox Syrian (Mx) to Rank No. 4842 which is below the petitioner's rank. The claim of the petitioner is illegally rejected and the second respondent gave allotment to a lesser rank holder. Ext.P6 is the true copy of the said third round allotment details. The conduct of the second respondent constitute arbitrariness and illegality warranting interference of this Court under Article 226 of the Constitution of India. In the above circumstances, the petitioner filed this writ petition with the following prayers:

- i) to issue a writ of certiorari quashing the original of Ext.P5 to the extent it relates to the petitioner and all consequential or preceding proceedings if any pursuant to it;
- ii) to issue a writ of mandamus commanding the respondents to include the petitioner also in the category of minority/community quota and to issue to him appropriate allotment according to the order of merit in the rank list to the institution, that he has chosen.

2. The second respondent filed a counter affidavit denying all allegations in the writ petition except the extent to which they are specifically admitted. According to the counter affidavit, the petitioner is not entitled for seeking a relief for writ of mandamus, since he has no legal right. It is admitted that the petitioner has appeared for Entrance Examination with Roll No. 153147 and secured rank No. 4675, The petitioner's application to community quota was rejected for the specific reason that the application was not accompanied by original of the community certificate issued by the Vicar of the Parish countersigned by the Bishop. Though the petitioner was given an opportunity to cure the defect, he did not opt for the same and therefore, not entitled to pray for further reliefs. As per Ext.R2(a) notification dated 20/6/2012, the candidates must have submitted application for minority quota before 25/6/2012 and later it was extended upto

30/6/2012 by Ext.R2(b) notification. It was specifically stated in Ext.R2(a) that the authority to issue certificate for proving community is a Vicar of Parish counter signed by the Bishop. The candidates, who applied for minority/community/trust/society quota for considering under Malankara Orthodox Syrian quota in Malankara Orthodox Syrian Church Medical College, Kolenchery, Ernakulam, should produce the original certificate from the Vicar of Parish counter signed by the Bishop. The name of community is the valid factor and the Vicar of the Parish should mention the name of the community in the certificate. But the petitioner has produced a copy of the certificate which does not mention the name of the community in question. Hence, the application was not considered. The list of candidates who have applied for the said quota seats under the listed colleges had been published by the second respondent on 18/7/2012 for filing complaints if any before the Commissioner for Entrance Examination within 21/7/2012. Thus the petitioner has got an opportunity to produce the original documents. It is pertinent to point out that by virtue of Ext.P5 list, the roll number of candidates whose applications for inclusion in community/minority/trust quota were rejected was published with specific reasons on 18/7/2012. It is shown in Ext.P5 that the petitioner's application was rejected for the reason that only photo copy of the certificates are attached. Based on the complaints, a revised quota list was published on 22/7/2012. But the petitioner did not file any complaint. The second phase of allotment was on 23/7/2012 and the third allotment was on 5/8/2012 and the fourth phase of allotment was on 21/8/2012. As on 10/8/2012, there was no seat vacant for MBBS course at Malankara Orthodox Syrian Church Medical College, Kolenchery under any category. However, on 13/8/2012, it was submitted on behalf of the college that one person did not join and there is one vacancy in the community quota. In that context this Court issued an interim order directing the 2nd respondent to admit the petitioner provisionally. In compliance with the interim order dated 13/8/2012, the petitioner was provisionally allotted to the vacancy in MBBS arose on the non-joining of Shri Seemanth Varghese, reported by the Principal of the 3rd respondent College. After the fourth round of allotment, the petitioner's allotment was not challenged by anybody else. However, after petitioner's allotment, no other eligible candidates challenged the petitioner's allotment and the allotments already made became final subject to the final orders of this Court. If allotments already made are disrupted, it will affect the admission process already concluded. Hence, prayed for passing appropriate orders in the writ petition.

3. The petitioner filed a reply affidavit denying the allegations against the petitioner in the counter affidavit. The averments that the petitioner should have produced the original certificate of the Vicar of the Parish counter signed by Bishop is not based on the stipulations in Exts.P1, P3 and P4(a). The copy of the community certificate produced by the petitioner as well as the certificate issued by the Revenue Officials unambiguously reveal the petitioner's community and satisfy the requirement for admission under community quota. There is no

stipulation either in Exts.P1, P3 or P4(a) requiring to produce original of the community certificate issued by the Vicar and counter signed by the Bishop, In Ext.P4(a), the only requisite condition was to produce community certificate attested by the Revenue Officials and the petitioner had produced Ext.P2 community certificate, which satisfies that requirement. However, he also produced attested photocopy of Ext.P4 community certificate issued by the Vicar and counter signed by the Bishop, in time. Since there was no requirement to produce the original of the certificate issued by the Vicar, he was under the firm belief that his application was complete and proper in all respects. There was no room to doubt the correctness of his application. So he did not verify the portal of respondents. Moreover, in the locality where the petitioner resides the accessibility to website is very feeble. Moreover, the portal of the Entrance Commissioner will be very busy and most of the time it will get jammed and become inaccessible. Since there was no requirement to produce the original community certificate, the petitioner cannot be found fault with for non-production of original community certificate. Even the prospectus does not stipulate any opportunity to rectify mistakes, if any, or laches on his part in not producing the original of the community certificate.

4. We heard Shri S. Sreekumar, Senior Counsel for the petitioner and Shri Roshan D. Alexander, the learned Government Pleader.

5. The question to be considered is whether the stipulation to produce original Community Certificate issued by the Vicar of the Parish, counter signed by Bishop along with the application is discernible or decipherable from the prospectus or Ext.P1 proforma or any other subsequent notifications issued by the 2nd respondent? Whether there is any room for doubt with respect to community/caste certificate required to be produced along with the application on a conjoint reading of prospectus, Exts.P1, P3, P4(a) and R2(b). Certainly, it is a factual issue having legal implications.

6. Ext.P1 is a proforma dated 22/6/2012 for submission of candidate's details, Ext.P3 is the list of allotments and last ranks dated 8/8/2012, Ext.P4(a) is a Notification dated 20-6-2012 regarding allotment of seats in Minority/Community quota of self financing colleges and Ext.R2(b) is Press Release dated 23/6/2012. These are the exhibits which indicate the documents required to be produced along with the application and the manner of allotment of seats from community/caste quota. What are the documents required to be produced along with the application as per the above exhibits and prospectus? We may examine the stipulation in each exhibit requiring production of documents along with the application for getting seat in community/caste quota. The relevant portion in Ext.P1 is extracted below:

Note:- (i) For claiming Minority/Community quota, attach Community Certificate obtained from Revenue Officials.

Relevant portion in Ext.P3 is extracted and given below:-

Candidates should report to the Principal of the allotted colleges along with original documents, take admission and remit balance fee at the college, if any, as per the schedule from 06.08.2012 to 08.08.2012.

7. Relevant portions of Ext.P4(a) relied on by the 2nd respondent and the petitioner, is extracted as below:

8. Learned Government Pleader relying on the aforesaid extracted portion of Ext.P4(a) strenuously contended that a stipulation to produce original Community/Caste Certificate issued by Vicar of the Parish and countersigned by the Bishop along with the application is obviously discernible from Ext.P4 (a). Is it possible without leaving a room for doubt? We are of the opinion that it is not possible, particularly in view of specific stipulations in Prospectus, Exts.P1, P3 and P4(a). When documents required to be produced along with the application are specifically as well as explicitly indicated in Prospectus, Ext.P1 produced by the candidates who are desirous of applying for community quota", is the Community/Caste Certificate issued by the Revenue Authority only. This is supported by Ext.P1, which includes a note, which stipulates that for claiming Minority/Community quota, attach certificates obtained from Revenue Officials. Ext.P3 requires production of original documents before the Principal at the time of admission.

9. Had the second respondent stipulated the need for production of original community/caste certificate issued by the Vicar either in the "Note" of Ext.P1 or in the heading above the tabular column or under the caption "documents required to be produced" shown below the tabular column of Ext.P4(a), the whole confusion could have been avoided without leaving a room for doubt.

10. But the counsel for the second respondent argued that an opportunity to cure the defect was given to the candidates by publishing the roll numbers of rejected applications in the website and the petitioner did not opt for the same. This argument also appears to be unsustainable in view of the absence of any communication, which gives such an opportunity in any of the notifications or in the proforma. None of the documents indicates such an opportunity to the applicant. Therefore, such publication of rejected applications could not have made the applicant to avail such an opportunity.

11. Similarly, the counsel contended that last date of submission of the certificates has been extended till 30/6/2012 by Ext.R2(b) notification. So, the applicants got more time to produce community/caste certificate issued by Vicar. What does Ext.R2(b) mean and indicate? It does not indicate anything about the non-production of community/caste certificate issued by the Vicar of Parish. Ext.R2(b) simply extended the period of submission Without referring to the nature of certificate required. Relevant portion of Ext.R2(b) is extracted below:

The averments in the counter affidavit that Ext.R2(b) specifically states that the authority to issue certificate for proving community is Vicar of Parish is not correct.

12. Had the 2nd respondent given a press release specifically requiring submission of original community certificate issued by the Vicar of Church along with application, the confusion which arose on a conjoint reading of the Prospectus, Exts.P1, P3 and P4(a) in this writ petition could have been avoided. We notice the rejection of a large number of applications in Ext.P5 on the reason that only photocopies are attached.

13. Strangely, both parties did not raise any argument based on "Prospectus". We directed the Government Pleader to produce the prospectus for the year 2012 and address at the Bar on the basis of prospectus. The learned Government Pleader drew our attention to "introduction" of the Prospectus and pointed out the direction that candidates are requested to visit the official web site of the Commissioner for Entrance Examination "www. ceekerala.org. regularly for notification and announcements. More importantly, he would point out that it was after the prospectus was issued that Government entered into agreement with the self financing institutions in question and it was at their behest that the condition regarding proof of community was provided for. That is, the prospectus is dated 28/12/2011 and the order based on the agreement is dated 31/5/2012.

14. Per contra, the learned counsel for the petitioner drew our attention to headline in the cover page of the Prospectus, which is extracted below:

BASIC REQUIREMENTS FOR APPLYING ONLINE.

(5)(b) Community Certificate: If you have any claim for communal reservation/ fee concession, please download the format of the community certificate and get it certified by a Village Officer/Tahsildar.

Again under clause 5.4.2(b), it is stipulated as follows:

Candidates belonging to Ezhava, Muslim, other Backward Hindus, Latin Catholic other than Anglo Indian, other Backward Christian and Kudumbi communities, claiming reservation under SEBC Quota should invariably produce both community and income certificates obtained from the Village officer concerned. The above certificates, should be obtained in the prescribed format along with the application itself.

15. Going by the prospectus, we find that the requirement of community certificate issued by the Vicar of Church is not stipulated in the Prospectus. In answer to our specific query on instructions, the learned Government Pleader submitted that the need for community certificate issued by Vicar of Parish, warranted by subsequent developments after the publication of Prospectus, and candidates were not informed of the need by press release and it was informed by Ext.P4(a), which we have already found confusing and inconsistent with Exts. P1 and P3 and prospectus.

16. Relying on the direction in the prospectus to visit the web site regularly, the Government Pleader submitted that notifications were put in the web site then and there so as to alert the applicants, and the applicants ought to have

responded to such notifications within the time. Did we attain complete Internet accessibility? At this juncture, it is worthy to have a look at the statistical report prepared and published by a Government Agency, the National Sample Survey Organization (NSSO) for the period 2009-10. "All India level only about 0.4 percent of rural households have access to Internet at home as compared to about 6 percent of urban house holds", i.e. Less than half percent of families having Internet facility at home-Reflecting the digital divide in India, the study said just 3.5 households per 1.000 families, had access to internet services at home in rural areas in the year. Do the entire villages in India or at least in Kerala have Internet Cafes? Even in Kerala, there are so many villages having no Internet Cafes. At this juncture, the argument advanced by the counsel for the petitioner relying on the averments in the reply affidavit that the locality where the petitioner resides accessibility of website is very feeble and portal of the Entrance Commissioner will be very busy and most of the time it will get jam and become inaccessible cannot be brushed aside.

17. We must remember that even in this period of tight competition to the professional course like MBBS, by making up children competent through intensive and rigorous tutoring, a few brilliant students who belong to families of down troddens living below the poverty line and dwelling in remote villages are securing seats of professional course, despite all adverse circumstances because of their untutored, unattended and inherent brilliance. Do they have the facility to check up the website of the second respondent on a day to day basis as required by the second respondent?. Where do they get such Internet facility? Though a few or minority, we cannot forget their interest or ignore their difficulties. We draw the attention of the second respondent to this ground realities of people, who are residing in remote villages also. Public authorities have a bounden duty and responsibility to adopt a method acceptable and convenient to common man especially weaker sections of the society also.

18. We understand the convenience of giving information through web site and further online sending and processing of application. But the up shot of the above discussion is that it is for the second respondent to prepare with all circumspection and publish a full fledged and impeccable Prospectus containing all procedures and all documents or certificates required to be produced. If any document or certificate is required to be filed along with application to claim any kind of reservation in addition to the documents specified in Prospectus or Proforma the Commissioner of Entrance examinations will bear in mind desirability of informing the candidates of the additional requirements by a press release also requiring to submit additional documents so as to avoid piecemeal instruction through website and regular visit of the web site, without leaving a room for doubt. Can we expect that all candidates have Internet facility so as to visit web site regularly for a period of two months till the completion of admission process. Public. Authorities cannot shirk their responsibility or escape from their liability, by putting everything in the website, on a day to day basis in a period when internet accessibility is a dream to common man.

19. In *Dolly Chhanda Vs. Chairman, JEE and Others*, on a similar set of facts, the Apex Court held that in the matter of submission of proof, it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

20. We may quote the principle explained and applied by Justice V.R. Krishna Iyer in *Charles K. Skaria and Others Vs. Dr. C. Mathew and Others*, an identical case wherein the matter relates to delayed submission of certificate for admission to post graduate course in medicine.

But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardships and harassment in administration flows from overemphasis on the external rather than the essential.

21. The general rule is that while applying for a course of study, there could be no relaxation in the matter of submitting all required documents to prove the eligibility. The eligibility has to be established by producing necessary certificates for claiming benefit of reservation. In the instant case, we are inclined to take into account the factum of laches from the part of second respondent in the matter of not specifically indicating the requirement of original caste certificate issued by the Vicar in Ext.P1 or under specific stipulation in Ext.P4(a). In fact Ext.P1 and P4(a) refers to G.O. No. 1814/2012 dated 31-5-2012, the agreement with the management referred to in the counter affidavit. Therefore, the requirement of community certificate issued by Vicar of Parish could have been specifically stipulated either in Ext.P1 or P4(a). According to the petitioner, she came to know the rejection of her application only when she got the information that in the third allotment, a candidate having lesser rank than the petitioner secured admission. So, certainly, had she produced original certificate issued by Vicar of Parish along with the application, she could have secured admission in third allotment. Was the candidate in fact eligible to get admission? This is the primary question. It is necessary to produce proof also. But proof is secondary. Academic excellence cannot be defeated by late production of proof when it was caused by lack of circumspection and care of the Public Authority.

22. Considering the positive answer to the primary question which we have raised above, on 13/8/2012, we have passed an interim order directing the

second respondent to provisionally allot the petitioner for MBBS seat in the third respondent's college. It was before closing of third round allotment when one seat fell vacant.

23. In view of the decision quoted above, depending upon the facts, there could be some relaxation in the matter of submission of original caste certificate particularly when with abundant caution, the petitioner submitted copy of the same along with the application. We are of the opinion that the submission of community/caste certificate along with application said to have been stipulated in Ext.P4(a) leaves room for doubt or misunderstanding in view of stipulations in Ext.P1, Ext.P3 and specific direction to produce caste certificate issued by the revenue authorities in Ext.P4(a).

24. In the counter affidavit filed by the second respondent, it is stated that after the 4th round allotment, the petitioner's allotment was not challenged by anybody else. If allotments already made are disrupted, it will affect the admission process already concluded. We quash Ext.P5 in so far as it relates to the petitioner and we are inclined to make the interim order dated 13/8/2012 absolute. Consequently, the admission given to the petitioner provisionally pursuant to the interim order dated 13/8/2012 is made absolute.

The writ petition is allowed accordingly.