

(1999) 11 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No's. 17988 of 1999 and Connected Cases

Jerry Joseph

APPELLANT

Vs

Commr. of Entrance Examinations

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Constitution of India, 1950 — Article 15(4)

Citation : (2000) 1 KLJ 568

Hon'ble Judges : M.R. Hariharan Nair, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : C.P. Sudhakara Prasad, K.P. Dandapani, Vanaja Madhavan, Elvin Peter P.J., S. Ramesh, P.N. Santhosh, S.D. Asokan, for the Appellant; K. Jayakumar (Sr.G.P.), for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—These writ petitions have been filed seeking a direction to the Commissioner for Entrance Examinations to accept the community and income certificates issued by the Village-Officers concerned and to give admission to the applicants under the quota earmarked for Socially and Educationally Backward Classes (in short "SEBC) to the Professional Degree Courses for the year 1999. Commissioner for Entrance Examinations published Prospectus for admission to Professional Degree Courses (Engineering, Medical and Agricultural Courses) 1999. Prospectus sets out the rules and regulations for selection and admission to the various professional courses in the State. Prospectus also provided for reservation of seats for different categories of which we are concerned with clause 4.1(d) which deals with mandatory reservation, particularly clause 4.1.4 which says that leaving the seats set apart for the All India Quota, Government of India Nominees, Special Reserved Quotas, Management Quota and NRI Quota, if any, the remaining seats for each course will be distributed as per the mandatory reservation principle contemplated in G.O.(P) 208/66/Edn. dated 2-5-1966 as modified from time to time. All together

25% of the seats are earmarked for SEBC out of which 9% is reserved for members of the Ezhava community, 8% for muslim community, 2% for Latin Catholic Other than Anglo Indian, 1 % for Other Backward Christian and 5% for Other Backward Hindu.

2. Claim for communal reservation is also specifically provided in clause 5.3. Clause 5.3.3 deals with claim for communal reservation under SEBC which says that candidates claiming reservation under SEBC should invariably produce both community and income certificates obtained from the concerned in the body of the application form itself. With regard to income certificate it is stated that the candidates belong to SCBC whose annual family income (i.e. annual income of all members in the family from all sources taken together) is below Rs. 42,000/- are eligible for reservation under the said item. Note to clause 5.3.3. says that salary excluding DA, HRA, Special Pay, Deputation Pay/Allowances, etc. will be reckoned for calculating total income. In cases wherein portion of DA has been merged with Pay declaration will be filed by the persons concerned. TA/PTA Honorarium for Special work etc. will be excluded for calculating salary income. Reference was also made in the Note to G.O.Ms. No. 192/85/RD dated 23-3-1985.

3. Guidelines for assessment of income for the purpose of issuing income certificate are dealt with in Annexure X of the Prospectus. The Village Officer concerned shall be the authority to issue income certificate that is required to be produced before the State Government Department or authorities. Annexure XI also deals with item-wise instructions to fill the application form. Clause II(i) deals with reservation under SEBG wherein also it is provided that candidates belonging to communities listed under SEBC whose annual family income is below Rs. 42,000/- are eligible for communal reservation under SEBC and if the income exceeds the limit of Rs. 42,000/- they are eligible for communal reservation under payment seats.

4. Applicants in all these cases are admittedly members of the communities which come under SEBC. Therefore if the applicants' annual family income is below Rs. 42,000/- they are eligible for admission under SEBC as per the Prospectus. In all these cases applicants' parents are either Central or State Government employees or similar institutions. In the year 1996 when the Kumara Pillai Commission report was given effect to the income limit fixed for giving admission to various professional degree courses in the State was Rs. 6,000/-. Later Government vide G.O.P. No. 126/94 dated 28-9-1994 ordered that the benefit would be given to the communities mentioned under SEBC, if the limit of their annual family income is Rs. 42,000/-. This limit was incorporated in clause 5.3.3 of the Prospectus. Later by the Fifth Pay Commission report, salary of the Central Government Employees also consequently the State Government employees and other similar institutions was enhanced. If the income from salary is reckoned by the Village Officers on the basis of the current revised pay-scale applicable to Central and State Government employees and other similarly placed institutions, children of those employees could not have claimed reservation

under SEBC quota as per the prospectus.

5. Government after publication of the Fifth Pay Commission Report noticed that very many persons even after publication of the 5th Pay Commission Report were receiving actually the salary in the pre-revised scale of pay. Government felt that this situation would cause difficulties in issuing income certificate for professional degree courses for the year 1999. Government therefore issued an order G.O.K. No. 40/99 dated 13-4-1999 directing the authorities concerned to issue income certificates in the case of employees of Central and State Governments and other similarly placed institutions on the basis of pre-revised scale of pay. Based on the above mentioned Government order, the applicants total family income would have been below Rs. 42,000/- on the basis of pre-revised pay.

6. Complaint of the petitioners is that since the Government Order was not made available to the various Village Officers in the State, many of the Village Officers were reluctant to issue income certificates on the basis of pre-revised pay scale. In the case of petitioner in O.P. No. 19300 of 1999 Village Officer, Thiruvalla, inspite of the Government Order dated 13-4-1999, issued income certificate to the applicant on the basis of new scale of pay at Rs. 94,608/-. If the applicant's family income is reckoned on the basis of pre-revised scale of pay, it is not disputed, the income would have been below Rs. 42,000/-. In fact the same was so certified by the Village Officer later vide certificate dated 26-7-1999. This is the case in the case of many of the applicants.

7. Government while issuing Government order dated 13-4-1999 evidently wanted to give the benefit of reservation to those persons whose annual family income is below Rs. 42,000/-. Petitioners maintained the stand with reference to Ext.P2 in O.P. No. 19300 of 1999 and Ext.P3 in O.P. No. 19326 of 1999 that the Government order dated 13-4-1999 was in fact despatched from the Collectorate of Pathanamthitta, and Ernakulam respectively to Village Officers on 20-5-1999 and 26-5-1999. So also in the case of various other Collectorates in the State certificate from the Village Officer, Pathanamthitta. However, Ext.P2 Government order was despatched from the Collectorate, Pathanamthitta only on 20-5-1999. Petitioner in O.P. No. 19326 of 1999 made an application for income certificate before the Village Officer, Maradu which comes within Kanayannur Taluk, Ernakulam Dist. Government order shows that it was ordered to be despatched from the office of the Collectorate only on 26-5-1999. It was actually despatched from the office only on 29-5-1999. It is also learnt that the said order was received in the Taluk Office only on 5-6-1999. Appeal memorandum, WA No. 2300 of 1999, itself says that the date of invitation of applications was 19-4-1999 and the last date for receipt of applications was 12-5-1999. Facts reveal that the Government order, which was issued to have uniformity in issuing income certificates by the Village Officers concerned, was received in those offices only after the last date fixed for receipt of applications by the Commissioner for Entrance Examinations.

8. Learned Government Pleader submitted that eventhough copy of the

Government order was received by some of the Village Officers late, the same was published in the Kerala Kaumudi daily dated 24-4-1999 as well as Malayala Manorama daily dated 23-4-1999. Consequently the Village Officers and the general public were aware of such an order and the applicants should have availed of the benefit of the Government order. Further it was contended that some applicants similarly placed submitted income certificate on the basis of pre-revised scale of pay in time. According to him, since Village Officers were made known through paper publications, they should have issued certificates on the basis of pre-revised scale of pay. In any view learned Government Pleader submitted that applicants cannot be allowed to submit fresh income and community certificates after the last date fixed for receipt of applications which is prohibited under clause 7.8 of the prospectus. Reliance was placed by the learned Government Pleader on the decision of a Division Bench of this court in *Simi Raj Vs. Commr. for Entrance Exmns*, .

9. We are of the view that it is difficult to accept the stand of the Government. The mere fact that news item appeared in some newspapers would not mean that all the Village Officers should act accordingly. Facts reveal that some of the Village Officers were reluctant to issue income certificates on the basis of pre-revised scale of pay unless and until they get the Government order. We notice that this has caused difficulties to many persons who are otherwise eligible to get reservation under SEBC. This has definitely affected the members of communities listed under SEBC.

10. We are of the view that when State Government decides to give benefit of reservation to SEBC, which is a mandatory reservation in the Prospectus, it should be given effect to in its letter and spirit. Art. 15(4) of the Constitution of India permits the State Government to make reservation for members of SEBC. As per Government Order dated 13-4-1999 Village Officers are obliged to issue income certificates in a particular manner. Therefore it is the duty of the Government, and its officers to give effect to that Government order in its letter and spirit. It is difficult to believe that members of SEBC would give up the benefit of reservation by their own conduct.

11. Government have got power by clause 1.5 of the prospectus to modify and also to delete various clauses from the prospectus as it may deem necessary. The income limit of Rs. 42,000/- was fixed in clause 5.3.3. Government order dated 13-4-1999 was issued with specific reference to the Entrance Examinations for admission to the Professional Degree Courses for the year 1999. Therefore evidently Government issued order dated 13-4-1999 in exercise of the powers conferred on them by clause 1.5 of the prospectus. Once the prospectus is amended the amendment becomes an integral part of the Prospectus and all changes and additions made must be made known to all concerned. Supreme Court in *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, while dealing with the publication of rules relating to the Karnataka Town and Country Planning Act held as follows:

There can be no doubt about the proposition that where a law, whether Parliamentary or Subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the conscientious good man seeking to abide by the law or from the stand point of Justice Holmes's "Unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known.....

We are of the view that it is the duty of the Government as well as Village Officers to see that income certificates are issued only on the basis of pre-revised scale of pay on the basis of the government order. The non-receipt of government order by the Village Officers is not a ground for defeating the rights of members of communities who are eligible for reservation under SEBC. Article 15(4) of the Constitution of India enables the State to make special provisions for advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes. The object of Art. 15(4) is to recognise the factual existence of Socially and Educationally Backward Classes in our country and to promote the welfare of the weaker sections of the community. It is in line with the said Constitutional provision that the State has given the benefit of reservation for the promotion of the SEBC. Prospectus specifically refers to such reservation as mandatory reservation. Question arises as to whether such a mandatory reservation as provided for the members of the SEBC could be defeated by the delay and laches on the part of the Government in not properly communicating the order in time to the Village Officers in the State. We are of the view that when the State has granted mandatory reservation to members of SEBC an imperative duty is cast on the Government to see that the order they issued for the benefit of those communities should be scrupulously obeyed and complied with by the respective village officers. When there is delay and laches on the part of the Government in giving effect to their order, which was in consonance with clause 1.5 of the Prospectus, they cannot take shelter under clause 7.8 to say that no documents certificates furnished after the last date for submission of applications will be entertained under any circumstances. If the Government acts arbitrarily clause 7.8 would not come to the aid and rescue of the Government, to the disadvantage of the applicants. We are also of the view that the decision referred to by the learned Government Pleader in Simi Raj's case is not applicable to the facts of this case. In this case Government themselves modified clause 5.3.3 of the prospectus. When the prospectus is amended by the Government as already stated it is the paramount duty of the Government while exercising powers under clause 1.5 of the Prospectus to inform all officers concerned of the amendment effected so that all the officers could issue community and income certificates in accordance with the amendment.

We therefore allow all the petitioners to produce community and income certificates at the time of counselling within a period of one week from the date of judgment, if not already submitted. There will be a further direction to the

Commissioner for Entrance Examinations to consider those certificates and to give admission to the candidates in accordance with their rank. Original Petitions are allowed. Since we have allowed O.P. No. 19300 of 1999 and connected cases, W.A. No. 2300 of 1999 filed by the State stands dismissed.