
(1995) 08 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 7330 of 1995-V

K. Sreekala

APPELLANT

Vs

The Manager, S.N.V.T.T.I. and Others

RESPONDENT

Date of Decision : 18-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Ker 102

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : V.P. Seemanthini, for the Appellant; Harikrishnan and Kurian Joseph, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—This original petition is filed by a candidate who applied for admission to the T.T.C. course for the year 1994-96 in the school of which the first respondent is the Manager. In relation to the managership of the school a litigation is pending before the Sub-Court, Alleppey as O.S. 35/87. The Manager was directed to submit the select list of candidates before that Court for approval and only on getting such an approval is he entitled to admit candidates to the course. For the course 1994-96 Manager appears to have prepared a select list of candidates and submitted before the Subordinate Judge's Court, Alleppey on 23-5-94 for approval. From the order on I.A. Nos. 1386/93 and 2488/94 in O.S. 35/87 it appears that the Subordinate Judge has approved the select list dated 23-5-94.

2. Petitioner in O.P. 7330/95 claims to have secured higher marks than the candidates included in the list approved by the Subordinate Judge and so she challenges the selection made by the Manager to the course 1994-96.

3. The same petitioner namely Sri K. Sreekala moved this Court by filing O.P. No. 6753/95 praying for the issuance of a writ of mandamus directing the Deputy

Director of Education, Alappuzha to see that all the management seats for the T.T.C. course 1994-96 in the school run by the second respondents is filled up purely on the basis of merit. When that original petition came up for admission on 25-4-95, I dismissed the same on the basis of the specific averments made by the petitioner in paragraph 4 of the O.P. For a proper understanding of the judgment in O.P. 6753/95, I quote the passage from paragraph 4 which was quoted in the said judgment:

"The 32 seats for the year 1994-96 were allotted to the second respondent's school by the first respondent only on 28-3-1994. It is understood that the management quota seats (4 PDC and 4 SSLC -- total 8) had already been determined by the second respondent and list of 8 candidates to be admitted for the TTC course 1994-96 in the management quota was already forwarded by the second respondent to the first respondent in the last week of March 1994."

Thereupon petitioner filed R.P. 136/95 for reviewing the judgment in O.P. 6753/95. That petition came up before me on 2-5-95. That application was also dismissed because there was no application for correcting the averments made in the O.P. Later petitioner filed C.M.P. 12383/95 praying for correcting the averments in paragraph 4 of the O.P. When that petition came up for orders on 19-7-95, learned counsel representing the petitioner submitted that she is not pressing the same. On the basis of that representation, the petition was dismissed. Thus the judgment rendered in O.P. 6753/95 has become final.

4. Without divulging the disposal of O.P. 6753/95 petitioner filed O.P. 7330/95 praying for the issue of a writ of mandamus directing the Deputy Director of Education, Alapuzha to issue necessary direction to the Manager to admit the petitioner to one of the 4 management seats available to S.S.L.C. candidates for the year 1994-96. That petition was filed in Court on 9-5-1995. It came up before a learned single Judge on 12-5-1995. The learned single Judge ordered urgent notice. Respondents have been served and they have filed counter affidavits.

5. The short question that arises for consideration is whether petitioner who got worsted in getting O.P. 6753/95 is entitled to move this Court again by filing this O.P. without divulging the details regarding O.P. 6753/95. If such a procedure is allowed to be followed any petitioner will be in a position to move this Court any number of times on the ground that earlier petition happened to be dismissed at the admission stage without the Judge going into the merits of the contentions. According to me, it will result an abuse of process of court. It is more so when it is seen that nowhere in this O.P. mention was made of the dismissal of O.P. 6753/95.

6. Learned counsel representing the petitioner brought to my notice Constitution Bench decision of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, to contend that the disposal of O.P. 6753/95 will not operate as *res judicata* in so far as O.P. 7330/95 is concerned. The Constitution Bench in the

reported decision was concerned with the preliminary objection against the maintainability of the writ petition filed under Article 32 of the Constitution on the ground that the petitioner had moved the High Court for a similar writ under Article 226 and the High Court has rejected those petitions. Dealing with that, Their Lordships observed:--

"If a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution."

Their Lordships further went on to state that:--

"It would not be open to a party to ignore the said judgment of the High Court and move the Supreme Court under Article 32 by an original petition made on the same facts for same reliefs."

It was observed that if the petition filed in the High Court under Article 226 happened to be dismissed not on merit but because of the laches of the party, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32. It was also stated that when a petition is dismissed in limine and an order is pronounced in that behalf whether or not the dismissal would constitute a bar would depend on the nature of the order. The decision in O.P. 6753/95 may not strictly come within the scope of Section 11 of the CPC to constitute *res judicata*. But that disposal has been concealed in O.P. 7330/95 while moving for the same relief. Such a practice if allowed to be resorted to by an unsuccessful party, then that practice, according to me, will amount to abuse of process of Court. This issue was considered by the Supreme Court in *State of U.P. and another Vs. Labh Chand*, According to their Lordships, it is well established salutary rule of judicial practice and procedure that an order of a single Judge Bench or of a larger Bench of the same High Court dismissing the writ petition either on the ground of laches or non-exhaustion of alternative remedy, as well, shall not be by-passed by a single Judge Bench or Judges of a larger Bench except in exercise of review or appellate powers by it. Their Lordships categorically stated that when a Judge of the single Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another single Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternative remedy. The view taken by their Lordships is that the single Judge has no jurisdiction to entertain the second writ petition because entertaining of such a second writ petition would render the order of the same Court dismissing the earlier writ petition redundant and nugatory. Their Lordships observed (at p 761 of AIR):--

"If a single Judge could entertain a second writ petition of a person respecting a

matter on which his first writ petition was dismissed in limine by another single Judge or a Division Bench of the same Court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 in that any order by any Bench of such Court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition."

As stated earlier, the petitioner did not make mention of the earlier O.P. 6753/95 filed by her for the identical relief. Immediately after getting the review petition dismissed by order dated 2-5-1995 the second O.P. happened to be filed on 9-5-1995. It was during the second half of the vacation sitting. There was change in the person of the Judge. The Judge who was to have sitting during the second half of the vacation ordered urgent notice since he was not aware of the earlier O.P. filed by the petitioner. Such a practice adopted by the petitioner if allowed to continue, it will lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court. So conceding for argument sake that this court did not enter a finding on merits on the claim of the petitioner for admission to the T.T.C. course while disposing of O.P. 6753/95 the decision may not strictly operate as *res judicata*, but to avoid confusion and chaos in the exercise of jurisdiction under Article 226 of the Constitution, a practice similar to the one resorted to by the petitioner in this O.P. should not be encouraged and it should be curbed at the bud itself.

In view of what has been stated above, I find no merit in this original petition. It is dismissed with costs including Advocate's fee of Rs. 1500/-. Cost is payable to the first respondent in the O.P.