

(1986) 10 KL CK 0045
In the High Court Of Kerala
Case No : W.A. No. 509 of 1986

Kerala Public Service Commission

APPELLANT

Vs

K.P. Karthikeyan and Another

RESPONDENT

Date of Decision : 24-10-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1986) 10 KL CK 0045

Hon'ble Judges : V.S. Malimath, C.J.; V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar, for the Appellant; K. Ramakumar, for 1st Respondent and Govt. Pleader for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

V.S. Malimath, C.J.—This appeal is by the District Officer of the Kerala Public Service Commission challenging the order made by the learned Single Judge in O.P. No. 2347 of 1985 Applications were invited for filling up posts of Lower Division Clerks in the various departments in the State of Kerala. The first Respondent is one of the applicants who made the application. The Public Service Commission has prepared a rank list after holding selection, wherein the name of the 1st Respondent, is included as serial No. 929. For the preparation of the said rank list, the first Respondent was treated as a person belonging to "Other Backward Classes". The rank list became operative from 17th May 1983. The life of the rank list is admittedly three years. Nearly 20 months thereafter, the first Respondent approached the Appellant with a request to consider his claim as a member of the Scheduled Caste and to give him benefit in the rank list on that basis. The claim put forward in his representation dated 23rd January 1985 was that he belongs to "Vannan" community Which according to him is one of the Scheduled Castes. That representation of the 1st Respondent was rejected by the Appellant on 4th February 1985. It is pointed out while rejecting the representation by Ext. P-6 that the 1st Respondent has claimed, in his

application as a person belonging to "Peruvannan", whereas now the claims to belong to "Vannan" community. The 1st Respondent presented O.P. No. 2347 of 1985 on the 4th of March, 1985 praying for issue of a writ in the nature of mandamus directing the Appellant and the State to appoint him as Lower Division Clerk in the service of the Government of Kerala, treating him as a member of the Scheduled Caste.

2. When the Original Petition was pending, the 1st Respondent filed Ext. P-9 dated 13th January 1986. That purports to be a communication from the Director of Scheduled Caste Development to the Tahsildar, Palghat, stating that the Director of Kerala Institute on Research and Development Studies for Scheduled Castes and Scheduled Tribes, Kozhikode, has in his letter reported that he has conducted anthropological investigation about the 1st Respondent's Community and that he belongs to "Mannan" community included in the list of Scheduled Castes (Amendment) Order, 1966 and that he agrees with the said finding. Relying on this document it was urged before the learned Single judge that there cannot be any doubt that the 1st Respondent is a person belonging to the Scheduled Caste. If that is the position, it was urged that his claim to be considered for, inclusion in the rank list on the basis that he is a member of the Scheduled Caste deserves to be acceded to.

3. The learned Single Judge accepted this plea of the first Respondent and allowed the Original Petition. As by the time the Original Petition was disposed of on the 20th May, 1986, the life of the rank list had expired, the learned Single Judge made a further direction to the Appellant to extend the validity of the list, to such further period as far as the first Respondent is concerned, to enable him to secure the fruits of the order. It was made clear that the first Respondent shall not be made to suffer merely for the reason that the validity of the list expired on 17th May 1986. It is the said decision that is challenged by the Appellant in this appeal.

4. The principal contention of Sri Kelu Nambiar, the learned Counsel for the Appellant, is that the learned Single Judge was not justified in interfering with the rank list and issuing appropriate direction to treat the first, Respondent as a member of the Scheduled Caste on the basis of the stand taken long after the finalisation of the rank list and contrary to his own stand taken in his application for the post. It was submitted that if the Public Service Commission proceeded to act on the basis of the case put forward by the 1st Respondent himself; its action cannot be found fault with assuming for the sake of argument that the 1st Respondent has been able to secure satisfactory material or evidence in support of his plea long after the selection was made. In other words, the contention put forward is that the action of the Public Service Commission must be judged with reference to the material that was placed before it and not on the basis of the subsequent material which came into existence and which the first Respondent was able to collect or produce before this Court. On behalf of the first Respondent it was contended by Sri Ramakumar, the learned Counsel for the first

Respondent, that this is not a fit case in which we should interfere in appeal with the discretion exercised by the learned Single Judge in favour of a member of the Scheduled Caste. It was further submitted that the essential question to be considered in this case was as to whether the 1st Respondent was really a member of the Scheduled Caste and therefore entitled to be treated as such for the purpose of selection. If that be the position, it was contended that the fact that the first Respondent was able to collect and produce the material at a later stage should not come in the way of the writ jurisdiction being exercised in favour of the first Respondent. He also invited our attention to two decisions of this Court reported in 1982 KLT 786, *Santhamma v. Public Service Commission* 1984 KLT 925 *Kuriakose v. State of Kerala and Ors.* and the decision of the Supreme Court in 1980 S.C.C. 1230. The principle to be gathered from all these decisions is the well-recognised principle that when an authority is conferred with certain powers that authority must exercise those powers in a fair and reasonable manner. If having regard, to the facts and circumstances of the case it is found that such an authority did not act fairly, and reasonably and consistent with the object sought to be achieved it may be possible for the Court to draw the inference that the action of the authority is arbitrary. If the action of the authority is arbitrary it is obvious that a case would be made out for interference by invoking Article 14 of the Constitution as no authority can be permitted to act arbitrarily and in violation of the principles contained in Article 14 of the Constitution. So, the essential question in all such cases is as to whether the authority which had the duty to act reasonably and fairly, in the given circumstances has acted fairly and reasonably or has acted arbitrarily. If it was found that the action is arbitrary this Court will not hesitate to interfere under Article 226 of the Constitution and set right the mistake. Looked at from this point of view, it is obvious that what we have to examine in this case or what we have to scrutinise in this case is the action of the Public Service Commission in the matter of treating the 1st Respondent as a member of the "Other Backward Classes" for the purpose of preparation of rank list. If in this behalf the Appellant can be regarded having regard to the facts and circumstances of the case as having acted arbitrarily, unreasonably and unfairly, surely the 1st Respondent should succeed. If, however, it is not possible to hold that the action of the Appellant is not arbitrary, the case brought forward by the first Respondent has to fail. It is obvious that for the purpose of considering the action of the Public Service Commission we have to take into consideration the facts and circumstances that were available for the Public Service Commission to take into account. If, after taking into account the relevant facts and circumstances which it was required to take into account, the Public Service Commission acts in a manner which is manifestly unfair and unreasonable tantamounting to arbitrary action, such action can certainly be annulled. For that purpose, we have to examine the facts and circumstances to find out as to whether it can be held that it was possible for the Public Service Commission to act in a way different from the one in which it acted, in which event alone one can say that it was possible for the Public Service Commission to act fairly and reasonably and that in spite of

that it has chosen to act unfairly and unreasonably. We shall therefore proceed to examine the relevant facts bearing on the question.

5. In accordance with the invitation for receiving applications the first Respondent submitted his application in the prescribed form. In column (6) he was required to state his religion, the name of his community, caste or tribe to which he belongs. He is also required to state whether he is a member, of the Scheduled Caste, Scheduled Tribe or Other Backward Classes and to specify the name of the caste or community as the case may be to which he belongs. Column (6) is the relevant column in the application for this purpose and the 1st Respondent has filled all the three columns. He has stated that his religion is "Hindu". He has stated that he belongs to "Peruvannan" community. He has further stated that he belongs to "Other Backward Glasses", namely, "Peruvannan". It is thus clear that so far as the claim of the first Respondent in his application is concerned, he belongs to the particular community of "Peruvannan" and that the said community is the one falling under "Other Backward Glasses". It is on this basis that he has claimed his status as "Other Backward Classes" and has presented himself, as a candidate for consideration as a person belonging to "Other Backward Glasses". In support of his application he was required to produce particulars of the mark list and the Secondary School Leaving Certificate. He has produced copy of the Secondary School Leaving Certificate wherein it is stated in the column pertaining to "caste (in the case of backward classes eligible for fee concession)" as "Peruvannan". Whereas the Appellant wants us to understand the word as conveying "sub-caste", Sri Ramakumar would like us to understand the expression as an abbreviation of the expression "Scheduled Caste". This, in our opinion, need not detain us as the community to which the 1st Respondent belongs has been stated to be "Peruvannan" in the Secondary School Leaving Certificate. It is the very community stated in column (6) of the Application Form before the Public Service Commission. There cannot therefore be any doubt whatsoever that the Appellant has claimed his status that he belongs to "Peruvannan" community in his Application Form and has also produced evidence in support of the said assertion that he belongs to "Peruvannan" community. His further assertion is that he belongs to "Other Backward Classes". It is pertinent to note that the first Respondent has not either directly or indirectly claimed status of a person belonging to Scheduled Caste. On the contrary he has expressly claimed the status as a member of the "Other Backward Classes". Besides, if we look into the order of the State Government for the purpose of reservation pertaining to the Other Backward Glasses in the Kerala State, we find that at serial No. 57 of the said list is included the community, "Peruvannan". The entry reads:

57 : Peruvannan (Varanavar)

So far as the list of Scheduled Caste for the State of Kerala is concerned, we find that "Peruvannan" is not one of the communities included in the Scheduled Caste. Hence with the best possible scrutiny that one can conceive of the

application of the first Respondent and the material which he has produced, it is impossible for any one to come to any other conclusion than the one that the 1st Respondent has claimed that he belongs to "Peruvannan" community and that he has claimed his status as a person belonging to "Other Backward Classes", and that in fact "Peruvannan" community is one which is included in "Other Backward Classes", and not a community which is included in the list of Scheduled Caste. If in these circumstances the Public Service Commission proceeded to treat the first Respondent as a person belonging to "Other Backward Classes" relying upon the representation of the first Respondent himself and the materials placed by him, it is impossible for any one to find fault with the action of the Public Service Commission in accepting the plea of the 1st Respondent and treating him as a person belonging to "Other Backward Classes" for the purpose of selection. There was no option for the Public Service Commission to act in any other manner than the way in which it acted and treated the first Respondent as a member of "Peruvannan" community and as a member of the "Other Backward Classes". It is impossible to suggest that the Public Service Commission could have dealt with the application of the 1st Respondent as a person belonging to the Scheduled Caste. That was not his case, that was not his plea, that was not the information that he furnished and all that, he has stated in the application is contrary to his present claim that he belongs to Scheduled Caste. In these circumstances it is impossible for any one to suggest that the Public Service Commission acted unreasonably or unfairly to justify an inference that its conduct can be regarded as arbitrary calling for interference under Article 226 of the Constitution. We must confine our attention to the material which was placed and which the Public Service Commission with due diligence was required to examine at the relevant point of time before final selection came to be made by the Public Service Commission. The conduct of the Public Service Commission cannot be examined with reference to the subsequent material which the 1st Respondent says that he was able to collect and has relied upon in support of his case that he is a member of the Scheduled Caste.

6. It is interesting to note that whereas the first Respondent claimed that he belongs to "Peruvannan" community and claimed status as a member of the "Other Backward Classes", in his application dated 6th October 1980, in his application before the Appellant dated 23rd January 1985, he changed his stand and claimed that he belongs to "Vannan" community,, which, according to him, is one of the Scheduled Castes in Kerala State. What was sought to be relied upon before the learned Single Judge by producing Ext. P-9 dated 3rd January 1980 is that he belongs to yet another community, namely, "Mannan" which is a Scheduled Caste. Ext. P-9 is information obtained after an anthropological investigation made about the community to which the 1st Respondent belongs. It is impossible to say in this background where the 1st Respondent himself has gone on changing his stand that his conduct in approaching this Court for relief is bona fide.

7. We may also advert to the notification inviting applications for the post,

wherein it is stated in paragraph 18 that claims made after submitting the application will not be considered under any circumstances. This is a very salutary principle as there will be no end to investigations if they are permitted to be made after the elaborate selection process is completed and selection is made. It is necessary to point out that the claim made by the first Respondent contrary to the one made in the application was nearly 20 months after the rank list was published in this case. Such delayed claims if accepted is bound to disturb and upset the selection made which is likely to disturb the rights of several persons who have been selected and/or entitled to be selected.

8. On facts it was pointed out by the Appellant's counsel that the benefit or reservation for Scheduled Caste candidates has not been denied. There were other Scheduled Caste candidates available who have been included in the list in the quota reserved for Scheduled Castes. Thus, members of the Scheduled Caste as such have not suffered. On the contrary allowing the belated claim of Respondent No. 1 will have the effect of depriving one place for the members of the "Other Backward Communities". It is neither just nor legal to interfere with the select list on the basis of the new claim and fresh materials produced after the selection.

9. It appears unnecessary for us to pronounce on the question as to whether the first Respondent is right or wrong in claiming that he belongs to a particular community which is scheduled caste. We are confining our attention to the limited question as to whether the action of the Public Service Commission in the circumstances can be regarded as manifestly unreasonable and unfair justifying interference under Article 226 of the Constitution. We have recorded a categorical finding against the first Respondent in this behalf. Hence we have no hesitation in taking the view that this is not a case which calls for interference under Article 226 of the Constitution.

10. Hence the appeal is allowed, the judgment of the learned Single Judge is set aside and the Original Petition is dismissed. In the circumstances, the parties shall bear their respective costs.