

(1999) 08 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 16173 of 1999A

Sarojini Vijayan M.V. and Another

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2000 Ker 71

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : Kaleeswaram Raj, for the Appellant; M.S. Radhakrishnan Nair, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Miss. Amrita Priya is a deaf and dumb girl. She was a student of the Government Girls' High School, Madayi in Kannur District. She has registered for the S.S.L.C. Examination in March, 1999 and expressed her desire to get exemption from 2nd and 3rd languages in the said examination on the plea that she is a deaf and dumb girl. She had earlier appeared for the S.S. L.C. Examination in March 1997 as well as in March, 1998. She did not claim exemption from writing the second and third languages and consequently the same was not granted. She then approached this Court and filed O.P. No. 1338 of 1999 which was disposed of by this Court permitting her to exercise option or express desire not to study second and third languages and directed the Government to consider the said request in accordance with law.

2. Petitioner has now written the S.S.L.C. Examination conducted in March 1999 and expressed her desire for exemption from writing second and third languages. She was informed that the said benefit would be available only to deaf candidates and not the candidate who is deaf and dumb. Petitioner has therefore approached this Court seeking a declaration that the exemption for writing the second and third languages should be extended to deaf and dumb candidates

also and not to deaf persons alone.

3. A statement has been filed on behalf of 2nd respondent. Government took up the stand that the benefit available on the basis of Ext. P1 G.O. dated 14-6-1983 and notification dated 23rd September, 1995 would be available only to deaf candidate and not to a deaf and dumb candidate. I heard counsel for petitioner Sri. Kaleeswaram Raj as well as learned Government Pleader Sri M.S. Radhakrishnan Nair.

4. The difficulties experienced by deaf children in learning three languages at the secondary stage came to the notice of the Government of India and it was felt as a result, only a very small percentage of deaf children are successful at the secondary examination. Government of India therefore vide letter dated 20-9-1979 directed the State Government to examine the question with a view to adopt one language policy so far as the deaf children are concerned.

5. Thereafter Government called for the remarks of the Universities in the State on the issue with particular reference to the desirability or otherwise of admitting the handicapped pupil qualifying in S.S.L.C. as above to the various courses of study in the Universities. The University of Cochin did not offer any remarks since the University does not offer any course for which the minimum requirement for admission in S.S.L.C. However, the University of Calicut expressed their opinion that the proposal to admit students in that category is not acceptable for them, The University of Kerala also informed that the University does not find it academically sound to recommend exemption to the deaf and dumb pupils to take University examination in language at the University level.

6. The Director of Public Instruction however, proposed that the deaf students may be required to learn compulsorily only the first language (mother tongue/ regional language) exempting them from the study of second language (English) and third language (Hindi). He recommended that if any deaf student wants to learn other languages he may be allowed to do so by exercising option. In the light of the above mentioned recommendations Government further examined the matter in detail and ordered that the deaf students are exempted from the study of second and third language, but they have the option to study all the languages if they want so or only the mother-tongue.

7. It is seen in tune with the above Government order, notification was issued in the year 1995 for the S.S.L.C. Examination. Similar notification was issued in 1996 as well. Clause VI of the notification deals with concessions to the blind, deaf and dumb and orthopaedically handicapped candidates which is extracted below :

(a) Blind candidates will be exempted from question in drawing, graphs etc. They will be allowed 15 minutes more for every hour of examination as they have to write in Braille System. Blind pupils appearing for the public examinations will be allowed the service of a scribe each on a remuneration of Rs. 5 per paper. Blind

pupils answering the S.S.L.C. Examination papers utilising the services of scribes will be granted extension of time of ten minutes per hour per paper. The scribe appointed for the purpose should be persons who do not possess qualifications higher than the examinations for which they are appointed (G.O.(P) 412/69/Edn. dated 18-11-1969 and G.O.(MS) 142/80/G.Edn. dated 9-9-1980) S.S.L.C. failed or passed persons with no other Additional Qualifications alone should be appointed a scribe. The District Educational Officers concerned are competent to sanction the service of a scribe subject to the approval of the Secretary to the Commissioner for Government Examinations, (b) The Deaf and Dumb Candidates will be given additionally 25% of the marks secured by them in theory papers as they are backward in Language ability. (G.O.(P) 150/72/ S.Edn. dated 30-10-1972) Chief Superintendents should make necessary notings on the facing sheet of the main answer books of such candidates. Deaf students are exempted from the study of 2nd and 3rd languages if they desire so. subject to the provisions contained in G.O. Rt. 1697/83 dated 14-6-1983".

The department in strict interpretation of the above mentioned Government Orders and notifications took the stand that the benefit of exemption in studying second and third languages would be available only to the deaf students and not to a deaf and dumb student, the reason being that the Government Order speaks only for deaf students and not deaf and dumb. In other words, 2nd respondent blindly followed the Government Orders and all the requests made by the deaf and dumb girl fell into deaf ears. She became literally dumb founded being deaf and dumb she could not speak.

8. Advocate Sri. Kaleeswaram Raj spoke for her. This Court cannot shut its eyes to the discrimination meted out to a deaf and dumb and be a mute spectator. Discrimination meted out to them is a clear violation of human rights which is constitutionally guaranteed under Article 21 of the Constitution of India. I fail to see why the Government extended the benefit only to a deaf candidate and not to a deaf and dumb candidate. There is no rational in the said discrimination. The difficulties experienced by a deaf and dumb child is much more than the difficulties experienced by a deaf child. Government of India and State Government issued notification after having convinced of the difficulties experienced by deaf children. I fail to understand why the said benefit is not extended to a deaf and dumb child. A deaf and dumb child is in a more disadvantage position than a deaf child. Giving the benefit only to deaf children is irrational and arbitrary.

9. The principle of equality enshrined in Article 14 must guide every state action, whether it be legislative executive or quasi judicial. An authority has to act properly for the purpose for which the power is conferred. Authority must not act irrationally or arbitrarily. Any such illegal irrational or arbitrary action or decision whether in the nature of a legislative, administrative or quasi judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution of India. The Supreme Court in Commissioner of Income Tax, Bombay and Others

Vs. Mahindra and Mahindra Limited and Others, held that if the administrative or executive action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same. As held by the Supreme Court in M.J. Sivani and Others Vs. State of Karnataka and Others, every action of the State or an instrumentality of the State must be informed by reason or else it will fall in the realm of arbitrariness. In this case evidently the Government has completely misdirected themselves in reaching a conclusion that the exemption for writing second and third language could be given only to deaf candidates and not to deaf and dumb candidate.

10. This Court cannot lend a deaf ear to prayers made by Amrita Priya. Incidentally she also quoted the instance of one R. Sajeewan to whom benefit claimed by her was given. Discrimination was shown to a deaf and dumb girl. It is therefore declared that the benefit given to deaf candidate should be extended to deaf and dumb candidate also, in the matter of exemption for studying second and third languages in the S.S.L.C. Examination. It is so declared. There will be a further direction to the second respondent to declare that the second petitioner need not write the second and third languages in the S.S.L.C. Examination conducted in March, 1999.

Original Petition is allowed as above.