

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WA.No. 1209 of 2010 () IN WP(C).372/2009

**AGAINST THE ORDER/JUDGMENT IN WP(C) 372/2009 of HIGH COURT OF KERALA
DATED 06-04-2010**

APPELLANT(S)/PETITIONERS:

- 1. C.KRISHNAKUMAR
COUNCILLOR, CORPORATION OF THIRUVANANTHAPURAM
RESIDING AT LAKSHMI VILASAM, VELLUNNI
MEDICAL COLLEGE PO, ULLOOR, THIRUVANANTHAPURAM**
- 2. C.VIJAYAN
GALLERY PRESSMAN, GOVERNMENT CENTRAL PRESS
THIRUVANANTHAPURAM , RESIDING AT LAKSHMI VILASAM
VELLUNNI, MEDICAL COLLEGE PO, ULLOOR
THIRUVANANTHAPURAM**

**BY ADVS.SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K.MANOJKUMAR
SMT.HENA BAHULEYAN**

RESPONDENT(S)/RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
TO GOVERNMENT , S.C/ST DEVELOPMENT (G) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE SCRUTINY COMMITTEE FOR VERIFICATION
OF COMMUNITY CERTIFICATES REPRESENTED BY ITS
CHAIRMAN/THE PRINCIPAL SECRETARY TO GOVERNMENT
SC./ST DEVELOPMENT, GOVERNMENT SECRETARIAT
THRIVANANTHAPURAM.**
- 3. THE DIRECTOR, KIRTADS, DIRECTORATE
OF KIRTADS, KOZHIKODE-17**
- 4. EDAVACODE ASOKAN, CHINNAVEEDU
T.C.7/2129-A, SREEKARYAM, THIRUVANANTHAPURAM-17**
- 5. P.B.MINI
RESEARCH OFFICER, KIRTADS, KOZHIKODE.**

**BY SRI.R.T.PRADEEP
SR.GOV.T.PLEADER SRI.P.IDAVIS**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A.No.1209 of 2010

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Dated this, the 8th day of July, 2015

J U D G M E N T

Shaffique, J

Petitioners in WP(C) No.372/2009 are the appellants. They challenged judgment dated 6/4/2010 passed in the above writ petition. The issue involved in the writ petition would disclose that the first petitioner was elected as Councilor of Edavacode ward of Thiruvananthapuram Corporation. Second petitioner is his brother, who was working as a Gallery Pressman in the Government Central Press, Thiruvananthapuram. Petitioners' claim to be members belonging to Vannan, which is a Scheduled Caste community. After declaration of results in the election conducted for Edavacode ward, the 4th respondent filed a petition before the Minister for Revenue on 3/10/2005 alleging that the caste certificate produced by the first petitioner from Tahsildar is a false certificate and that the same is liable to be cancelled. The Minister referred the matter to the Vigilance Officer of KIRTADS,

who conducted an enquiry in terms of the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996. Enquiry was conducted and on the basis of enquiry, it was found that the petitioners does not belong to Vannan community, whereas, they belong to Veluthedathu Nair, which comes under Other Backward Community (OBC).

2. Petitioners took up the matter before the Scrutiny Committee. The Scrutiny Committee after taking evidence in the matter affirmed the view taken by the KIRTADS. The matter was challenged before this Court by filing a writ petition which came to be dismissed. Petitioners preferred an appeal before the Division Bench and by judgment dated 5th August, 2008 in WA No.833/2008, Division Bench, after setting aside the order passed by the Scrutiny Committee, directed the matter to be considered afresh within a period of two months after giving an opportunity to the petitioners to submit their representation. Paragraphs 32 and 33 of the said judgment reads as under;

-:3:-

"32. The Act provides first enquiry by Expert Agency and in the present case KIRTADS. The agency may carry out the enquiry on its own on the basis of the field studies on castes, communities or tribes, or on petitions and complaints received by it from any source pertaining to the Scheduled Caste or Scheduled Tribe claims of non-scheduled castes or non-scheduled tribes or on references made by the State Government or Central Government. Sub-section (2) provides that the report of the Expert Agency shall be conclusive proof for or against the Scheduled Caste or Scheduled Tribe claim, as the case may be, of the person reported. In the present case, the Vigilance Officer of KIRTADS after conducting a detailed enquiry has submitted a report before the Scrutiny Committee regarding the caste status of the petitioners and what is expected under the Act and the Rules, by the Scrutiny Committee before passing the order under Section 11 of the Act, is to give an opportunity to the person concerned to make his representation, if any to the report filed by the Vigilance Officer of KIRTADS. What is ingrained in sub-section (1) is to follow the minimal requirement of principles of natural justice, such as written copy of the proceedings disclosing the grounds of the complaint, preferably by furnishing a copy of the petition on which action is contemplated, a copy of the report of the Vigilance officer, if it is not already furnished, so that the party affected could make effective representation and afford an opportunity

of hearing. We do not think that when the legislature used the expression "making of representation" to mean to hold an elaborate de novo enquiry. If this is resorted to at the instance of a person who intends to drag on the proceedings, the whole purpose of the Act could be defeated. Here we do confirm the view expressed by the learned Single Judge in the course of his order that the petitioners appears to be determined to adopt dilatory proceedings and delay as much as he can, the final disposal of the proceedings taken against them.

33. In the instant case, it is an admitted position even by the respondents 1 to 3, that no opportunity of hearing was given to the petitioners and after going through the records made available by the learned Government Advocate, we are also of the same opinion, and therefore, we have no other alternative, but to set aside the order and direct the Scrutiny Committee to decide the case afresh as expeditiously as possible, after giving an opportunity of hearing to all the interested parties to the lis"

3. Thereafter direction was also issued to complete the procedure within a period of two months. The State and its authorities filed IA No.893/2008 in the writ appeal seeking for extension of time, which was rejected as per order dated 12/11/2008. Scrutiny Committee thereafter passed orders

confirming the earlier view taken in the matter. The matter was carried in an appeal before the Government, which was also dismissed. It is challenging the order passed by the Scrutiny Committee and the appellate order of the Government that this writ petition has been filed.

4. Learned Single Judge after hearing either parties dismissed the writ petition *inter alia* observing that appropriate opportunity has been granted by the Scrutiny Committee to the petitioners to adduce evidence. Further, it was found that the conclusions in Ext.P16 are not perverse warranting interference in a proceeding under Article 226 of the Constitution of India and therefore the orders passed by the Scrutiny Committee as well as the Government were upheld.

5. Learned Senior Counsel Sri.N.Nandakumara Menon appearing on behalf of the appellants submits that it is a clear case where principles of natural justice has been violated. It is submitted that though this Court cannot enter into any finding regarding the factual aspects involved in the matter, it is open for this Court to consider whether there is violation of principles of natural justice. Reference is also made to the judgment of the

Supreme Court in ***Kumari Madhuri Patil v. Additional Commissioner*** [(1994) 6 SCC 241] and also judgment of the learned Single Judge of this Court in ***Prakash v. State of Kerala*** (2002 (2) KLT 580). There cannot be any dispute regarding the question that any authority constituted under the Act which is given quasi judicial powers has to comply with the procedure prescribed under the statutory provisions and any order passed shall be in accordance with the principles of natural justice.

6. In the case on hand, it is contended that though the petitioners have given a list of witnesses and though summons were issued, taking into consideration the limited time available to the Scrutiny Committee, all the witnesses could not be examined. A perusal of the counter affidavit filed in the matter clearly indicates that the Scrutiny Committee allowed cross examination of all 25 witnesses for which summons were issued on 20/10/2008. Among the witnesses summoned, certain persons appeared and they were cross examined. Notices issued to certain others were returned undelivered. This, according to the respondent authority, proves that the petitioners prepared a witness list without an intention to summon them. It is therefore

evident that though sufficient opportunity had been given to the petitioners to adduce evidence and all the persons available in the witness list were summoned, only a few of them appeared. They were cross examined. If the petitioners wanted to adduce evidence, taking into consideration the limited scope of enquiry as detailed by the judgment in the writ appeal, the petitioners ought to have produced such persons who were already summoned in the matter. No such steps were taken by the petitioners.

7. This is not a case which had come up for consideration before the Scrutiny Committee only once. In an earlier occasion, the petitioners had taken a similar contention that there was violation of the principles of natural justice, which was taken into consideration by this Court in the writ appeal judgment and the matter was remitted back with specific directions. We do not think that the Scrutiny Committee had not complied with the directions issued by the Division Bench in WA No.No.833/2008. Under such circumstances, when sufficient opportunity had already been granted by the Scrutiny Committee to the petitioners to adduce evidence and the petitioners did not avail of the said opportunity,

WA No.1209/2010

-:8:-

we do not think that there is any violation of the principles of natural justice.

Under such circumstances, we do not find any ground to interfere with the judgment of the learned Single Judge. Writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge