

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 2106 of 2015 (K)

PETITIONER(S):

**AKHILENDIA NADAR ASSOCIATION (ANA)
(PREVIOUS NAME :HINDU NADAR COPORATION,
REGISTRATION NO.214/1987
REPRESENTED BY ITS GENERAL SECRETARY, K.VASUDEVAN
CENTRAL OFFICE, LEKSHMI ILLAM, TC.40/294(1),
2ND PUTHEN STREET, THIRUVANANTHAPURAM-695 009.**

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.**
- 2. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
BACKWARD COMMUNITY DEVELOPMENT DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

BY SPECIAL GOVERNMENT PLEADER SMT.P.K.SANTHAMMA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1: TRUE COPY OF THE BYELAWS OF THE PETITIONER ASSOCIATION**
- EXT P2: TRUE COPY OF THE RESOLUTION DATED PASSED BY THE CENTRAL EXECUTIVE COMMITTEE, AUTHORIZING THE GENERAL SECRETARY OF THE PETITIONER ASSOCIATION TO FILE THIS WRIT PETITION TO PROTECT THE INTEREST OF THE PETITIONER SOCIETY DATED 04.01.2015**
- EXT P3: TRUE COPY OF THE GO.NO.13/2013 DATED 29.10.2013**
- EXT P4: TRUE COPY OF THE CIRCULAR DATED 26.07.2007 ISSUED BY THE KERALA PUBLIC SERVICE COMMISSION.**
- EXT P5: TRUE COPY OF THE PAPER CUTTING OF MATHRUBHOOMI DAILY DATED 11.12.2009**
- EXT P6: TRUE COPY OF THE G.O.(MS)104/2009/SC TDD DATED 21.11.2009**
- EXT P7: TRUE COPY OF THE GO.NO.113/10 DATED 04.11.2010**
- EXT P8: TRUE COPY OF THE REPRESENTATION DATED 10.04.2013 SENT TO THE CHIEF MINISTER OF KERALA.**
- EXT P9: TRUE COPY OF THE RELEVANT PAGE OF MATHRUBHOOMI NEWSPAPER DAILY DATED 02.01.2015**
- EXT P10: TRUE COPY OF THE PAPER REPORT DATED 05.01.2015**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.2106 of 2015

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Dated this the 20th day of February, 2015

JUDGMENT

The petitioner Association is before this Court mainly aggrieved of Clause (1) of Ext.P3 terms of reference made by the Government to submit a report with regard to the steps being taken for identifying the eligible hands for providing reservation under Article 16(4) of the Constitution of India. With reference to members of Nadar community. The prayers are in the following terms:-

“A. That all records leading to Exhibit-P3 order be called to this Court and a writ of certiorari or other order passed quashing point No.1 in Exhibit P3 sought to be enquired and reported by Justice Hariharan Nair Commission.

B. That a writ of mandamus or other order be passed directing the respondents to treat members of Hindu Nadar community as a separate class/group for the purpose of granting all reservations for educational and employment benefits due to a backward community like Hindu Nadars;

C. That the respondents be directed to issue specific directions to Justice Hariharan Nair Commission not to club Hindu Nadars with members of Christian and other religious institutions in

the matter of granting reservation benefits both educational and employment to Hindu Nadar.”

2. The case of the petitioner is that, the petitioner Association represents the 'Hindu Nadar' Community which is stated as a backward community. The said community was being treated as a separate class of its own and members are enjoying the benefit of reservation, as envisaged under the Constitution of India. Earlier, when there was an attempt to club the 'Hindu Nadar' community along with 'SIUC Nadars' and other 'Christian Nadars', the said attempt was sought to be challenged by the petitioner Association, who earlier was known by different name, by filing O.P No.7870/1988. The case projected from the part of the petitioner was considered meticulously and it was held by a Division Bench of this Court, as per decision in **Hindu Nadar Corporation v. State of Kerala** (2000(3) KLT 740), that 'Hindu Nadar' community had to be treated as a separate class of its own with rights or reservation. The matter was taken up as before the Apex Court CA No.3361/2002 by the President of other community, ie., SIUC Nadar community, which was supported by the Government. In the said case, the decision

taken by the Division Bench was affirmed by the Supreme Court as per the decision **President, SIUC v. State of Kerala and others** [(2006) 9 SCC 354]. By virtue of attaining finality to the issue involved, the Government was forced to pass Ext.P6 G.O. dated 21.11.2009 settling the rights and interest of the community in crystal clear terms, which was done after obtaining a report from the Kerala State Commission for Backward Classes. Quite after a long time, the Government has come up with Ext.P3 Government Order dated 20.10.2013 constituting a new Commission known as "Justice M.R.Hariharan Nair Commission", to consider the backwardness of the Nadar Community and to submit a report for extending the benefits of reservation. Terms of reference have been produced, which forms part of Ext.P3 and by virtue of Clause (I) the task of the Commission has been specified to submit a report so as to extend the benefit of reservation in terms of the Policy of the Central Government, considering all the different categories of Nadar Community. The learned counsel for the petitioner points out that, such a course is not permissible after declaration of the law by the Division Bench of this Court as per the decision (2000(3)

KLT 740) supra, which stands affirmed by the Apex Court as per the decision in (2006) 9 SCC 354 (cited supra). This made the petitioner to approach this Court by filing the writ petition seeking for the reliefs as aforesaid.

3. Heard the learned Special Government Pleader as well, who has obtained instructions from the Principal Secretary to the Government. A copy of the communication bearing No.200/A3/2015/BCDD dated 02.02.2015 addressed to the learned Advocate General is placed for consideration before this Court. Paragraphs 2 and 3 (unnumbered) of the above communication are in the following terms:-

"Akhilendia Nadar Association have filed W.P.(C) No.2106/2015 (R) and challenged point No.1 in the terms of reference in the Ext.P3 Government Order, i.e. G.O.(MS) No.13/2013/BCDD dated 29.10.2013. The point No.1 is for submitting suggestions if any regarding the reservation to all the members of Nadar Community belongs to different religious groups. Commission will finalise the report based on its detailed study and the recommendations of the terms of reference will be based on its findings.

As per G.O.(MS) No.13/2013/BCDD dated 29.10.2013, Government had decided the terms of reference of Justice M.R.Hariharan Nair Commission. The petitioner can present his

contentions before the Commission for or against any points in the terms of reference, in any of the sittings of the Commission before finalising the report by the Commission. Accordingly, the petitioner have his right to present his case against the point No.1 of the terms of reference of the Government Order dated 29/10/2013. It is understood that the Commission's study is at the final stage."

Going by the contents of the above instruction, it prima facie appears that there is nothing malicious in Ext.P3 and that the Commission has already been required to examine all the relevant aspects and to submit a report. It is also pointed out that the petitioner is at liberty to mention all the facts and figures before the Commission and to have the matter considered accordingly.

4. But after hearing both the sides and considering the nature of grievance and the legal position which stands declared as on date, this Court finds that clarity with regard to the issue is very much essential, to enable the Commission to proceed on the right track and to addresss the issue in the required manner, to the requisite extent. In other words, Clause No.1 of Ext.P3 shall not give rise to any fluid state of affairs by clubbing the communities, who otherwise are not liable to be clubbed

together. It is made clear that, while considering the issue, particularly with reference to Clause No.1 of Ext.P3, the Commission shall address the same confining within the parameters, particularly in the light of the law declared by the Division Bench of this Court and the Apex Court as mentioned above. It is open for the Commission to consider the relevant aspects with regard to the members of the Hindu Nadar Community treating the same different from the other sectors and proceed with further steps,.

Making the position clear as above, the writ petition stands disposed of. It is for the petitioner to move the Commission with appropriate pleadings/suggestions/remarks so as to enable the Commission to finalise the matter and submit the report in terms of the reference.

**P.R.RAMACHANDRA MENON,
JUDGE**

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