

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 5922 of 2012 (M)

PETITIONER(S):

SHIJAS.S, AGED 27 YEARS
S/O.SHANMUGHAN.A, SHAJAS BHAVAN
UDAYANAPURAM.P.O, WARD NO.17, VADAKKEMURI VILLAGE
VAIKOM-686143.

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SMT.M.A.RUXANA

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY
SCHEDULED CASTE AND SCHEDULED TRIBE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. MAHATMA GANDHI UNIVERSITY,
KOTTAYAM, REPRESENTED BY REGISTRAR.
3. HON:DIRECTOR ,
INTER UNIVERSITY CENTER FOR DISABILITY STUDIES(IUCDS)
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS.P.O
KOTTAYAM-686560.
4. TAHSILDAR,
TALUK OFFICE, VAIKOM.

R1 & R4 BY SPECIAL GOVERNMENT PLEADER SMT.P. SANTHAMMA
R2 & R3 BY ADV. SRI.VARGHESE M.EASO, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.07.2015, THE COURT ON 14.07.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P-1 : PHOTOCOPY OF THE MARK LIST, MARCH - 2000
SHOWING PETITIONER'S CASTE AS 'HINDU PULAYA'.
- EXHIBIT P-2 : PHOTOCOPY OF THE CERTIFICATE DATED 30.04.2011
ISSUED BY THE VILLAGE OFFICER, VADAKKEMURI.
- EXHIBIT P-3 : PHOTOCOPY OF THE COMMUNITY CERTIFICATE
DATED 30.4.11 ISSUED BY 4TH RESPONDENT.
- EXHIBIT P-4 : PHOTOCOPY OF THE LETTER DATED 18.10.11 OF
THE 4TH RESPONDENT BEARING NO.C3-7114/11.
- EXHIBIT P-5 : PHOTOCOPY OF THE APPLICATION UNDER R.I. ACT
DATED 25.10.11.
- EXHIBIT P-6 : PHOTOCOPY OF THE REPLY DATED 18.11.11 TO R.I.
ACT.
- EXHIBIT P-7 : PHOTOCOPY OF THE LETTER BEARING
NO.ACA1/2/7455/2011 ISSUED BY 2ND RESPONDENT
TO THE 3RD RESPONDENT.
- EXHIBIT P-8 : PHOTOCOPY OF THE SHOW CAUSE NOTICE DATED
4.1.12.
- EXHIBIT P-9 : PHOTOCOPY OF THE REPLY GIVEN TO SHOW CAUSE
NOTICE DATED 11.1.12.
- EXHIBIT P-10 : PHOTOCOPY OF THE ORDER DATED 6.3.12.
CANCELLING M.PHIL ADMISSION.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

smv

"C.R."

SHAJI P. CHALY, J.

W.P.(C) No.5922 of 2012

Dated this the 14th day of July, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P10 order passed by the 3rd Respondent dated 06.03.2012, which reads as follows:

"According to the Letter Number cited above, we are herewith informing you that your M.Phil Disability Studies admission is cancelled from 06th March, 2012. Receive back your original Certificates from IUCDS."

2. Heard the learned counsel for the petitioner, learned Special Government Pleader appearing for Respondents Nos.1 and 4 and the learned Standing Counsel appearing for the University.

3. Brief facts for the disposal of the writ petition are as follows:

The petitioner after passing M.Sc. in Health and Behavioural Science from the School of Behavioural Science, M.G. University in the year 2011 joined for M.Phil. in Disability Studies under the 2nd Respondent University. It is the case of the petitioner that at the time of admission, he had produced all certificates including Ext.P3 community certificate issued by

the 4th Respondent certifying that he belongs to Hindu Pulaya, a community recognized as a Scheduled Caste. Later, petitioner understood that, in response to a letter of the 3rd Respondent dated 03.10.2011, the 4th Respondent as per Ext.P4 dated 18.10.2011 replied that as per enquiry of the Village Officer, Vadakkemury, petitioner and his family were members of Hindu Pulaya community and now they are believers of 'Pentacost Sabha' and so steps are being taken to cancel his community certificate. Petitioner has thereupon made Ext.P5 application dated 25.10.2011 to the officer concerned under the Right to Information Act seeking to inform him the circumstances under which Ext.P4 was issued and he secured Ext.P6 reply dated 18.11.2011, stating that Ext.P4 was issued pursuant to an enquiry made by the 3rd Respondent with respect to Ext.P3 community certificate issued by the 4th Respondent.

4. Matters being so, petitioner understood that on 20.12.2011, the Registrar of the 2nd Respondent University has issued Ext.P7 letter to the 3rd Respondent communicating the order of the Vice Chancellor of the 2nd Respondent directing to issue show cause notice to the petitioner as to why disciplinary

proceedings including cancellation of the admission of the petitioner to M.Phil. (Disability Studies) on charges of submitting fake caste certificate for procuring admission shall not be initiated against him. Thereupon, 3rd Respondent has issued Ext.P8 show cause notice dated 04.01.2012 to the petitioner, asking the petitioner to show cause why action including cancellation of admission should not be taken against him in view of the action initiated by the 4th Respondent to cancel the community certificate issued by the Village Officer, Vadakkemury. On receipt of Ext.P8, petitioner has submitted a detailed reply to the 3rd Respondent stating that neither himself nor his family members are converted as Christians and further that they are professing Hindu religion and are members of Akhila Kerala Cheramar Hindu Maha Sabha, having registration No.K.315, H.O., Changanassery. It was further stated by him that when his father fell ill due to heart disease, some Pentacost Pastors went to his house for offering prayers at the instance of his mother and that petitioner and other family members were never converted as Christians. That the issuance of community certificate by the Village Officer, Vadakkemury as Christian Cheramar for admission to

P.G. course during 2009 was purely on misinformation by some neighbours and due to paucity of time to correct the same, petitioner was constrained to produce it for immediate admission to P.G. Course. But when Ext.P2 certificate was issued by the Akhila Kerala Cheramar Hindu Maha Sabha, both the Village Officer and the 4th Respondent were convinced of their mistake and correctly issued Ext.P3 certificate.

5. Petitioner has further contended that even though he has offered satisfactory explanation to Ext.P8 notice by issuing Ext.P9 reply, the 3rd Respondent without assigning any reason, issued Ext.P10 non-speaking order and cancelled his admission to M.Phil. (Disability Studies) with effect from 06.03.2012. It is thus challenging the said order, this writ petition is filed.

6. I have perused the pleadings in the writ petition and the exhibits produced along with the same. None of the Respondents have filed counter affidavit. On a perusal of Ext.P10, I am of the considered opinion that the same is a non-speaking order passed by the 3rd Respondent without providing an opportunity of hearing to establish the case put forth by the petitioner that Ext.P3 community certificate was

issued properly by the appropriate statutory authority. In my view, the 3rd Respondent has issued the one line order and cancelled the admission to M.Phil. course granted to the petitioner, unilaterally.

7. Since there were disputed facts in the subject matter of the issue and also due to the fact that as per Ext.P1 Secondary School Leaving Certificate, the religion and caste of the petitioner is shown as Hindu Pulaya, definitely, the petitioner should have been provided with an opportunity by the 3rd Respondent to establish his contention that he is still Hindu Pulaya, entitled for reservation as provided under law. So also, it is clear from Ext.P10 impugned order that 3rd Respondent has not considered any of the explanations put forth by the petitioner in Ext.P9 reply, which, according to me, were relevant before a decision was taken by the 3rd Respondent.

8. On a close scrutiny of Exts.P4, P6 and P7 communications issued by other authorities and Ext.P8 show cause notice issued by the 3rd Respondent, it is clear that a stigma is casted on the petitioner by attributing the allegation that the caste certificate is obtained by the petitioner by

practicing fraud and manipulation. According to me, the said allegation contained in the aforesaid documents is creating a stigma/slur not only in the matter of educational prospects, but also all future activities of the petitioner and therefore, definitely, the 3rd Respondent should have provided an opportunity of hearing to the petitioner, before implementing the action contemplated under Ext.P8.

9. Further, it may have other far reaching and deep rooted consequences affecting the future prospects, career and well-being of the petitioner and therefore the 3rd Respondent should not have passed Ext.P10 impugned order without affording an opportunity of hearing to the petitioner. That apart, when the 3rd Respondent has issued show cause notice to the petitioner and secured a reply from him, if the statements in the reply were considered by such authority, definitely, such consideration should have reflected in the order impugned. But Ext.P10 order does not even disclose application of mind by the 3rd Respondent to Ext.P9 reply and therefore, on that account also, Ext.P10 order is bad.

10. The Hon'ble Apex Court had occasion to consider the issue regarding the stigma caused to a student on

cancellation of examination in the judgment reported in **'Board of High School and Intermediate Education, Uttar Pradesh, Allahabad v. Ghanshyam Das Gupta'** [LAWS(SC)-1962-2-9], it was held as follows in paragraph 4:

" x x x x x x
 x x x x x x

It seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under R.1 (1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under R.1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast

on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under R.1 (1). We are therefore of opinion that the Committee when it exercises its powers under R.1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee."

11. So also, in the decision reported in '**Board of High School and Intermediate Education, Uttar Pradesh v. Kumari Chitra Srivastava**' [LAWS(SC)-1969-11-6], in similar circumstances, the Hon'ble Apex Court held in paragraph 4 as follows:

" X X X X X X
 X X X X X X

The learned counsel for the appellant, Mr. C.B. Aggarwal, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no

defence but on the nature of the order proposed to be passed.

We agree with the High Court that the impugned order imposed a penalty. The petitioner had appeared in the examination and answered all the question papers. According to her she had passed. To deny her the fruits of her labour cannot but be called a penalty. We are unable to appreciate the contention that the Board in "cancelling her examination" was not exercising quasi-judicial functions. The learned counsel urges that this would be casting a heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price a small price indeed - has to be paid if we desire a society governed by the rule of law. We should not be taken to have decided that this rule will also apply when a candidate is refused admission to an examination. We are not concerned, with this question and say nothing about it."

12. Therefore, by testing the facts of this case with the principles so laid down by the Hon'ble Apex Court, it is explicit and vivid that whenever a stigma is casted on a person consequent to an administrative order, certainly, before taking a decision on the allegations so made, the party affected should be provided with an opportunity of hearing in its fullest sense.

13. Again, Ext.P4 discloses that 3rd Respondent has conducted a personal enquiry behind the back of the petitioner, the details were not seen furnished to the petitioner. Thus, it is clear that 3rd Respondent has proceeded against the petitioner with a pre-meditated disposition of mind, which was all the more a reason for providing an opportunity to the petitioner to establish the defence put forth by him and the same also would have enabled the 3rd Respondent to arrive at an impartial conclusion in the subject issue. The impugned action is also a matter interfering with the rights and privileges of a person entitled to secure the benefits of reservation provided under the Constitution of India and the laws made thereunder. So also, the facts and documents reveal that it is not a case of absolute fabrication of any caste certificate by the petitioner. But the imputation is attributed on the basis that the petitioner has changed his faith to Christianity and thereby not entitled to enjoy the benefits of Hindu Pulaya community. For all these reasons, in my considered opinion, Ext.P10 order suffers from the vice of patent arbitrariness.

14. Yet another important aspect which requires consideration is that the framers of the Constitution have

provided reservation to certain categories of citizens basically with the avowed object of uplifting the poor and the downtrodden, taking into account the sufferance undergone by them for centuries. Therefore such reservations are provided basically visualising the principles of compassion and humane approach. Reservations made in the education as well as the employment sector reflects the highest order of socialistic approach made by the framers of the Constitution in order to equip this poor lots to compete with the mainstream of the society. Therefore, any action of an authority thwarting or attempting to interfere with such basic objectives of the Constitution of India in violation of principles enunciated by Courts of law and other statutory provisions should be whittled down with the required force it deserves.

15. Now a days, the Parliament and the State Legislatures are conferring more and more quasi-judicial and administrative powers to superior statutory authorities for taking decisions affecting the rights and privileges of subordinates, it is desirable that such authorities are instilled with basic principles of law so as to ensure fair, proper and legal decisions.

16. The Hon'ble Supreme Court had occasion to consider almost on similar factual situations, the cancellation of a caste certificate. In the decision reported in '**Gulzar Singh v. Sub-Divisional Magistrate & Another**' [AIR 1999 SC 3803], in paragraph 3, it was held as follows:

"3. It is clear from the facts on record that prior to the cancellation of the Scheduled Caste certificate by the impugned order dated 3rd June, 1997 no show cause notice was issued to the appellant. It cannot be denied that with the issuance of Scheduled Caste certificate certain rights accrued to the appellant. If this certificate was to be cancelled on the basis of some enquiry which had been conducted by the department it was incumbent on the department, keeping in view the principles of natural justice, to issue a show cause notice to the appellant requiring him to explain as to why the Scheduled Caste certificate which had been issued should not be cancelled. If there were statements of other persons which were recorded, as seem to have been done in the present case, on the basis of which the department came to the conclusion that the appellant was not Majhbi Singh by caste but was Christian, then fairness would require that the said statements should be put to the appellant before a final decision is taken."

17. So also, in the decision reported in **Jauwad Ali v. State of U.P.**' [AIR 2001 All 86], a Division Bench of the Allahabad High Court had occasion to consider the question of cancellation of caste certificate and held as follows, at paragraph 7:

"By issuance of caste certificate, certain rights accrue to a person which cannot be taken away without giving an opportunity of hearing and which violates the principles of natural justice. It was not proper on the part of the authorities to cancel caste certificate without issuing any show cause notice and without giving any opportunity of hearing and the said order of cancellation of the caste certificate suffers from violation of the principles of natural justice."

18. According to me, these are all principles laid down, also taking into account the sufferance tolerated by these poor lots throughout the ages. It was also in the spirit of reconciling the wrongs done to them and compensate for the injury and injustice inflicted upon them that the framers of the Constitution enacted Article 16(4) and other enabling provisions under the Constitution, placing them in a separate class in matters relating to employment to any office under the State and providing admission to the educational sector. The laudable object thus envisaged under the Constitution of India

granting reservation is also with the intention of infusing into them a sense of social justice and security.

19. Taking into account the aforesaid principles of law laid down by the Hon'ble Apex Court and the Allahabad High Court, the facts and circumstances of the case and also bearing in mind the well-settled proposition of law that violation of principles of natural justice is a legal error, I am of the considered opinion that Ext.P10 order was passed by the 3rd Respondent violative of the principles of natural justice and therefore the same is hit by Article 14 of the Constitution of India.

20. In view of the discussions made above, I am of the considered opinion that Ext.P10 cannot be sustained under law and requires fresh consideration. Therefore, Ext.P10 order is set aside and 3rd Respondent or the competent among the Respondents is directed to take a decision on Ext.P8 notice taking into account Ext.P9 reply submitted by the petitioner and after affording him sufficient opportunity of hearing, within a period of thirty days from the date of receipt of a copy of this judgment.

In the facts and circumstances of the case, there will be no order as to costs.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-