



WEB COPY



W.A.No.682 of 2023 & etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.Nos.682 to 687 of 2023
and
W.P.No.7412 of 2023
and
other connected miscellaneous petitions**

W.A.Nos.682 to 687 of 2023

1.The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Public Service Commission Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003.

2.The Controller of Examinations,
The Tamil Nadu Public Service Commission,
Public Service Commission Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003.

... Appellants in
W.A.Nos.682, 683, 684, 685
and 687 of 2023 /
2nd and 3rd Appellants in
W.A.No.686 of 2023

The Chief Secretary,
Government of Tamil Nadu,
Human Resources Management Department,
Secretariat, Sr. George Fort,
Chennai - 600 009.

... 1st Appellant in
W.A.No.686 of 2023



W.A.No.682 of 2023 & etc. batch

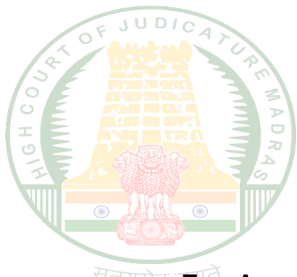
Vs.

WEB COPY

U.Kaviyarasan	...	Respondent in W.A.No.682 of 2023
M.Saravana Kumar	...	Respondent in W.A.No.683 of 2023
R.Satish	...	1st Respondent in W.A.No.684 of 2023
D.Dharmaraj	...	Respondent in W.A.No.685 of 2023
V.Ramkumar	...	Respondent in W.A.No.686 of 2023
A.Suganya	...	Respondent in W.A.No.687 of 2023
Parkadhe Anibal KC	...	2nd Respondent in W.A.No.684 of 2023
Raja.D	...	3rd Respondent in W.A.No.684 of 2023
Praveen.D.	...	4th Respondent in W.A.No.684 of 2023
R.Sugadevan	...	5th Respondent in W.A.No.684 of 2023

(Respondents 2, 3, 4 and 5 are impleaded vide order dated 20.11.2023 passed in C.M.P.No.15792 of 2023 in W.A.No.684 of 2023)

Writ Appeals filed under Clause 15 of the Letters Patent, against the orders dated 20.03.2023 in W.P.Nos.7141 of 2023, 7486 of 2023, 7414 of 2023, 8059 of 2023, 7718 of 2023, 7934 of 2023 respectively.



W.A.No.682 of 2023 & etc. batch

For Appellants in

all Writ Appeals

: Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.I.Arbar Md.Abdullah

For Respondents

: Mrs.Nalini Chidambaram, Senior Counsel
For Ms.C.Uma
For 1st Respondent
in W.A.No.682 and 684 of 2023

Mr.R.Singaravelan
Senior Counsel
For Respondents 2 to 5
in W.A.No.684 of 2023

Mr.R.Thamaraiselvan
For Mr.N.Kesavaraj for
Respondent in W.A.No.683 of 2023

Mr.T.Muthukrishnan
For Respondent in W.A.Nos.685 & 687/2023

* * *

W.P.No.7412 of 2023

D.Eraiyambu

... Petitioner

Vs.

1.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, V.O.C. Nagar,
Chennai - 600 003.

2.The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai - 600 003.



W.A.No.682 of 2023 & etc. batch

3. The State Director-cum-Commissioner,
Commissionerate of Welfare of the Differently Abled,
No.5, Kamarajar Salai, Lady Wellington College Campus,
Chennai - 600 005.

... Respondents

(R-3 suo motu impleaded vide order
dated 20.03.2023 made in W.P.No.7412 of 2023)

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to call the petitioner with the register number 2701004040 for oral interview on 08.03.2023 or any other subsequent date and for counselling for the post of Assistant Engineer included in Combined Engineering Services pursuant to Notification No.10/2022 dated 04.04.2022 by including the register number of the petitioner in the list of Register numbers provisionally admitted to onscreen Certificate Verification for the posts in the Combined Engineering Services.

For Petitioner : Mrs.Nalini Chidambaram,
Senior Counsel
For Ms.C.Uma

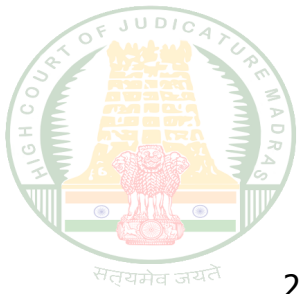
For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.I.Arbar Md.Abdullah

* * *

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The writ appeals viz., WA.Nos.682 to 687 are directed against the three separate orders passed by the learned Judge on 20.03.2023 in W.P.Nos.7141, 7486 and 8059 of 2023; 7414 & 7934 of 2023; and 7718 of 2023.



W.A.No.682 of 2023 & etc. batch

WEB COPY

2. The writ petition in WP.No.7412 of 2023 is filed for a direction to the respondents to call the petitioner with the register number 2701004040 for oral interview on 08.03.2023 or any other subsequent date for counselling for the post of Assistant Engineer included in the Combined Engineering Services, pursuant to notification No.10 of 2022, dated 04.04.2022 by including his register number in the list of Register numbers provisionally admitted to on-screen certificate verification for the posts in the Combined Engineering Services.

3. Since the issues involved in this batch of writ appeals and the writ petition are common, they are taken up for joint hearing and disposed of by this common judgment.

4. Brief facts which are necessary for disposal of all these matters are summarised as under:

4.1. The Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") issued Notification No. 10 of 2022 through Advertisement No. 613, dated 04.04.2022, inviting online applications until 03.05.2022 for direct recruitment to vacancies in various posts in the Combined Engineering Services. The written examination was conducted on 02.07.2022. Subsequently, based on the results of the written examination, a list of provisionally admitted candidates for on-screen certificate verification was published on the



W.A.No.682 of 2023 & etc. batch

WEB COPY

Commission's website on 22.02.2023. However, the writ petitioners' names were not included in the provisional list dated 22.02.2023. Instead, their names were placed in the list of rejected applications without any valid reason, leading them to file writ petitions.

4.2. The writ petitioners in W.P.Nos.7486, 8059, 7718, and 7934 of 2023 challenged the rejection of their online applications by approaching the writ court and sought to quash the same and consequently, direct the TNPSC to allow them to attend the oral test. Additionally, W.P.No.7141 of 2023 was filed for a direction to TNPSC to disclose the reasons for not including the petitioner's register number and enable him to rectify the technical defects, if any, and permit him to attend oral test. Furthermore, W.P.No.7414 of 2023 was filed to direct the TNPSC to include the petitioner's register number in the list of numbers provisionally admitted to on-screen certificate verification.

4.3. It was contended on the side of the TNPSC, in the course of writ proceedings that the writ petitioners' applications were rejected because they had uploaded wrong documents, instead of essential documents. The details of the same are as under:

(i) The respondent in W.A.No.682 of 2023 (petitioner in W.P.No.7141 of 2023) claimed the benefit of PSTM (Persons Studied in Tamil Medium)



W.A.No.682 of 2023 & etc. batch

reservation, but he has not uploaded the certificate to show that he had studied Classes XI and XII in Tamil, instead of that, uploaded the certificate to show that he had studied Classes IX and X in Tamil twice.

(ii) The respondent in W.A.No.683 of 2023 (petitioner in W.P.No.7486 of 2023) uploaded the Certificate of Class XII, instead of Community certificate.

(iii) The respondent in W.A.No. 685 of 2023 (petitioner in W.P.No.8059 of 2023) claimed the benefit of PSTM (Persons Studied in Tamil Medium) reservation but he has uploaded mark-sheets for Classes X and XII, instead of the certificate to show that he had studied Classes X and XII in Tamil.

(iv) The application of the respondent in W.A.No.684 of 2023 (petitioner in W.P.No.7414 of 2023) was rejected, as he has not uploaded his UG certificate, but has uploaded the consolidated mark statement of PG Course.

(v) The application of the respondent in W.A.No.687 of 2023 (petitioner in W.P.No.7934 of 2023) was rejected as she had uploaded PG Certificate, instead of UG Certificate.

(vi) The application of the respondent in W.A.No.686 of 2023 (petitioner in W.P.No.7718 of 2023) was rejected on the ground tht he claimed to have studied from Class I to VIII in regular mode, but has not produced any supporting documents in respect of Classes I and II.

4.4. The learned Judge disposed of the writ petitions in W.P.Nos.7141, 7486 and 8059 of 2023 on 20.03.2023 with the following directions: -



W.A.No.682 of 2023 & etc. batch

WEB COPY

"10. The upshot of the forgoing discussion is that the Writ Petitions are ordered on the following terms:-

(i) the Respondent shall forthwith inform through SMS, e-mail and publication in its official website to all those candidates (including the Petitioners) whose online applications have been rejected for failure to upload the required documents in support of their claim under the respective categories of reservation, to appear for oral interview along with originals of all required documents on specified dates for verification, and consider them for appointment as if their names had been included in the list of candidates provisionally admitted to on-screen certificate verification;

(ii) in the event of the said candidates failing to produce the required documents on the specified dates, they shall be treated as general candidates entitled to participate in the recruitment in open competition category;

(iii) the final result of the impugned recruitment shall be published only after carrying out the aforesaid exercise;

(iv) consequently, the connected miscellaneous petitions are closed; and

(v) there shall be no order as to costs.'

4.5. On the very same day, the learned Judge disposed of other two writ petitions viz., W.P.Nos.7414 and 7934 of 2023, in the same lines as that of the order in W.P.Nos.7141, 7486 and 8059 of 2023. However, there was a deviation in one aspect, with respect to direction no.(ii), which was replaced with the instruction that "in the event of the said petitioners fail to produce the required documents on the specified dates, their respective applications shall be treated as rejected for not producing proof for the required qualification for the post." This modification was made, since these cases pertain to rejection of candidatures for not uploading the UG certificate. Similar W.P.No.7718 of 2023 came to be disposed of, on 20.03.2023, with the following direction:



W.A.No.682 of 2023 & etc. batch

WEB COPY

"7. At the same time, such rejection of the application of the Petitioner would only disentitle him to claim the benefit of reservation under the category of persons who studied through Tamil Medium, but would not deprive him of the right to be treated as general candidate entitled to participate in the recruitment in open competition category. This would obviously mean that it is incumbent upon the Respondent to call upon the Petitioner through SMS, e-mail and publication in its official website to appear for oral interview along with all required documents on a specified date for verification, and consider him for appointment as if his name had been included in the list of candidates provisionally admitted to on-screen certificate verification. The final result of the impugned recruitment shall be published only after completing the aforesaid exercise.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.'

4.6. Aggrieved by the three separate orders dated 20.03.2023 passed in the aforesaid writ petitions, the appellant authorities have come up with these writ appeals.

4.7. W.P.No.7412 of 2023 is filed by one D.Eraiyambu, alleging that his candidature was rejected without assigning any reason. However, the same was not disposed of on 20.03.2023, along with the batch of other writ petitions, in view of the fact that the determination of his percentage of visual disability was pending; and the medical report confirming that the petitioner does not suffer from any visual disability was provided only on 28.03.2023. By the time, the batch of writ petitions had been disposed of on 20.03.2023. Hence, the learned Judge directed the Registry to post the writ petition along with this batch of writ appeals before this court.



W.A.No.682 of 2023 & etc. batch

WEB COPY

5. Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.I.Arbar Md.Abdullah, learned standing counsel, appearing for the appellant-TNPSC would submit that the respondents in W.A.No.682 and 685 of 2023 had claimed reservation under PSTM quota, however they had not uploaded the certificates to prove their claim, instead some other certificates were uploaded. Similarly, the respondent in W.A.No.683 of 2023 had claimed reservation under MBC category, however, he had not uploaded the required certificate. Hence, their applications were rejected. The learned Additional Advocate General further proceeded to refer to Clause 12(B)(iv)(v) and (vi) of the notification, which read as follows:

"(iv) If no such document as evidence for 'PSTM' is available, a certificate from the Principal / Head Master / District Educational Officer / Chief Educational Officer / District Adi Dravidar Welfare Officer / Controller of Examinations / Head / Director of Educational Institution / Director / Joint Director of Technical Education / Registrar of Universities, as the case may be, in the prescribed format must be uploaded at the time of submission of online application, for each and every educational qualification up to the educational qualification prescribed.

(v) Failure to upload such documents at the time of submission of online application as evidence for 'Persons Studied in Tamil Medium' for all 19 educational qualification up to the educational qualification prescribed, shall result in the rejection of candidature after due process.

(vi) Documents uploaded at the time of submission of online application as proof of having studied in Tamil medium, for the partial duration of any course / private appearance at any examination, shall not be accepted and shall result in the rejection of candidature after due process".



W.A.No.682 of 2023 & etc. batch

WEB COPY

Thus, according to the learned Additional Advocate General, the aforementioned clauses explicitly stipulate that the failure to upload the requisite documents as evidence for 'Persons Studied in Tamil Medium' (PSTM) will result in the rejection of the candidates' applications and accordingly, the writ petitioners' applications have been rejected.

5.1. It is further submitted by the learned Additional Advocate General appearing for the appellant – TNPSC that the respondents in W.A.Nos.684 and 687 of 2023, did not upload their UG certificate as required. Instead, they uploaded the mark-sheet for class XII and PG certificate, respectively, resulting in the rejection of their applications. To substantiate the said rejection, the learned Additional Advocate General has relied on Clauses 12 (I) and 12 (L) of the Notification, which state that any subsequent claims made after the initial online application will not be entertained and will be rejected. Furthermore, Clause 12 (L) addresses incomplete and incorrect applications, which are subject to summary rejection after due process. For better appreciation, the said Clauses 12 (I) and 12 (L) are reproduced below:

"12(I) - Evidence for all the claims made in the online application should be unloaded at the time of submission of online application. Any subsequent claim made after submission of online application will not be entertained. Failure to unload the documents at the time of submission of online application will entail rejection of application after due process".



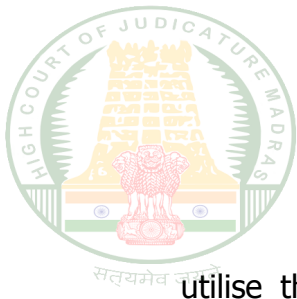
W.A.No.682 of 2023 & etc. batch

WEB COPY

"12 (L) - Incomplete applications and applications containing wrong claims or incorrect particulars relating to category of reservation / eligibility / age /gender / communal category / educational qualification / medium of instruction / physical qualification / other basic qualifications and other basic eligibility criteria will be summarily rejected after due process".

5.2. The learned Additional Advocate General appearing for the appellant – TNPSC submitted that the respondent in W.A.No. 686 of 2023 in his online application, had claimed that he underwent a regular course of study for Class I and II in Tamil medium. However, upon examining the records, it was found that the respondent had not studied Classes I and II in regular mode and had directly joined Class III without selecting the private study option, which was available while filling up the online application and hence, his application was rightly rejected.

5.3. The learned Additional Advocate General appearing for the appellant – TNPSC would also submit that online applications were called for on 04.04.2022 and the same could be submitted until 03.05.2022 at 11:59 PM and until 14.06.2022, online window was open for the candidates to verify and re-upload the certificates submitted when filling up the application form. Thus, when there was about 2 months time for the candidates to correct the errors flagged by the website against the certificates uploaded by the candidates, it is for them to



W.A.No.682 of 2023 & etc. batch

utilise the time and correct the errors. In this regard, the learned Additional Advocate General placed reliance on Clause 15 of the Notification, which reads as follows:

"15. UPLOAD OF DOCUMENTS:-

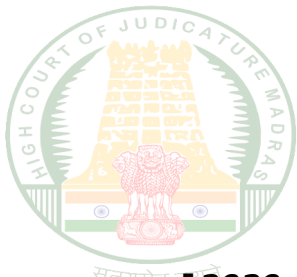
(a) In respect of recruitment to this post, the candidates shall mandatorily upload the certificates / documents (in support of all the claims made / details furnished in the online application) at the time of submission of online application itself. It shall be ensured that the online application shall not be submitted by the candidates without mandatorily uploading the required certificates.

(b) The applicants shall have the option of verifying the uploaded certificates through their OTR. If any of the credentials have wrongly been uploaded or not uploaded or if any modifications are to be done in the uploading of documents, the applicants shall be permitted to edit and upload / re-upload the documents till two days prior to the date of hosting of hall tickets for that particular post (i.e. twelve days prior to the date of examination).

In the light of the above Clauses, the learned Additional Advocate General would submit that sufficient opportunities were given to the candidates to verify the uploaded certificates through their OTR and if any of the credentials have wrongly been uploaded or not uploaded or if any modifications are to be done in the uploading of documents, however, the respondent candidates failed to utilize the same, but approached the court by filing writ petitions.

5.4. In support of his contentions, the learned Additional Advocate General has relied on the following case laws:

(i) *State of Tamil Nadu and Others vs. G. Hemalathaa and another*



W.A.No.682 of 2023 & etc. batch

[2020 (19) SCC P.430]

WEB COPY

"7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.

9. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By Lrs v. Salambin Mohammed and Chandra Singh and others v. State of Rajasthan and Another in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

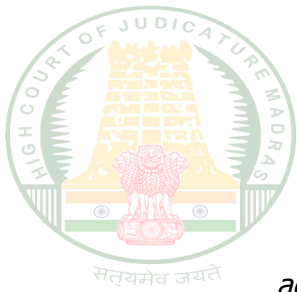
10. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

11. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:

"13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

12. Roberts, CJ. in Caperton v. A.T. Massey held that:

Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than



W.A.No.682 of 2023 & etc. batch

WEB COPY

adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."

13. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.

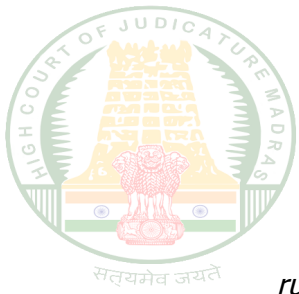
14. In view of the aforementioned, the judgment of the High Court is set aside and the appeal is allowed."

(ii) *Sanjay Dixit vs State of U.P. [2019 (17) SCC 373]*

11. Admittedly, the Rules governing the selection to the posts of Technician Grade 2 (Apprenticeship Electrical) require every candidate to submit a DOEACC certificate signifying completion of 80 hours' CCC at the time of interview. Such condition was made compulsory. The advertisement also contained the condition regarding submission of the certificate at the time of interview. There is no doubt that there exists a power of relaxation of any of the Rules which could be exercised by the Chairman of the Corporation.

*It is nobody's case that the Chairman/Managing Director was not competent to relax the Rules. But, the submission made by the learned counsel for the writ petitioners is that the relaxation could not have been done as the advertisement did not mention about a possible relaxation of the Rules. We find force in the said submission made on behalf of the writ petitioners as this Court in *Bedanga Talukdar [Bedanga Talukdar v. Saifudaullah Khan, (2011) 12 SCC 85 : (2011) 2 SCC (L&S) 635]* held as follows : (SCC pp. 92-93, para 29)*

"29. ... In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the



W.A.No.682 of 2023 & etc. batch

WEB COPY

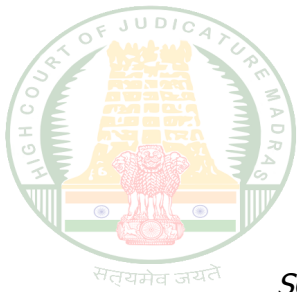
rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

(emphasis supplied)

12. We are in respectful agreement with the above judgment of this Court. Exercise of the power of relaxation without informing the candidates about the existence of such power would be detrimental to the interests of others who did not possess the certificate and did not take part in the selection process. We are unable to accept the submission that selection is on the basis of the performance of the candidates in the written test and interview and that the DOEACC certificate is not an essential requirement. The Rule as well as the advertisement provide for submission of the certificate at the time of interview, compulsorily. The Rule further provides for production of the certificate as an additional requirement for selection. The above stipulation in the Rule as well as the advertisement cannot be Ignored.

*13. On the basis of the said findings, the point that remains to be considered is whether the High Court was right in upholding the relaxation in respect of candidates who submitted the certificate before 28-3-2012. The High Court took note of the fact that the certificates were not being issued by DOEACC to candidates who had already completed the course. The learned Division Bench of the High Court was of the opinion that there was a genuine problem and in the interest of those meritorious candidates who could not secure the certificate for no fault of theirs, they could not be penalised. The High Court placed reliance on the judgment of this Court in *Amlan Jyoti Borooah v. State of Assam* [*Amlan Jyoti Borooah v. State of Assam*, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] , SCC para 40 to support its view that relaxation can be done in larger public interest.*

*14. The question that then arises is whether the High Court could have granted such a relief after holding that the relaxation of the Rule could not have been made. The final relief in a case can be different from the ratio decidendi. It was held in *Sanjay Singh v. U.P. Public Service Commission* [*Sanjay Singh v. U.P. Public Service Commission*, (2007) 3*



W.A.No.682 of 2023 & etc. batch

SCC 720 : (2007) 1 SCC (L&S) 870] as follows ; (SCC p. 732, para 10)

WEB COPY

'10. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent.'

(emphasis supplied)

(iii) P.Prabu v. Tamil Nadu Public Service Commission

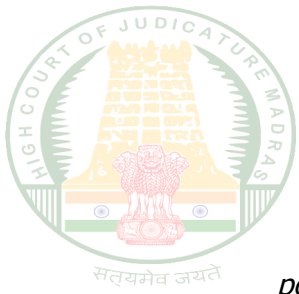
[W.A.No.4318 of 2019, dated 11.03.2020]

"Strict adherence to the terms and conditions of the instructions is paramount importance and the High Court in exercise of powers under Article 226 cannot modify/relax the instructions by the commission"

(iv) Bedanga Talukdar v. Saifudaullah Khan [2011] 12 SCC 85 :

(2011) 2 SCC (L&S) 635 : 2011 SCC OnLine SC 1325]

"29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a



W.A.No.682 of 2023 & etc. batch

WEB COPY

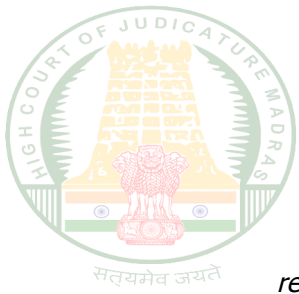
power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be. relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list."

5.5. It is also submitted by the learned Additional Advocate General appearing for the appellant – TNPSC that when the writ appeals were taken up for hearing on 23.03.2023, this Bench permitted the appellant-TNPSC to conduct the full-fledged selection process, however, stayed the appointment alone. The operative portion of the order reads as follows:

"8. Concededly, theses cases are only in the admission stage and it is



W.A.No.682 of 2023 & etc. batch

WEB COPY

reported that today is the last date for publishing marks. Furthermore, the contempt petition, referred by the learned Additional Advocate General supra is not before us. In such perspective of the matter, we are of the view that the TNPSC shall be permitted to publish the marks, with a rider that appointments shall not be made with a view of the order dated 29.09.2022 of this court in Sub Appliation Nos.480 and 481 of 2022 in Contempt Petition No.615/2021. Needless to state that those, who were affected or aggrieved, are entitled to get themselves impleaded as parties to the present proceedings, when the matters are taken up for final hearing. The contention of Mrs.Nalini Chidambaram, learned Senior counsel that the entire process of selection, including Group Discussion and interview should be stalled, cannot be accepted and the said contention is rejected. A full-fledged selection process shall go on and appointment alone is stayed."

Pursuant to the aforesaid order, the appellants have completed the entire selection process and they are awaiting the orders of this court for publishing the results. Stating so, the learned Additional Advocate General appearing for the appellants prayed to set aside the orders of the learned Judge and thereby allow all these writ appeals.

6. Mrs.Nalini Chidambaram, learned senior counsel representing Ms.C.Uma, learned counsel appearing for the respondents in W.A Nos.682 and 684 of 2023 would submit that there was a list published by the appellant-TNPSC stating the particulars of candidates whose online applications were rejected. Though it was stated that the reasons for rejection would be mentioned in the Annexure, no reasons were found in the Annexure itself. Consequently, candidates were arbitrarily thrown out from the selection process without being informed of the grounds for their rejection, which amounts to violation of the principles of natural

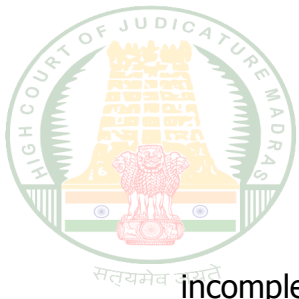


W.A.No.682 of 2023 & etc. batch

WEB COPY

justice. The learned senior counsel further submitted that the reasons for rejection pointed out by the TNPSC in the course of writ proceedings was that the respondent in W.A.No.682 of 2023 inadvertently uploaded the certificates certifying that he had studied Standards 9th and 10th in Tamil twice instead of uploading certificates certifying that he had studied Standards 11th and 12th in Tamil. With regard to the respondent in W.A.No.684 of 2023, by mistake he had uploaded PG certificate, instead of UG certificate. According to the learned senior counsel, the respondents have fully qualified for the post in question and hence, the rejection of their candidature for want of production of documents, which is purely procedural in nature, is unsustainable. Even as per the Notification, the same can be done only by following due process and not unilaterally without affording any opportunity to them. Taking note of the same in proper perspective, the learned Judge has given direction to the appellant TNPSC to the effect that opportunity to produce documents be given not just to the candidates, who are before the Court, but also to all the candidates whose candidatures have been rejected, by the orders impugned herein, which need not be interfered with by this court.

6.1. Adding further, Mr.R.Thamaraiselvan, learned counsel representing Mr.N.Kesavaraj, learned counsel appearing for the respondent in W.A.No. 683 of 2023, by relying upon Clause 12(L) of the Notification, would submit that



W.A.No.682 of 2023 & etc. batch

WEB COPY

incomplete applications should be rejected after following due process of law, however, no such process was followed in this case. The learned counsel would also contend that the claim made in the online application for the recruitment will be taken into consideration as per Clause 12 (M) of the Notification and in this case, the respondent claimed that he belongs to MBC Community and however, instead of uploading community certificate, 12th certificate was uploaded. The learned counsel would further assert that the respondent did not provide false information and is willing to produce the community certificate during physical verification. Furthermore, the learned counsel referring to Clause 15(B) of the Notification, pointed out that modifications can be made up to 12 days before the examination date. However, due to a technical glitch in the TNPSC's document upload software, the respondent was unable to upload the required documents within the stipulated time. That apart, the learned counsel submitted that TNPSC allowed the candidates in Group IV and Group I examinations to rectify certificate issues within a 2-day window through Press Releases 45/2023 and 50/2023, however, this opportunity was not provided to the respondent. It is also submitted that when an identical issue came up for consideration, in the case of direct recruitment to the posts of VAOs, in which the appellant (TNPSC) invited applications through online mode, a Division Bench of this Court in its judgement in ***The Secretary, TNPSC Vs. J. Thamizhisai and Others [2011 (3) MLJ]*** dismissed the writ appeal filed by the TNPSC and affirmed the order of the



W.A.No.682 of 2023 & etc. batch

WEB COPY

learned Judge. The relevant passage of the said judgment is profitably reproduced below:

" 7. As far as the Petitioner is concerned, she had produced the original certificate at the time of Certificate Verification. As such, relying of Clause 15, the Commissions' arguments cannot be accepted and apart from this, as per the judgment of the Division Bench (Madurai) in W.A.No.585 of 2009 by order dated 11.11.2009, the Division Bench has held that certain certificates are to be treated as important on which relate to the academic qualification but as far as other certificates including Community Certificates are concerned, the non-production with the application and before the provisional selection is finalized, if those certificates are produced, the same should be accepted. For the reasons stated above, I am of the opinion that the Petitioner is entitled to succeed. Hence, the Impugned order is set aside and the Writ Petition is allowed."

6.2. Continuing further, Mr.T.Muthukrishnan, learned counsel appearing for the respondents in W.A.Nos. 685 and 687 of 2023, would submit that the respondent in W.A.No.685 of 2023 had uploaded the mark sheet for Classes X and XII, instead of the required PSTM certificate for Classes X and XII. Similarly, the respondent in W.A.No.687 of 2023 had uploaded her PG Certificate instead of the required UG Certificate. As a result of these errors, the applications of the respondents were rejected. It is further contended that on 13.01.2023, the results were published on the basis of 1:3 ratio (Selection list 1), which included the respondents' names. However, on 22.02.2023, the TNPSC published a revised 1:2 ratio list (Selection list 2), and in this updated result, the respondents' names



W.A.No.682 of 2023 & etc. batch

WEB COPY

were not found and their names were found in the annexure list stating that "rejected for various reasons", which according to the learned counsel, is against the principles of natural justice. Referring to the decision in ***State of Orissa Vs. Binapani Dei [AIR 1967 SC 1269]*** it is emphasized that any administrative decision with adverse civil consequences must adhere to the rules of natural justice. This entails informing the person concerned of the case against them and providing an opportunity to be heard for the purpose of explaining or defending their position. It is also submitted that some candidates with lower marks were selected, while the respondents were rejected without being given a fair opportunity to rectify their mistakes. Furthermore, it is highlighted by the learned counsel that the respondents come from remote villages and are first-generation candidates and if the appeals are allowed, they will be put to irreparable loss and hence, their cases may be considered leniently.

7. In reply, the learned Additional Advocate General appearing for the appellants would submit that a small number of candidates attempt to circumvent the established rules and regulations for document submission in TNPSC examinations by seeking court orders at the eleventh hour, when mistakes are on the part of the writ petitioners/respondents, and the results are being published. The learned Additional Advocate General would further submit that the TNPSC, as an institution, takes its commitment to transparency, fairness, and



W.A.No.682 of 2023 & etc. batch

integrity very seriously. One of the fundamental tenets of this commitment is the strict adherence to the prescribed guidelines, including the submission of required documents within the time prescribed. When the individuals resort to legal intervention to bypass prescribed procedures, it not only disrupts the application process, but also sets a dangerous precedent that can lead to chaos and an inundation of court cases. Hence, the learned Additional Advocate would submit that no leniency should be shown to the respondents/writ petitioners in enforcing these rules.

8. Mr.R.Singaravelan, learned senior counsel appearing for the respondents 2 to 5 in WA.No.684 of 2023 would submit that they are the selected candidates waiting for appointment and they are sailing with the appellants. It is submitted by the learned senior counsel that the order of stay granted in favour of the appellants has to be vacated for three reasons viz., (i) it amounts to tinkering with the brochure, because while the brochure makes it clear that submission of incorrect or incomplete documents would be met with the rejection, this Court ought not to have stopped the authorities from acting according to Clauses 15 and 16 of the Notification; (ii) not only once, but thrice the candidates were given opportunity to produce documents, but they did not choose to avail the same and it is settled law that the courts would not come to the rescue of those who sleep over their rights. The learned senior counsel further submitted that as per the



W.A.No.682 of 2023 & etc. batch

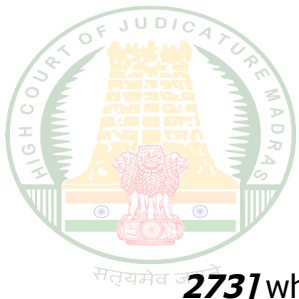
WEB COPY

notification, the writ petitioners were required to submit their proper mark sheets and educational qualification certificates and the failure to do so would result in the forfeiture of their opportunity for selection. In other words, the candidates are not only bound by the notification, but also estopped from challenging their non-selection for violation of the notification norms, as held by the Apex Court in ***K.A.Nagamani vs. Indian Airlines and others [2009 (5) SCC 515]***, in which, it was held as follows:

"53. Yet another aspect of the matter that the appellant admittedly had participated in the similar selection process for erstwhile Grades 15 and 16 Manger(Maintenance/ System) and Senior Manager (Maintenance / Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question.

54. The Corporation did not violate the right to equality "guaranteed under Articles 14 and 16 of the constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot allowed to turn round and question the very same process having failed to qualify for the promotion".

and (iii) If at all any relief was deemed fit to be awarded by the Court, the same must have been restricted just to those who come to Court and not in an omnibus fashion to all similarly placed persons. This amounts to treating a service matter as a Public Interest Litigation, which is time and again criticised by the Apex Court right from ***Duryodhana Sahu (Dr) v. Jitendra Kumar Mishra [1998 7 SCC***



W.A.No.682 of 2023 & etc. batch

सत्यमेव जयते **273]** wherein, it was observed as follows:
WEB COPY

"The Constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of administrative tribunal to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions' of the act is that the tribunal should quickly redress the grievance in relation to service matters. The definition of service matters found in section 3(q) shows that in relation to a person, the expression means all service matters relating to the condition of his service. The significance of the word "his" cannot be ignored. Section 3(b) defines the word "Application" as an application made under section 19. The latter section refers to "Person Aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any- matter within the jurisdiction of the Tribunal. The word "Order" has been defined in the explanation to sub-section (1) of section 19 so that all matters referred to in section 3(q) as service matter could be brought before the Tribunal. If in that context sections 14 and 15 are read, there is no doubt that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated. There is no substance in the contention that the proceedings before the Tribunal are in the nature of quo warranto and it could be filed by any member of the public as he is an aggrieved person in the sense public interest is affected. The Applications in the present case have been filed before the appointment of the petitioner as a lecturer and the relevant prayers are to quash the creation of the post itself and preventing the authorities from appointing the petitioner as a lecturer. Hence, the applications filed by the respondents cannot be considered to be in the nature of quo warranto".

8.1. The learned senior counsel for the respondents 2 to 5 in WA No.684 of 2023 would also submit that strict adherence to the terms and conditions



W.A.No.682 of 2023 & etc. batch

WEB COPY

mentioned in the notification is paramount consideration and the same cannot be relaxed. In support of his contention, the learned senior counsel has referred to the judgment of this court in ***Dr.M.Vennila Vs. Tamil Nadu Public Service Commission [2006 (3) CTC 449]***, wherein, it was held as follows:

" 25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification/relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large."

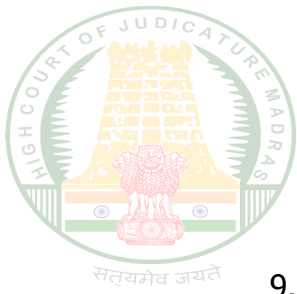
8.2. It is further submitted by the learned senior counsel appearing for the respondents 2 to 5 in WA No.684 of 2023 that pursuant to the interim order dated 23.03.2023, the respondents herein were not issued with the orders of appointment to the post of Assistant Engineers and suffered even after they got selected by competing with more than 35000 candidates those who have participated in the said selection process. Hence, the learned senior counsel prays for appropriate orders in this writ appeal.



WEB COPY



W.A.No.682 of 2023 & etc. batch



W.A.No.682 of 2023 & etc. batch

WEB COPY

9. Mrs.Nalini Chidambaram, learned senior counsel representing Ms.C.Uma, learned counsel for the petitioner in W.P.No.7412 of 2023 submitted that the petitioner's candidature should be considered as that of a general candidate rather than as a visually disabled candidate. Whereas, the learned Additional Advocate General appearing for the TNPSC raised objection to the same, stating that if such an opportunity is granted, it would open the floodgates for every individual, who has made a mistake to approach the court and seek correction, even when the mistake is on his / her part.

10. Heard the submissions made by all the parties and also perused the materials available on record.

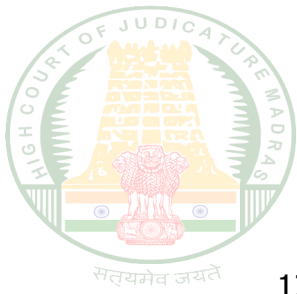
11. The point of dispute in all the cases before us can be categorized into the following categories:

(i) The PG Degree Certificate has been uploaded instead of UG Certificate,

(ii) The PSTM Certificates for the entire period of study have not been uploaded

(iii) Uploading of Class XII Certificate instead of Community Certificate

(iv) Verification of Visual Disablement Claim



W.A.No.682 of 2023 & etc. batch

WEB COPY

12. Before proceeding to decide the appeals, it is necessary to look into the notification and the conditions. The notification for direct recruitment in Combined Engineering Services was issued on 04.04.2022, prescribing the last date of submission of the application on 03.05.2022. The instructions to candidates have been amended and come into force with effect from 22.03.2022. Originally, the examination was scheduled to be conducted on 26.06.2022. However, the date was modified and the examinations were held on 02.07.2022. The oral interview was scheduled to be held between 08.03.2023 and 23.03.2023.

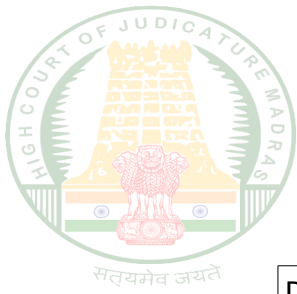
13. The relevant clauses in the Notification for recruitment dated 04.04.2022 are extracted below, for better understanding:

WARNING

Sl No 5. In respect of recruitment to this post, the applicants shall mandatorily upload the certificates / documents (in support of all the claims made / details furnished in the online application) at the time of submission of online application itself. It shall be ensured by the applicants that the online application shall not be submitted without uploading the required certificates.

3. IMPORTANT DATES AND TIME:

Date of Notification	04.04.2022
Last date for submission of online application	03.05.2022
Dates of written examinations	
Paper-I: Subject Paper (Degree Standard)	26.06.2022 09.30 a.m. to 12.30 p.m.



W.A.No.682 of 2023 & etc. batch

WEB COPY

Date of Notification	04.04.2022
Paper-II: Part-A Tamil Eligibility Test (SSLC Standard) Part-B General Studies (Degree Standard)	26.06.2022 02.00 pm. to 05.00 p.m.

The Examinations were subsequently postponed to 02.07.2022 by Notification No. 10A dated 28.04.2022. (Emphasis added)

4. QUALIFICATIONS

(B) EDUCATIONAL QUALIFICATION (as on 04.04.2022)

Applicants should possess the following or its equivalent qualification awarded by any University or Institution recognized by the University Grants Commission/AICTE as the case may be.

TABLE (Not Extracted in this judgement but the contents will be discussed in the later part of the judgment)

12. GENERAL INFORMATION:

(A) The rule of reservation of appointments is applicable to this recruitment separately for each post.

(B)

(ii) Candidates claiming to be Persons studied in Tamil Medium (PSTM) must upload the document at the time of submission of online application for the same in the form of SSLC, HSC, Transfer Certificate, Provisional Certificate, Convocation Certificate, Degree Certificate, PG



W.A.No.682 of 2023 & etc. batch

WEB COPY

Degree Certificate, Mark Sheets, Certificate from the Board or University or from the Institution, as the case may be, with a recording that he/she had studied the entire duration of the respective course(s) through Tamil Medium of instruction.

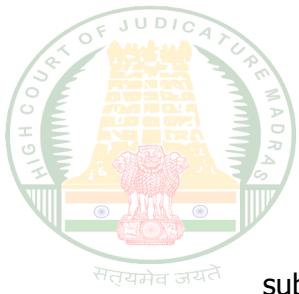
(iii) Candidates must upload documents at the time of submission of online application as evidence of having studied in the Tamil medium, all educational qualification upto the educational qualification prescribed

(iv) If no such document as evidence for 'PSTM' is available, a certificate from the Principal / Head Master / District Educational Officer / Chief Educational Officer / District Adi Dravidar Welfare Officer / Controller of Examinations / Head / Director of Educational Institution / Director / Joint Director of Technical Education / Registrar of Universities, as the case may be, in the prescribed format must be uploaded at the time of submission of online application, for each and every educational qualification up to the educational qualification prescribed

(v) Failure to upload such documents at the time of submission of online application as evidence for 'Persons Studied in Tamil Medium' for all educational qualification up to the educational qualification prescribed, shall result in the rejection of candidature after due process.

(vi) Documents uploaded at the time of submission of online application as proof of having studied in Tamil medium, for the partial duration of any course / private appearance at any examination, shall not be accepted and shall result in the rejection of candidature after due process.

(I) Evidence for all the claims made in the online application should be uploaded at the time of submission of online application. Any



W.A.No.682 of 2023 & etc. batch

WEB COPY

subsequent claim made after submission of online application will not be entertained. Failure to upload the documents at the time of submission of online application will entail rejection of application after due process.

(L) Incomplete applications and applications containing wrong claims or incorrect particulars relating to category of reservation / eligibility / age / gender / communal category / educational qualification / medium of instruction / physical qualification / other basic qualifications and other basic eligibility criteria will be summarily rejected after due process.

13. OTHER IMPORTANT INSTRUCTIONS:

(a) Applicants should ensure their eligibility for the examination. Before applying for / appearing for the examination, the applicants should ensure their eligibility for such examination and that they fulfil all the conditions in regard to age, educational qualifications, number of chances for fee concession, etc., as prescribed by the Commission's notification. Their admission to all stages of the examination will be purely provisional, subject to their satisfying the eligibility conditions. Mere admission to the written examination / certificate verification / oral test / counselling or inclusion of name in the selection list will not confer on the candidates any right to appointment. The candidature is therefore, provisional at all stages and the Commission reserves the right to reject candidature at any stage after due process, even after selection has been made, if a wrong claim or violation of rules or instructions is confirmed.

(g) Unless specific instruction is given, applicants are not required to submit along with their application any certificates (in support of their claims regarding age, educational qualifications, physical qualification, community, physical disability etc.,) which should be submitted when



W.A.No.682 of 2023 & etc. batch

WEB COPY

called for by the Commission. Applicants applying for the examination should ensure that they fulfil all the eligibility conditions for admission to the examination. Their admission at all the stages of examination for which they are admitted by the Commission will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If, on verification at any time before or after the written examination /certificate verification / oral test, it is found that they do not fulfil any of the eligibility conditions, their candidature for the recruitment will be summarily rejected after due process.

Clause 14.

9. The applicants shall be permitted to edit the details in the online application till the last date stipulated for submission of online application. After the last date for submission of online applications, no modification shall be permitted in respect of the application data i.e., the details furnished by the candidates in the online application.

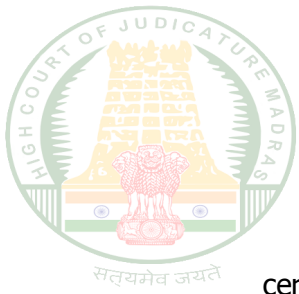
10.

c) Applicants need not send the printout of the online application or any other supporting documents to the Commission.

15. UPLOAD OF DOCUMENTS:

(a) In respect of recruitment to this post, the candidates shall mandatorily upload the certificates / documents (in support of all the claims made / details furnished in the online application) at the time of submission of online application itself. It shall be ensured that the online application shall not be submitted by the candidates without mandatorily uploading the required certificates.

(b) The applicants shall have the option of verifying the uploaded



W.A.No.682 of 2023 & etc. batch

WEB COPY

certificates through their OTR. If any of the credentials have wrongly been uploaded or not uploaded or if any modifications are to be done in the uploading of documents, the applicants shall be permitted to edit and upload / re-upload the documents till two days prior to the date of hosting of hall tickets for that particular post (i.e. twelve days prior to the date of examination)

16. Online application can be submitted / edited upto 03.05.2022 till 11.59 p.m., after which the link will be disabled and the uploaded documents can be re-uploaded upto 14.06.2022 till 11.59 P.M.

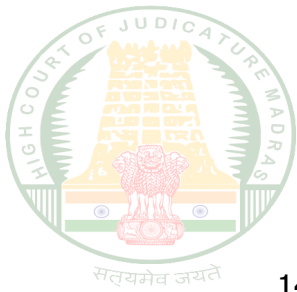
ANNEXURE – V

Sl. No 3. - Educational Qualification (Provisional Certificate / Degree Certificate / Consolidated Mark Sheet)

1. Diploma Certificate
2. Post Diploma Certificate
3. U.G. Degree in Engineering
4. P.G. Degree in Engineering
5. Apprenticeship Training Certificate

Note:

If the issue date of provisional certificate / U.G. Degree / P.G. Degree Certificate / Diploma falls after the date of notification (i.e 04.04.2022) candidates should upload evidence for having acquired the prescribed qualification on or before the date of Notification, failing which their applications will be rejected."



W.A.No.682 of 2023 & etc. batch

WEB COPY

14. The Relevant clauses in the Instructions to the applicants as modified with effect from 20.03.2022 are as follows:

Instructions to applicants

13 B. The original certificates in support of the claims made in the online application, should be scanned and uploaded for onscreen certificate verification, during the period stipulated by the Commission, failing which candidature is liable to be summarily rejected after due process.

14 G. Educational Qualification

(vi) Candidates claiming possession of qualification higher than that prescribed for a post, must upload / produce certificates, issued on / before the date of notification, in support of such claim. Failure to upload / produce such certificates shall result in rejection of candidature after due process

(viii) In any case, the educational qualification prescribed, should have been obtained in the order as specified in Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and as stated at (i) to (iii) of Explanation-I of Paragraph 9 of these Instructions.

(ix) In cases where the duration of the prescribed educational / technical course has been specified in the notification, any discrepancy between the claim in the application and the documents uploaded / produced, shall result in the rejection of candidature after due process.

(xii) Claim to possess educational qualification unsupported by the prescribed documents shall result in rejection of candidature after due process.



W.A.No.682 of 2023 & etc. batch

WEB COPY

Clause 14 R

(ii). Candidates claiming to be Persons studied in Tamil Medium (PSTM) must upload / produce evidence for the same, in the form of SSLC, HSC, Transfer Certificate, Provisional Certificate, Convocation Certificate, Degree Certificate, PG Degree Certificate, Mark Sheets, Certificate from the Board or University or from the Institution, as the case may be, with a recording that he had studied the entire duration of the respective course(s) through Tamil medium of instruction.

(iv) If no such document as evidence for 'Person Studied in Tamil Medium' is available, a certificate from the Principal / Head Master / District Educational Officer / Chief Educational Officer / District Adi Dravidar Welfare Officer / Registrar / Controller of Examinations / Head / Director of the Educational Institution / Director / Joint Director of Technical Education/ Registrar of Universities as the case may be, in the format as given below must be uploaded / produced, for each and every educational qualification upto the educational qualification prescribed.

(v) Failure to upload / produce such documents as evidence for 'Persons Studied in Tamil Medium' for all educational qualification upto the educational qualification prescribed, shall result in the rejection of candidature after due process.

(vi) Documents uploaded / produced as proof of having studied in Tamil medium, for the partial duration of any course / private appearance at any examination, shall not be accepted and shall result in the rejection of candidature after due process.



W.A.No.682 of 2023 & etc. batch

Post script

WEB COPY

The instructions contained herein are general in nature. Instructions specific to individual recruitments are issued in the respective notifications, memoranda of admission (hall tickets), question booklets, answer sheets/question-cum- answer booklets and examination centres.

15. The instructions with effect from 22.03.2022 have been subsequently amended. The amendments are not applicable as the instructions that were in vogue as on 04.04.2022, the date of notification are alone applicable. For the modified instructions to apply, the notification would also have to be issued afresh. Further, it is also evident that the instructions are general in nature and the notifications are specific with regard to the posts to be filled up. Therefore, the notification and the instructions have to be harmoniously read together with preference to the terms and conditions in the notification.

16. Now coming to the notification, it contains clauses relating to eligibility, requirement of submission of documents to prove the claim, documents required to fulfil the qualifications, documents required to satisfy the claim under horizontal reservation, conduct during the examination, selection process, reservation, fees and other matters. The notification also explicitly makes it clear that the candidate must be eligible as on the date of notification. Clause 13 (g) clearly states that if the candidates do not fulfil any of the eligibility conditions upon verification of the



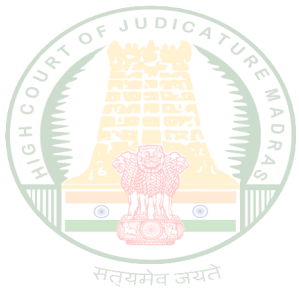
W.A.No.682 of 2023 & etc. batch

certificates, then their candidature would be rejected. The clause also states that the documents must be produced when called for. Therefore, all that is required for an applicant to be considered is that he must fulfil all the eligibility conditions on the date of notification; and what is also relevant from various clauses in the notification is that when the documents are not furnished, the candidature can be rejected after due process.

16.1. Once, the applicants have satisfied all the eligibility conditions, their candidature is not to be ordinarily rejected for want of proof, when the notification itself permits production of proof at a later date. It would be useful to refer to the judgment of the Apex Court in ***Charles K. Skaria v. C. Mathew (Dr), [(1980) 2 SCC 752 : 1980 SCC (L&S) 305]***, wherein, it was held as follows:

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

"(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.



WEB COPY



W.A.No.682 of 2023 & etc. batch

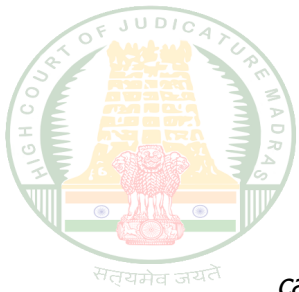
13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application."

*This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. **To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.***

21. Before the Selection Committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.

26. Even so, there is a snag. Who are the diploma-holders eligible for 10 extra marks? Only those who, at least by the final date for making applications for admissions possess the diploma. Acquisition of a diploma later may qualify him later, not this year. Otherwise, the dateline makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the authority concerned. An examinee for a degree or diploma must complete his examination—written, oral or practical—before he can tell the Selection Committee or the court that he has done his part. Even this is not enough. If all goes well after that, he



W.A.No.682 of 2023 & etc. batch

WEB COPY

cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled viz. the official communication of the result before the selection and its being brought to the ken of the committee in an authentic manner. May be, the examination is cancelled or the marks of the candidates are withheld. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the Selection Committee has the result before it at the time of—not after—the selection is over. To sum up, the applicant for postgraduate degree course earns the right to the added advantage of diploma only if (a) he has [**Ed.:** Matter between two asterisks is emphasised in original.] completed the diploma examination on or before the last date for the application [**Ed.:** Matter between two asterisks is emphasised in original], (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a Selection Committee requesting the universities concerned to inform them of the factum and get the proof straight by communication therefrom—unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unveracious touch about the process.”

16.2. Reiterating the above view, the Hon’ble Apex Court in ***Dheerender***

Singh Paliwal v. UPSC, [(2017) 11 SCC 276 : (2018) 1 SCC (L&S) 318]

held as follows:

“11. We heard Mr V. Shekhar, learned Senior Counsel for the appellant who drew our attention to the various interviews narrated above which are part of our record and also relied upon the decision of this Court in *Charles K. Skaria v. C. Mathew* [*Charles K. Skaria v. C. Mathew, (1980) 2 SCC 752 : 1980 SCC (L&S) 305*] wherein this Court has held as under in paras 21 & 26: (SCC pp. 762 & 764)



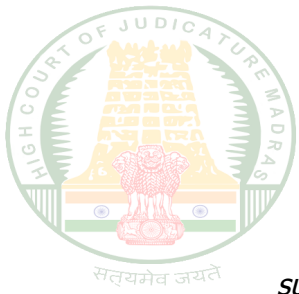
WEB COPY



W.A.No.682 of 2023 & etc. batch

"21. Before the Selection Committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.

*26. Even so, there is a snag. Who are the diploma-holders eligible for 10 extra marks? Only those who, at least by the final date for making applications for admissions possess the diploma. Acquisition of a diploma later may qualify him later, not this year. Otherwise, the dateline makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the authority concerned. An examinee for a degree or diploma must complete his examination—written, oral or practical—before he can tell the Selection Committee or the court that he has done his part. Even this is not enough. If all goes well after that, he cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled viz. the official communication of the result before the selection and its being brought to the ken of the committee in an authentic manner. May be, the examination is cancelled or the marks of the candidates are withheld. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the Selection Committee has the result before it at the time of—not after—the selection is over. To sum up, the applicant for postgraduate degree course earns the right to the added advantage of diploma only if (a) he has [**Ed.:** Matter between two asterisks is emphasised in original.] completed the diploma examination on or before the last date for the application [**Ed.:** Matter between two asterisks is emphasised in original.] , (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a*



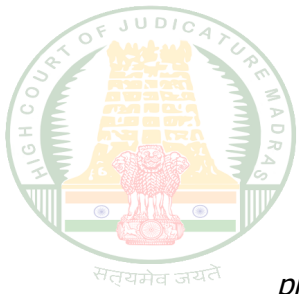
WEB COPY

sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a Selection Committee requesting the universities concerned to inform them of the factum and get the proof straight by communication therefrom—unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unveracious touch about the process.”

(emphasis supplied)

14. Having considered the respective submissions and having noted the dictum of this Court as noted above, we are of the view that in the light of the prescription noted in the advertisement, the particulars furnished by the appellant in response to the said advertisement and the production of the degree certificate for having secured the BSc degree with Zoology as the subject at a later point of time there was substantial compliance with the requirement to be fulfilled in the matter of the essential qualifications possessed by the appellant. Therefore, applying the principle set down by this Court, the respondent Commission ought to have considered the application and more so when the appellant was already in the services of the Forensic Science Laboratory as Senior Scientific Assistant and his essential qualifications were very much on record in the form of résumé and therefore pursuant to the direction of the Tribunal when the respondent Commission interviewed the appellant and found him fit to be selected and appointed for the post of Senior Scientific Officer in all fairness should have appointed the appellant.

15. In the first place, it must be stated that it is not a case of the appellant not possessing the required essential qualifications but was of only not enclosing the certificate in proof of the added qualification of Zoology as one of the subjects at BSc level, from a recognised University. In the application when once the appellant, marked '1' against Column 9 and thereby confirmed that he possesses the essential qualification, namely, the postgraduate qualification as well as the degree level qualification, if at all there was any doubt about any of the qualification, the appellant should have been called upon to produce the required certificate in proof of such essential qualification. In fact in this context, when we refer to the interview proceedings of the appellant as well as two other candidates we find that the appellant produced the original BSc/MSc degree in Zoology and also submitted the attested photocopy of BSc Zoology degree. The outcome of the said interview was that the appellant should be cleared of his selection. Insofar as other two candidates, namely, Miss Babyto and Miss Imrana, are concerned, we find that the



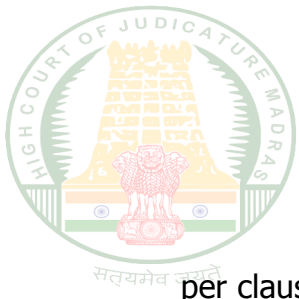
W.A.No.682 of 2023 & etc. batch

WEB COPY

production of their caste certificate was not in the prescribed pro forma initially, nevertheless those candidates were allowed to produce the original caste certificate issued by the competent authority and after verifying the same by accepting the attested photocopies of such caste certificates, their cases were cleared. Therefore, when such a course was adopted by the respondent Commission in regard to those two candidates there is no reason why the candidature of the appellant alone was kept in suspension, though he also cleared interview process. Even assuming such clearance was not made awaiting the outcome of the order of the Tribunal, when the Tribunal upheld his selection and directed the respondent to issue necessary orders for appointment, in all fairness the respondent Commission should have issued the order of appointment. We are of the view that such an approach of the respondent Commission was unfair having regard to the very trivial issue, namely, a non-production of an added qualification as part of the essential qualification at the degree level which the appellant did possess and for mere asking, the appellant could have readily produced the same through his employer.

16. We are therefore convinced that the interference with the order of the Tribunal by the Division Bench was uncalled for and accordingly while setting aside the impugned judgment [UPSC v. Dheerender Singh Paliwal, 2010 SCC OnLine Del 3465 : (2010) 119 DRJ 662] of the Division Bench of the High Court, the order of the Tribunal dated 9-12-2009 [Dheerender Singh Paliwal v. UPSC, 2009 SCC OnLine CAT 1593] stands restored. The appeal is allowed. The appellant shall be appointed as Senior Scientific Officer as directed in the aforesaid order and shall be granted all the benefits including restoration of the seniority as on the date of the appointment of any of his juniors in the said position pursuant to the selection made in the Advertisement dated 28-2-2009 to 6-3-2009. However, applying the principle of not having actually performed the duties of the Senior Scientific Officer, we hold that such conferment of benefits shall be made on notional basis without any monetary liability. Above directions shall be carried out within two weeks from the date of production of the copies of this order."

16.3. Insofar as the documents are concerned, on a first blush would look at as if it is mandatory to upload all the documents from Sl.No.5 of "Warning", Clause 12 (B) (ii), (v), 12 (B) (i) and 15 (a). However, as per clause 13 (g), unless specific instructions are given, the documents need not be uploaded and as



W.A.No.682 of 2023 & etc. batch

WEB COPY

per clause 14 (10) (c), the applicants need not send a print of the application and the documents. Though clause 14 states that the particulars mentioned in the application shall not be permitted to be modified after the last date for submitting the on-line application, clause 15 (b) is converse to earlier clauses referred to above, as it conveys that the applicants are entitled to edit the credentials, upload/re-upload documents which were either wrongly uploaded or not uploaded till two days prior to the date of hosting of hall tickets for that particular post or in other terms, twelve days prior to the date of examination. At this juncture, it is pertinent to mention here that the examination was postponed to 02.07.2022 in the present cases. From the above clauses, it is clear that the condition to upload the document is not mandatory as clause 15 (b) also covers a situation where documents were not uploaded along with the application. Clause 16 of the notification partially confirms clause 14, but varies with clause 15 as it states that the uploading of documents can take place till 14.06.2022 when clause 15 has granted time till two days prior to uploading of hall ticket or 12 days prior to the examination. When the notification gives two different dates, the uploading of the documents being procedural, the interpretation which confers benefit to the applicants must be considered. Hence, in the present cases, the last date would have to be reckoned as twelve days prior to 02.07.2022 or the date if examinations are held on various dates. The clauses in the notification as well as the instructions explicit that the effect of failure to upload the documents is



W.A.No.682 of 2023 & etc. batch

rejection of the application after due process. The word “due process” has not been defined in the notification or in the instructions. Therefore, it should be understood or considered in its natural meaning, that is to say, as understood in common parlance.

17. The concept of ‘due process’ in the legal jurisprudence is understood as something that is fair, just and reasonable. The concept of “due process” is conceived from “natural law”. Prior to codification of laws by the crown, rules, which provided for standard behaviours were followed by social groups, with consensus came to known as “norms”. Such norms contemplated procedures, the observance of which may be rewarded and when violated, resulted in imposition of sanctions. Such norms also reflected the culture and tradition of the group. Later, the application of such norms, followed by dominant groups, were either accepted as such or with modification by other groups. Such norms when they received the assent of the crown and codified, became law.

17.1. Natural law is interested in absolute justice. Every law must be in conformity with the natural law which is rested on the principles of fairness, reason and equality. Fairness would not only mean a fair law, but also a fair procedure, by which proper, equal and adequate opportunity are offered to the parties in the dispute. This natural law later developed into the concept of natural

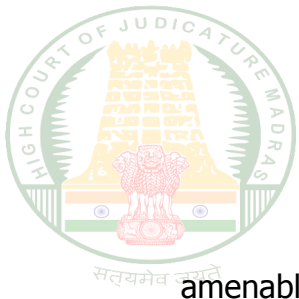


W.A.No.682 of 2023 & etc. batch

WEB COPY

justice, which has many facets. Two important facets of natural justice are the adherence to the procedure where opportunity is provided to a person who is either accused of committing an act prohibited by law or when his civil right is threatened; and the second facet being the right to know the reason for adverse proceedings. The principles of natural justice grew rapidly in every jurisprudence. The rules of evidence, the right against self-incrimination, right against illegal detention are some excerpts from criminal jurisprudence. The development in civil jurisprudence resulted in development of concepts like doctrine of proposition. The natural laws paved way for fundamental rights, which has since been incorporated in every constitution in the world. The above rights and protections which are determined and indispensable to the justice delivery system came to be known as "due process". The concept of "due process" is divided into two categories known as "substantive due process" and "procedural due process". "Substantive due process" is the principle by which the fundamental rights of a citizen are protected. The "procedural due process" requires that a fair procedure is to be followed before the deprivation of life, liberty, property and rights.

17.2. The concept of due process was first brought into a codified law in the "Charter of Magna Carta" in 1215. Clause 39 of the Magna Carta stated that no free man could be imprisoned or stripped of his rights or possessions without following the due process". The Magna carta, in a way brought the crown



W.A.No.682 of 2023 & etc. batch

WEB COPY

amenable to law and offered various protections amongst other protections like access to justice, protection against illegal imprisonment, limitations on payments, protection of property rights, protection against deprivation of rights without due process.

17.3. The due process concept was brought into the American Constitution in the Fifth Amendment and Fourteenth Amendment. The due process clause in the fifth Amendment applies to the Federal Government and the Fourteenth Amendment to the state governments. Section 1 of the Fourteen Amendment reads as follows:

"Section 1. *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

17.4. The American courts have interpreted the "due process" clause widely and offered protection against vague and arbitrary laws in addition to protection against arbitrary and unreasonable state action against civil rights and liberties of its citizens.

17.5. Every human being is entitled to certain basic rights covered under the principle of "due process". Such rights are classified as "Human Rights".



W.A.No.682 of 2023 & etc. batch

WEB COPY

Unreasonable procedure taking away the substantive right is unfair. The basic concepts of human rights are weaved into every constitution in the form of fundamental rights. The two World Wars brought about a sense of insecurity and in turn responsibility among various countries in the world to establish peace and order. In furtherance of such endeavour, the United Nations was established as an International Organization, to address not only international disputes between the different countries, but also to ensure that basic human rights are protected. The Universal Declaration of Human Rights was adopted on 10th December 1948, which sets out the fundamental human rights to be universally protected. Article 21 (2) of the Declaration and other relevant Articles read as under:

"Article 21

...

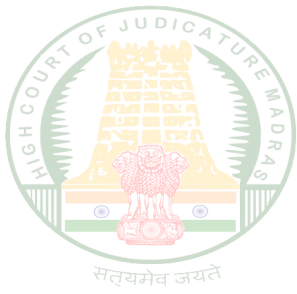
2. Every one has the right of equal access to public service in his country.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

- 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- 2. Everyone, without any discrimination, has the right to equal pay for equal work.*
- 3. Everyone who works has the right to just and favourable*



WEB COPY



W.A.No.682 of 2023 & etc. batch

remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. *Everyone has the right to form and to join trade unions for the protection of his interests.'*

The above rights have been integrated into our constitution in the form of fundamental and constitutional rights.

17.6. The concepts of equity, reasonableness and equality have been in existence in our country for a very long period, which is evident from the various scripts and literatures. The concept of evidence before judgment and the concepts of primary and secondary evidence are illustrated in the 11th Century literature "Thiruthondar Puranam", while describing the life of "Sundarar". Our Indian Constitution, has not incorporated the clause of "due process", but has restricted it to "procedure established by law". However, the protection under "due process" is covered under various rights protected under the Fundamental rights, which are as follows:

"Article 14. Equality before law.

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.



W.A.No.682 of 2023 & etc. batch

WEB COPY

2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

Article 19. Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right*
 - (a) to freedom of speech and expression;*
 - (b) to assemble peaceably and without arms;*
 - (c) to form associations or unions;*
 - (d) to move freely throughout the territory of India;*
 - (e) to reside and settle in any part of the territory of India; and*
 - (f) omitted*
 - (g) to practise any profession, or to carry on any occupation, trade or business.*

Article 21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

17.7. Article 41 under the Directive Principles of State Policy reads as follows:

"Article 41. Right to work, to education and to public assistance in certain cases .

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."



W.A.No.682 of 2023 & etc. batch

WEB COPY

17.8. The reading of the above Articles would illustrate that the basic protection under the Human Rights Declaration and the protection offered by the “due process” principle, both substantive and procedural are covered in the Indian Constitution under Articles 14, 16, 19 and 21. Such laws either substantive or procedural, which are unreasonable and unfair, would be arbitrary and hit by Article 14 of the Constitution. Similarly, deprivation of equal opportunity in employment by creating an arbitrary fetter and discrimination except by way of policy of reservation is prohibited under Article 16. Article 21 of the Constitution is significant in the protection of human rights along with Article 14. The deprivation of right to life and liberty cannot be except according to the procedure established by law. The Hon’ble Apex Court in various judgments has extended the scope of right to life. It is now a settled law that the right to life would mean and include the right to live with human dignity which would also include within its ambit a fair opportunity to defend against any action, development and social security. Any act of the state or its arm, which deprives the citizen of his right to live with dignity is a violation of human right and in turn violative of Article 21. Even the action taken by the state, in adopting a procedure in exercise of its Administrative power which abridges the basic human right will have to be tested with reference to reasonableness and arbitrariness as they are comprised in the theory of fairness, which is the basic principles of “due process”. Even though the above Articles deal with different subjects, they are not mutually exclusive. We



W.A.No.682 of 2023 & etc. batch

WEB COPY

have already seen that the principles of fairness or “due process” would require the compliance of the principles of natural justice, failing which would offend the rights sought to be protected under Article 14 and Article 21 of the Constitution.

17.9. At this Juncture, it would be useful to refer to the following judgments of the Apex Court with regard to right to life, human dignity, principles of natural justice and “due process”:

(i) ***Maneka Gandhi v. Union of India [(1978) 1 SCC 248]***

“6. We may at this stage consider the inter-relation between Article 21 on the one hand and Articles 14 and 19 on the other. We have already pointed out that the view taken by the majority in A.K. Gopalan case [1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] was that so long as a law of preventive detention satisfies the requirements of Article 22, it would be within the terms of Article 21 and it would not be required to meet the challenge of Article 19. This view proceeded on the assumption that “certain articles in the Constitution exclusively deal with specific matters” and where the requirements of an article dealing with the particular matter in question are satisfied and there is no infringement of the fundamental right guaranteed by that article, no recourse can be had to a fundamental right conferred by another article. This doctrine of exclusivity was seriously questioned in R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] and it was over-ruled by a majority of the full Court, only Ray, J., as he then was, dissenting. The majority Judges held that though a law of preventive detention may pass the test of Article 22, it has yet to satisfy the requirements of other fundamental rights such as Article 19. The ratio of the majority judgment in R.C. Cooper case [(1970) 2 SCC 298 : (1971) 1 SCR 512] was explained in clear and categorical terms by Shelat, J., speaking on behalf of seven Judges of this Court in Shambhu Nath Sarkar v. State of West Bengal [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] . The learned Judge there said (SCC p. 879):

“In Gopalan case [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] the majority court had held that Article 22 was a self-contained code and therefore a law of preventive detention did not have to satisfy the requirements of Articles 19, 14 and



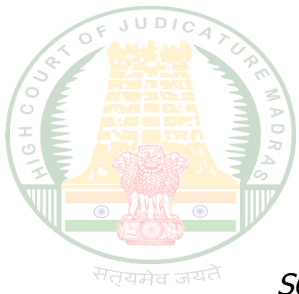
WEB COPY



W.A.No.682 of 2023 & etc. batch

21. The view of Fazl Ali, J., on the other hand, was that preventive detention was a direct breach of the right under Article 19(1)(d) and that a law providing for preventive detention had to be subject to such judicial review as is obtained under clause (5) of that article. In *R.C. Cooper v. Union of India* [(1970) 2 SCC 298 : (1971) 1 SCR 512] the aforesaid premise of the majority in *Gopalan case* [1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] was disapproved and therefore it no longer holds the field. Though *Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] dealt with the inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in *Gopalan case* [1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] to be incorrect."

Subsequently, in *Haradhan Saha v. State of West Bengal* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] also, a Bench of five Judges of this Court, after referring to the decisions in *A.K. Gopalan case* [1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] and *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] agreed that the Maintenance of Internal Security Act, 1971, which is a law of preventive detention, has to be tested in regard to its reasonableness with reference to Article 19. That decision accepted and applied the ratio in *R.C. Cooper case* [(1970) 2 SCC 298 : (1971) 1 SCR 512] and *Shambhu Nath Sarkar case* [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] and proceeded to consider the challenge of Article 19, to the constitutional validity of the Maintenance of Internal Security Act, 1971 and held that the Act did not violate any of the constitutional guarantees enshrined in Article 19. The same view was affirmed once again by a Bench of four Judges of this Court in *Khudiram Das v. State of West Bengal* [(1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832]. Interestingly, even prior to these decisions, as pointed out by Dr Rajeev Dhavan, in his book, *The Supreme Court of India* at p. 235, reference was made by this Court in *Mohd. Sabir v. State of Jammu and Kashmir* [(1972) 4 SCC 558 : 1971 Cri LJ 1271] to Article 19(2) to justify preventive detention. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of "personal liberty" and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in *R.C. Cooper case* [(1970) 2

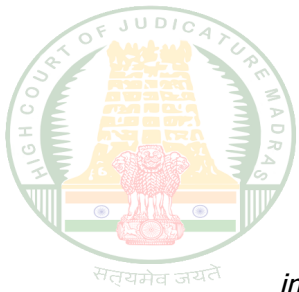


WEB COPY

SCC 298 : (1971) 1 SCR 512], Shambhu Nath Sarkar case [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] and Haradhan Saha case [(1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778] Now, if a law depriving a person of "personal liberty" and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14. This was in fact not disputed by the learned Attorney-General and indeed he could not do so in view of the clear and categorical statement made by Mukherjea, J., in A.K. Gopalan case [1950 SCC 228 : AIR 1950 SC 27 : 1950 SCR 88 : 51 Cri LJ 1383] that Article 21 "presupposes that the law is a valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and does not infringe any of the fundamental rights which the Constitution provides for", including Article 14. This Court also applied Article 14 in two of its earlier decisions, namely, State of West Bengal v. Anwar Ali Sarkar [(1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] and Kathi Raning Rawat v. State of Saurashtra [(1952) 1 SCC 215 : AIR 1952 SC 123 : 1952 SCR 435 : 1952 Cri LJ 805] where there was a special law providing for trial of certain offences by a speedier process which took away some of the safeguards available to an accused under the ordinary procedure in the Criminal Procedure Code. The special law in each of these two cases undoubtedly prescribed a procedure for trial of the specified offences and this procedure could not be condemned as inherently unfair or unjust and there was thus compliance with the requirement of Article 21, but even so, the validity of the special law was tested before the Supreme Court on the touchstone of Article 14 and in one case, namely, Kathi Raning Rawat case [(1952) 1 SCC 215 : AIR 1952 SC 123 : 1952 SCR 435 : 1952 Cri LJ 805] he validity was upheld and in the other, namely, Anwar Ali Sarkar case [(1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] it was struck down. It was held in both these cases that the procedure established by the special law must not be violative of the equality clause. That procedure must answer the requirement of Article 14.

The nature and requirement of the procedure under Article 21

7. Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be

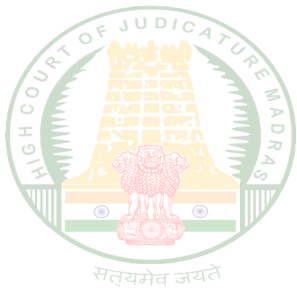


WEB COPY

imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

How far natural justice is an essential element of "procedure established by law"

8. The question immediately arises : does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the test of this requirement? Is it "right or fair or just"? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in Cooper v. Wandsworth Board of Works [(1863) 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] :



WEB COPY



W.A.No.682 of 2023 & etc. batch

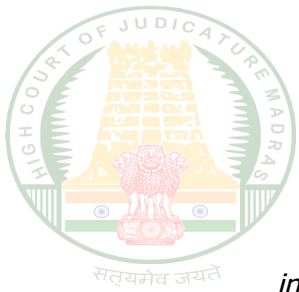
"A long course of decisions, beginning with Dr Bentley case and ending with some very recent cases, establish that, although there are no positive works in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, nemo judex in causa sua and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport?

9. We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club:

"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet re-remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fair-play in action — who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled; it lacks more exalted inspiration. [Current Legal Problems, 1973, Vol. 26, p. 16] "

And then again, in his speech in the House of Lords

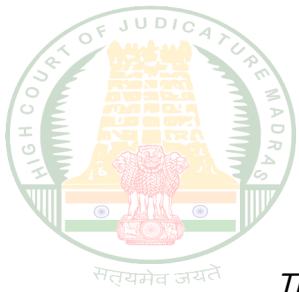


WEB COPY

in *Wiseman v. Borneman* [1971 AC 297 : (1969) 3 All ER 275] the learned Law Lord said in words of inspired felicity:

"... that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only 'fair play in action'. Nor do we wait for directions from Parliament. The common law has abundant riches : there may we find what Byles, J., called 'the justice of the common law' ".

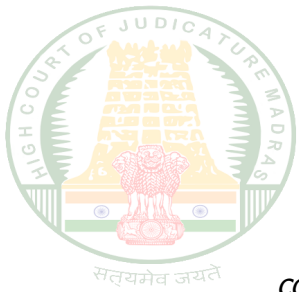
*Thus, the soul of natural justice is "fair-play in action" and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that "fair-play in action" demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, MR in these terms in *Schmidt v. Secretary of State or Home Affairs* [(1969) 2 Ch D 149 : (1969) 1 All ER 904] — "where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations (vide *American Journal of International Law*, Vol. 67, p. 479). Magarry, J., describes natural justice "as a distillate of due process of law" (vide *Fontaine v. Chastarton* [(1968) 112 Solicitor General 690]). It is the quintessence of the process of justice inspired and guided by "fair-play in action". If we look at the speeches of the various Law Lords in *Wiseman* case [1971 AC 297 : (1969) 3 All ER 275] it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", or, was the procedure adopted by the*



WEB COPY

Tribunal "in all the circumstances unfair?" The test adopted by every Law Lord was whether the procedure followed was fair in all the circumstances and "fair-play in action" required that an opportunity should be given to the taxpayer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him". The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?

*10. Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair-play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences. There was, however, a time in the early stages of the development of the doctrine of natural justice when the view prevailed that the rules of natural justice have application only to a quasi-judicial proceeding as distinguished from an administrative proceeding and the distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by the law under which it is functioning to act judicially. This requirement of a duty to act judicially in order to invest the function with a quasi-judicial character was spelt out from the following observation of Atkin, L.J. in *Rex v. Electricity Commissioners* [(1924) 1 KB 171 : (1923) All ER Rep 150] , "wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King Bench Division . . .". Lord Hewart, C.J., in *Rex v. Legislative Committee of the Church Assembly* [(1928) 1 KB 411] read this observation to mean that the duty to act judicially should be an additional requirement existing independently of the "authority to determine questions affecting the rights of subjects"— something super-added to it. This gloss placed by Lord Hewart, C.J., on the dictum of Lord Atkin, L.J., bedevilled the law for a considerable time and stultified the growth of the doctrine of natural justice. The Court was constrained in every case that came before it, to make a search for the duty to act judicially sometimes from tenuous material and sometimes in the services of the statute and this led to oversubtlety and over-refinement resulting in*

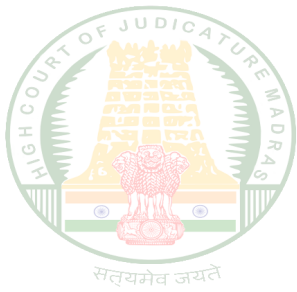


WEB COPY

confusion and uncertainty in the law. But this was plainly contrary to the earlier authorities and in the epoch-making decision of the House of Lords in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66] which marks a turning point in the history of the development of the doctrine of natural justice, Lord Reid pointed out how the gloss of Lord Hewart, C.J., was based on a misunderstanding of the observations of Atkin, L.J., and it went counter to the law laid down in the earlier decisions of the Court. Lord Reid observed: "If Lord Hewart meant that it is never enough that a body has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially, then that appears to me impossible to reconcile with the earlier authorities". The learned Law Lord held that the duty to act judicially may arise from the very nature of the function intended to be performed and it need not be shown to be super-added. This decision broadened the area of application of the rules of natural justice and to borrow the words of Prof. Clark in his article on "Natural Justice, Substance and Shadow" in Public Law Journal, 1975, restored light to an area "benighted by the narrow conceptualism of the previous decade". This development in the law had its parallel in India in the Associated Cement Companies Ltd. v. P.N. Sharma [AIR 1965 SC 1595 : (1965) 2 SCR 366 : (1965) 1 LLJ 433 : 27 FJR 204] where this Court approvingly referred to the decision in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66] and, later in State of Orissa v. Dr Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] observed that: "If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power". This Court also pointed out in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] another historic decision in this branch of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and said:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised."

The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted."



WEB COPY

(ii) **Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC**

405 at page 433]

"44. The dichotomy between administrative and quasi-judicial functions vis-a-vis the doctrine of natural justice is presumably obsolescent after Kraipak [A.K. Kripak v. Union of India, (1969) 2 SCC 262 : (1970) 1 SCR 457] in India and Schmidt [Schmidt v. Secretary of State for Home Affairs, (1969) 2 Ch 149] in England.

45. Kraipak marks the watershed, if we may say so, in the application of natural justice to administrative proceedings. Hegde, J., speaking for a Bench of five Judges observed, quoting for support Lord Parker in In re H.K. (an infant) [(1967) 2 QB 617, 630 : (1967) 1 All ER 226] :

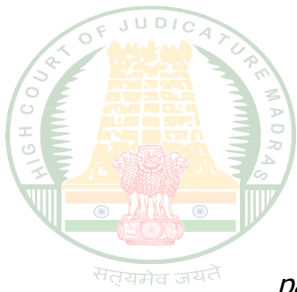
"It is not necessary to examine these decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding. (p. 467) (SCC p. 271, para 17)

** * **

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. (p. 468) (SCC p. 272. para 20)

** * *"*

The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala [AIR 1969 SC 198 : (1969) 1 SCR 317] the rules of natural justice are not embodied rules. What



WEB COPY

particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.” (p. 469) (SCC pp. 272-3, para 20)

.....

53.Ridge v. Baldwin [(1964) AC 40 : (1963) 2 All ER 66] is a leading case which restored light to an area “benighted by the narrow conceptualism of the previous decade”, to borrow Professor Clark's expression. [Natural Justice : Substance and Shadow 'Public Law' Journal — Spring 1975] Good administration demands fairplay in action and this simple desideratum is the fount of natural justice. We have already said that the classification of functions as “judicial” or “administrative” is a stultifying shibboleth, discarded in India as in England. Today, in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights penumbral areas it is only for improving the quality of government by injecting fairplay into its wheels.”

(iii) Sunil Batra v. Delhi Admn. [(1978) 4 SCC 494 : 1979 SCC (Cri)

155]

“227. There is no more controversy which ranged over a long period about the view expressed in A.K. Gopalan v. State of Madras [1950 SCC 228 : AIR 1930 SC 27 : 1950 SCR 88 : 51 Cri LJ 1387] that certain articles of the Constitution exclusively deal with specific matters and where the requirements of an article dealing with a particular matter in question are satisfied and there is no infringement of the fundamental right guaranteed by the article, no recourse can be had to fundamental right conferred by another article. This doctrine of exclusivity was seriously questioned in R.C. Cooper v. Union of India [(1970) 1 SCC 248 : (1971) 1 SCR 512] and it was overruled by a majority of Judges of this Court, Ray, J. dissenting. In fact, in Maneka Gandhi v. Union of India [(1978) 1 SCC 248.] Bhagwati, J. observed as under: (SCC pp. 282-83)

“The law must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if



WEB COPY



W.A.No.682 of 2023 & etc. batch

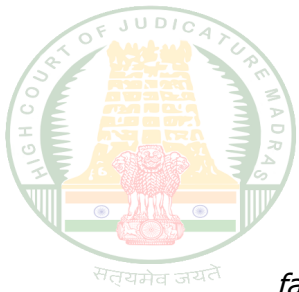
there is a law prescribing a procedure for depriving a person of personal liberty and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article ... If a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesi it must also be liable to, be tested with reference to Article 14.

228. The challenge under Article 21 must fail on our interpretation of sub-section (2) of Section 30. Personal liberty of the person who is incarcerated is to a great extent curtailed by punitive detention. It is even curtailed in preventive detention. The liberty to move, mix, mingle, talk, share company with co-prisoners, if substantially curtailed, would be violative of Article 21 unless the curtailment has the backing of law. Sub-section (2) of Section 30 establishes the procedure by which it can be curtailed out it must be read subject to our interpretation. The word "Law" in the expression "procedure established by law" in Article 21 has been interpreted to mean in Maneka Gandhi case that the law must be right, just and fair, and not arbitrary, fanciful or oppressive. Otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied. If it is arbitrary it would be violative of Article 14. Once Section 30(2) is read down in the manner in which we have done, its obnoxious element is erased and it cannot be said that it is arbitrary or that there is deprivation of personal liberty without the authority of law."

(iv) *People's Union for Civil Liberties (PUCL) v. Union of India,*

[(1997) 1 SCC 301 at page 314]

"30. The above analysis of Section 5(2) of the Act shows that so far the power to intercept messages/conversations is concerned the section clearly lays down the situations/conditions under which it can be exercised. But the substantive law as laid down in Section 5(2) of the Act must have procedural backing so that the exercise of power is fair and reasonable. The said procedure itself must be just, fair and reasonable. It has been settled by this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : (1978) 2 SCR 621] that "procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right



WEB COPY

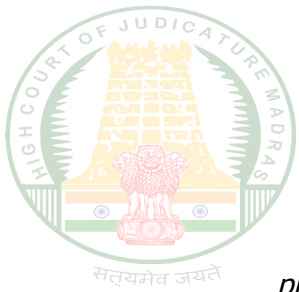
falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself". Thus understood, "procedure" must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes.

34. We agree with Mr Sibal that in the absence of any provision in the statute, it is not possible to provide for prior judicial scrutiny as a procedural safeguard. It is for the Central Government to make rules under Section 7 of the Act. Section 7(2)(b) specifically provides that the Central Government may make rules laying down the precautions to be taken for preventing the improper interception or disclosure of messages. The Act was enacted in the year 1885. The power to make rules under Section 7 of the Act has been there for over a century but the Central Government has not thought it proper to frame the necessary rules despite severe criticism of the manner in which the power under Section 5(2) has been exercised. It is entirely for the Central Government to make rules on the subject but till the time it is done the right to privacy of an individual has to be safeguarded. In order to rule out arbitrariness in the exercise of power under Section 5(2) of the Act and till the time the Central Government lays down just, fair and reasonable procedure under Section 7(2)(b) of the Act, it is necessary to lay down procedural safeguards for the exercise of power under Section 5(2) of the Act so that the right to privacy of a person is protected.'

(v) *Zahira Habibulla H. Sheikh v. State of Gujarat*, [(2004) 4 SCC

158 : 2004 SCC (Cri) 999 : 2004 SCC OnLine SC 464]

"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair



W.A.No.682 of 2023 & etc. batch

WEB COPY

prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

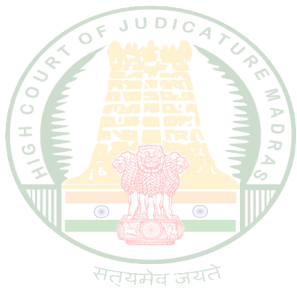
.....

39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial”.

(vi) *K.S. Puttaswamy (Aadhaar-5J.) v. Union of India [(2019) 1*

SCC 1 : 2018 SCC OnLine SC 1642]

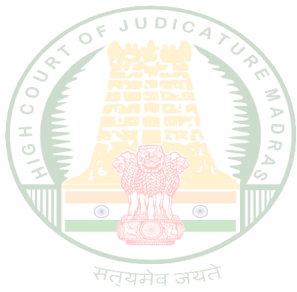
112. A brief summation of the judgment on privacy would indicate that privacy is treated as fundamental right. It is predicated on the basis that privacy is a postulate of dignity and the concept of dignity can be traced to the Preamble of the Constitution as well as Article 21 thereof. Further, privacy is considered as a subset of personal liberty thereby accepting the minority opinion in Kharak Singh v. State of U.P. [Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] Another significant jurisprudential development of this judgment is that right to privacy as a fundamental right is not limited to Article 21. On the contrary, privacy resonates through the entirety of Part III of the Constitution which pertains to fundamental rights and, in particular, Articles 14, 19 and 21. Privacy is also recognised as a natural right which inheres in individuals and is, thus, inalienable. In developing the aforesaid concepts, the Court has been receptive to the principles in international law and international instruments. It is a recognition of the fact that certain human rights cannot be confined within the bounds of geographical location of a nation but have universal application. In the process, the Court accepts the concept of universalisation of human rights, including the right to privacy as a human right and the good practices in developing and understanding such rights in other countries have been welcomed. In this hue, it can also be remarked that comparative law has played a very significant role in shaping the aforesaid judgment on privacy in Indian context, notwithstanding the fact that such comparative law has only a persuasive value.



WEB COPY

127. Next judgment in this line of cases would be that of *Jeeja Ghosh v. Union of India* [*Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 : (2016) 3 SCC (Civ) 551] wherein the Court, while expanding the jurisprudential basis, outlined three models of dignity which have been discussed by us above. These were referred to while explaining the normative role of human dignity, alongside, in the following manner : (SCC pp. 791-93, paras 37-38)

'37. The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are : (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption "fundamental rights". One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak [Aharon Barak, *Human Dignity—The Constitutional Value and the Constitutional Right* (Cambridge University Press, 2015).] (former Chief Justice of the Supreme Court of Israel) in the following manner:



WEB COPY

The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways : first, the value of human dignity serves as a normative basis for constitutional rights set out in the Constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.'

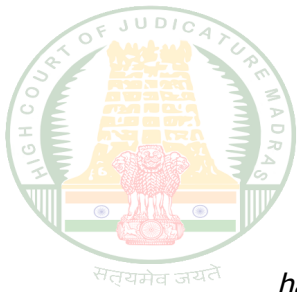
38. All the three goals of human dignity as a constitutional value are expanded by the author in a scholarly manner. Some of the excerpts thereof, are reproduced below which give a glimpse of these goals:

The first role of human dignity as a constitutional value is expressed in the approach that it comprises the foundation for all of the constitutional rights. Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights. According to Christoph Enders, it is the constitutional value that determines that every person has the right to have rights ...

The second role of human dignity as a constitutional value is to provide meaning to the norms of the legal system. According to purposive interpretation, all of the provisions of the Constitution, and particularly all of the rights in the constitutional Bill of Rights, are interpreted in light of human dignity ...

Lastly, human dignity as a constitutional value influences the development of the common law. Indeed, where common law is recognised, Judges have the duty to develop it, and if necessary, modify it, so that it expresses constitutional values, including the constitutional value of human dignity. To the extent that common law determines rights and duties between individuals, it might limit the human dignity of one individual and protect the human dignity of the other.'"

134. From the aforesaid discussion, it follows that dignity as a jurisprudential concept has now been well defined by this Court. Its essential ingredients can be summarised as under. The basic principle of dignity and freedom of the individual is an attribute of natural law which becomes the right of all individuals in a constitutional democracy. Dignity



WEB COPY

has a central normative role as well as constitutional value. This normative role is performed in three ways:

First, it becomes basis for constitutional rights;

Second, it serves as an interpretative principle for determining the scope of constitutional rights; and,

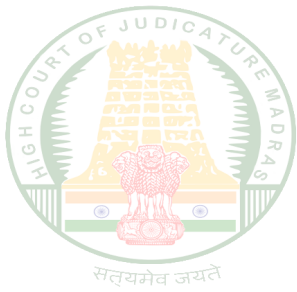
Third, it determines the proportionality of a statute limiting a constitutional right. Thus, if an enactment puts limitation on a constitutional right and such limitation is disproportionate, such a statute can be held to be unconstitutional by applying the doctrine of proportionality.

138. The aforesaid discourse on the concept of human dignity is from an individual point of view. That is the emphasis of the petitioners as well. That would be one side of the coin. A very important feature which the present case has brought into focus is another dimension of human dignity, namely, in the form of "common good" or "public good". Thus, our endeavour here is to give richer and more nuanced understanding to the concept of human dignity. Here, dignity is not limited to an individual and is to be seen in an individualistic way. A reflection on this facet of human dignity was stated in National Legal Services Authority [National Legal Services Authority v. Union of India, (2014) 5 SCC 438] (Transgenders case), which can be discerned from the following discussion : (SCC pp. 498-99, paras 103-105)

'103. A corollary of this development is that while so long the negative language of Article 21 and use of the word "deprived" was supposed to impose upon the State the negative duty not to interfere with the life or liberty of an individual without the sanction of law, the width and amplitude of this provision has now imposed a positive obligation (Vincent Panikurlangara v. Union of India [Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165 : 1987 SCC (Cri) 329]) upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity e.g.:

(i) Maintenance and improvement of public health (Vincent Panikurlangara v. Union of India [Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165 : 1987 SCC (Cri) 329]).

(ii) Elimination of water and air pollution (M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1987) 4 SCC 463]).



WEB COPY



W.A.No.682 of 2023 & etc. batch

(iii) *Improvement of means of communication (State of H.P. v. Umed Ram Sharma [State of H.P. v. Umed Ram Sharma, (1986) 2 SCC 68]).*

(iv) *Rehabilitation of bonded labourers (Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]).*

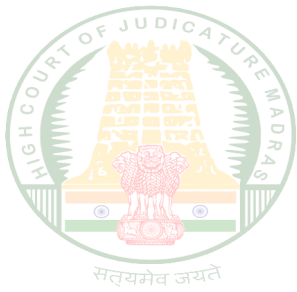
(v) *Providing human conditions in prisons (Sher Singh v. State of Punjab [Sher Singh v. State of Punjab, (1983) 2 SCC 344 : 1983 SCC (Cri) 461]) and protective homes (Sheela Barse v. State of Maharashtra [Sheela Barse v. State of Maharashtra, (1983) 2 SCC 96 : 1983 SCC (Cri) 353]).*

(vi) *Providing hygienic condition in a slaughterhouse (Buffalo Traders Welfare Assn. v. Maneka Gandhi [Buffalo Traders Welfare Assn. v. Maneka Gandhi, 1994 Supp (3) SCC 448]).*

104. *The common golden thread which passes through all these pronouncements is that Article 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development.*

105. *The concepts of justice social, economic and political, equality of status and of opportunity and of assuring dignity of the individual incorporated in the Preamble, clearly recognise the right of one and all amongst the citizens of these basic essentials designed to flower the citizen's personality to its fullest. The concept of equality helps the citizens in reaching their highest potential. Thus, the emphasis is on the development of an individual in all respects.'*

548. *Privacy has been held to be an intrinsic element of the right to life and personal liberty under Article 21 and has a constitutional value which is embodied in the fundamental freedoms embedded in Part III of the Constitution. It was further held that like the right to life and liberty, privacy is not absolute. The limitations which operate on the right to life and personal liberty would operate on the right to privacy. Any curtailment or deprivation of that right would have to take place under a regime of law. The procedure established by law must be fair, just and reasonable.*



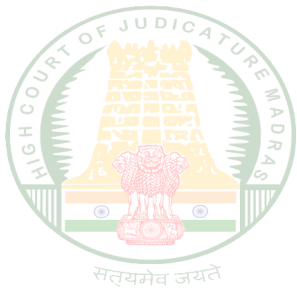
W.A.No.682 of 2023 & etc. batch

WEB COPY

1419. The principle of arbitrariness was applied for invalidating a State law by the three-Judge Bench decision in *Lakshmanan* [K.R. Lakshmanan v. State of T.N., (1996) 2 SCC 226]. It was, in this context that Nariman, J. speaking for two Judges in the Constitution Bench in *Shayara Bano* [Shayara Bano v. Union of India, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] held that manifest arbitrariness is a component of Article 14. Hence, a law which is manifestly arbitrary would violate the fundamental right to equality : (SCC pp. 91-92, para 87)

"87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in *McDowell* [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution."

Nariman, J. has observed that even after *McDowell* [State of A.P. v. McDowell and Co., (1996) 3 SCC 709], challenges to the validity of legislation have been entertained on the ground of arbitrariness (*Malpe Vishwanath Acharya v. State of Maharashtra* [Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1], *Mardia Chemicals Ltd. v. Union of India* [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311], *State of T.N. v. K. Shyam Sunder* [State of T.N. v. K. Shyam Sunder, (2011) 8 SCC 737 : 6 SCEC 65], *A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy* [A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy, (2011) 9 SCC 286] and *K.T. Plantation (P) Ltd. v. State of Karnataka* [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]).



WEB COPY

1421. In *Puttaswamy [K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1]*, the judgment delivered on behalf of four Judges expressly recognised the impact of Article 14 in determining whether a law which is challenged on the ground that it violates Article 21 meets both the procedural as well as the substantive content of reasonableness. The Court held : (SCC p. 495, para 291)

'291. ... the evolution of Article 21, since the decision in *Cooper [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248]* indicates two major areas of change. First, the fundamental rights are no longer regarded as isolated silos or watertight compartments. In consequence, Article 14 has been held to animate the content of Article 21. Second, the expression "procedure established by law" in Article 21 does not connote a formalistic requirement of a mere presence of procedure in enacted law. That expression has been held to signify the content of the procedure and its quality which must be fair, just and reasonable. The mere fact that the law provides for the deprivation of life or personal liberty is not sufficient to conclude its validity and the procedure to be constitutionally valid must be fair, just and reasonable. The quality of reasonableness does not attach only to the content of the procedure which the law prescribes with reference to Article 21 but to the content of the law itself. In other words, the requirement of Article 21 is not fulfilled only by the enactment of fair and reasonable procedure under the law and a law which does so may yet be susceptible to challenge on the ground that its content does not accord with the requirements of a valid law. The law is open to substantive challenge on the ground that it violates the fundamental right."

The same principle has been emphasised in the following observations : (SCC p. 497, para 294)

'294. ... Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The interrelationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression "law". A law within the meaning of Article 21 must be consistent with the norms of fairness which



WEB COPY

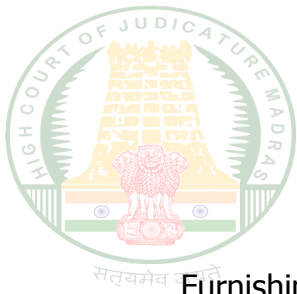


W.A.No.682 of 2023 & etc. batch

originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well."

17.10. Thus, the word "due process" would have to be construed as a process established by law or a procedure where a fair opportunity is provided. Any unreasonable action either in the form of law or procedure on the part of the State, which curbs the civil rights of the parties without any opportunity would be unfair, unreasonable and in violation of the principles of natural justice, which is violation of fundamental human right protected by Article 14 and Article 21 of the Constitution. When no procedure is contemplated, the test would be that of reasonableness and rationality. The protection is also available against the administrative actions of the State as evident from the judgments referred to above. In the present cases, before us, the notifications clearly prescribe that "due process" has to be followed before the candidature is rejected for want of documents. Admittedly, no opportunity has been given after it was discovered that the documents are not in order and hence, there is a clear violation of the principles of natural justice. That apart, no reasons have been adduced, which is also a violation of the principles of natural justice.

18. Insofar as non-furnishing of reasons is concerned, it is settled law that the administrative authorities are bound to follow the principles of natural justice.



W.A.No.682 of 2023 & etc. batch

WEB COPY

Furnishing of reasons is facet of the principles of natural justice, which is basic human right, falling within the ambit of "due process" as discussed in the preceding paragraphs. The law on this point is well settled. It will be useful to refer to the judgment of the Hon'ble Apex Court in **Kranti Associates (P) Ltd. v. Masood Ahmed Khan, [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852 : 2010 SCC OnLine SC 987]**, wherein, it was held as follows:

"41. In England there was no common law duty of recording of reasons. In Stefan v. General Medical Council [(1999) 1 WLR 1293 (PC)] it has been held : (WLR p. 1300)

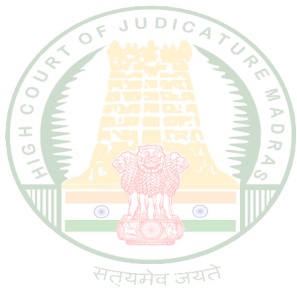
the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in R. v. Civil Service Appeal Board, ex p Cunningham [(1991) 4 All ER 310 (CA)] , Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said : (All ER p. 317)

"... `... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in R. v. Immigration Appeal Tribunal, ex p Khan (Mahmud) [1983 QB 790 : (1983) 2 WLR 759 : (1983) 2 All ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of



WEB COPY



W.A.No.682 of 2023 & etc. batch

injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).’ ”

43. The learned Master of Rolls further clarified by saying : (Civil Service Appeal Board case [(1991) 4 All ER 310 (CA)] , All ER p. 317)

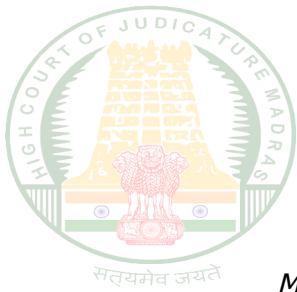
“... \... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.’ ”

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see *North Range Shipping Ltd. v. Seatrans Shipping Corpn.* [(2002) 1 WLR 2397 : (2002) 4 All ER 390 : (2002) 2 All ER (Comm) 103 (CA)]). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In *English v. Emery Reimbold and Strick Ltd.* [(2002) 1 WLR 2409 : (2002) 3 All ER 385 (CA)] it has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in *Cullen v. Chief Constable of the Royal Ulster Constabulary* [(2003) 1 WLR 1763 : (2004) 2 All ER 237 (HL)] , Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held : (WLR p. 1769, para 7)

“7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched.”

46. The position in the United States has been indicated by this Court in *S.N. Mukherjee* [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as “the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review”. In *S.N.*



WEB COPY

Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. [87 L Ed 626 : 318 US 80 (1942)] and Dunlop v. Bachowski [44 L Ed 2d 377 : 421 US 560 (1974)] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

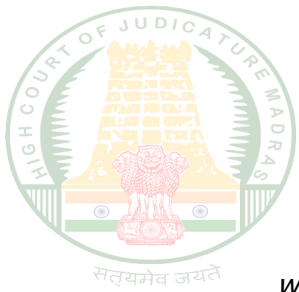
(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know



WEB COPY

whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

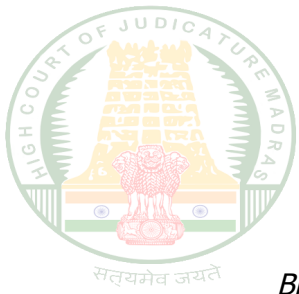
(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

18.1. In the present cases, the reasons were not attached with the impugned orders, but were furnished later. This conduct of the appellants is against the ratio laid down by the Hon'ble Apex Court in ***Mohinder Singh Gill v. Chief Election Commr., [(1978) 1 SCC 405 at page 417]***, in which, it was pointed out as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas



W.A.No.682 of 2023 & etc. batch

WEB COPY

Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

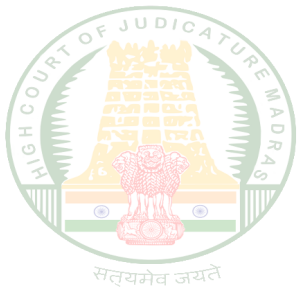
"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

*Orders are not like old wine becoming better as they grow older.
a caveat"*

19. Now coming to the first issue of uploading of degree certificate, the educational qualification that is required to be eligible is also specified in the Table given in clause 4 of the Notification, which deals with qualifications *qua* eligibility. Clause 4(B) which deals specifically with regard to educational qualifications, states that for certain posts, a degree in particular Engineering is the requirement and for certain other posts, a particular degree is the requirement. The note to clause 4(B) reads as follows:

*"Note: The educational qualifications prescribed for these posts should have been obtained by passing the required qualification in the following order of studies viz. **10th + HSC/Diploma or its equivalent + U.G. Degree + P.G. Degree** as required under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The results of examination should have been declared on or before the date of Notification'.*

19.1. Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as follows:



W.A.No.682 of 2023 & etc. batch

WEB COPY

"25. No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he,

(a) possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the special rules; or

(b) possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests—

(i) by the Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and

(ii) by the Government or by the appointing authority with the approval of the Government in other cases.

Explanation-1.—In cases where the special rules prescribe a diploma or a degree or a post-graduate degree as a qualification for appointment, then,—

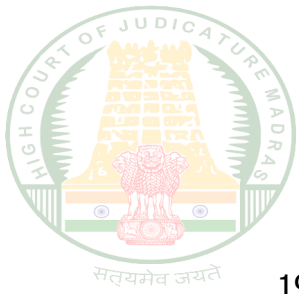
(a) a diploma obtained, after completion of S.S.L.C. or Higher Secondary Course [10+3 (3 Years Diploma)] or [10+2+2 (Lateral Entry)]; or

(b) a degree obtained, after completion of S.S.L.C. and Higher Secondary Course (10+2+3 or more); or

(c) **a post-graduate degree obtained, after completion of S.S.L.C., Higher Secondary Course and a degree (10+2+3+2 or 3) from any University or Institution, recognized by the University Grants Commission shall be recognized as the qualification.**

Explanation-II.—In cases where the special rules prescribe a diploma in a particular subject as qualification, then, a degree in that subject shall be deemed to be a higher qualification.

Explanation-III.—In cases where the special rules prescribe a period of practical or other experience in addition to educational or technical qualification, for an appointment, such a period of practical or other experience, as the case may be, should have been acquired after obtaining the educational or technical qualification prescribed for such appointment unless otherwise specified in the special rules.



W.A.No.682 of 2023 & etc. batch

WEB COPY

19.2. Clause 9 of the Instructions as it stood then speaks about educational qualifications. It also refers to Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and confirms the position that when a degree is prescribed as a qualification, a post graduate degree will also be a qualification. This is again fortified by clauses 14 G (vi), which specifies that if the candidate claims to be in possession of higher qualification, then, the same is to be produced.

19.3. In the note to clause 4 (B), there is a reference to Section 25. The Explanation I to Section 25 would be applicable in the present case. A Conjoint reading of Clause 4 (B) with the note and Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, makes it clear that the qualification prescribed in the notification is only a minimum requirement and a candidate with higher qualification is also eligible to apply. It goes without saying that insofar as the professional courses are concerned, if the candidate has not completed Under Graduation, he will not be permitted to undergo post-graduation. Further, as per Annexure V, a consolidated mark sheet can also be furnished to prove the educational qualification, if the provisional certificate or degree certificate is not available at the time of filling up the application. Once the basic requirement of eligibility is proved, this court is of the opinion that the requirement is satisfied to be eligible. We have already held that the TNPSC has

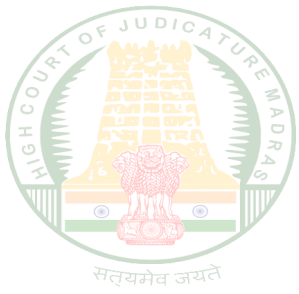


W.A.No.682 of 2023 & etc. batch

WEB COPY

not followed the “due process” by giving an opportunity to the candidate before rejecting his/her candidature, which amounts to clear violation of the principles of natural justice. We do not find any error in the reasoning and directions given by the Learned Judge. In view of the same, the grounds and the contentions raised by the appellants are unsustainable and hence, the same are rejected.

20. Moving on to the next issue of certificates relating to PSTM, we have already seen that the appellants are bound to follow the due process before rejecting the application, which they have failed. Further, in proof of the claim that the candidate has undergone the entire duration of study in Tamil Medium, it is sufficient if the certificates as mentioned in Clause 14 (R) (ii) are uploaded or produced. If such documents are not available, as per sub clause (iv) of clause 14 (R), a certificate from the Principal or Head of Institution or any other person mentioned therein is sufficient to prove the same. Clause 14 (R) (v) & (vi), which again also speaks about ‘due process’. Clause 13 (B) of the instructions clearly states that if the documents are not scanned and uploaded for on-screen certificate verification, during the period stipulated by the Commission, the candidature will have to be rejected after due process. There is nothing on record to show that the appellant TNPSC had specifically granted any time for the candidates to upload or produce the documents after having found the same to not satisfy the claim.

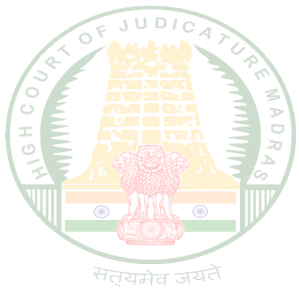


W.A.No.682 of 2023 & etc. batch

WEB COPY

20.1. Further, similar provisions are also found in the notification dated 04.04.2022 in clauses 12 (B) (ii), (iv),(v) and (vi). Further as per clause 12 (B) (iii), it is sufficient, if the certificates mentioned to prove all educational qualifications upto the qualification prescribed in clause 12 B(ii) are produced. The documents then to be produced are the 10th and HSC certificates with medium of instruction in Tamil for candidates who have a UG degree and 10th, HSC and UG Degree certificate in case of PG Degree. The only notable difference with the previous issue and this issue is the UG degree certificate is only required to verify whether his medium of instruction for his entire duration of study is in Tamil as the candidate has claimed the benefit of reservation under PSTM Quota.

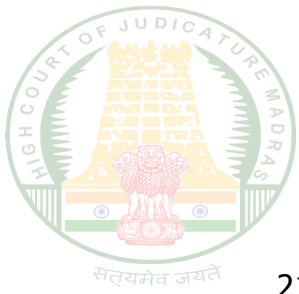
20.2. That apart, it is evident from the notification and the instructions that mark sheets can also be produced in proof of claim of reservation under PSTM quota. The other condition to be satisfied is that it must reflect that the candidate has undergone the educational qualification through the Tamil medium. In any case, as we have already held that in view of the failure to follow the due process by giving an opportunity, the Learned Judge was right in issuing the directions for production of certificates/documents and inclusion of the candidature in the list for oral interview.



W.A.No.682 of 2023 & etc. batch

WEB COPY

20.3. Insofar as the claim of the candidate who had claimed to have made a regular study for the entire period from standard I to VIII, when the standard I and II were undertaken through private study as the certificate produced did not include Standard I and II, we do not find error in the orders of the Learned Judge. As regards the candidate with private study, once the claim for PSTM could not be substantiated, the candidate will not be entitled to the benefit of reservation under PSTM Quota. That apart, in the present case, no reasons have been adduced for rejecting the candidatures except by claiming during the hearing of the writ petition that the writ petitioner had not uploaded the certificates for standard I and II. In a recent Judgment in ***Bharath Sanchar Nigam Ltd vs. Sandeep Choudhary & Others [2022 Livelaw (SC) 419]***, considering various orders including ***Saurav Yadav case and Indra Sawhney Case***, the Apex Court clearly held that the reserved category candidates securing higher marks than the last of the general category candidates are entitled to get seat/post in unreserved categories. In view of the same, the direction issued by the learned Judge is also in order. Hence, the challenge by the appellants is rejected.

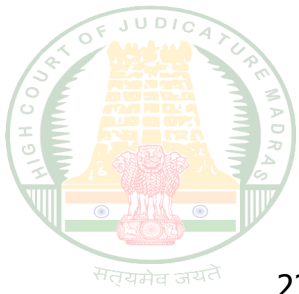


W.A.No.682 of 2023 & etc. batch

WEB COPY

21. Now coming to the next issue of erroneously uploading the Standard XII certificate instead of community certificate, we have already discussed the various clauses in the notification and the instructions and held that in view of the specific condition in the clause to follow the due process before rejection of candidature, the rejection orders stand vitiated. We have also held that reasons are the heart beat of every order and in *absentia*, the order would stand vitiated. It is not the claim of the appellants that the candidate does not belong to the particular social category and is not eligible. Hence, there is no infirmity in the order of the learned Judge and the appeal is accordingly, rejected.

22. Regarding the claim of visual disability, the writ petition was not disposed for want of report regarding the percentage of disability, which ultimately turned out to be against the writ petitioner. The observations regarding due process, failure to furnish reasons for rejecting the candidature and interpretation of the clauses regarding uploading of the documents are equally applicable to this case as well. Similarly, the rules of reservation as determined by the Apex Court in **BSNL Case** (Supra) also apply. Since the writ petitioner is not entitled to avail the reservation under visual disability /Physically disabled persons quota, his candidature can be considered on merits under the general category. With the said direction, the writ petition is disposed of.

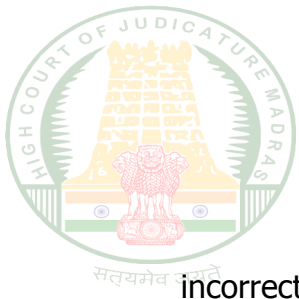


W.A.No.682 of 2023 & etc. batch

WEB COPY

23. The learned Additional Advocate General appearing for the appellants and the learned senior counsel for the respondents 2 to 5 in WA.No.684 of 2023 have relied upon the various judgments referred to above to contend that the documents were not properly uploaded despite sufficient opportunity, that the conditions in the recruitment notification are mandatory, that the High Court under Article 226 of the Constitution cannot modify or relax the conditions unless such power is vested and there cannot be general direction to apply it to parties not before the court as it is not a public interest litigation.

24. There cannot be any quarrel with regard to the general principles regarding the mandatory binding nature of the conditions of the notification, modification or relaxation of the conditions. However, it is settled law that every case has to be judged on its own facts. The judgements relied upon on the side of the appellants and the respondents 2 to 5 in WA. No. 684 of 2023 are not applicable to the facts of the cases before us, as the subject notification is peculiar wherein there are contradictory clauses with regard to uploading of documents, the applicants are eligible based on their qualifications, the due process is to be followed before the applications are rejected, no reasons are given for rejecting the candidature, the applicants have correctly filled the application form and the writ petitioners have not challenged the process without clearing the exams. Clause 12 (L) of the notification dealing with the furnishing of



W.A.No.682 of 2023 & etc. batch

WEB COPY

incorrect or wrong or incomplete particulars in the application also cannot be pressed into service by the appellants and the respondents 2 to 5 in WA No.684 of 2023. Even then, the due process has to be followed. The case before us does not involve relaxation of any of the conditions. The issues involved in the present cases are more in the nature of interpretation and grant of opportunity as per the terms and conditions of the notification. The judgment in ***Duryodhana Sahu's case*** cannot be pressed into service, is also not applicable, as the subject matter is completely different. It was a matter arising out of Central Administrative Tribunal, where third parties by applications had challenged the creation of the post and sought a direction not to select a candidate. In the present case, the Learned Judge has correctly directed the Commission to give opportunity to all the persons, who have not been provided with opportunity. This is to be considered not only in terms of Articles 14 and 16 of the Constitution, but also with a view that appointments to public posts are to be filled at the earliest by avoiding multiplicity of proceedings. Therefore, the contention of the respondents 2 to 5 in WA. No. 684 of 2023 is liable to be rejected and is accordingly, rejected.

25. Further, it is not the case of the appellants that the applicants / respondent candidates were not eligible to apply. As held by the Apex Court in ***Charles K Sakaria (Supra), Dolly Chhanda [(2005) 9 SCC 779] and Dheerender Singh Paliwal [2017 (11) SCC 276]***, once the eligibility is



W.A.No.682 of 2023 & etc. batch

WEB COPY

satisfied, the furnishing of the proof is only procedural, which cannot take away the right of the applicants on technicalities and by way of interpretation. The object of the examinations and interview is to select the meritorious persons from among the different categories under which they fall. The respondents 2 to 5 in WA.No.684 of 2023 have sought to be impleaded in the appeal, as they have not been issued with appointment orders, despite being selected. In view of the fact that we have already rejected the appeals filed by the Commission, the question of issuing appointment orders to the respondents 2 to 5 in WA No.684 of 2023 does not arise and the directions issued by the Learned Judge are to be followed, if not followed already. However, the appellants are duty bound to ensure that the rules of reservation are implemented. As a consequence of dismissal of the appeals, the appellants will have to consider the case of the respondent candidates to be appointed to the posts in Combined Engineering Services by following the rules of reservation as enumerated in ***Saurav Yadav v. State of UP and BSNL case (supra)*** and on merits along with the case of the respondents 2 to 5 in WA. No. 684 of 2023, within a period of six weeks from the date of receipt of copy of this judgment.

26. As held by us in paragraphs 16, 16.1 and 16.2 (supra), there is a significant difference between eligibility and proof of documents. Once the candidates are eligible, their candidature cannot be rejected for submission of



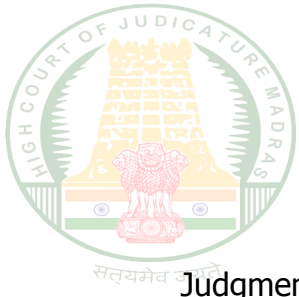
W.A.No.682 of 2023 & etc. batch

WEB COPY

wrong documents or insufficient documents without following the due process of providing opportunity. When the instructions permit production of documents, which is clearly distinct from uploading of documents, it must mean that the documents must be produced when they are called for. The clause relating to production of the documents “when called for”, when read in conjunction with the “due process” would have to be read to mean that the due process contemplated in the notification requires the appellants to call for the documents before rejection. This stage to call for the documents by providing opportunity in compliance with the principle of “due process” would come only after the commission has identified that either the documents are not uploaded or wrongly uploaded. As rightly pointed out by the Learned Judge, the appellants must have called for the documents. The date of examination was also revised. Therefore, the appellants could have very well intimated the respective candidates/writ petitioners about the flaws in the documents uploaded and directed them to produce the documents, considering the fact that the writ petitioners are eligible as they satisfy the necessary qualifications.

27. In the upshot,

(i) All the writ appeals viz., WA.Nos.682 to 687 of 2023 are dismissed and the directions issued in the writ petitions are directed to be complied with by the appellant authorities. The rules of reservation as set out by the Apex Court in the



W.A.No.682 of 2023 & etc. batch

Judgments mentioned in paragraph no.25 of this judgment, are to be scrupulously followed.

(ii)The Writ Petition in WP.No.7412 of 2023 is disposed of, with the direction as stated in para 22 of this judgment.

Consequently, all the miscellaneous petitions are closed. There will be no order as to costs.

[R.M.D,J.] [M.S.Q, J.]
20.11.2023

r n s

Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.