



W.A.No.2685 of 2022 & 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.2685, 2626, 2688, 2689, 2691, 2695 of 2022 &
W.A.Nos.867, 891, 894, 895 of 2023 &
W.A.(MD)Nos.1423, 1450, 1451, 1452, 1453, 1501, 1502 of 2022 &
W.A.(MD)Nos.18, 20, 21, 22 and 23 of 2023
and
other connected miscellaneous petitions**

**W.A.Nos.2685, 2626, 2688, 2689, 2691, 2695 of 2022 &
W.A.Nos.867, 891, 894, 895 of 2023**

Tamil Nadu Public Service Commission,
Rep. by its Secretary, Frazer Bridge Road,
VOC Nagar, Chennai - 600 003.

... Appellant
in all Writ Appeals in
W.A.Nos.2685, 2626,
2689 of 2022, 867, 894 of 2023

1. The Controller of Examination,
TNPSC, TNPSC Road, Park Town,
Chennai - 600 003.
2. The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
Chennai - 600 003.

... Appellants in
W.A.No.2688 /
2nd and 1st Appellants
respectively in
W.A.Nos.2691 & 2695 of 2022,
891 of 2023, 895 of 2023,

Vs.



W.A.No.2685 of 2022 & etc. batch

B.Parthiban
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... 1st Respondent in
W.A.No.2685 of 2022

M.Palanisamy

... 3rd Respondent in
W.A.No.2685 of 2022

**(3rd respondent impleaded
vide order dated 20.11.2023 in
W.M.P.No.16537 of 2023 in
W.A.No.2685 of 2022)**

K.Murugan

... 4th Respondent in
W.A.No.2685 of 2022

**(4th respondent impleaded
vide order dated 20.11.2023 in
W.M.P.No.16508 of 2023 in
W.A.No.2685 of 2022)**

R.Aishwarya

... 1st Respondent in
W.A.No.2626 of 2022

P.Jagadeeswaran

... 1st Respondent in
W.A.No.2688 of 2022

C.Rajeswari

... 2nd Respondent in
W.A.No.2688 of 2022

D.Roobini Chitha

... 3rd Respondent in
W.A.No.2688 of 2022

C.Devi

... 4th Respondent in
W.A.No.2688 of 2022

S.Anjali

... 5th Respondent in
W.A.No.2688 of 2022



W.A.No.2685 of 2022 & etc. batch

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... 6th Respondent in
W.A.No.2688 of 2022

**(2rd, 3rd, 4th, 5th and 6th respondents
impleaded vide order dated 20.11.2023 in
W.M.P.Nos.16241,16445, 16779, 16781
and 17358 of 2023 in W.A.No.2688 of 2022)**

M.Dhanalakshmi ... 1st Respondent in
W.A.No.2689 of 2022

T.Sasikala ... 1st Respondent in
W.A.No.2691 of 2022

G.Hemalathaa ... 1st Respondent in
W.A.No.2695 of 2022

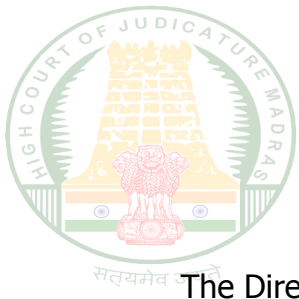
A.Ponmari ... 1st Respondent in
W.A.No.867 of 2023

A.Sankaramasubramanian ... 1st Respondent in
W.A.No.891 of 2023

G.Rathika ... 1st Respondent in
W.A.No.894 of 2023

D.Shri Sangeetha ... 1st Respondent in
W.A.No.895 of 2023

The Government of Tamil Nadu,
Represented by its Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009. ... 2nd Respondent in
W.A.No.2685 of 2022



W.A.No.2685 of 2022 & etc. batch

The Director of Prosecution,
Office of Director of Prosecution,
Having its office at Tamil Nadu
Slum Clearance Board,
Annex Building 1st Floor,
Complex No.5, Kamarajar Salai,
Chennai - 600 005.

... 2nd Respondent in
W.A.Nos.2626 of 2022,
895 of 2023

State of Tamil Nadu,
Rep. by its Secretary, Home Department,
(Prosecution Department),
Fort St. George,
Chennai - 600 009.

... 2nd Respondent in
W.A.No.2691 of 2022

The Government of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

... 2nd Respondent in
W.A.Nos.867, 894 of 2023

Prayer in W.A.Nos.2685, 2626, 2688, 2689, 2691, 2695 of 2022:- Writ Appeals filed under Clause 15 of the Letters Patent, against the order dated 21.11.2022 in W.P.No.12032 of 2022, W.P.Nos.11714 of 2022, 12022 of 2022, 11934 of 2022, 11936 of 2022 and 11728 of 2022 respectively.

Prayer in W.A.Nos.867, 891, 894, 895 of 2023:- Writ Appeals filed under Clause 15 of the Letters Patent, against the order dated 05.12.2022 in W.P.Nos.11999 of 2022, 11954 of 2022, 12088 of 2022 and 12148 of 2022 respectively.



W.A.No.2685 of 2022 & etc. batch

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For Appellants in
all Writ Appeals

: Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.R.Bharanidharan
Standing Counsel for TNPSC

For Respondents

: Mr.V.Ragavachari, Senior Counsel
For Mr.P.Saravanan
For 1st Respondent in W.A.No.2685 of 2022

Mr.P.V.Balasubramaniam, Senior Counsel
For Mr.G.Abraham Prabhu
For 1st Respondent in W.A.No.2626 of 2022

Mr.V.Ramamoorthy
For 1st Respondent in W.A.No.2688 of 2022

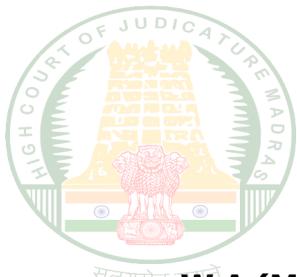
Mr.L.Parvin Banu
For 1st Respondent in W.A.No.2689 of 2022

Mr.C.K.Chandrasekar
For 1st Respondent in W.A.No.2695 of 2022

Mr.C.Kasirajan
For 1st Respondent in
W.A.No.867 of 2023
Mr.R.Vijayakumar
For 3rd Respondent in
W.A.No.2685 of 2022

Mr.Balan Haridas
For 4th Respondent in
W.A.No.2685 of 2022
Mr.Balan Haridas
For Respondents 2 to 6 in
W.A.No.2688 of 2022

* * *



W.A.No.2685 of 2022 & etc. batch

W.A.(MD)Nos.1423, 1450, 1451, 1452, 1453, 1501, 1502 of 2022 &
W.A.(MD)Nos.18, 20, 21, 22 and 23 of 2023

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

2.The Director of Prosecution,
O/o Director of Prosecution,
Tamil Nadu Slum Clearance Board,
Annex Building 1st Floor,
Complex No.5, Kamarajar Salai,
Chennai - 600 005.

... Appellants in
W.A.(MD)No.1423 of 2022

Vs.

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

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

... Appellants in
W.A.(MD)Nos.1450 of 2022,
1451 of 2022, 1452 of 2022,
1453 of 2022, 1502 of 2022,
18 of 2023, 21 of 2023,
23 of 2023

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

... Appellants in
W.A.(MD)No.1501 of 2022,
20 of 2023, 22 of 2023,

Vs.



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A.Velmurugan

Mr.J.Saravana Kumar

(R-2 impleaded vide order dated
22.06.2023 made in
C.M.P.No.12238 of 2023 in
W.A.(MD)No.1423 of 2022)

M.Parameshwari

Karunanithi

S.Shyamaladevi

S.Sekar

C.Jeyasuba

R.Manimegalai

S.J.Subashini

K.Saravana Selvi

P.Saritha

Thenmozhi

Kalaiyarasi

Bar Council of India,
Rep. by its Secretary,
No.21, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi - 110 002.

W.A.No.2685 of 2022 & etc. batch

... 1st Respondent in
W.A.(MD)No.1423 of 2022

... 2nd Respondent in
W.A.(MD)No.1423 of 2022

... Respondent in
W.A.(MD)No.1450 of 2022

... Respondent in
W.A.(MD)No.1451 of 2022

... Respondent in
W.A.(MD)No.1452 of 2022

... Respondent in
W.A.(MD)No.1453 of 2022

... 1st Respondent in
W.A.(MD)No.1501 of 2022

... Respondent in
W.A.(MD)No.1502 of 2022

... Respondent in
W.A.(MD)No.18 of 2023

... Respondent in
W.A.(MD)No.20 of 2023

... Respondent in
W.A.(MD)No.21 of 2023

... Respondent in
W.A.(MD)No.22 of 2023

... Respondent in
W.A.(MD)No.23 of 2023



W.A.No.2685 of 2022 & etc. batch

The Bar Council of Tamil Nadu and Puducherry,
Rep. by its Secretary,
High Court Campus,
Chennai - 600 104.

... 2nd and 3rd Respondents
W.A.(MD)No.1501 of 2022

Writ Appeals filed under Clause 15 of the Letters Patent, against the orders dated 12.08.2022 in W.P.(MD)No.9296 of 2022, dated 10.08.2022 in W.P.(MD)No.9267 of 2022, dated 10.08.2022 in W.P.(MD)No.9268 of 2022, dated 10.08.2022 in W.P.(MD)No.9269 of 2022, dated 10.08.2022 in W.P.(MD)No.9270 of 2022, dated 17.11.2022 in W.P.(MD)No.9506 of 2022, dated 17.11.2022 in W.P.(MD)No.9307 of 2022, dated 30.11.2022 in W.P.(MD)No.9278 of 2022, dated 30.11.2022 in W.P.(MD)No.9262 of 2022, dated 30.11.2022 in W.P.(MD)No.9402 of 2022, dated 30.11.2022 in W.P.(MD)No.9408 of 2022, dated 30.11.2022 in W.P.(MD)No.9566 of 2022 respectively.

For Appellants in
all Writ Appeals

: Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.R.Bharanidharan
Standing Counsel for TNPSC

For Respondents

: Mr.K.K.Senthil for R-1
Mr.K.Selvakumar for R-2
in W.A.(MD)No.1423 of 2022

Mr.Ma.P.Thangavel
For Mr.SMS.Johnny Basha
for Respondent
in W.A.(MD)No.1450 of 2022
Mr.K.Vigneshkumar
for Respondent
in W.A.(MD)No.1451 of 2022



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W.A.No.2685 of 2022 & etc. batch

Ms.S.Mahalakshmi
for 1st Respondent
in W.A.(MD)No.1501 of 2022

Mr.M.Shakul Hameed
for Respondent
in W.A.(MD)No.1502 of 2022

Mr.B.Anandan
for Respondent
in W.A.(MD)No.18 of 2023

Mr.K.Jayamohan
for Respondent
in W.A.(MD)No.20 of 2023

Mr.B.Anandan
for Respondent
in W.A.(MD)No.21 of 2023

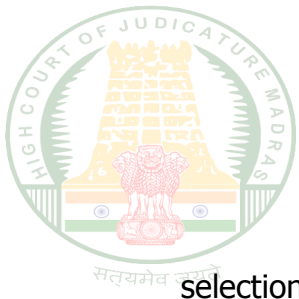
Mr.P.Senthil
for Respondent
in W.A.(MD)No.23 of 2023

* * *

COMMON JUDGMENT

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

All these Writ Appeals have been filed by the appellant(s) challenging the orders passed by the writ court, which directed the appellant / Tamil Nadu Public Service Commission (hereinafter shortly referred to as "TNPSC") to permit the respondent candidates / writ petitioners to participate in the next stage of



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selection process, if they are found to be eligible, inasmuch as they have satisfied the requirements specified in the notification issued by the TNPSC.

2. Since the issues involved in all these writ appeals are common, they are taken up for joint hearing and disposed of by this common judgment.

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

3.1. TNPSC had issued a Notification No.10 of 2021, dated 25.08.2021 calling for applications from eligible candidates for direct recruitment to fill 50 vacancies for the post of Assistant Public Prosecutor - Grade II in the Prosecution Department. The last date for submitting the online application was fixed as 24.09.2021. The preliminary examination was conducted on 06.11.2021 and the results of preliminary written examination was declared on 25.01.2022 along with the roll of candidates short-listed for the main (written) examination. The notification, dated 25.01.2022, further states that those who were admitted provisionally to the main examination, should upload scanned copies of documents in support of the claims made in the online application from 03.02.2022 to 11.02.2022 (05:45 p.m.). The main Examination was scheduled to be conducted on 07.05.2022 and 08.05.2022 by the TNPSC. The candidates, who adhered to the specified conditions and successfully uploaded the required



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certificates, have received hall tickets for the main examination. On the other hand, the applications of the candidates who failed to properly upload the necessary documents which include the candidates' failure to provide the correct certificates pertaining to their community, PSTM (Preferential Special Category), experience, or disclosure of pending cases against them, have been rejected by the TNPSC .

3.2. The reasons for rejection of the applications submitted by the respondent candidates / writ petitioners are tabulated below:

Sl.No.	Case No.	Reason for rejection
1	W.A.No.2685 of 2022	Not uploaded the PSTM Certificate for the entire period of study instead uploaded only for X and XII
2	W.A.No.2626 of 2022	Not uploaded experience certificate in the prescribed format
3	W.A.No.2688 of 2022	Not furnished the details of FIR pending against him, inspite of mentioning the same in the online application.
4	W.A.No.2689 of 2022	No Criminal Court experience was submitted in the prescribed format
5	W.A.No.2691 of 2022	No particulars of criminal proceedings were stated in the prescribed format.
6	W.A.No.2695 of 2022	Furnished the community certificate showing her husband's name instead of father's name.



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Sl.No.	Case No.	Reason for rejection
1	W.A.No.867 of 2023	PSTM Certificate for 1st standard to 5th standard and law degree not produced.
2	W.A.No.891 of 2023	No criminal Court experience was submitted in the prescribed format
3	W.A.No.894 of 2023	PSTM Certificates have not been uploaded
4	W.A.No.895 of 2023	Insufficient Bar experience for 5 years in the criminal Court as she has studied M.L.Course during her experience period.

(iii) The respondent candidate in W.A.(MD)No.18 of 2023 / writ petitioner had uploaded community certificate of her spouse instead of that of her father. Similarly, the respondent candidates in W.A.(MD)Nos.20 to 23 of 2023 / writ petitioners had not uploaded PSTM certificates.

(iv) The respondent candidates in WA (MD) Nos.1423, 1450, 1451, 1452 and 1453 of 2022 / writ petitioners' applications were rejected on the ground that no criminal court experience has been stated in the experience certificate uploaded by them.

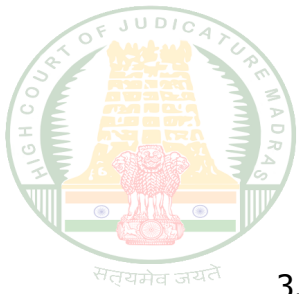
(v) The respondent candidates in WA (MD) Nos.1501 and 1502 of 2022 / writ petitioners were not issued with the hall tickets, for the reason that after



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getting enrolled as Advocates, they had joined M.L.degree and if the period of study undergone by the writ petitioners for clearing M.L.degree is taken into account, they would not fulfil the requirement of five years of active practice before the criminal Court.

3.3. Challenging the rejection of their online applications and the consequential non-issuance of hall tickets for appearing main examinations, the respondent candidates / writ petitioners preferred writ petitions, in which, the learned Judge, by interim orders dated 05.05.2022 and 06.05.2022, directed the appellant-TNPSC to upload hall ticket of the writ petitioners on the TNPSC's official website before 07:00 P.M. on 06.05.2022, enabling them to download the same and attend the main examination scheduled to be held on 07.05.2022 and 08.05.2022. Further, the writ petitioners were directed to approach the TNPSC and submit the requisite documents in person within one week and on such approach, the TNPSC was directed to receive and scrutinize the documents submitted by them. It was also directed in the said orders that the results of the writ petitioners shall be kept in abeyance until further orders. Pursuant to the said interim orders dated 05.05.2022 and 06.05.2022, the respondent candidates / writ petitioners attended the main examination and submitted the required documents.



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3.4. Finally, all the writ petitions were disposed of, by the writ court, by separate orders, the operative portion of which are quoted below for better appreciation:

Order dated 21.11.2022 in WP.Nos.12032, 11714, 12022, 11934, 11936 and 11728 of 2022 arising out of which are W.A.Nos.2685, 2626, 2688, 2689, 2691 and 2695 of 2022 respectively:

"6.Since the respective petitioners have satisfied the requirements of the respondents, necessarily their results will have to be declared. Accordingly, the results of the respective petitioners which was kept on abeyance pursuant to the interim directions given by this Court on 05.05.2022 and 06.05.2022 is now directed to be released / published on or before 23.11.2022. It is also made clear that if the respective petitioners are found to be eligible to participate in the next stage of selection process, they shall be intimated and allowed to participate. There is no embargo for the respondents to release the subsequent results.

7.With the aforementioned directions, these writ petitions are disposed of..."

Order dated 05.12.2022 in WP. Nos.11999, 11954, 12088 and 12148 of 2022 arising out of which are W.A.Nos.867, 891, 894, 895 of 2023 respectively:

"5. The learned counsels appearing for the respective writ petitioners would submit that no prejudice would be caused to this respondent/TNPSC if the results of the written examination are published subject to the result of these writ petitions. According to them, if the results are published, many of them many not pursue these writ petitions as they will come to know as to whether they will be under the zone of consideration for getting appointment in their favour or not.

6. Learned Standing Counsel appearing for the respondent/TNPSC vehemently opposes such a direction being issued by this Court. However, this Court is of the considered view that, in order to weed out unnecessary litigants, no prejudice would be caused if the respondent/TNPSC is directed to publish the results with regard to the



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written examination for these writ petitioners, that too, when only pursuant to the directions given by this Court, the respective writ petitioners were allowed to write the written examination.

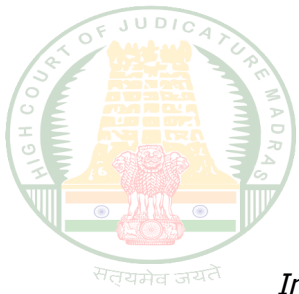
7. For the foregoing reasons, this Court directs the respondent/Tamil Nadu Public Service Commission to publish the written examination results for these writ petitioners within a period of one week from the date of receipt of a copy of this order. However, it is made clear that, the declaration of results is subject to the results of these writ petitions and the petitioners cannot plead equity at the time of final disposal of these petitions.

8. Post the matter 'for reporting compliance' on 21.12.2022."

Order dated 30.11.2022 in WP(MD)No.9278 of 2022 arising out of which is W.A.(MD)No.18 of 2023:

"9. The only question that calls for consideration is whether on this ground, the petitioner's application is liable to be rejected. No doubt, "Instructions to Applicants" reads that production of a community certificate citing name of spouse would result in rejection of candidature after due process. The expression "after due process" cannot be ignored. It only means that if the candidate had taken advantage of the status of the spouse and obtained certificate on that basis, the application is liable to be rejected. In other words, such a certificate is subject to a verification process at the threshold. The candidate will have to sustain the claim at the time of certificate verification by producing antecedent certificates.

10. It is well settled that caste or community status is determined by one's birth. Marriage will not lead to changing the community status. I have come across cases where a woman after marriage claims the status of the husband's community and even manage to obtain certificate. In order to ensure that such unfair advantage is not taken, there is a clause that if the community certificate cites the name of spouse, it shall be rejected after due process. Unless this clause is considered in the aforesaid fashion, the ends of social justice will be defeated. A person will be denied the benefits of reservation to which he or she is otherwise entitled to. The petitioner had produced before me the copy of the certificate issued in her favour way back in the year 1997 in which her father's name has been mentioned. One must take note of the social reality. Once a woman gets married, even her initial undergoes change.



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Invariably, in all the official records, the name of the husband is mentioned. The name of the father is no longer mentioned. The Zonal Deputy Tahsildar while issuing the community certificate, ought to have mentioned the community as well as the father's name of the applicant. One cannot take advantage of the one's own wrong. Here, wrong if at all was committed by Government official. For this, the candidate could not suffer. TNPSC will declare the petitioner's result in the main examination. If she is found to have passed, she will be permitted to take part in the oral test.

11. In this view of the matter, the order impugned in the writ petition is set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

Order dated 30.11.2022 in WP(MD)Nos.9262, 9402, 9408 & 9566 of 2022 arising out of which are W.A.(MD)Nos. 20, 21, 22 and 23 of 2023 respectively

"9. It is not in dispute that the petitioners sought to be considered under PSTM category. However, the certificates filed by them were not complete on the date when the applications were submitted. They have therefore come forward not to pursue their claim for preferential treatment.

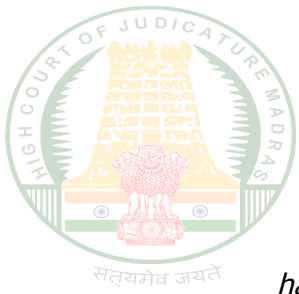
10. The stand of the respondents is that the petitioners' case is liable to be rejected on two grounds:

(a) They have not uploaded the necessary certificate.

(b) Their claim is also intrinsically wrong.

11. Even if I totally accept the contention of the respondents, that would still not debar the petitioners from being considered under general category. In fact, the Hon'ble Division Bench of the Madras High Court in W.A.No.424 of 2018, (M.Silamparasan Vs. TNPSC & another) dated 23.01.2019 had held that while construing a similar clause that it cannot be interpreted to mean that on the failure to produce certificate, the petitioner would lose the chance of being considered, in other categories to which he is otherwise entitled, for a post.

12. In my view, the said decision is squarely applicable to the case on hand. The subsequent First Bench decision rendered in W.P.No.14635 of 2020 dated 12.10.2022 does not make any reference to the earlier order dated 23.01.2019. The learned counsel appearing for the petitioners also draw my attention to yet another Division Bench order dated 26.03.2021 in W.A.No.489 of 2021. The Hon'ble Division Bench was considering a similar clause and held that even though the candidate



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had made an erroneous claim, the restrictive clause will not come in the way. I therefore hold that the wrong claim made by the petitioners for being considered under PSTM category will come in the way of being considered as general category.

13. Respectfully following the decision of the Hon-ble Division Bench rendered in W.A.No.424 of 2018, the impugned order is set aside insofar as the petitioners are concerned. TNPSC will declare their results in the main examination. If the petitioners are found to have passed, they will be permitted to appear in the oral test."

Order dated 12.08.2022 in WP(MD) No.9296 of 2022 arising out of which is WA (MD) No.1423 of 2022

"4.Apparently, the reason assigned in the impugned order seems to be a misconception of the qualification and experience requirements prescribed by them in the notification, dated 25.08.2021. When the notification states that the required experience of five years has to be certified by a Senior Advocate or the Presiding Officer and the term "Senior Advocate" has been defined to include the Prresident / Secretary of the Bar Associations. I do not find any justification on the part of the respondents in rejecting such an application merely on the ground that the said certificate is not in the prescribed format. A comparison of the format given in the Annexure -II of the notification with the experience certificate submitted by the petitioner herein reveals that it is in total conformity with the prescribed format and thus, the reasoning adopted by the respondents in rejecting the application of the petitioner, cannot be sustained.

5...

6.In the light of the above findings and observations, the impugned order dated 28.04.2022, on the file of the respondents is quashed. Accordingly, it is hereby declared that the experience certificate uploaded by the petitioner herein is in conformity with the requirements of the notification, dated 25.08.2021. Consequently, the respondents shall accept the application of the petitioner, together with the experience certificate, for the purpose of further process of selection and declare the results of his written examination.

7.The Writ Petition stands allowed accordingly...."



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Order dated 10.08.2022 in WP(MD)Nos.9267, 9268, 9269 and 9270 of 2022 arising out of which are W.A.(MD)No.1450 to 1453 of 2022 respectively:

"6.In the light of the above findings and observations, the impugned orders dated 28.04.2022, on the file of the respondents are quashed. Accordingly, it is hereby declared that the experience certificate uploaded by the petitioners herein is in conformity with the requirements of the notification, dated 25.08.2021. Consequently, the respondents shall accept the applications of the petitioners, together with the experience certificates, for the purpose of further process of selection and declare the results of his written examination.

7.The Writ Petition stands allowed accordingly...."

Order dated 17.11.2022 in WP.(MD)Nos.9506 and 9307 of 2022 arising out W.A.(MD)Nos.1501 and 1502 of 2022

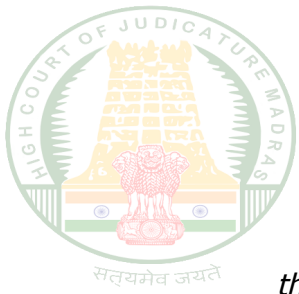
"6.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the petitioner draws my attention to the resolution passed by the Bar Council of India in December 2009 resolving that the practising advocates can join in LLM course as a regular student without suspending the practice. I am also informed that M.L degree course conducted in Tamilnadu do not stipulate that the students must attend day long. The number of hours is confined to three. If that be so, a student can attend the college in the morning and attend the Court in the afternoon or vice versa. The learned counsel for the petitioner has relied on a catena of decisions which have dealt with the issue of active practice. The decisions are as follows:-

"(1998) IILLJ 186 P H (Karan Jagdish Kaur Vs. Punjab School Education Board)

Tahir Ahmad Dar v. State of J & K and Others in SWP No.1127 of 2016, dated 07.09.2017 and

Dharmendra Kumar vs Bar Council of India in Second Appeal No:CIC/BCOI/A/2018/146320~BJ, dated 20.02.2020"

7.In light of the aforesaid decisions and the resolution passed by



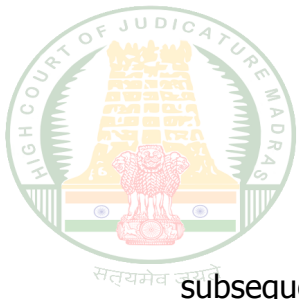
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the Bar Council of India, I am more than satisfied that the period undergone by the petitioner for pursuing M.L. degree cannot be excluded. The impugned order is set aside and the writ petition is allowed. TNPSC is directed to publish the petitioner's result. No costs. Consequently, connected miscellaneous petition is closed."

3.6. Challenging the aforesaid orders of the writ court, the appellants have come up with these appeals.

4.1. Mr.J.Ravindran, learned Advocate General, representing Mr.R.Bharanidharan, learned standing counsel appearing for the appellants would submit that the applications of the respondents/writ petitioners were rejected due to their failure to comply with the conditions specified in the notification dated 25.08.2021. Elaborating further, the learned Additional Advocate General submitted that the preliminary examination results were officially announced on 25.01.2022 and the candidates were explicitly instructed to upload scanned documents between 03.02.2022 and 11.02.2022 until 5:45 pm at the e-seva centers operated by TACTV. However, some candidates failed to utilize this specified timeframe and upload the required certificates, leading to the rejection of their applications. Challenging the same, the writ petitioners approached the writ court at Principal Bench as well as Madurai Bench. *Vide* interim orders dated 05.05.2022 and 06.05.2022, the appellant-TNPSC was directed to permit the respondent candidates / writ petitioners to appear in the main examination and



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subsequently, all the writ petitions were disposed of, in their favour. It is also submitted by the learned Additional Advocate General that there are totally 22 writ appeals before this court, in which, 12 writ appeals pertain to the Madurai Bench. Pursuant to the interim orders, all the writ petitioners were permitted to write the main examination. When the writ appeal bearing No.2685 of 2022 came up for hearing on 14.12.2022, this Court passed an order directing the appellant-TNPSC to publish the marks secured by the first respondents in W.A. Nos. 2685 of 2022, 2626 of 2022, 2688 of 2022, 2689 of 2022, 2691 of 2022 and 2695 of 2022 and permit them to participate in the counselling scheduled to be held on 15.12.2022, if they secure pass marks and if they are found to be eligible. Following this order, the original rank list dated 08.12.2022 was modified and a new rank list dated 15.12.2022 was published by including the respondent candidates, who passed the main examination. Accordingly, the respondent candidates whose names were not found in the earlier rank list, were positioned in the new rank list and they are as follows:

Sl.No.	Writ Appeal Nos.	Position in the rank list dated 15.12.2022
1	W.A.No.2685 of 2022	99th
2	W.A.No.2626 of 2022	10th
3	W.A.No.2688 of 2022	29th
4	W.A.No.2695 of 2022	1st



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In respect of the other respondent candidates in Writ Appeal Nos. 2689 of 2022 and 2691 of 2022, though their marks were duly disclosed, since they failed to secure pass marks in the main examination, they were not positioned in the rank list. Similarly, in respect of the Writ Appeals pertaining to the Madurai Bench also, pursuant to the order passed by this court, marks obtained in the main examination, were communicated to the candidates and the respondent candidates in W.A. (MD) Nos. 1423, 1450 and 1502 of 2022 have cleared the main examination. Thus, according to the learned Additional Advocate General, only the respondent candidates in W.A.Nos.2626, 2685, 2688 and 2695 of 2022 & W.A.(MD)Nos. 1423, 1450, and 1502 of 2022 / writ petitioners have cleared the main examination and the rest of the respondent candidates/writ petitioners do not come within the zone of consideration for further selection process. It is further submitted that pursuant to the interim orders passed in the Writ Appeals in W.A.Nos.2685, 2688, 2689, 2691, 2695 & 2626 of 2022, dated 22.12.2022, 4 seats are being kept vacant; and following the interim order passed in W.A.(MD)Nos.1423, 1450, and 1502 of 2022, dated 14.12.2022, 2 seats are also being kept vacant. While so, due to the imminent need to prosecute criminal cases and to handle the on-growing docket explosion in various criminal courts in the State, the Government thought it fit to appoint 41 Assistant Public Prosecutors vide G.O.(4D) No.21 dated 15.05.2023. However, the said appointment does not



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in any manner affect the rights of the writ petitioners / respondent candidates herein, in view of the fact that only 7 of them are falling within the zone of consideration. That apart, it was specifically mentioned in the said G.O. (4D) No. 21 dated 15.05.2023 that the appointments are subject to the orders which are going to be passed in the present batch of Writ Appeals. With these factual backdrop, the learned Additional Advocate General has placed his submissions in respect of the 7 cases alone viz., W.A. Nos. 2626, 2685, 2688 and 2695 of 2022 and W.A.(MD)Nos. 1423, 1450, and 1502 of 2022.

4.2. The learned Additional Advocate General for the appellants would contend that the respondent candidates in W.A.No.2626 of 2022, W.A.(MD)No.1423 of 2022, and W.A.(MD)No.1450 of 2022 / writ petitioners, were not permitted to write the main examination for the reason that the experience certificate uploaded by them did not specify any criminal court experience as required to be stated in the prescribed format. In specific, the respondent in W.A.No.2626 of 2022 stated "Courts in and around Chennai"; the respondent in W.A.(MD)No.1423 of 2022 has submitted a certificate dated 02.09.2021 from the Coimbatore Bar Association to the effect that he has enrolled in the year 2008 and has been in active practice for the past 13 years; and the respondent in W.A.(MD)No.1450 of 2022 indicated "High Court", instead of specifying the criminal courts, where he was practising. According to the learned Additional



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Advocate General, the format specified by the appellants is very precise and should not be deviated from the same and that, even if such deviations are innocent in nature, they have to be dealt with strictly. Furthermore, the learned Additional Advocate General stated that the essential qualification for the post of Assistant Public Prosecutor is a background in practising criminal law. Therefore, when the first respondent in these three appeals failed to provide a certificate demonstrating their experience in criminal law practice, it raises a fundamental issue regarding their qualification and the same directly affects their eligibility, as a result of which, their candidatures are subjected to rejection.

4.2.1. The learned Additional Advocate General appearing for the appellants referring to various clauses of the Notification, highlighted the importance of criminal practice as a necessary requirement for the candidates to the post in question. As a part of his argument, the learned counsel drew the attention of this court to Clause 4(B) of the Notification, which states as follows:

"(B) Educational Qualification (As on 25.08.2021)

Applicants should possess the following or its equivalent qualification awarded by any University or Institution recognized by the University Grants Commission:-

- i. Must possess B.L. degree,*
- ii. Must be a member of the Bar,*
- iii. Must possess adequate knowledge of Tamil*
and
iv. Experience: must have had active practice in 'criminal courts' for a period of not less than five years.'



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The explanation portion in the above mentioned Clause 4(B) states that the expression "active practice in Criminal Courts" shall include the period of service rendered by a person as a temporary Assistant Public Prosecutor, Grade-II. Therefore, the intention was that the candidate should have been practising only in the criminal courts, more particularly, subordinate criminal court and not in the High Court. In this context, it may be relevant to refer to the Note section in the same clause, which reads as under:

"NOTE:

A certificate in the format prescribed in Annexure-II should be obtained from a Senior Advocate or from the Presiding Officer of.....Court in support of the applicants claim regarding the period of active practice in Criminal Courts and kept ready before applying online.'

Thus, Clause 4(B) explicitly defines the term 'active practice in Criminal Courts,' according to which, the candidates must explicitly state their experience in criminal courts when applying. As such, the averments made by the writ petitioners about confusion or inadvertence, are deemed to be unacceptable. The learned Additional Advocate General further submitted that once the candidates have uploaded their practical experience certificates for on-screen certificate verification, the same shall be shared with the concerned Head of Department for verification purposes. The report obtained shall be utilized for the generation of rejection/final admission/provisional admission lists to be prepared at the end of



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the certificate verification process. In these three matters, the experience certificates uploaded by the respondents/writ petitioners have been verified by the scrutiny committee constituted by the Directorate of Prosecution on 06.04.2022 and 07.04.2022 and it was found that the experience certificates uploaded by the respondents/writ petitioners did not mention any criminal court experience as required under clause 4(B) of the notification dated 25.08.2021 and consequently, the certificates of the writ petitioners were rightly rejected by the scrutiny committee.

4.3. With regard to W.A.(MD)No.1502 of 2022, the learned Additional Advocate General appearing for the appellants contended that the certificate uploaded by the respondent in W.A.(MD)No.1502 of 2022 was verified by the scrutiny committee constituted by the Directorate of Prosecution and it was rejected for the reason that she did not meet the criterion of minimum number of years of practice. This rejection was based on her insufficient bar experience of five years in criminal courts due to pursuing her Post Graduate Degree. According to the learned Additional Advocate General, the period spent for pursuing postgraduate degree cannot be considered as part of the requisite experience in criminal courts.

4.4. With respect to W.A.No.2685 of 2022, the learned Additional Advocate



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General appearing for the appellants that the application of the first respondent was rejected for the reason that he claimed relaxation under PSTM category. However, he has not uploaded the certificates from 1st standard to 9th standard and 11th standard to substantiate his claim. It is settled law that to avail the PSTM Quota, one should have studied their entire course from 1st standard to the degree level in Tamil. In this case, the first respondent has only submitted two certificates from the Headmaster of his school viz., one certificate states that he studied Class X in Tamil, and another certificate states that he studied Class XII in Tamil. Except declaration in the application form that he studied every grade from school till the degree in Tamil, no other proof has been annexed other than the said two documents to substantiate his claim. The learned Additional Advocate General proceeded to refer to the relevant clauses in the Notification, more particularly Clause 12(B)(ii), which reads as follows:

"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/she had studied the entire duration of the respective course(s) through Tamil Medium of instruction."

Following this, the learned counsel read out Clause 12(B)(v), which states that failure to upload/produce such documents as evidence for Persons Studied in Tamil Medium for all educational qualifications upto the educational qualification prescribed, shall result in the rejection of candidature after due process. As the



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respondent has not uploaded the certificates as per the conditions prescribed in the notification, his application was rightly rejected by the appellant-TNPSC.

4.4.1. Adding further, the learned Additional Advocate General appearing for the appellants submitted that the candidates, who had been provisionally selected for the main examination were required to submit their documents within the specified timeframe i.e., from 03.02.2022 to 11.02.2022, as clearly outlined in the notification. However, in this case, the first respondent failed to meet this critical deadline. Instead, he submitted his application after 06.05.2022 pursuant to the interim order passed in the writ petition. This belated submission cannot be considered, as granting such leniency to the first respondent which would likely lead to chaos and severe disruptions in the selection process. It is also submitted that if such a benefit is extended to the candidates, it could set a precedent that would open the door for other candidates who are not currently parties to these legal proceedings to make similar demands.

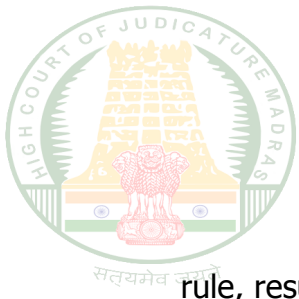
4.5. Regarding W.A.No.2688 of 2022, the learned Additional Advocate General appearing for the appellants submitted that the first respondent herein, despite disclosing the existence of a pending criminal case against him, has failed to provide the mandated FIR copy, as specified under Clause 11(B)(i) of the Notification. This clause explicitly states that candidates who have declared



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pending criminal or disciplinary cases in their online application must upload or provide copies of the First Information Report (FIR) or the memorandum of charges/show cause notice, as applicable; and the failure to upload the required documents would lead to rejection of candidature. Thus, according to the learned counsel, it is settled law that any person who seeks employment or appointment in public services ought to disclose full particulars and most importantly his criminal antecedents. Since the first respondent did not upload the copy of the FIR, his application was correctly rejected by the TNPSC.

4.6. With respect to W.A.No.2695 of 2022, the learned Additional Advocate General appearing for the appellants submitted that the first respondent in this appeal belongs to the Most Backward Class-Vanniyar (MBC-V) Vanniakula Kshatriya community and had uploaded community certificate No.4835783 issued by the Zonal Deputy Tahsildar, Salem, which identified her as G.Hemalathaa, wife of A.S.Gopalakannan. Further, she had uploaded a community certificate obtained from the Mandal Revenue Officer, Guntur, under BC 'A' category, identifying her as G.Hemalathaa, daughter of G.Sukumar, and requested the acceptance of both community certificates. It is submitted by the learned counsel that as far as female candidates are concerned, the appellant always insists on uploading/submission of the candidate's father's community certificate alone and hence, the submission of both certificates amounts to contrary to the prescribed



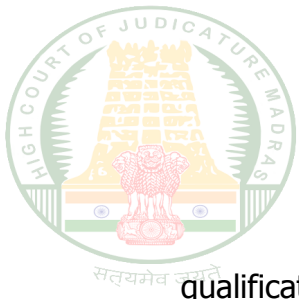
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rule, resulting in the rejection of her candidature.

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4.7. Ultimately, the learned Additional Advocate General appearing for the appellants submitted that the learned Judges, without considering the facts and circumstances of the cases, erred in disposing of the writ petitions in favour of the respondent candidates/writ petitioners. Therefore, the writ appeals will have to be allowed by setting aside the orders so passed by the writ court.

5.1. Per contra, Mr.P.V.Balasubramanian, learned senior counsel appearing for the first respondent in W.A.No.2626 of 2022 would submit that the first respondent uploaded the experience certificate in strict compliance with the format provided by the appellant in "Annexure II" of the Notification. Adding further, it is submitted that the first respondent instead of using the term 'Criminal Court,' had stated 'Courts in and around Chennai' within the blank "----- Courts" in the experience certificate. It is pertinent to note that the 'format' refers only to the printed material and not to the blanks left therein. Thus, all the contents provided in the printed material of Annexure II format are included in the experience certificate originally submitted (in a timely manner) by this respondent. Filling in the blanks cannot be considered as a deviation from the prescribed 'format'. This is especially relevant, since the requirements and



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qualifications for criminal court experience are clearly outlined in the application form itself, and the respondent was permitted to appear for the preliminary examination only after meeting these qualifications criteria.

5.1.1. Continuing further, the learned senior counsel submitted that the format prescribed for the practice experience certificate by the appellant-TNPSC and the format of the certificates submitted by the candidates are identical. The only distinction between the two formats is that the form provided by the appellant-TNPSC included a blank space, which they expected to be filled as "Criminal Courts," while the candidate filled it out as "Courts in and around Chennai." According to the notification, the documents are to be requested from the candidates, after the publication of marks. Therefore, even if the certificate, as per their interpretation, is incorrect, it does not affect the qualification and the eligibility of the candidates for selection to the post in question, as they can furnish the correct documents, when requested by the TNPSC after the marks are published. It is also submitted that a comparative analysis of the previous experience certificate format (Notification 2018) with the current format (Notification 2021) reveals that the TNPSC itself omitted the phrase "active practice in criminal court" from the current format, which caused confusion, not only in the minds of the first respondent, but also for 30% of the candidates who approached the court by way of writ petitions.



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5.1.2. The learned senior counsel would submit that the further argument of the learned Additional Advocate General appearing for the appellants that the 'Experience Certificate' must be interpreted in conjunction with Clause 4(B) of the Notification, lacks merit and is unfounded. According to the learned senior counsel, Clause 4(B) solely addresses qualifications and does not extend to the 'prescribed format for experience certificate.' The first respondent possessed the said qualifications and it was on the basis of these qualifications that she was allowed to participate in the preliminary examination. Additionally, the 'NOTE' provided below the format in Annexure II of the notification, serves the purpose of clarifying from whom the certificate should be obtained, to verify the 5-year period of active practice in criminal court – a requirement that the first respondent has indeed fulfilled. Pointing out that the experience certificate required to be submitted is not issued by a statutory authority, but by someone who is familiar with the applicant's area of practice, the learned senior counsel submitted that it is quite reasonable to expect that an applicant would submit a certificate that is beneficial to their case.

5.1.3. The learned senior counsel would also submit that the omission of the alleged phrase 'actively practising as an advocate since ----- in criminal



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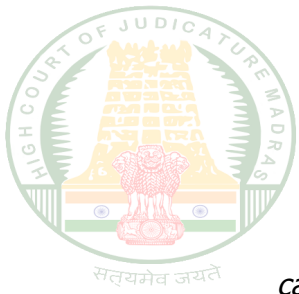
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courts' in the current notification, led the first respondent to produce the experience certificate with a mention of territorial jurisdiction, which indisputably includes criminal courts as well. The term 'Courts in and around Chennai' inherently encompasses Criminal Courts. In support of this contention, the learned senior counsel relied upon a judgment of the Division Bench of this court in ***Dr.A.Rajapandian vs. State of Tamil Nadu [2006 (5) CTC 529]***, wherein it was held as follows:

"18. It is true that the Instructions, etc. to the Candidates mentions that the registration 'with the Councils is a pre-condition, and requires the production of the registration certificate..."

19. It is pertinent to note that the earlier advertisement, a copy of which is produced at Page No. 1 of the paper book, specifically requires the production of the Registration Certificate issued by the Veterinary Council. No such requirement is stipulated in the present Notification/Advertisement. Moreover, it is not disputed by the Commission that the petitioners are duly registered Veterinary Assistant Surgeons under Tamil Nadu Veterinary Council prior to the date of Notification/Advertisement. The non-enclosure of the Registration Certificate issued by the Veterinary Council, which was not specifically required to be produced along with the application either in the Notification/Advertisement or in the Information Brochure or in the Check List cannot be put against the petitioners for rejecting their applications.

20. If there was any confusion created on the minds of the candidates, the blame squarely lies on the TNPSC. Far from helping the candidates, it had made mess for any reasonable candidate to understand as to what was their exact requirement. The TNPSC could have very well issued one simple and compendious booklet containing all these details rather than making the candidate to refer to several documents. Starting from paper notification, application, instructions to candidate, information brochure and finally a misleading check list in the OMR application makes it a jigsaw puzzle. When as many as over 100 candidates have committed the so-called mistake (which accounts for almost 10% of the total applicants), the resultant mistake cannot be solely attributed to the



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candidates alone. Unlike the previous years, paper notification, the requirement for production of the registration certificates was omitted in the present notification and there is no satisfactory explanation from the TNPSC for such omission. Further, in the check list found in the OMR application, again there is significant omission to include the requirement for production of a Registration Certificate.'

Referring to the above-mentioned judgment, the learned senior counsel would submit that the case law pertains to the removal of a specific certificate from the list for the current year in comparison with the previous year. Despite this certificate not being listed as a required qualification in the Notification, it led to confusion whether the concerned certificate had to be submitted. The disqualified candidates cited the reason that the concerned certificate was not produced, despite the fact that it had been removed from the list. Similarly, in the present case, the deliberate removal of the disputed phrase 'active practice in Criminal Court' from the current format by the TNPSC has caused confusion as to whether the blank (i.e., "_____Courts") refers to the "place of practice" or the "name of the court." Therefore, if any confusion arises in the minds of the candidates, the responsibility for the same squarely rests on the appellant-TNPSC.

5.1.4. The learned senior counsel would further point out that the first respondent has secured 10th rank and such a meritorious person, who is fully qualified cannot be chucked out on hyper-technicalities. That apart, even in the very same declaration, it was mentioned that he has experience in both civil and



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criminal courts. Thus, the learned senior counsel submitted that it is a settled law that *res judicata* would operate even in same proceedings and hence, when all the parties accepted the interim order of the court dated 06.05.2022 which was passed after hearing both sides; neither the Government nor the TNPSC preferred Appeals; and the candidates complied with the order and uploaded documents exercising the option granted by this Court, this operates as *res judicata* in the same proceedings. To fortify this submission, the learned senior counsel would rely on the judgment of the Apex Court in ***Barkat Ali & Anr. vs Badrinarain (Dead) through LRs [(2008) 4 SCC 615]***. The relevant portions of the said Judgment are extracted as under:

"8. The principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same Court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage.

9. In Arjun Singh v. Mohindra Kumar and Ors. **(AIR 1964 SC 993)** it was observed as follows:-

"Scope of principle of res judicata is not confined to what is contained in Section 11 but is of more general application. Again, res judicata could be as much applicable to different stages of the same suit as to findings on issues in different suits. Where the principles of res judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the enquiry which the adjectival law provides, the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and the relevant factors to be considered before the principle is held applicable."



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10. In *Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr.* (AIR 1960 SC 941) it was observed as follows:

"The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the Trial Court or a High Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

Thus, he would submit that the order passed by this Hon'ble Court in the same proceedings is binding on the respondents and the Commission herein. So, the Commission cannot be permitted to take a contrary stand that the documents uploaded by the candidates in pursuance of the order cannot be accepted since it is after the time fixed in the Notification.'

5.1.6. In conclusion, the learned senior counsel emphatically submits that the experience certificate, which was produced in strict compliance with the interim order dated 06.05.2022 passed in the writ petition, has been accepted and also approved by the scrutiny committee of the Directorate of Prosecution. In the given circumstances, the appellant-TNPSC has no authority to reject the candidature of the respondent for appointment to the post in question, when his qualification, experience certificate and its format had been approved by the scrutiny committee of the concerned department. Therefore, the order of the learned Judge deciding the writ petition in favour of the first respondent, does not require any interference at the hands of this court.

5.2. Mr.Ma.P.Thangavel, learned counsel, representing Mr.SMS.Johnny



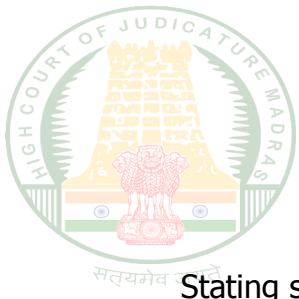
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Basha, learned counsel appearing for the respondent in W.A.(MD)No.1450 of 2022 would submit that the respondent has 11 years of active practice in criminal courts, including Madurai High Court, Madurai District Court, Theni District Court, Krishnagiri Court, and Melur Judicial Magistrate Court. According to the learned counsel, the dispute arises from differing formats for providing experience details in Notification No. 23/2018 and Notification No. 10/2021. While the 2018 notification required the details about 'has been actively practising as an advocate since _____ in Criminal Courts,' the 2021 notification mandated experience in the Annexure - II format, which is as follows:

"..... was enrolled as an Advocate on _____ and has been continuously practicing from _____ (date) to till date. He/she has been regularly appearing in _____ courts, conducting cases on her/his own."

The respondent duly filled in the above column, stating that he has been regularly appearing in 'High Courts.' The Hierarchy of Criminal Court under Section 6 of the Criminal Procedure Code, 1973 clearly states that the High Court is a criminal court with original jurisdiction under Section 482 of the Criminal Procedure Code, as well as the authority to conduct "Trials before High Courts" under Section 474 of the Criminal Procedure Code. Adding further, the learned counsel would submit that there was a deliberate omission in the 2021 notification, on the part of the appellant, as evident from the 2018 notification. Therefore, the claim of the appellant-TNPSC that the word 'criminal' is missing, is not legally sustainable.

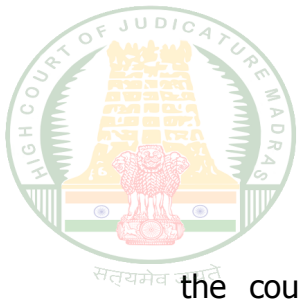


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Stating so, the learned counsel prayed for dismissal of this Writ Appeal.

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5.3. Mr.K.K.Senthil, learned counsel appearing for the first respondent in W.A.(MD) No. 1423 of 2022, submitted that the first respondent is practising as an advocate in the Coimbatore Court and has obtained a certificate from the Coimbatore Bar Association, affirming his 13 years of legal experience. He uploaded this certificate to the portal, but his application was rejected and he was not permitted to write main examination by the appellant-TNPSC on hyper-technical grounds. The rejection was based on the assertion that the certificate from the Coimbatore Bar Association did not explicitly mention experience in criminal court cases, even though it was clearly mentioned therein that he had been an active member of the bar for the past 13 years. Additionally, the learned counsel points out that in a previous notification, the appellant-TNPSC had accepted the candidates, who produced certificates from the Bar Association without such specific requirements regarding the area of practice. This change in criteria has not only caused undue hardship to the first respondent, but also to some other candidates. Furthermore, the learned counsel highlights that the first respondent is a physically challenged person suffering from a locomotor disability, and he has been certified as having a 50% permanent disability. However, he has successfully handled various criminal cases and, based on this substantial experience, cleared the preliminary examination. Based on the interim order of



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the court, he was allowed to take part in the main examination and he successfully passed it as well. Therefore, the learned counsel prayed for appropriate order in this writ appeal.

5.4. Mr.M.Shakul Hameed, learned counsel appearing for the respondent in W.A.(MD)No.1502 of 2022, would submit that the respondent completed her law degree during 2010-2015, and thereafter she got enrolled with the Tamil Nadu and Puducherry Bar Council of India on 09.10.2015. Subsequently, she has been pursuing her M.L. Degree. However, the application of the respondent was rejected for the reason that she had insufficient bar experience of 5 years in the criminal courts as she had studied the M.L. course during her experience period. The learned counsel would further submit that as per the resolution of the Bar Council of India dated 23.01.2010, a practising advocate can join an LL.M. course as a regular student without suspension of practice and hence, the order of rejection of her candidature is unsustainable. The learned Judge, by relying upon the judgments in ***Karan Jagdish Kaur Vs. Punjab School Education Board [(1998) IILLJ 186 PH]***, ***Tahir Ahmad Dar V. State of J & K and others in S.W.P.no.1127 of 2016, dated 07.09.2017***, and ***Dharmendra Kumar Vs. Bar Council of India in Second Appeal No. CIC/BCOI/A/2018/146320-BJ, dated 20.02.2020***, allowed the writ petition in favour of the first respondent in WA.(MD) No.1502 of 2022, which need not be interfered with by this court.



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5.5. Mr.V.Raghavachari, learned senior counsel representing Mr.P.Saravanan, learned counsel appearing for the 1st respondent in W.A.No.2685 of 2022, would submit that the first respondent applied under the PSTM category. According to the learned senior counsel, the first respondent completed his education from Standard I to XII in the Tamil medium at a Government School and obtained his law degree from Dr. Ambedkar Government Law College, Chennai, which is also in Tamil medium. He explicitly stated in his application form that he attended the same Government School for all 12 classes. However, he did not possess a PSTM certificate and hence, he followed the procedure prescribed in Clause 12(B)(iv), which reads as follows:-

'If no such document as evidence for PSTM is available, a certificate from the Registrar / Principal / Head Master / Controller of Examinations / Director of the Educational Institution, as the case may be, in the prescribed format must be uploaded / produced, for each and every educational qualification up to the educational qualification prescribed.'

Accordingly, a certificate from the Principal of the School was submitted stating that he studied SSLC in Tamil medium. But, the TNPSC adopting a hyper-technical stand, states that the respondent had studied Class X and XII alone in Tamil Medium and not the other classes and therefore, his candidature is liable to be rejected by relying on Clause 12(B)(v) which states as follows:

'Failure to upload / produce such documents 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.'



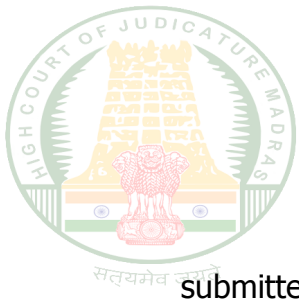
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The learned senior counsel would contend that even the above clause requires rejection of the candidature, but only by due process and not summarily behind the back of the candidate. Moreover, the TNPSC in its notification has clearly mentioned that the candidate can produce or upload the document when called for, which shows that the candidate ought to be provided an opportunity during the certificate verification and only thereupon when it is found that he is not in possession of proper certificate, can his candidature be rejected. The relevant clause 12B(iii) is profitably extracted below :

'Candidates must upload / produce documents as evidence of having studied in the Tamil medium, all educational qualification upto the educational qualification prescribed.'

The learned senior counsel further submits that the first respondent has not violated any rules or regulations notified by the appellant. He indicated in his application about the medium of instruction he pursued, to the effect that he studied in "1st standard to 10th standard and 11th standard to 12th standard" in Tamil medium. It is additionally submitted that the first respondent's claim is bona fide, and if the writ appeals are allowed, he would be put to irreparable loss. The learned counsel also points out that the first respondent hails from a downtrodden family, and it would be very difficult to get appointment in the future. Referring to G.O.(4D) No. 21 dated 15.05.2023, the learned senior counsel

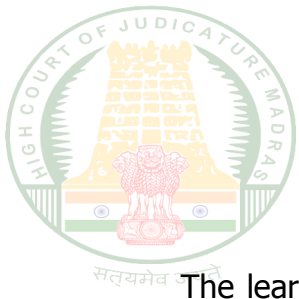


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submitted that the appellant TNPSC cannot be permitted to contend that 41 vacancies have been filled up and the candidates, who have reached the zone of consideration in this batch of Writ Appeals have to contest only in the 9 vacancies yet to be filled. This is because the said 41 appointments were not directed to be done by this court and pending consideration before this Court, the appellant-TNPSC unilaterally decided to fill up the posts, hence, the rights of the candidates herein cannot be disturbed by the appointments done pursuant to the G.O. Moreover, when the G.O. in clear terms read that the appointments will be subject to the decision in this batch of Writ Appeals, the right of the 41 appointees to hold the post is not crystallized till disposal of these Writ Appeals. To substantiate this contention, the learned senior counsel relied upon the Judgment of this Hon'ble Court in ***Secretary, Tamil Nadu Public Service Commission vs R. Nagarajan & Ors.*** [2007 SCC Online Mad 710], in which, it was observed as under:

'14. It is to be noted that Appointing Authority viz., Government has not preferred any appeal. As held in Miss Neelima Shangla v. State of Haryana and Ors, duty of Public Service Commission is only to make available to the Government a complete list of qualified candidates arranged in order of merit. It is the Government who strictly appoints in the order in which they have been placed by the Commission as a result of the examination. When there are resultant vacancies, TNPSC cannot contend that the selected list prepared in 2002 got expired. In fact, while issuing notification inviting applications for 44 vacancies of Additional Public Prosecutor Grade II, it was notified that "the recruitment of the posts is subject to the result of various cases filed in the High Court Madras, which are still pending". Having said so, the appellant is not justified in contending that at present there is no vacancy. This is all the more so, when the Government and TNPSC had taken time in the contempt proceedings for implementing the order.'



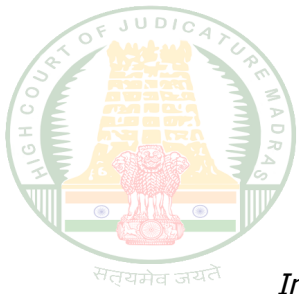
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The learned senior counsel also emphasized that the first respondent has indeed produced PSTM Certificates (from 1st standard to 12th standard) within a reasonable time frame, as provided by this Court. Taking note of the same, the learned Judge has rightly allowed the writ petition, by the order impugned herein, which does not warrant any interference.

5.6. Mr.V.Ramamurthy, learned counsel appearing for the respondent in W.A.No.2688 of 2022, submits that FIR filed against respondent has been duly mentioned in the application, however, a copy of the same could not be fully uploaded as it was a voluminous document. Nevertheless, the respondent sent a representation to the TNPSC on 03.02.2022 in this regard. Furthermore, the respondent utilized the services of an e-seva kendra to complete the application, but he was unable to find a way to upload the entire FIR. Thus, according to the learned counsel, the non-uploading of the complete document was solely due to this technical challenge and not a deliberate withholding of any material information. The learned counsel further contends that the failure to upload the entire FIR should not be a reason for rejection, as per Clause 11(B)(i) of the TNPSC Notification, which states that rejection is applicable only when the document is not produced, when called for. The relevant clause is reproduced below for better understanding:

"Candidates who have declared pending criminal or disciplinary cases in their online application must upload/produce a copy of the First



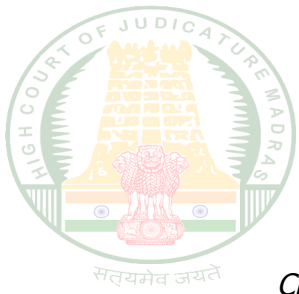
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Information Report (FIR) or memorandum of charges/show cause notice, as applicable. Failure to upload/produce such papers when called for shall result in the rejection of candidature."

The learned counsel also submits that Clause 12K mandates providing accurate and truthful details regarding criminal cases and as per the same, the respondent had duly informed about the pending criminal case, while submitting online application. Additionally, a representation was also sent to the appellant on 03.02.2022 by the respondent. Thus, according to the learned counsel, there was no concealment of any material information relating to the pending criminal case against the respondent and hence, the order of the learned Judge is perfectly correct and the same requires no interference by this court.

5.7. Mr.C.K.Chandrasekhar, learned Counsel appearing for the respondent in W.A No. 2695 of 2022 would submit that the respondent stood first in the main examination conducted by the appellant-TNPSC, but she is denied appointment for the reason that she has uploaded community Certificate of both her father and husband. According to the learned counsel, in any event, the appellant - TNPSC cannot reject summarily the candidature of the respondent and they have to follow due process. In this connection, the learned counsel drew the attention of this court to Clause 12(L) and Clause 13(g) of the Notification, which read as follows :



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Clause 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.****

*Clause 13(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 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 rejected summarily by the Commission.***

Referring to those two clauses, the learned counsel submitted that Clause 12(L) emphasizes the need for due process in handling incomplete or incorrectly filled applications, while Clause 13(g) outlines that the applicants must submit required documents when specifically instructed by the TNPSC. The respondent / writ petitioner did not submit any bogus certificates; both the certificates pertain only to the same community viz., MBC (Vanniyar); and she provided all the necessary documents and therefore, her application should not have been rejected without following due process. That apart, there is no conflicting claim with respect to the community of the respondent. The learned counsel would rely on the judgment of the Apex Court in ***Dolly Chhanda v Chairman, JEE [(2005) 9 SCC 779]***,



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wherein, it was held as under:

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*" 7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, **in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.**"*

...

*"9. **The appellant undoubtedly belonged to reserved category.** She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. **Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal . "***

The learned counsel would thus submit that the Hon'ble Apex Court itself has heavily come down on the recruitment agencies and criticised their rigid technical approach in respect of community claim as adopted by the appellant-TNPSC in the instant case and has instructed them to adopt a flexible approach. As pointed out in the Judgment, the community certificate could very well be directed to be produced at the time of certificate verification. In reply to the learned Additional



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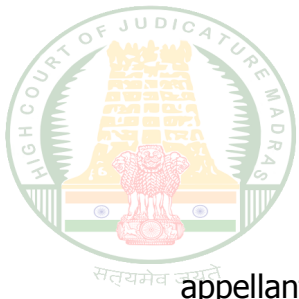
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Advocate General's submission that community certificate with the name of the father and not that of the husband, must be uploaded in respect of female married candidates, it is submitted that there is no clause in the notification to that effect. The learned counsel would further submit that it is not a case where community certificate of the father is not uploaded, it is uploaded with another document and that, if the appellant-TNPSC would only place reliance on one of the two certificates, she could very well be considered as it is not the case of the Appellant TNPSC that the respondent has submitted a bogus certificate. The learned counsel would further rely on the Judgment of the Full Bench of this Hon'ble Court in ***TNPSC v R. Manikandan [2011 (5) CTC 1]*** to contend that when a community certificate has been submitted, the selection of the candidate cannot be withheld. The relevant portion of the said judgment reads as under:

"27. D) For the purpose of processing the application and allowing a candidate to take part in the written examination and the consequential oral examination, the Service Commission would be entitled to verify as to whether the Candidate has produced a Caste Verification Certificate obtained from the respective Committees and in the event such certificate is produced, the selection of the candidate cannot be withheld and the name should be forwarded to the appointing authority for making appointments;

E) In the event a candidate does not produce such a Caste Verification Certificate and in the event he is selected, his name cannot be withheld and can be forwarded for appointment with a clear indication that the selection is subject to the verification of the community certificate'

The learned counsel went on to contend that even if it is the case of the

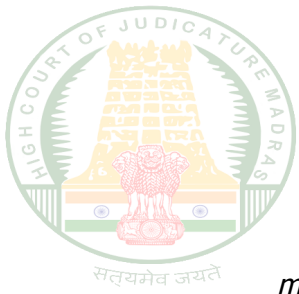


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appellant-TNPSC that the first respondent is not entitled to claim benefit of reservation by virtue of her community, in view of the fact that she has secured the 1st mark in the main examination, she based on her own merit, has succeeded and would take the place of a general candidate in the roster. To the said submission, the learned counsel placed reliance on the Judgment in ***RK Sabharwal vs. State of Punjab & Ors. [(1995) 2 SCC 745]***, wherein it was held that the seat secured by a reserved category candidate on her own merit, should be adjusted against the general category. The relevant paragraph of the judgment is extracted hereunder:

"4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the



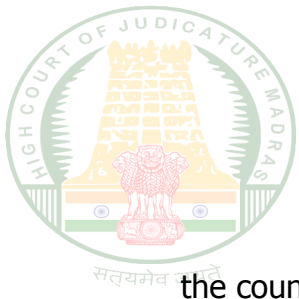
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member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.'

Thus, according to the learned counsel, the question of verifying the validity of community certificate loses significance. With these submissions, the learned counsel submitted that since the first respondent secured the first position in the selection process, she should be granted an appointment with due seniority and all associated benefits and therefore, appropriate orders may be passed in favour of the respondent herein.

6.1. Mr.R.Vijayakumar, learned counsel representing the third respondent in W.A.No.2685 of 2022, submitted that this respondent belongs to the SCA (SC-Arunthathiyar) community, and is also a physically challenged person with Locomotor disability. The learned counsel further contends that after successfully passing the preliminary examination, this respondent was allowed to participate in the main examinations. The appellant-TNPSC published a ranking list on 08.12.2022, where he was placed at 84th position under the SCA quota and accordingly, he was summoned for counselling on 15.12.2022. However, before



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the counselling could commence, the appellant issued another ranking list, placing him at 89th position. This change was made based on the interim order issued by this court on 22.12.2022 in W.A.No.2685 of 2022. It is also brought to the notice of this court that there are two seats reserved for the SC-Arunthathiyar (SCA) category, as per the Notification dated 25.08.2021, for the post of Assistant Public Prosecutor Grade-II and the said two posts were considered under the SCA quota, including the writ petitioner as well. Originally, the writ petitioner was placed under withheld status following the interim order dated 22.12.2022 in W.A. No. 2685 of 2022 and his name was provisionally ranked at 99th position under the SCA category, pending the outcome of the Writ Appeal. It is further submitted that another candidate by name, R. Murugeswari, who was ranked at 12th rank in the first list, was now ranked at 14th in the second list and placed under the SCA quota and this respondent was placed under 84th position under the SCA category and hence, his claim for selection and appointment to the post of Assistant Public Prosecutor Grade II should be considered under the SCA category. The learned counsel also submitted that if horizontal reservation, i.e., the first rank list dated 08.12.2022 was taken into account, this respondent would have been selected. However, in view of the second rank list, this respondent's name was not considered, thereby causing him severe mental distress as he has been placed at 84th rank. Therefore, the learned counsel prayed for appropriate direction in favour of this respondent.



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6.2. Mr.Balan Haridas, learned counsel appearing for the respondents 2 to 6 in WA. No. 2688 of 2022 and the 4th respondent in W.A.No.2685 of 2022, submitted that these respondents successfully passed the preliminary examination and subsequently appeared in the main examination. It is further submitted that the TNPSC published the consolidated rank list on 08.12.2022 in respect of 107 candidates, and the selection of 10 candidates was withheld due to various reasons such as not uploading documents, suppression of certain facts, etc. In the said rank list, these respondents' names were placed at Sl.Nos. 28, 30, 59, 60, 47, and 86. However, in the revised rank list dated 15.12.2022, the TNPSC included the names of the withheld candidates, resulting in these respondents' names being pushed down to Sl.Nos.31, 34, 63, 64, 51, and 91, respectively. It is also submitted that the original notification clearly stated that applications containing incorrect or incomplete particulars would be summarily rejected. Additionally, the notification emphasized that no modifications to the details of the online application would be permitted, and the information provided in the online application would be considered as final; and that, all the candidates gave a declaration that they would not request any changes to their application details and acknowledged that their candidature could be rejected at any stage of the selection process. Despite the said declaration, the previously withheld candidates sought to include their names in the rank list, which led to the pushing down of



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these respondents' names in the revised rank list, potentially affecting their appointments. Therefore, the learned counsel prayed that the interests of these respondents may be protected by passing appropriate orders in these writ appeals.

6.3. Mr.K.Selvakumar, learned counsel appearing for the second respondent in W.A.(MD)No.1423 of 2022, would submit that the second respondent is a differently-abled person aged about 42 years and he had applied under BC (OBCM) quota and he falls within the special category, namely the One Arm (OA) category, as notified by the TNPSC. He is one of the successful candidates selected for the post of Assistant Public Prosecutor Grade-II in the selection process conducted by the appellant herein. He scored 260 marks and secured the 54th position in the first rank list published by the TNPSC on 02.12.2022, under the BC (OBCM) OA (LD-Locomotor Disability) category. The learned counsel further submit that the instructions notified by the TNPSC have made it clear in unequivocal terms that practice by the applicants before the criminal courts is a mandatory requirement for acceptance of the experience certificate along with the applications and as the first respondent in WA. (MD) No. 1423 of 2022 has not submitted the experience certificate in the prescribed format, his application was rejected and he comes under the MBC category and



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he cannot be a competitor for the same post. Similarly, one Ms.Geetha, who has secured 267 marks and was 41st position in the ranking list and who is a female OC candidate, could be filled up in the OC category, thereby paving the way for BC reservation quota. Thus according to the learned counsel, the pendency of the said Writ Appeal would not stand in the way of issuing appointment orders to this second respondent by the TNPSC. This is because, as per the existing quota meant for BC(OBCM) OA (LD- Locomotor Disability) category, he is the only suitable candidate, and there is no other candidate made available. The learned counsel would further submit that during the pendency of these writ proceedings, the appellant - TNPSC has issued appointment Orders to 41 candidates out of the 50 vacancies called for under the present Notifications and the remaining 9 vacancies are yet to be filled up, due to pendency of the proceedings. Stating so, the learned counsel prayed for suitable orders in favour of this respondent.

7.1. In reply to the submissions made on the side of the respondents in WA.No.2626 of 2022 and W.A.(MD)Nos.1423, 1450 of 2022 and 1502 of 2022 / writ petitioners, the learned Additional Advocate General appearing for the appellants submitted that the same are liable to be rejected on two grounds. Firstly, the certificates submitted by the respondents/writ petitioners do not adhere to the prescribed format and it is settled law that the terms of the notification have to be strictly adhered to. Secondly, the TNPSC has made it very



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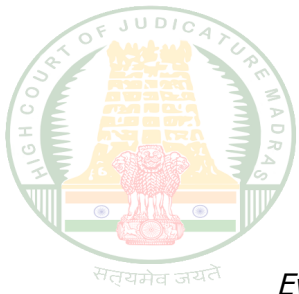
clear by the terms of the Notification that practice / experience in Criminal Courts alone is expected from the candidates and not just practice in any area whatsoever. This is because the term "Criminal Court" has been stated not just in one place, but in 3 places in various parts of the Notification, apart from Annexure-II.

7.2. In respect of submissions made in Writ Appeal No. 2685 of 2022, the learned Additional Advocate General appearing for the appellants submits that the first respondent cannot claim that he would submit documents to show that he studied other grades in Tamil at the time of certificate verification, because no candidates would be permitted to submit additional documents and the documents uploaded by them through online alone would be called for and verified in original. Thus, the respondent / writ petitioner cannot develop his case by submitting any other documents, after submitting the application. In this regard, the learned Additional Advocate General relied upon clauses 12(I) and 15 of the Notification, which read as follows:

"Clause 12 (I)

Evidence for all the claims made in the online application should be uploaded / submitted in time when documents are called for. Any subsequent claim made after submission of online application will not be entertained. Failure to upload / submit the documents within the stipulated time limit will entail rejection of application after due process.

Clause 15



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Evidence for all the claims made in the online application should be uploaded / submitted in time when documents are called for. Any subsequent claim made after submission of online application will not be entertained. Failure to upload / submit the documents within the stipulated time limit will entail rejection of application after due process."

Thus, according to the learned Additional Advocate General, the candidates must upload or submit all necessary evidence for the claims made in their online application, when requested to do so. Any subsequent claims made after the submission of the online application will not be entertained. The failure to adhere to this requirement within the specified timeframe will result in the rejection of the application following the due process.

7.3. In response to the submission made on the side of the first respondent in Writ Appeal No. 2688 of 2022 that the website did not accept the FIR in relation to the criminal case pending against him, the learned Additional Advocate General appearing for the appellants submitted that the same should not be accepted because there are ample tools available in the internet to compress large-sized voluminous documents for uploading. The further submission of the first respondent / writ petitioner that while filling up the application from e-seva kendra, even the Government staffs in e-seva kendra could not upload the FIR copy, after their best efforts, should also be brushed aside, in the light of the express clause mentioned in the 'Warning' part of the Notification, which is usefully extracted below:



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"Applicants are solely responsible for their claims in the online application. They cannot blame service providers like internet cafes/browsing centres/Common Service centres for the mistakes made while applying online for recruitment. Applicants are advised to check the filled in online application before finally submitting the same."

Therefore, the first respondent is not entitled for any relief in this writ petition, but the learned Judge erred in disposing of the writ petition in his favour, by the order impugned in this writ appeal, which will have to be set aside.

7.4. As regards the submissions made by the first respondent in W.A No. 2695 of 2022 that there was no clause stipulating that only the community certificate of the father, and not the husband, must be uploaded for female married candidates, the learned Additional Advocate General appearing for the appellants referred to clause 14-F(i) and (xiv) of the Instructions to the applicants, dated 10.08.2021, which read as follows:

"Para 14-F(i)

*In the case of a candidate who claims to be a member of Scheduled Castes / Scheduled Caste (Arunthathiyars) or Scheduled Tribes or Most Backward Classes / Denotified Communities or Backward Classes (Other than Muslim) or Backward Classes (Muslim), a certificate citing either father's / mother's name, from the following authority noted against each, should be uploaded / produced in the form prescribed, referred to in G.O.(Ms.)No.781, Revenue Department, dated 2nd May 1988. **Uploading / production of a community certificate citing name of spouse, shall result in rejection of candidature.***

Para 14-F(xiv)



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Candidates in possession of a community certificate obtained outside the State of Tamil Nadu are permitted to apply under:-

(a) 'Other' - such candidates need not upload / produce their community certificate.

(b) Scheduled Caste / Scheduled Caste (Arunthathiyar) / Scheduled Tribe - such candidates must upload / produce in addition to their community certificate, their father's or mother's native certificate, in support of their claim. Failure to do so, or failure of the uploaded / produced documents to substantiate their claim, shall result in rejection of candidate.

(c) Most Backward Classes / Denotified Communities, Backward Classes (other than Muslim) or Backward Classes (Muslim) - such candidates must upload / produce a fresh community certificate from the District Revenue Officer of their native district in Tamil Nadu. Failure to upload / produce such certificates shall result in rejection of candidature."

The above provisions clarify that for female married candidates, only the community certificate of their father, and not their husband, must be uploaded and hence, the claim of the first respondent is liable to be rejected.

7.5. Ultimately, the learned Additional Advocate General appearing for the appellants submitted 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 respondent candidates / writ petitioners and the results are being published. The learned Additional Advocate General further submitted that the TNPSC, as an institution, takes its commitment to transparency, fairness, and



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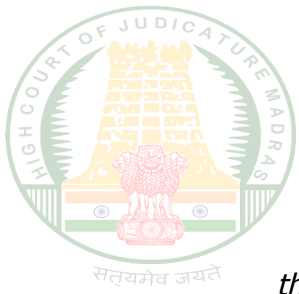
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integrity very seriously. One of the fundamental tenets of this commitment is the strict adherence to the prescribed guidelines, including the submission of required documents within the time prescribed. When individuals resort to legal intervention 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. In support of the said contention, the learned counsel relied upon a judgment of the Apex Court in ***State of Tamil Nadu and Others vs. G. Hemalathaa and Another [2020 (19) SCC P.430]*** and the relevant paragraph of the same is quoted below for ready reference:

"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 Mohammad 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



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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.

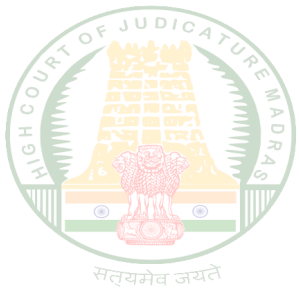
12. Roberts, CJ. in Caperton v. A.T. Massey held that:

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 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."

In the light of the aforesaid decision, the learned Additional Advocate General appearing for the appellants submitted that no leniency could be given to the respondent candidates / writ petitioners in enforcing these rules.

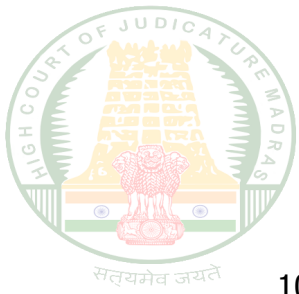


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8. Heard the submissions made by all the parties and also perused the materials available on record.

9. At the outset, it would be appropriate to point out that though the Tamil Nadu Public Service Commission, the appellant in all the cases, has preferred the present writ appeals against the orders of the Learned Judges in the Writ Petitions, by virtue of the results in the main examination, the appeals in W.A.No.2626 of 2022 (TNPSC -vs R.Aishwarya), W.A.No.2685 of 2022 (TNPSC vs. B.Parthiban), W.A.No.2688 of 2022 (TNPSC vs. P.Jagadeeswaran), W.A.No.2695 of 2022 (TNPSC vs. G.Hemalathaa), W.A.(MD)No.1423 of 2022 (TNPSC vs. A.Velmurugan), W.A.(MD)No.1450 of 2022 (TNPSC vs. M.Parameswari) and W.A.(MD)No. 1502 of 2022 (TNPSC vs. R.Manimegalai) alone are significant inasmuch as only the 1st respondents in the said appeals have cleared the main examination and the findings in other appeals are only academic. In other words, though the findings in the appeals, in which the respective first respondents' have cleared the main examination, may have a bearing on the other appeals, where the respective first respondents' have not cleared the main examination, we are not inclined to go into the factual aspects of those cases, which have since become academic.



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10. Having perused the relevant notification, the documents, the appropriate instructions to the applications prevalent at the time of notification and the judgments cited by all the counsels, we deem it fit to refer to certain important dates, before proceeding further.

<i>Sl.No.</i>	<i>Process</i>	<i>Timeline</i>
1	Date of notification	25.08.2021
2	Last date for submitting the Application	24.09.2021
3	Date of Preliminary Examination	06.11.2021
4	Publication of Preliminary Examination Results	25.01.2022
5	Uploading of Certificates	03.02.2022 to 11.02.2022
6	Main Examination	7th and 8th May 2022
7	Publication of Main Examination Results	15.11.2022
8	Oral Test	November 2022
9	Final Selection List	08.12.2022
10	Counselling	15.12.2022

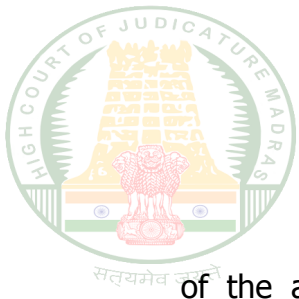
11. The notification for filling up the vacancies to the post of Assistant Public Prosecutor, Grade II was issued on 25.08.2021 and at that particular point of time, the instructions to the applicants as amended from time to time and re-issued are applicable. This is significant because as per the notification and the instructions to the applicants as applicable at that point of time, the on-line



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applications had to be filled up and the documents were to be uploaded only when called for. The fact that the documents are to be uploaded/produced when called, is also evident from clause 12 (I) of the notification. Further, it is also relevant to point out that the documents are to be uploaded only from e-seva centres of the state government. That apart, as per clause 13 (g), the particulars regarding the eligibility are to be furnished in the on-line application and the documents need not be uploaded unless called for. The particulars once furnished cannot be altered. As and when the documents are to be uploaded/produced, the applicants will have to upload/produce the same for verification. The said clause also clearly states that if the candidates do not fulfil any of the eligibility conditions upon verification of the certificates, then, their candidature would be rejected. Therefore, all that is required for an applicant to appear for the examination is that he/she must fulfil all the eligibility conditions on the date of notification and produce the documents in support of the particulars submitted in the application, as and when called for. 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. It is also important to mention here that the verification of the original documents is to be done at the stage of counselling as per the notification. The words "after due process" are to be read as synonymous with the principles of natural justice. The clauses in the notification as well as the instructions explicit that the effect of failure to upload the documents is rejection



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

11.1. 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 behaviors 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 was either accepted as such or with modification by other groups. Such norms when they received the assent of the crown and codified, became law.

11.2. 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



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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, 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.

11.3. 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 amenable to law and offered various protections amongst other protections like



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access to justice, protection against illegal imprisonment, limitations on payments, protection of property rights, protection against deprivation of rights without due process.

11.4. 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."*

11.5. 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.

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



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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 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

...

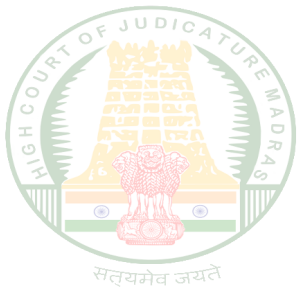
2. Every one has the right of equal access to public service in his country.

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*



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

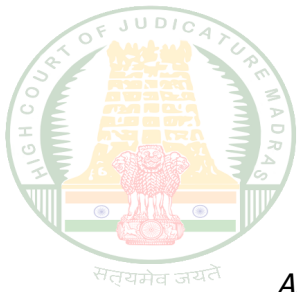
4. *Everyone has the right to form and to join trade unions for the protection of his interests.*

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

11.7. 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 the "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.



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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

(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*

.....

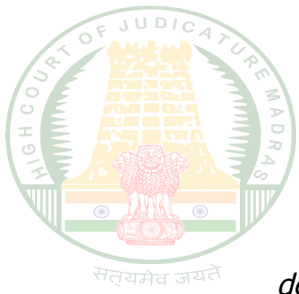
Article 21. Protection of life and personal liberty

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

11.8. 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



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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."

11.9. 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 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



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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 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. 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):



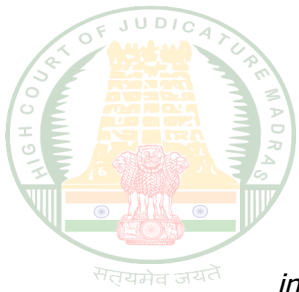
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"In Gopalan case [(1973) 1 SCC 856 : 1973 SCC (Cri) 618 : AIR 1973 SC 1425] the majority court had held that Article 22 was a self-contained code and therefore a law of preventive detention did not have to satisfy the requirements of Articles 19, 14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

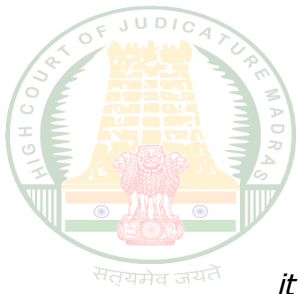


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infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in R.C. Cooper case [(1970) 2 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

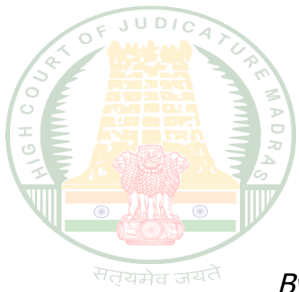


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*it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made 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 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



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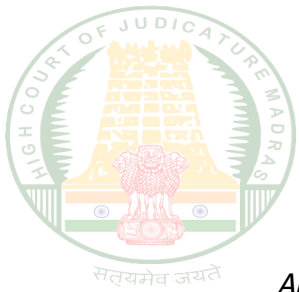
Byles, J., in Cooper v. Wandswort Board of Works [(1863) 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] :

"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] "



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



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with what justice demanded”, or, was the procedure adopted by the 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

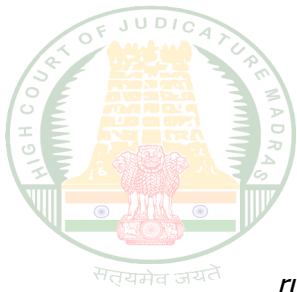


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of the statute and this led to oversubtlety and over-refinement resulting in confusion and uncertainty in the law. But this was plainly contrary to the earlier authorities and in the epoch-making decision of the House of Lords in Ridge v. Baldwin [1964 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



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rules of natural justice would be attracted."

(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] :

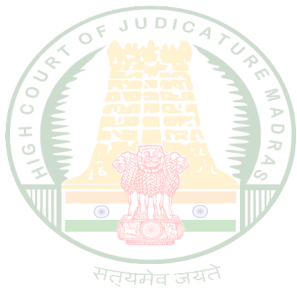
"It is not necessary to examine these decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding. (p. 467) (SCC p. 271, para 17)

** * **

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



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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 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)

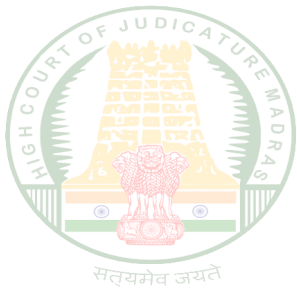
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53.Ridge v. Baldwin [(1964) AC 40 : (1963) 2 All ER 66] is a leading case which restored light to an area “benighted by the narrow conceptualism of the previous decade”, to borrow Professor Clark's expression. [Natural Justice : Substance and Shadow '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)**

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“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)



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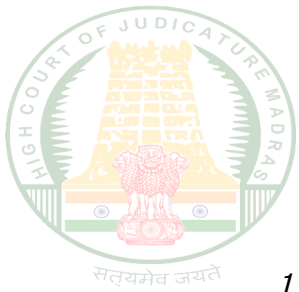
"The law must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article ... 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)



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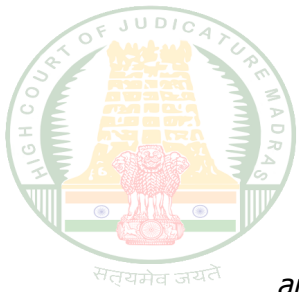
1 SCC 248 : (1978) 2 SCR 621] that "procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself". Thus understood, "procedure" 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



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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 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.

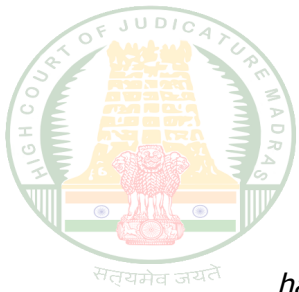
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39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which 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 Singhv. 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



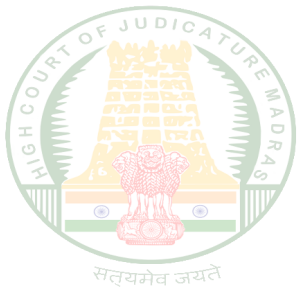
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have been welcomed. In this hue, it can also be remarked that comparative law has played a very significant role in shaping the aforesaid judgment on privacy in Indian context, notwithstanding the fact that such comparative law has only a persuasive value.

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



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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:

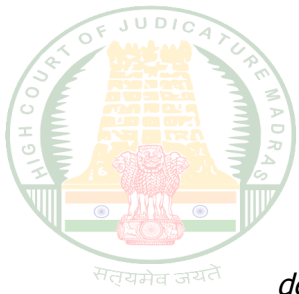
'The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways : first, the value of human dignity 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



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

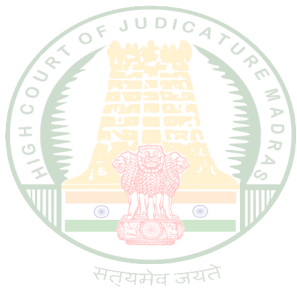
First, it becomes basis for constitutional rights;

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



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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]).

(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]).

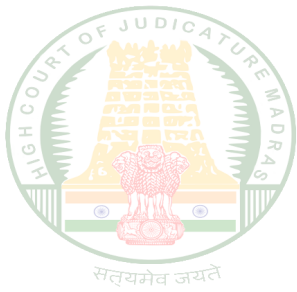
(iv) Rehabilitation of bonded labourers (Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]).

(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



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individual in all respects.'

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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.

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."



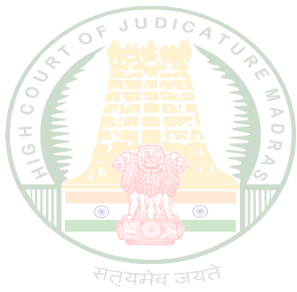
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Nariman, J. has observed that even after McDowell [*State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709], challenges to the validity of legislation have been entertained on the ground of arbitrariness (*Malpe Vishwanath Acharya v. State of Maharashtra* [*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]).

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



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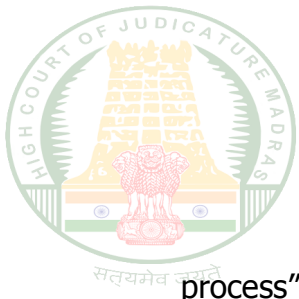
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does not accord with the requirements of a valid law. The law is open to substantive challenge on the ground that it violates the fundamental right."

*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 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."

11.10. 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 in 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 protections are also available against the administrative actions of the state as evident from the judgments referred above. In the present cases, before us, the notifications clearly prescribe that 'due



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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 were allegedly not in order and hence, there is a clear violation of the principles of natural justice.

11.11. 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:

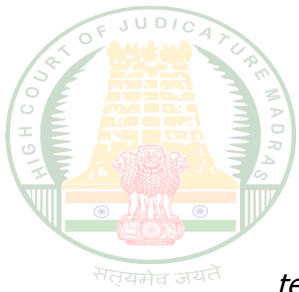
“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. 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.

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



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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 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.”

12. As set out in para 9 above, we are now concerned only with the 7 writ appeals and hence, the common issues involved thereunder are addressed jointly for the sake of convenience and are tabulated below:

Sl.No.	Case numbers	Issues involved
(a)	W.A.No.2626 of 2022, W.A.(MD)No.1423 of 2022,	Experience Certificate is not as per the format

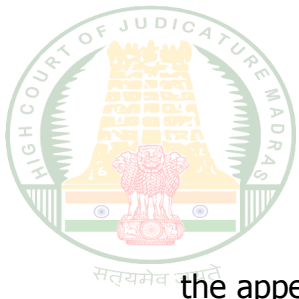


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	W.A.(MD)No.1450 of 2022;	
(b)	W.A (MD) No 1502 of 2022	Did not possess requisite experience, due to pursuing M.L study.
(c)	W.A No 2685 of 2022	Failed to upload PSTM Certificate, as per the Notification
(d)	W.A No 2688 of 2022	Failed to upload the FIR Copy
(e)	W.A No 2695 of 2022	Uploaded two Community Certificates with one containing her husband's name and another relating to her father's name

13. Writ Appeals *qua* Experience Certificate.

13.1. It has been contended by the learned Additional Advocate General appearing for the appellants that the certificates uploaded by the Candidates are not as per the required format and hence, their candidature was rejected. It has also been contended by the learned Additional Advocate General that instead of filling 'criminal courts' in Annexure II of the notification, the 1st respondents in the respective appeals have given the particulars of the courts like courts in Chennai, Madurai and Coimbatore in the certificates. It has been further contended that "active practice in criminal courts" is specifically mentioned in Clause 4 (B) of the notification and also the explanation in clause 4, which accounts for the term during which a person has served temporarily as Assistant Public Prosecutor, Grade-II. Per Contra, it has been contended on the side of the first respondents in



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the appeals that the blank given in the Annexure -II is not specific about “criminal courts” and is indicative of the place and invariably, all the 1st respondents in the respective appeals have experience in criminal side and when the place of practice is mentioned, it goes without saying that it will also include the criminal courts within the jurisdiction. The counsels for the respective respondents also emphasized the deviation in the nomenclature used in the 2018 notification and the 2021 notification to buttress their point.

13.2. We have considered the rival contentions and the documents. It is not in dispute that the applicants/respective 1st respondents have not committed any mistake in filing the application. Their basic eligibility is not questioned here. The authority of the persons who have issued the certificate has also not been questioned. Further, it is not the case of the appellants that the documents were not uploaded within the given period. Rather, only the format of Annexure-II as produced has been questioned. More particularly, not even the format, but also the blank portion in Annexure-II is the subject matter of dispute. A perusal of the certificates produced would reflect that the applicants have mentioned the courts with reference to the place and not specifically with respect to the field of practice. At this juncture, it would be relevant to point out that when the courts are specified, it would encompass within it the civil as well as criminal courts. It



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would also be appropriate to mention here that the syllabus also contains a paper on Civil Procedure Code, with 20 marks attributed to it. It is pertinent to point out that apart from the certificate in Annexure-II, the appellants have not prescribed or demanded any other document like vakalathnama or copies of orders to be produced to prove the active practice in criminal courts. The object of such a requirement is to select a person with experience in criminal side. While so, in the absence of any requirement under the notification or demand for any specific document, apart from the experience certificate in the present format, the appellants cannot insist that the applicants failed to mention "Criminal Courts", more so, when the words like "Courts in Chennai" are exhaustive to include 'criminal courts' also. This court also wonders how a certificate alone can satisfy the requirement. Rather, the certificate must be treated as fulfilling the basic eligibility of experience to appear for the exams and the knowledge in a particular field may be ascertained by examination and/or oral interview.

13.3. Further, as rightly contended by the learned Counsels appearing for the respective 1st respondents that there is a significant change in the Annexure-II of the 2018 notification and 2021 notification, wherein the sentence 'has been actively practising as an advocate since _____ in Criminal Courts', has been omitted in the 2021 notification. If the commission had wanted "criminal courts" to be included in the Annexure, they would have specifically said so. Once,



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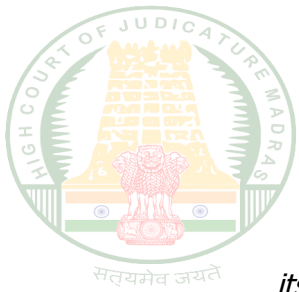
the particular requirement is modified in the Annexure, it is deemed to be done with intention and the knowledge of the consequences of such omission. Hence, the same cannot be permitted to be reintroduced by interpretation. At this Juncture, it would be relevant to refer to the following Judgements of the Apex Court:

(i) ***Polestar Electronic (P) Ltd. v. Addl. CST [(1978) 1 SCC 636 : 1978 SCC (Tax) 68]***

"8. It may be pointed out in the first place that the Legislature could have easily used some such words as "inside the Union Territory of Delhi" to qualify the word "re-sale", if its intention was to confine re-sale within the territory of Delhi, but it omitted to do what was obvious and used the word "re-sale" without any limitation or qualification, knowing full well that unless restriction were imposed as to situs, "re-sale" would mean re-sale anywhere and not merely inside the territory of Delhi. The Legislature was enacting a piece of legislation intended to levy tax on dealers who are laymen and we have no doubt that if the legislative intent was that "re-sale" should be within the territory of Delhi and not outside, the Legislature would have said so in plain unambiguous language which no layman could possibly misunderstand. It is a well-settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all. We may repeat what Pollack C.B. said in Attorney General v. Sillem [(1864) 2 H & C 431, 526] that:

"If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it."

We think that in a taxing statute like the present which is intended to tax the dealings of ordinary traders, if the intention of the legislature were that in order to qualify a sale of goods for deduction, "re-sale" of it must necessarily be inside Delhi, the legislature would have expressed



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itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act. The absence of specific words limiting "re-sale" inside the territory of Delhi is not without significance and it cannot be made good by a process of judicial construction, for to do so would be to attribute to the legislature an intention which it has chosen not to express and to usurp the legislative function."

(ii) *Dental Council of India v. Hari Prakash [(2001) 8 SCC 61 :*

2001 SCC OnLine SC 1020]

"7. The intention of the legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation.

8. To interpret the meaning of the expression "university" the High Court proceeded to examine various dictionaries. That exercise could not have been undertaken by the High Court in view of the fact that the expression used in Section 3(d) of the Act is "a university established by law". The expression used is not just a "university" but "university established by law" and the expression "university" cannot be divorced from the following words "established by law". The entire expression "university established by law" constitutes one concept and is well known in law as indicated in Section 22 of the UGC Act. Hence, construction of the expression used in the Act with reference to dictionaries is not called for. Such a course will result in either omission of words in the Act such as "established by law" or to add different words which is not permissible in the language of the Act.

9. The learned counsel for the respondents referred to a large number of decisions where the meaning of the expression used in an enactment has been given a wider meaning or even to cover a situation which could not have arisen when the law was enacted. But we are afraid, these principles cannot be applied in the present context, for Parliament is well aware of the situation of university, deemed university and the institutions constituted and empowered under relevant enactments to confer degrees and the Act has been amended from time to time, to suit fresh needs as and when they arose. Thus, the Act has not remained static but is catching up with the times. Therefore, what is not included by the legislature cannot be undone by us by adopting the principle of purposive interpretation."



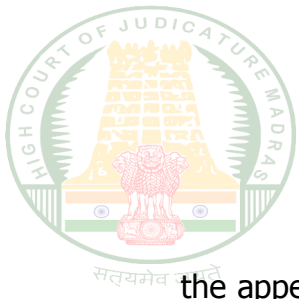
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13.5. Though it has been contended by the learned Additional Advocate General appearing for the appellants before us that the Annexure-II must be read together with Clause 4B, we are of the opinion that even such a reading will not aid the case of the appellants, because, by mentioning courts with reference to their place, would not exclude criminal courts falling within the jurisdiction of the mentioned courts, when the candidates have the required number or more years of practice. Nevertheless, we have already pointed out the effect of omission in the 2021 notification. Similarly, we find it difficult to understand as to how the “Explanation” would come to the aid of the appellants, when the same only seeks to include the employment as Assistant Public Prosecutor for temporary period also as a period of practice to enable the candidate to complete the required five years of practice as an advocate. This has nothing to do with the eligibility. In the present cases, the applicants have not only passed the main examination, but also participated in the oral interview and found place in the rank list. Therefore, the claim of the applicants that they have sufficient practice in criminal courts stand vindicated. In view of the same, the appeals challenging the candidature of the applicants / first respondents who have produced experience certificate, are not sustainable.

14. Writ Appeal *qua* period of post graduate education and experience.

14.1. The experience certificate has been rejected by excluding the period of study of M.L degree. The learned Additional Advocate General appearing for

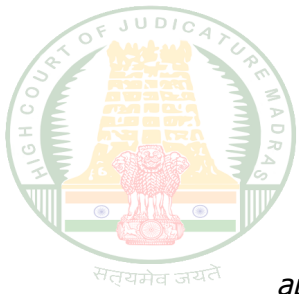


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the appellants reiterated the stand of the commission that the applicant could not have gained experience as an advocate during his period of study. The said stand was rejected by the learned Judge by placing reliance upon the judgments in ***Karan Jagdish Kaur vs. Punjab School Education Board [(1998) II LLJ 186 PH]***, ***Tahir Ahmad Dar vs. State of J & K and others [S.W.P.no.1127 of 2016, dated 07.09.2017]*** and ***Dharmendra Kumar vs. Bar Council of India [Second Appeal No. CIC/BCOI/A/2018/146320-BJ, dated 20.02.2020]***.

14.2. Upon consideration of the respective pleas and the decisions of the learned Judge, we have no hesitation to hold that the learned Judge was right in rejecting the contention of the commission. A perusal of the notification would reveal that there is neither any specific clause to exclude the period of study from that of period of practice nor is there any clause to the effect that a person must be a whole time practitioner. It is not out of place to mention here that as per the notification, it is sufficient if the applicant is a member of the Bar and has had an active practice in criminal courts for not less than five years. A plea that a person cannot gain experience when undergoing a M.Tech Course was rejected by the Apex Court in ***Sajeesh Babu. K vs. N.K.Santosh and others [2012 (12) SCC 106]*** by holding as under:

"6. Respondent 1 herein, who is working in the Kerala State Electricity Board as Assistant Engineer, challenged the selection of the



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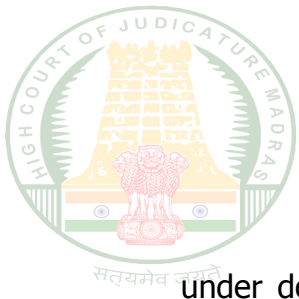
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appellant herein before the High Court of Kerala by filing a petition being WP (C) No. 7622 of 2010 alleging the genuineness of the experience certificates (Exts. P-2 and P-3) produced by him and awarding of more marks on the basis of the same. He further claimed that the Selection Committee ought to have preferred his application for LPG distributorship. The learned Single Judge allowed the said writ petition holding that the experience certificates submitted by the appellant appear to be totally unacceptable as the appellant while studying MTech could not have been possible to work as part-time Marketing Manager and an Insurance Consultant. On this ground, the learned Single Judge quashed the grant of licence of LPG distributorship to the appellant and directed the Corporation to reassess his marks afresh excluding the marks for the experience certificates. The very same decision was affirmed by the Division Bench of the High Court.

.....

14. The experience certificates issued by M/s Sree Agencies and M/s Bajaj Allianz Life Insurance Company Ltd. were evaluated by the Selection Committee. It has already been stated in the counter-affidavit filed by the Corporation that the quality of experience will be judged on the basis of the response to the questions related to experience in direct sale, home delivered products, hospitality/service industry, etc. by the candidates in the interview. It has also been informed to this Court that the appellant has been awarded 4 marks for experience by the Selection Committee consisting of three senior officials of the Company who are well qualified and experienced in assessing the required experience for LPG distributorship. It is further asserted that after the interview, field verification had been done by the Corporation to verify the genuineness and veracity of the documents submitted by the candidate as contemplated in Clause 16 of the guidelines. It is further stated that the field verification had been conducted by a team comprising of two officers of the Corporation and that the team had met the Proprietor as well as Manager of M/s Sree Agencies, who confirmed that Mr Sajeesh Babu K. (the appellant herein) worked with them on a part-time basis. It is the stand of the Corporation that since the persons who have issued the experience certificate admitted its issuance, the Corporation treats the same as genuine. They also reiterated and verified that the certificates of experience have no relevance in granting marks under the parameter "Experience" as the same has been awarded on the basis of the response to the questions related to experience in the relevant field."

14.3. In the case on hand also, the genuineness of the certificate is not

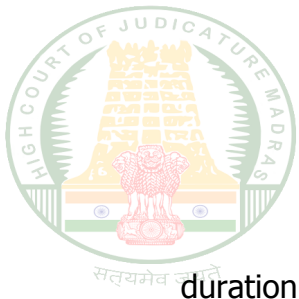


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under doubt. The applicant / first respondent claims to have been continuously practicing in Karaikudi Courts. She could have very well adjusted her court work and attended the classes. When the notification does not enable exclusion of the period of study from experience, it is not for the commission to later prescribe such condition. Further, the learned Judge also placed reliance upon the resolution of the Bar Council of India, which resolved that advocates undertaking post-graduation need not suspend their practice. It is not in dispute that the number of hours for M.L Classes are not beyond three hours as recorded by the learned Judge. Therefore, under the circumstances, we find no reasons to interfere with the order of the learned Judge.

15. Writ Appeal *qua* PSTM.

15.1. It is the case of the appellants that the applicant / first respondent had not uploaded the certificates as required under the notification in respect of his claim of medium of study in Tamil within the stipulated time and produced two certificates for having studied Standard X and XII alone in Tamil. It has also been contended on the side of the appellants that the other certificates produced by the applicant only cover the standards 1 to 9 and XI. It is the further case of the appellants that the entire duration of study including the qualifying degree must also be in Tamil. Per Contra, the learned Senior Counsel appearing for the applicant / first respondent submitted that the medium of language for the entire

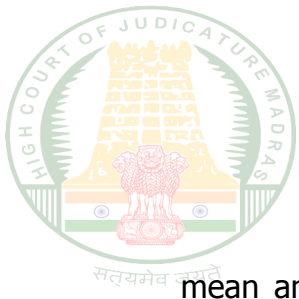


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duration of the education is Tamil and the same has been specifically mentioned in the application. The mark sheets and the letter issued by the Principal of the school would also stand testimony to the same. The learned senior counsel has further submitted that as per the interim directions, another certificate satisfying the commission's specific requirement has been issued. The learned senior counsel also relying upon clause 12 (I) submitted that without following the due process, the candidature could not be rejected.

15.2. We have considered the contentions and perused the documents. A perusal of the application would reveal that the applicant / first respondent has specifically stated that he had studied in Tamil Medium from Standards 1 to X, Standards XI and XIII and also the law degree. The particulars in the application are sought under separate heads, which could have prompted the applicant to submit different certificates from the Head of the Institute which is permissible under the notification. The applicant's medium of study in the law degree is not in dispute. It is also pertinent to mention here that the applicant had acquired the eligibility to apply under PSTM upon completion of the courses in Tamil Medium and with acquisition of required experience as an advocate. As rightly contended by the learned Senior Counsel appearing for the first respondent, the candidature could not be rejected on technical grounds, when the applicant has acquired the eligibility, that too, without following the due process, which obviously would



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mean an opportunity to the respective applicants. The appellants are bound by the terms and conditions of the notification, which stipulates that due process is to be followed. In the present case, as the due process was not followed, by way of interim order, the applicant/1st respondent was directed to re-submit the certificate, which he has duly complied.

15.3. It is also important to mention at this juncture that the applicant/1st respondent was not required under the notification to upload any document along with the applications as pointed out in preceding paragraphs and all the particulars relating to eligibility would have to be furnished in the application, which the applicant has promptly complied. As per the notification, he is required to produce the documents as and when called for. The educational qualification is standard 10 + HSC + law degree as per Note to clause 4 (B). As per clause 12 (iii), the candidate must produce documents to show that he has studied in Tamil, all educational qualification under the prescribed qualification and in the example, it is given that the candidate must produce SSLC, HSC and degree certificate with Tamil as medium of instruction. Going by the said clause, the applicant has satisfied the requirement by producing a certificate from the Head of the Institute for SSLC and HSC, which is an alternative to the above certificates. In any case, the certificate has since been produced and in view of the violation of the principles of natural justice, the rejection of the candidature is



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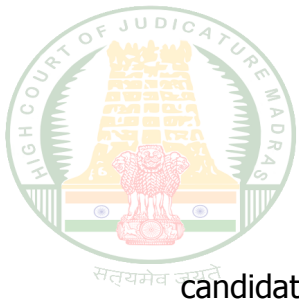
not sustainable.

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16. Writ Appeal *qua* uploading of FIR

16.1. It has been contended on behalf of the appellants that the respective 1st respondent failed to upload the FIR within the stipulated time and hence, his candidature was rightly rejected. Per contra, it was contended on the side of the first respondent that the FIR contained 200 pages and could not be entirely uploaded from the E-Seva centre. It has been further submitted that a representation was sent on 03.02.2022 and the entire FIR has been furnished pursuant to the interim orders of this Court.

16.2. It is not in dispute that the applicant/1st respondent had mentioned about the FIR in his application form. It is also not in dispute that the applicant made an attempt to upload the entire FIR from the e-seva centre and a representation was sent on 03.02.2022, within the stipulated time. However, the FIR was subsequently submitted. As per clause 12 (I), the candidature can be rejected for not furnishing the document, when called for, after following the due process. Admittedly, no further opportunity has been granted to the applicant before he was denied the permission to write the main exam, which is a violation of the principles of natural justice. Further, as per clause 12 (J), it is only failure to mention the particulars in the application that would result in rejection of the



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candidature. That apart, as per clause 14 (10) (c), the application and the certificates will be verified only when the applicants come up for certificate verification.

16.3. A conjoint reading of the various provisions would make it clear that the documents can also be produced when called for and before rejection due process has to be followed. In the present case, the applicant has written to the commission about his difficulty in uploading the FIR. The commission neither issued any reply nor called for the copy of the FIR, but straight away denied him the permission to write the main examination in violation of the principles of natural justice. It is also pertinent to mention here that pendency of a Criminal case does not bar the applicant / first respondent from applying and is not related to eligibility. Considering the various clauses, this court is of the view that the learned Judge was right in directing the applicant to furnish a copy of the FIR. Therefore, we are of the view that the appellants are bound to consider the case of the applicant and hence, the appeal is liable to be rejected.

17. Writ Appeal *qua* Community Certificate.

17.1. The case of the appellants is that the applicant / first respondent has submitted two community certificates, namely her certificate with her husband's



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name and another that of her name with her father's name in support of her claim for reservation under MBC. As per the learned Additional Advocate General appearing for the appellants, only one certificate with the name of the applicant with her father's name is to be submitted and hence, her candidature was rejected. Per contra, the learned counsel appearing for the applicant/1st respondent would contend that once the applicant has satisfied that she is entitled to seek the benefit of communal reservation, her candidature ought not be rejected on technicalities. It is further contended that since she was married, the issuing authority has mentioned her husband's name, instead of her father's name and to prove the genuineness of her claim and to remove all doubts, she has also uploaded a community certificate obtained from the Mandal Revenue Officer Guntur, with her father's name. The learned counsel also submitted that the community of the applicant is not disputed, the certificates produced by her are not bogus and the question of claiming the benefit of reservation on the basis of the community of her husband also does not arise, as there is no question of inter-faith marriage or conflicting community claims. The learned counsel further contended that the applicant has secured the 1st rank and hence, even if the communal reservation is not granted, she deserves to be appointed under the general category by following the rule of reservation. In this regard, the learned Counsel placed reliance on the judgment in ***R.K.Sabharwal case (supra)***.



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17.2. We have considered all the material particulars. It is not in dispute that the applicant belongs to Vanniyar (MBC) community. It is also not in dispute that the certificates produced are genuine and have been issued by the appropriate authority. In the present case, the applicant has uploaded two certificates one issued by the Zonal Deputy Tahsildar, Salem, which identified her as G.Hemalathaa, wife of A.S.Gopalakannan and another community certificate obtained from the Mandal Revenue Officer, Guntur, under BC 'A' category, identifying her as G.Hemalathaa, daughter of G.Sukumar. The submission of the above documents would prove that as on the date of the application, she was eligible to apply. Further, as rightly contended by the learned Counsel for the 1st respondent, there is nothing in the notification regarding submission of community certificate with father's name. Even if the same is contemplated in the instructions, the applicant/1st respondent has satisfied the requirement by submitting the community certificate with her father's name. Just because two certificates, one with her husband's name and one with her father's name, are submitted, her application cannot be rejected. All that is required under the notification is that she must produce the documents to substantiate her claim, which we find to be satisfied. It is now settled that once the person is found to be entitled to communal reservation, the same cannot be denied on technical grounds. The Rule of reservation was brought into the constitution by amendments to Articles 15 and 16. It is settled law that the right to reservation is



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not an exception to fundamental right, but a part and parcel of it **[Refer: T.Devadasan vs. Union of India, AIR 1964 SC 179 and Indra Sawhney vs. Union of India, AIR 1972 SC 477]**. The object of reservation is to promote and preserve social justice. The deprivation of the benefit is anathema to social justice. The state in its fulfilment of the directive principles enshrined under the constitution contemplates such reservation to promote equal opportunity. When a person has satisfied the requirements regarding eligibility and also communal reservation, the rejection of the candidature just because two certificates were submitted, is arbitrary and unjustifiable. Both the certificates are relevant and correlated to satisfy the requirement. In view of the same, the appeal by the commission is liable to be rejected.

18. The learned Additional Advocate General and the counsels for the newly impleaded respondents have relied upon several judgments as referred to above to contend that the conditions in the recruitment notification are mandatory and that, the High Court under Article 226 of the Constitution cannot modify or relax the conditions.

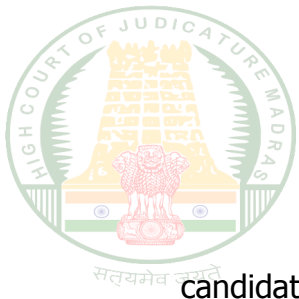
19. There cannot be any quarrel with regard to the general principles regarding mandatory binding nature of the terms and conditions of the notification, modification or relaxation of the conditions. It is also settled law that



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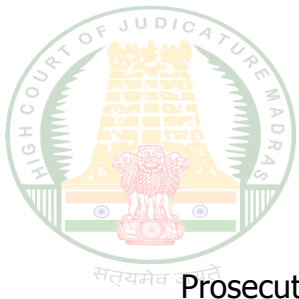
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every case has to be judged on its own facts. The judgements relied upon by the appellants and the newly impleaded respondents are not applicable to the facts of the cases before us as the notification in the present cases is peculiar by which the documents are not required to be submitted along with the application and only when called for, verification is done at the stage of counselling, the due process is to be followed before the applications are rejected and all the applicants have correctly filled the application form and are not seeking any indulgence to rectify the mistakes in the application. Clause 12 (L) of the notification dealing with the furnishing of incorrect or wrong or incomplete particulars in the application also, cannot be pressed into service by the appellants and the newly impleaded respondents. Even then, the due process has to be followed. 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 principles of "due process" would come only after the Commission has identified that either the documents are not uploaded or wrongly uploaded. The cases before us do not involve relaxation of any of the conditions. The issues involved in the present cases are more in the nature of interpretation and in violation of the principles of natural justice. Further, it is not the case of the appellants that the applicants / respondent



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candidates / writ petitioners were not eligible to apply. As held by the Apex Court in ***Charles K Sakaria (supra), Dolly Chhanda (supra) and Dheerender Singh Paliwal v. UPSC [2017 (11) SCC 276]***, once the eligibility is 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. It is also not in dispute that the respective 1st respondents have cleared the main examination and are included in the revised rank list. The object of the examinations and interview is to select the meritorious persons from among the different categories under which they fall. The third and fourth respondents in W.A.No.2685 of 2022 and the respondents 2 to 6 in W.A.No.2688 of 2022 have filed the impleading petitions as the rank list was revised and they have not been issued with appointment orders despite the fact that a Government order has been issued appointing 41 applicants out of 50 vacant posts, subject to the outcome of the cases pending before us. Therefore, the appointment orders issued, if any, to any candidates would not confer them absolute rights. In view of the fact that we have already rejected the appeals filed by the commission, the question of revising the merit list again and issuing appointment orders to these newly impleaded respondents does not arise. However, the appellants are duty bound to ensure that the rules of reservation are implemented. As a consequence of dismissal of the writ appeals, the appellants will have to consider the case of the applicants/1st respondents to be appointed to the posts of Assistant Public



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Prosecutor by following the rules of reservation as enumerated in ***Saurav Yadav and others v. State of UP and others [2021 (4) SCC 542]*** and ***Bharath Sanchar Nigam Ltd Vs Sandeep Choudhary & Others [2022 Livelaw (SC) 419]***, and on merits along with the case of the newly impleaded respondents, within a period of six weeks from the date of receipt of a copy of this judgment.

20. In the result,

(i) the Writ Appeals in W.A.Nos.2626 of 2022, 2685 of 2022, 2688 of 2022, 2695 of 2022 and WA(MD) Nos.1423 of 2022, 1450 of 2022 and 1502 of 2022 are dismissed. Consequently, the appellants are directed to comply with the directions issued in paragraph 19 of this judgment.

(ii) The other writ appeals in WA. Nos.2689, 2691 of 2022, WA Nos.867, 891, 894, 895 of 2023, WA (MD) Nos.1451, 1452, 1453, 1501 of 2022 and WA (MD) Nos.18, 20, 21, 22 and 23 of 2023 are closed, as no further orders are necessary.

The connected miscellaneous petitions are closed. There will be no order as to costs.

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

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Index: Yes / No.

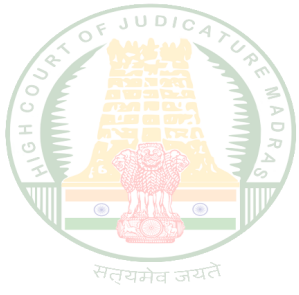


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Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

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To

- 1.The Controller of Examination,
TNPSC,
TNPSC Road, Park Town,
Chennai - 600 003.
- 2.The Secretary,
The Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
Chennai - 600 003.
- 3.The Secretary to Government,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009.
- 4.The Director of Prosecution,
Office of Director of Prosecution,
Having its office at Tamil Nadu
Slum Clearance Board,
Annex Building 1st Floor,
Complex No.5, Kamarajar Salai,
Chennai - 600 005.
- 5.The Secretary, Home Department,
Government of Tamil Nadu,
(Prosecution Department),
Fort St. George,
Chennai - 600 009.
- 6.The Secretary,
Government of Tamil Nadu,
Home Department,
Secretariat,
Fort St. George,
Chennai - 600 009.



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7. The Secretary to Government,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009.

8. The Secretary,
Bar Council of India,
No.21, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi - 110 002.

9. The Secretary,
The Bar Council of Tamil Nadu and Puducherry,
High Court Campus,
Chennai - 600 104.