

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 70 of 2000

Thursday, this the 14th day of December, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Vijaya Kumar B,
Thottumughathu Padinjattethil,
Mangad PO, Kollam.
2. Bindu R,
Geetha Mandiram,
Mangad PO, Kollam. ...Applicants

[By Advocate Mr. C. Unnikrishnan]

1. The Assistant Director,
Staff Selection Commission,
Department of Personnel and Training,
1st Floor, 'E' Wing, Kendriya Sadan,
Koramangala, Bangalore-34
2. The Tahasildar, Kollam.
3. The Union of India, represented by its
Secretary, Department of Personnel and
Training, New Delhi. ...Respondents

[By Advocate Mr. M. Rajendrakumar, ACGSC (for R1 and A3)]
[By Advocate Mr. C.A. Joy, GP (for R2)]

The application having been heard on 14th of December, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

Applicants, two in number, seek to declare that they are entitled to be appointed to the post of Clerk in Kerala and Karnataka Zones on the basis of rank assigned by the 1st respondent treating them as belonging to Other Backward Community, i.e. 'Chetty', and to direct the 1st respondent to advise them accordingly and further to quash A8 and A9.

2. Applicants say that they belong to Hindu-Chetty community evidenced by their SSLC Book. They have no other sub-caste. Applicants came out successful in the written test of the examination and they were directed to attend a typing test. They were also directed to show a certificate in the prescribed format in support of their OBC claim. The 2nd respondent was reluctant to issue a fresh caste certificate to them. Consequently they approached the High Court of Kerala by filing OP.No. 13263/99. The High Court, as per order dated 7-6-1999 in CMP.No. 21363/99 in the said OP, issued an interim direction to the Tahasildar to issue a caste certificate to the applicants pending disposal of the OP. In compliance with that the 2nd respondent has issued caste certificates to them. Those certificates are provisional and subject to the outcome of the OP. Applicants produced those certificates before the 1st respondent. According to the applicants, the action of the 1st respondent demanding community certificates from them showing the sub-caste is highly unwarranted.

3. Respondents 1 and 3 contend that the certificate produced by the applicants earlier does not show the sub-caste and that it has been issued provisionally. Certificates issued by the Tahasildar to the applicants are not in absolute conformity with the prescribed format. Copies of the community certificates issued by the Tahasildar also say that applicants have not produced any record to show the sub-caste in Chetty community. The Commission is not concerned about the indication or non-indication of the sub-caste of Chetty community in the OBC certificate. The Commission has not specifically asked for production of the certificate showing the sub-caste of Chetty community, but only observed that

non-inclusion of the sub-caste has been specifically stated by the Tahasildar in the OBC certificate issued to the applicants. The Commission has insisted only for OBC certificate in the format.

4. The 2nd respondent contends that applicants have approached the High Court of Kerala by filing OP.No. 13263/99 for a declaration that they are entitled to be issued with a caste certificate showing that they belong to OBC, that the above OP is still pending consideration of the High Court, that issue involved in this OA as well as in the OP pending before the High Court of Kerala are more or less similar in nature, and that on that ground itself this OA is to be dismissed.

5. The first relief sought is to declare that the applicants are entitled to be appointed to the post of Clerks in Kerala and Karnataka Zones on the basis of the rank assigned by the 1st respondent treating them as belonging to Other Backward Community, i.e. 'Chetty'. So, the first relief essentially depends upon the community to which the applicants belong. It is the admitted case of the applicants that the community certificate is to be issued by the Tahasildar. As far as the 1st respondent is concerned, there is no difficulty expressed to offer appointments to the applicants, provided the applicants produce the necessary community certificate, i.e. they belong to Other Backward Community. So, the only condition that is insisted by the 1st respondent is production of a certificate to the effect that the applicants belong to Other Backward Community. When the applicants say that they belong to that particular community and want to avail the benefits available to that community, it is for them to produce

the necessary certificate in proof of their claim before the 1st respondent. It is the admitted case of the applicants that they are now issued with provisional certificates (A6 and A7). It is also the admitted case of the applicants that those provisional certificates issued to them as to their community were issued as per the interim direction of the High Court of Kerala. So, the position is that the matter is now pending before the High Court of Kerala. That is exactly the stand taken by the 2nd respondent. The real issue involved herein is now pending adjudication before the High Court of Kerala. Applicants cannot seek remedies in respect of same relief simultaneously before two forums. It is not a question of exercising concurrent jurisdiction by the Tribunal and the High Court and the applicants availing of their remedies before two forums simultaneously in respect of the same relief.

6. The 1st respondent cannot be found fault in insisting a ~~regular~~ certificate, instead of a provisional certificate. There is no plea in the OA to the effect that the 1st respondent is as per the rules in force bound to act based on a provisional certificate. That being so, it is really difficult to grant the first relief sought by the applicants.

7. The second relief sought is to quash A8 and A9. A8 and A9 are identically worded. The only difference is that A8 relates to the 2nd applicant and A9 relates to the 1st applicant. A8 and A9 say that attested copy of community certificate strictly in the format prescribed should be enclosed. When a party is claiming a benefit based on reservation to a particular community, that party is duty bound to produce a certificate to the effect that he belongs to that

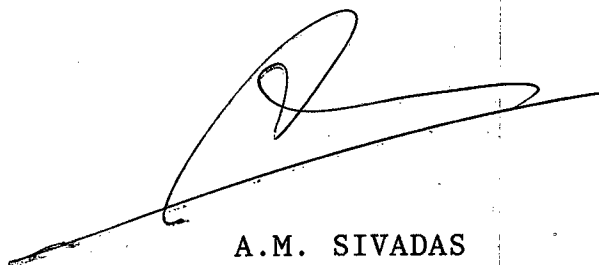
community. If A8 and A9 are quashed, the result will be that persons claiming reservation based on the community basis will have to be given appointment without having the community certificates. It cannot be done.

8. Accordingly, the Original Application is dismissed. No costs.

Thursday, this the 14th day of December, 2000



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A6 True copy of the Certificate dated 8-6-1999 No. K.Dis 14720/99/B7 issued by the 2nd respondent to the 1st applicant.
2. A7 True copy of the Certificate dated 8-6-1999 No. K.Dis 14720/99/B7(1) issued by the 2nd respondent to the 2nd applicant.
3. A8 True copy of the Memorandum No. 7/8/99-SSC(KK)/Vol-II dated 7-1-2000 issued by the 1st respondent to the 2nd applicant.
4. A9 True copy of the Memorandum No. 7/8/99-SSC(KK)/Vol. dated 8-1-2000 issued by the 1st respondent to the 1st applicant.