

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 11TH DAY OF JANUARY 2023 / 21ST POUSHA, 1944

WP(C) NO. 35154 OF 2017

PETITIONER:

KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY,
PATTOM,
THIRUVANANTHAPURAM.

BY SRI.P.C.SASIDHARAN, SC, KPSC

RESPONDENTS:

- 1 THE STATE COMMISSIONERATE FOR PERSONS WITH
DISABILITIES,
SOCIAL WELFARE INSTITUTION COMPLEX,
POOJAPPURA,
THIRUVANANTHAPURAM-695012,
REPRESENTED BY ITS SECRETARY.

- 2 ANSEER N.A.
S/O.ABDU N.B.,
NADUPARAMBIL HOUSE,
KANDAMKULAM P.O.,
KODUNGALLUR,
THRISSUR DISTRICT-680666.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11.01.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

'C.R.'

JUDGMENT

This writ petition is filed by the Kerala Public Service Commission (for short, the 'KPSC') to declare that the State Commissioner for Persons with Disabilities has no power or authority to issue an order in the nature of Ext.P1 dated 05.08.2017 and further to declare that Ext.P1 order is issued beyond the powers and jurisdiction vested with the first respondent as per the Right of Persons with Disabilities Act, 2016 (for short, the 'Act, 2016').

2. Brief material facts for the disposal of the writ petition are as follows:-

The second respondent namely, one Anseer N.A., apparently a person differently-abled, has submitted an application seeking to have an examination center near the house of differently-abled persons before the local MLA, who has forwarded it to the State Government and the State Government has delivered the same to the State Commissioner for Persons with Disabilities. The State Commissioner as per Ext.P1 has issued a direction to the KPSC that candidates with disabilities,

who are participating in the selection process of the KPSC shall be provided with examination centres near their residences. It is further specified in the order that the said order is issued by virtue of the power conferred on the Commissioner as a civil court. It is thus challenging the legality and correctness of Ext.P1, this writ petition is filed.

3. I have heard learned counsel for the petitioner Sri P.C. Sasidharan, and learned Senior Government Pleader, Sri Joby Joseph, and perused the pleadings and material on record. Even though notice is served on the party respondent, there is no appearance.

4. Section 82 of the Act, 2016 deals with powers of State Commissioner, which reads thus:-

“82. Powers of State Commissioner.—(1) The State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a Civil Court as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof

from any court or office;

- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the State Commissioners shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).”

5. Merely because a power is conferred on the State Commissioner to follow the procedure contained under the Code of Civil Procedure, 1908 while trying a suit in respect to summoning and enforcing the attendance of witnesses; requiring production of documents and others, that does not mean that the Commissioner is exercising the substantive powers under the Act, 2016, as if, it is a civil court.

6. Section 80 of the Act, 2016 deals with the functions of the State Commissioner, which reads as follows:-

“80. Functions of State Commissioner.—The State Commissioner shall—

(a) identify, suo motu or otherwise, provision of any law or policy, programme and procedures, which are inconsistent with this Act, and recommend necessary corrective steps;

(b) inquire, suo motu or otherwise deprivation of rights of persons with disabilities and safeguards

available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) undertake and promote research in the field of the rights of persons with disabilities;

(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and

(i) perform such other functions as the State Government may assign.”

7. Therefore, on a reading of Section 80 of the Act, 2016 it is clear that the powers of the Commissioner are confined to what is conferred under Section 80. Section 81 of the Act, 2016 further makes it clear that whenever the State Commissioner makes a recommendation to an authority in pursuance of Clause (b) of Section 80 of the Act, 2016, that authority shall take necessary action on it, and inform the State Commissioner of the

action taken within three months from the date of receipt of the recommendation. The case put forth by the KPSC is that no notice was issued to the KPSC. When the representation submitted by the second respondent was forwarded by the State Government to the Commissioner, the Commissioner has unilaterally passed the order and issued the directions. On a perusal of Section 80, it is clear that the Commissioner under the Act, 2016 is not vested with any such powers. If the Commissioner wanted to consider the grievances highlighted in the representation submitted by the second respondent, it ought to have made a recommendation to the KPSC as empowered under Section 80 of the Act, 2016. Therefore, it is clear that the Commissioner has over reached the powers conferred on it under the Act, 2016.

8. The deliberation of the facts, law and circumstances made above would make it clear that Ext.P1 order passed by the Commissioner is without any jurisdiction and power conferred on the Act, 2016. The Commissioner, in my view, is not a civil court, even though powers are conferred on the Commissioner to exercise the powers conferred on the civil court for summoning

and enforcing the attendance of witnesses etc., and for other consequential aspects, in accordance with Section 82 of the Act, 2016. In that view of the matter, I am of the considered opinion that Ext.P1 order suffers from vice of arbitrariness and illegality, liable to be interfered with under Article 226 of the Constitution of India.

Accordingly, I quash Ext.P1. However, I make it clear that this will not stand in the way of the Commissioner for making any suitable recommendation to the KPSC, or the Government in order to protect the interest of persons with disabilities in the matter of their appearance in the selection process conducted by the KPSC.

Sd/-

SHAJI P. CHALY
JUDGE

APPENDIX

PETITIONER EXHIBITS

EXHIBIT P1 **TRUE COPY OF THE COMMUNICATION DATED
5.8.2017.**

EXHIBIT P2 **TRUE COPY OF THE PETITION SUBMITTED BY
THE 2ND RESPONDENT BEFORE THE M.L.A.
KAIPPAMANGALAM.**

EXHIBIT P3 **TYPED COPY OF EXT.P2.**