(2004) 08 KL CK 0047

High Court Of Kerala

Case No: I.A. No. 2545 of 2004 in W.A. No. 1497 of 2004

P.S. Karunakaran	APPELLANT
Vs	
High Court of Kerala and Others	RESPONDENT

Date of Decision: Aug. 13, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2004) 3 ILR (Ker) 326 : (2004) 2 KLJ 443 : (2004) 3 KLT 110

Hon'ble Judges: N. K. Sodhi, C.J; P.R. Raman, J

Bench: Division Bench

Advocate: K. Ramkumar, for the Appellant; V. Giri, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N. K. Sodhi, C.J.
One P.S. Karunakaran is the applicant before us who has filed this application under Rule 152 of the High Court Rules with a prayer that he be impleaded as an additional respondent in Writ Appeal No. 1497 of 2004. This Writ Appeal came up for hearing before us yesterday and the same was admitted to hearing. The dispute in the Writ Appeal pertains to the selection of Munsiff-Magistrates for the six vacancies meant for reserved category candidates against which candidates from the open category had been selected. It is stated in the application that the judgment under appeal affects a large number of members of the Scheduled Castes and Scheduled Tribes in the State of Kerala whom the applicant claims to represent. He also claims to represent a Trust registered under T.C. Act 21 of 1955 which is said to be committed to the welfare of the members of the Scheduled Castes and Scheduled Tribes. It is further averred that the Trust considers it necessary to put forward its points of view in support of the judgment under appeal to protect the interests of the members of the Scheduled Castes and Scheduled Tribes and it is for this reason that the prayer for impleadment has been made. We have heard the learned counsel for the

applicant. Rule 152 of the High Court Rules deals with petitions filed under Articles 226 and 227 of the Constitution. It provides that the Court may order notice of the petition to any person not made party thereto. It further provides that at the time of hearing of the petition for admission or at a later stage, any person, who desires to be heard in the matter and "appears to the Court to be a proper person to be heard" may be heard even if he is not a party to the proceedings. Even if this Rule were to apply to the Writ Appeals, we are of the view that the applicant is not a ''proper person'' to be heard. As already observed, the dispute in the Writ Appeal pertains to the selection of Munsiff Magistrates by the High Court. The applicant did not make a prayer before the learned single Judge for being impleaded as a party. He was not even a candidate for selection. It is, therefore, not necessary to hear him in the Writ Appeal either. The issue to be decided in the Writ Appeal revolves around the interpretation of the Rules and it is not necessary for the representatives of any class or community to appear before the Court either in support of the judgment or to oppose it. We are clearly of the view that the applicant is neither a necessary party not a proper party so as to be allowed to be impleaded as a respondent in the Writ Appeal. The learned counsel for the applicant placed reliance on a judgment of the Apex Court in Nair Service Society Vs. Dist. Officer, Kerala Public Service Commission and Others, to contend that the Supreme; Court had allowed the Society consisting of the Nair community to file an appeal before it by way of public interest litigation. That could be done, but a person like the applicant, who is a pro bono publico, is not necessary to be heard as a party respondent. The Writ Appeal pending in the Court is not by way of public interest litigation and is a service matter in which only concerned parties can be heard. The judgment relied upon by the learned counsel for the applicant does not apply to the facts of the case nor does it advance the case of the applicant.

2. Before concluding, we may refer to another averment made by the applicant in paragraph 3 of the application. This paragraph reads as under.

I also beg to submit that I understand that the appeal has been filed on the directions of the Hon''ble Chief Justice, who is the head of the administration also of the High Court. The Registrar cannot decide on his own to appeal against the judgment of the learned single Judge. In arriving at a decision to file an appeal against the judgment, the Hon''ble Chief Justice must have gone through the judgment and found that the judgment'' is liable to be challenged in appeal. It will be inappropriate and totally opposed to judicial propriety and decorum, if the same Judge decides the appeal which he has directed to file, be admitted to file or to adjudicate it on merits as well. Ordinarily a person who has decided that an appeal should be filed, is unlikely to hold that the appeal has no merits on the judicial side. In these circumstances, though I do not for a moment suggest any personal interest of the Hon''ble Chief Justice in hearing the matter, I respectfully submit that on the ground of judicial propriety, it will not be conductive to the interests of the independence of judiciary and to maintain the trust of the litigants that the Chief

Justice himself hears the matter. It is, therefore, not appropriate that the matter be adjudicated by the Hon''ble Chief Justice himself as he has already taken a decision on the administrative side to challenge the decision of the learned single Judge before a Division Bench. Though I do not even remotely suggest any legal or factual bias, it will not be consistent with the maintenance of transparency and purity in the administration of justice, as the same Judge who has ordered the filing of the appeal should adjudicate the appeal on merits also. On the well-settled principles evolved by the Supreme Court it will be expedient in the interest of justice that the Judges who are not parties in the decision-making on the administrative side, avoid hearing the appeal on merits. There are number of other Judges who have not participated in the decision making on the administrative side of the High Court who can be entrusted to hear the appeal.

3. It is true that the Chief Justice had taken a decision on the administrative side to prefer an appeal against the judgment of the learned single Judge but that does not, in our opinion, preclude him from hearing the Writ Appeal. It is not unusual that Judges deal with matters on the administrative side in the discharge of their functions and when those issues are brought before them on the judicial side they hear them and take an objective view thereon after hearing the parties and quite often reverse their earlier decisions taken on the administrative side. The learned single Judge who decided the Writ Petition out of which the Writ Appeal has arisen was in the Full Court which approved the selections and yet rightly heard the matter and took a view that he thought was right. Such is the glory and tradition of our judicial system. It cannot even remotely be suggested that there is any bias or impropriety when Judges decide the same issues on the judicial side. They are not personally interested in the lis and therefore they cannot be said to be judges in their own cause. The judgments cited by the counsel for the applicant are cases where personal bias was alleged and do not apply to the case in hand.

4. The applicant has suggested that "on the well-settled principles evolved by the Supreme Court it will be expedient in the interest of justice that the Judges who are not parties in the decision making on the administrative side avoid hearing the appeal on merits." He has further suggested that a number of other Judges who have not participated in the decision making on the administrative side in the High Court could be entrusted with the hearing of the case. The senior Judges were members of the Administrative Committee which selected the candidates for the post of Munsiff-Magistrates. All the other Judges except the four additional Judges who were appointed after the selection had been made, were members of the Full Court which approved the selection. On the other hand the Chief Justice is the only senior Judge who had not been associated with the selection process at any stage and he has to head the Bench hearing the Writ Appeal keeping in view the importance of the issues involved therein. In such circumstances it becomes the constitutional responsibility of the Chief Justice to deal with the matter. By suggesting that some Judges who did not participate in the decision-making were

available, the applicant is only trying to indulge in Bench-hunting which cannot be permitted. His conduct in this regard cannot, but be deprecated. It is unfortunate that such averments were made in the application.

In the result, the only prayer made in the application for impleadment is declines.