

Kerala High Court

Sathyan A.V vs Government Of Kerala on 26 August, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 9265 of 2008(C)

1. SATHYAN A.V,PAYYOLI SERVICE CO-OPERATIVE
... Petitioner

Vs

1. GOVERNMENT OF KERALA,REPRESENTED BY
... Respondent

2. JOINT REGISTRAR OF CO-OPERATIVE

For Petitioner :SRI.P.N.MOHANAN

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice THOTTATHIL B.RADHAKRISHNAN

Dated :26/08/2008

O R D E R

THOTTATHIL B. RADHAKRISHNAN, J.

W.P.(C) NO.9265 OF 2008 (C)

Dated this the 26th day of August, 2008

J U D G M E N T

"C.R."

The petitioner, an employee of a co-operative society, challenges Ext.P6. At the outset, it is clarified that this judgment is being issued on the main issue that Ext.P6 is a non-speaking order, leaving open all other issues.

2. The petitioner's employer, a co-operative society, resolved and requested for exemption from possessing a qualification, for the purpose of promoting the petitioner in its service. The Registrar

forwarded that request to the Government. The Government sent impugned Ext.P6 to the Registrar stating that it has been decided that exemption need not be granted. It is single line order, a cryptic one, stating no reason for that decision.

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3. The request was for exercising a power of exemption. To grant or not, is within the power of the authority empowered to grant in terms of law. But, it is of the core principles of administrative law, that a decision has to contain its reasons. This is on account of different reasons. One is that, if the aggrieved person carries the matter to a higher authority, or requests for judicial review of that decision, fundamentally, reasons and lawful procedures are those which will sustain the decision making process and ultimately the decision. These principles of administrative law, which have grown with civilisation, have now found expression in Sections 3 and 4(1)(d) of the Right to Information Act, 2005, hereinafter referred to as "RTI Act". Section 3 of the RTI Act provides that all citizens shall have the right to information subject to the provisions of that Act. Section 4(1)(d) of the RTI Act provides that every public authority shall provide reasons for its administrative or quasi judicial decisions to affected W.P.(C) No.9265/2008

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persons. Indisputably, the Government and the Registrar of Co-operative Societies are public authorities as defined in Section 2(h) of the RTI Act. It goes without saying that the impugned Ext.P6 order is one which affects the writ petitioner's claim for promotion to higher post, to which his employer society has agreed. Therefore, the petitioner has the statutory right in terms of Section 4(1)(d) of the RTI Act to be provided with the reasons for the administrative decision of the Government that has led to the issuance of Ext.P6 order. Bereft of that, Ext.P6 is issued in infraction of that provision of the RTI Act. This, in turn, results in Ext.P6 being an arbitrary exercise of authority, in so far as the petitioner is concerned, since it results in negation of the Rule of Law and thereby, infraction of the fundamental right to equality before law and equal protection of the laws, guaranteed by Article 14 of the Constitution of India. W.P.(C) No.9265/2008

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4. Time has come when the prestigious and salutary principles of administrative law have found expression in provisions like the one noticed in this judgment, from the RTI Act. They are laws to be always remembered and obeyed by the administrative, or other, authorities, who are public authorities.

For the aforesaid reasons, this writ petition is allowed, quashing Ext.P6 without expressing anything on merits. The Government shall take up the matter and reconsider the issue and pass fresh orders, after affording the petitioner and his employer an opportunity of hearing, in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN, JUDGE skr/26/8