

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 18TH DAY OF JANUARY 2022 / 28TH POUSHA, 1943

WP(C) NO. 17496 OF 2021

PETITIONER/S:

JUSTINE PALLIVATHUKKAL,
AGED 45 YEARS
S/O. JOSEPH, PALLIVATHUKKAL HOUSE, PUTHUPARIYARAM P.O.,
PALAKKAD.
BY ADVS.
J.JULIAN XAVIER
C.JOSEPH ANTONY
ASHA TREESA JOSE
SRI. RAJU JOSEPH

RESPONDENT/S:

- 1 STATE OF KERALA
GENERAL ADMINISTRATION (MINORITY WELFARE) DEPARTMENT,
THIRUVANANTHAPURAM-695 001 REPRESENTED BY ITS
SECRETARY.
- 2 KERALA STATE COMMISSION FOR MINORITIES
MANGALALANE, JAWAHAR NAGAR, SASTHAMANGALAM PO,
THIRUVANANTHAPURAM, KERALA 695 010 REPRESENTED BY ITS
SECRETARY.
- 3 P.K.HANEEFA
CHAIRMAN, KERALA STATE COMMISSION FOR MINORITIES,
MANGALA LANE, JAWAHAR NAGAR, SASTHAMANGALAM P.O.,
THIRUVANANTHAPURAM, KERALA-695 010.
- 4 ADV.MUHAMMED FAISAL
MEMBER, KERALA STATE COMMISSION FOR MINORITIES, MANGALA
LANE, JAWAHAR NAGAR, SASTHAMANGALAM P.O.,
THIRUVANANTHAPURAM, KERALA-695 010.
BY ADVS.
SHRI.V.MANU, SENIOR G.P.
R4 BY SRI. K.ANAND
BENNY ANTONY PAREL
AMEER SALIM
SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'**JUDGMENT****S. Manikumar, CJ**

Petitioner, claiming to be a lawyer by profession and a member of the Roman Catholic community, a recognized minority community in the State, has filed the instant public interest writ petition challenging the Kerala State Commission for Minorities (Amendment) Act, 2017, on the ground that it violates Article 14 of the Constitution of India.

2. Reliefs sought for in the writ petition are as under:

- (i) Issue a writ in the nature of Certiorari or any other Writ, Order, of direction, quashing Exhibit-P1 amendment Act, the same being unreasonable, arbitrary and violative of Articles 14 and 13(2) of the Constitution of India.
- (ii) Issue a declaration that the appointment of persons from the same minority community as members of the Kerala State Minority Commission is unconstitutional and void.
- (iii) Issue a writ in the nature of Mandamus or any other Writ, Order or direction, directing the 1st respondent Government to reconstitute the 2nd respondent Commission by including persons from different minority communities in Commission.

3. Brief facts leading to the filing of the instant writ petition are that; petitioner approached this Court earlier by filing W.P.(C) (cited supra) No. 24355 of 2020, challenging the disproportionate and discriminatory quota fixed by the Government in the matter of educational scholarship among minority communities. After hearing

the Government and affected parties, this Court allowed the said writ petition by declaring that the quota fixed for educational scholarships in the ratio 80:20, is discriminatory and violative of Article 14 of the Constitution of India.

4. The present writ petition is filed in public interest, challenging a legislation by which, the State Government has given unbridled power to constitute a Minority Commission in the State under the Kerala State Commission for Minorities Act, 2014 ('Act, 2014' for short). Pursuant to the said legislation, viz., Kerala State Commission for Minorities (Amendment) Act, 2017, clause (b) of sub-section (2) of Section 3 was amended on the ground that the same is discriminatory and violative of Article 14 of the Constitution.

5. Section 3 of the Act, 2014 as it originally stood, specifies that if the Chairman of the Commission is appointed from a particular minority community, the other members should be from another minority community. Therefore, when the Commission was originally constituted, a member of the Muslim Community was appointed as the Chairman and a member belonging to Roman Catholic community was appointed as a member. Thereafter, amendment was made through an Ordinance, viz., Kerala State Commission for Minorities (Amendment) Ordinance, 2017, which came into force w.e.f 3.2.2017, and an Act was passed. As per the

amended provision, the word 'another' contained in Section 3(2)(b) was substituted by the letter 'a' by which, the stipulation in the original enactment that the Chairman and member shall be from different communities was taken away.

6. Petitioner has further stated that after the term of the members originally constituted had expired, the Chairman and a woman member were appointed, keeping the post of the 3rd member vacant. The amendment was brought in as submitted above and thereafter, the 4th respondent, who is a member of Muslim Community, was appointed.

7. Petitioner has contended that action of the State Government in appointing the Chairman, as well as other member from the Muslim community, is arbitrary, *mala fide*, and negation to the interest of other minority communities. The amendment has given unbridled power to the Executive Government, in selecting members of the Commission. He has pointed out that the only reason stated in the objects and reasons of the amendment Act is that it is for the purpose of smooth functioning of the Commission. In this context, petitioner has taken us through the object and reasons for passing the amendment Act, which reads thus:

“STATEMENT OF OBJECTS AND REASONS

Section 3 of the Kerala State Commission for Minorities Act, 2014 (5 of 2014) provides for the constitution of Kerala State Commission for Minorities.

2. Clause (b) of sub-section (2) of section 3 of the said Act provides that the Commission; shall consist of a member belonging to another minority community in the State and having special knowledge in matters relating to minority, nominated by the Government. The Government have decided to amend the said section by substituting the letter “a” for the word “another” for the smooth functioning of the Commission.

3. As the Legislative Assembly of the State of Kerala was not in session and the above proposal had to be given effect to immediately, the Kerala State Commission for Minorities (Amendment) Ordinance, 2017 (1 of 2017) was promulgated by the Governor of Kerala on the 2nd day of February, 2017 and the same was published in the Kerala Gazette Extraordinary No.203 dated 3rd February, 2017.

4. The Bill seeks to replace Ordinance No.1 of 2017 by an Act of the State Legislature.

8. Petitioner has further contended that it is not discernible from the object and reasons, as to how the pre-amended provision hindered the smooth functioning of the Commission. According to him, as a matter of fact, the pre-amended provision had been enabling the Commission to function smoothly, without any discrimination, and to the satisfaction of all concerned.

9. Being aggrieved, he has approached the State Public Information Officer, Kerala for obtaining the details regarding the appointment of the Commission members. In reply to his queries, the State Public Information Officer on 7.5.2021 informed that the first members of this Commission had taken charge on 10.06.2013 and Adv. K.P. Mariumma was the female member. As per Section 4 of the Act, each member may continue in office till the completion

of three years from the date of which he assumes office, Thus, the Chairman and Members of the Commission continued in office till 9.6.2016.

10. According to the petitioner, it could be seen from Exhibit-P3(a) reply dated 7.5.2021 received under the Right to Information Act, 2005 that the vacancies were not filled up until 27.06.2016 and it was thereafter, the Kerala State Commission for Minority (Amendment) Ordinance was promulgated on 3.2.2017. The 3rd member was appointed as per GO(P) No.13/2017/GAD dated 8.5.2017 and he took charge on 15.05.2017 and thereafter, on completion of three years, the tenure of Chairman and Woman Member was extended for three more years from 05.10.2019 and that of 4th respondent was extended for 3 years from 05.06.2020. He further contended that the foregoing facts would clearly show that the Executive Government was not *bona fide* in bringing the amendment to the parent Act. It was only for appointing persons from a particular community that the amendment was brought in. In such circumstances, the petitioner has filed the writ petition for the reliefs stated supra.

11. In support of his contentions, petitioner has relied on the decisions of the Hon'ble Court in **E.P. Royappa v. State of Tamil Nadu** [AIR 1974 SCC 255], **Jigya Yadhav v. CBSE** [2021 (3) KLT 71 (SC)], and **P. Venugopal v. Union of India** [(2008) 5 SCC 1].

12. Refuting the averments in the writ petition, the Additional Secretary to the Government of Kerala, General Administration Department, Government Secretariat, Thiruvananthapuram, on behalf of respondent No.1 - State of Kerala, has filed a counter affidavit, wherein it is contended that prior to the amendment Act, Section 3(2) of the principal Act provides that the KSCM shall consist of the following members,-

- (a) a chairperson belonging to a minority community in the State, having a special knowledge in matters relating to the minority and knowledge in law, nominated by the Government;
- (b) a member belonging to another minority community in the State and having special knowledge in matters relating to minority, nominated by the Government;
- and (c) a woman belonging to minority community in the State having special knowledge in matters relating to minority and who has proved working excellence in such matters, nominated by the Government.

13. Respondent No.1 has further contended that as per the Amended Act, the word "another" in Section 3(2)(b) was replaced with "a", amending the mandate of Section 3(2) of the Principal Act, with regard to the constitution of KSCM thus:

- (a) a chairperson belonging to a minority community in the State, having a special knowledge in matters relating to minority and knowledge in law, nominated by the Government;

- (b) a member belonging to a minority community in the State and having special knowledge in matters relating to minority, nominated by the Government; and
- (c) a woman belonging to minority community in the State having special knowledge in matters relating to minority and who has proved working excellence in such matters, nominated by the Government.

14. Respondent No.1 has further contended that it is trite and settled law that legislation can be challenged only on the grounds of lack of legislative competence, being violative of fundamental rights, and manifestly arbitrary. As regards legislative competence, it is contended that petitioner does not have a case of there being lack of legislative competence for the State in enacting the Amendment Act. Except bald averments, he has not made out any legally sustainable case, as to the violation of any provision of Part III of the Constitution of India. He has also not made out a case that the Amendment Act was an instance of capricious and irrational exercise of legislative function, without adequate determining principles, much less any manifest arbitrariness. Moreover, the constitution of a statutory committee is a legislative policy and as long as it is not proved that such legislative policy is not in conflict with any constitutional provision, the challenge against the same is unsustainable.

15. Relying on the provisions of National Commission for

Minorities Act, 1992 ('Act, 1992' for short) and National Commission for Minority Educational Institutions Act, 2004, respondent No.1 has contended that there is only a mandate that Chairperson and Members of the National Commission for Minority Educational Institutions shall belong to a minority community and no further stipulation that there shall be from different minority communities. According to the 1st respondent, the provision regarding constitution of KSCM in the Principal Act [Section 3(2)], as amended, is more or less in consonance with the provisions regarding constitution of National Commission for Minorities, as per the 1992 NCM Act (Section 3), and those regarding the constitution of the National Commission for Minority Educational Institutions, as per the 2005 NCMEI Act [Section 4(2)], to the extent it is provided that Members of such Commissions need only be from minority communities and not from separate and distinct minority communities.

16. It is further contended that, the petitioner does not have a case that the provisions regarding constitution of respective commissions under the 1992 NCM Act, 2005 NCMEI Act, in so far as the same does not stipulate that the members of the Commission must be from different minority communities, are violative of Article 14 of the Constitution.

17. Respondent No.1 has further contended that the Principal

Act was enacted to constitute a State Commission for the comprehensive educational advancement, welfare, protection and empowerment of minorities. As such, the minority will take in all the communities notified by the Central Government, in accordance with the 1992 NCM Act. Any member of KSCM, irrespective of his personal attributes, is bound to serve the purpose for which he/she has been appointed. It is stated that the Chairman of the KSCM (third respondent) is a retired District Judge, the other two members are the 4th respondent and Adv. Bindu M. Thomas, both are from different minority communities.

18. Respondent No.1 has further contended that as regards the averment in the writ petition, placing reliance on the unamended Section 3(2) of the Principal Act, to the effect that the said provision was made by the Legislature with a purpose that the Commission should be able to protect the interest of all minorities in the State and should not be able to protect the interest of any single community, is only a perception of the petitioner. The further contention that the Amendment Act has resulted in the Executive being given a wide discretion to constitute the KSCM even with the members of the same community, is also only an individual perception of the petitioner, which cannot, at any rate, be a ground to test constitutional vires or otherwise of a legislation.

19. Respondent No.1 has further contended that the Bill that

resulted in the Amendment Act, identified the smooth functioning of the Commission as the object of the Amendment; that the unamended clause [the erstwhile Section 3(2)(b) of the Principal Act], touching upon the distinct minority community to which a Member or Chairperson belonged to, was an unnecessary qualification that stood in the nomination of ideal persons to hold the posts of Chairperson and Member; that it is trite and settled law that the statement of objects and reasons could be referred for the purpose of identifying the background and antecedent history of the legislation; that it is also trite and settled law that the statement of objects and reasons could not be used to ascertain the true meaning and effect of substantive provisions; and that, therefore, the statement of objects and reasons of the Bill are not relevant in deciding the vires of the Amendment Act.

20. Respondent No.1 has further contended that if the Legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant and that if the Legislature lacks competency, the question of motive does not arise at all. Petitioner does not have any case of there being lack of Legislative competency in enacting the Amendment Act, and therefore, the motives attributed to the Legislature will not stand.

21. The reliance placed by the petitioner on the decisions in ***E.P. Royappa*** (cited supra), and ***Jigya Yadhav*** (cited supra), have

no relevance in the facts and circumstances of the case on hand. According to the respondent, the excerpts quoted from **E.P.Royappa** were in relation to consideration as to whether a transfer order was violative of Articles 14 and 16 of the Constitution and whether it was made in *mala fide* exercise of power and not on account of exigencies of admission or public service. The quoted excerpts from **Jigya Yadhav** were with regard to the consideration as to whether CBSE bye-laws were just and reasonable restrictions in the context of rights guaranteed under Part III and in the interest of the general public.

22. Further the decision relied on by the petitioner in **Venugopal P** (cited supra) has also no relevance since the said judgment was with regard to a legislation [All India Institute of Medical Sciences (Amendment) Act, 2007], whereby an amendment was brought in, which amendment dealt only with the particular Director of the All India Institute of Medical Sciences, who held office immediately prior to its coming into force and was not concerned with any other officer or member of the Institute, not any other person, who may be coming to hold the same office of Director in future. For the foregoing reasons, respondent No.1 prayed for dismissal of the writ appeal.

23. Heard Senior Counsel Shri Raju Joseph for the writ petitioner assisted by Adv Julian Xavier, and Mr. K. Gopalakrishna

Kurup, learned Advocate General, and perused the pleadings and material on record.

24. The question that emerges for consideration is with respect to the amendment made to Section 3(2)(b) of the Act, 2014, by which the word 'another' originally contained therein is replaced by the letter "a", due to which the stipulation as it originally stood, that the Chairman and the member of the commission shall be from different communities is taken away.

25. The paramount contention advanced by the learned Senior Counsel for the writ petitioner is that the amendment so carried out is violative of Article 14 and thereby it is void going by the mandate of Article 13(2) of the Constitution of India, by which provision it is stipulated that the State shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution of India and any law made in contravention of clause (2) shall, to the extent of contravention, become void.

26. Therefore, the sum and substance of the contention advanced is that the amendment so made, seriously and adversely interferes with the fundamental rights guaranteed under Part III of the Constitution of India, especially Articles 14 and 16. The learned counsel has relied upon the judgment of the Apex Court in **E.P. Royappa** (cited supra), wherein at paragraph 85 it is held as follows:

85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt 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 “cribbed, cabined and confined” within traditional and doctrinaire limits. 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, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14

and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.”

27. In order to understand the contentions advanced, we are of the view that the purpose of the legislation is to be looked into, because, Articles 14 and 16 takes care of equality before law and equality of opportunity in the matters of public employment, and therefore the extent of application of the said provisions in the facts and circumstances on hand requires to be identified. Article 14 specifies that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India and Article 16 stipulates that there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State. However, it is significant to note that clause (2) of Article 16 makes it clear that 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. Therefore, it is significant to note that whatever prescriptions on the basis of religion, race etc. contained under Article 16 of the Constitution of India are restricted by the circumstances under clause (2) of Article 16 of the Constitution.

28. In fact, the Act, 2014 was enacted by the State for the comprehensive educational advancement, welfare, protection and empowerment of Minorities and to provide for matters connected therewith or incidental thereto. The aforesaid aspects contained under the preamble of the Act makes it clear that what is relevant and important by introduction of the Act is comprehensive educational advancement, welfare, protection and empowerment of minorities in the State of Kerala and not the community of the persons manning the commission .

29. It is true that Section 3(2)(b), as it originally stood, was imperative that the Commission shall consist of a member belonging to another minority community in the State than that of the Chairperson, and having special knowledge in matters relating to the minority, nominated by the Government. Whereas Section 3(2) stipulates that the Commission shall consist of a Chairperson belonging to a minority community in the State, having special knowledge in the matters relating to the minority and knowledge in

law, nominated by the Government. Therefore, reading together Section 3(2) (a) and (b), as it originally stood, it is clear that if the Chairperson is belonging to a particular minority community in the State, then a member shall belong to another minority community.

30. In this context, the typical provisions under the Act, 1992 is relevant. The Act, 1992 was enacted in 1978 for providing an institutional arrangement for evaluating the safeguards provided in the Constitution for protection of the minorities and to make recommendations for ensuring implementation of the safeguards and the laws. The Government of India also thought that the National Minority Commission with statutory status would infuse confidence among the minorities about the working and the effectiveness of the Commission, that it would also carry more weight with the State Governments/Union territory Administrations and the Ministries/Departments and the other organisations of the Central Government. It was accordingly decided to give statutory status to the Minorities Commission by the proposed legislation.

31. The statement of objects and reasons of Act, 1992 shows that the National Commission for Minorities will consist of a Chairperson and 6 members; that the main task of the Commission shall be to evaluate the progress of the development of minorities, monitor the working of the safeguards provided in the Constitution for the protection of the interests of minorities and in laws enacted

by the Central Government or State Governments, besides looking into the specific complaints regarding deprivation of rights and safeguards of the minorities; that it shall also cause studies, research and analysis to be undertaken on the issues relating to socio-economic and educational development of the minorities and make recommendations for the effective implementation of the safeguards for the protection of interests of minorities by the Central Government or State Governments, and that it may also suggest appropriate measures in respect of any minority to be undertaken by the Central or State Governments.

32. Further Section 2 of Act, 1992 makes it clear that it extends to the whole of India and it came into force on publication in the Gazette on 17.05.1992. Section 3 deals with the Constitution of the National Commission for Minorities in order to exercise the powers conferred on it, and to perform the functions assigned to it under the Act, 1992. Sub-Section (2) thereto make it clear that the Commission shall consist of a Chairperson, a Vice- Chairperson and five members to be nominated by the Central Government from among the persons of eminence, ability and integrity. However, the proviso thereto makes it clear that five Members, including the Chairperson, shall be from among the minority communities.

33. Therefore, under the Act, 1992, there is no requirement at all for the Chairperson or Vice Chairperson and members should

belong to different communities. Section 9(1) of Act, 1992 deals with the functions of Commission, that is to say (a) evaluate the progress of the development of minorities under the Union and States; (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures; (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments; (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities; (e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal; (f) conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities; (g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments; (h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and (i) any other matter which may be referred to it by the Central Government.

34. The Commission is vested with ample powers to discharge its functions by appropriate measures as is contemplated

under sub-Section (4) of Section 9 by summoning and enforcing the attendance of any person and examining him on oath and requiring the discovery and production of any document etc. Therefore, the tenor of the provisions of the Act, 1992 makes it explicit that the provisions of the Act extends to the country as such. Suffice to say, the intention for which the Commission is constituted under the State Act is also with synonymous objectives, intentions and purpose .

35. Section 9 of the State Act, 2014 deals with the functions of the Commission, which, in our considered opinion, is in *pari materia* with the provisions of Section 9 of the Act, 1992. Both the Acts were discussed by us since we feel that what is important is not the community of the Chairperson and members of the Commission belonging to the same minority community or different minority community, but the functions to be discharged by the members in contemplation of the provisions of the Act, 2014. Merely because the Chairperson and the member belong to one community, that would not, and cannot, in any manner, interfere with the duties and obligations in the matter of discharging the functions in contemplation of the provisions of the Act, 2014.

36. The above view is fortified for the reason that the Statutory Commission appointed is expected to function in accordance with law and as per the powers conferred on them

under the statute, and merely because the Chairperson and a Member is from the one and the same community, it cannot be said to be conferment of unbridled and arbitrary power to interfere with the rights guaranteed under Articles 14 and 16 of the Constitution of India. Under the Constitution of India, in our considered opinion, no appointment can be made based on religious considerations and no appointment can be denied also on that basis. This is for the fundamental reason that our Constitution is founded also on the principles of Secularism and democracy with the freedom for liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, and to promote among them all, fraternity assuring the dignity of the individual and the unity and integrity of the nation, which is also the edict and reflection of the preamble of the Constitution.

37. It may be true that the Act, 1992 and the Act, 2014 insist that the Chairperson and members, substantial in number, shall belong to the minority community. However, that will not, in any manner, interfere with any of the fundamental rights guaranteed under Part III of the Constitution of India, as the purpose of the legislation is to ensure the comprehensive advancement of the minority communities in the nation as well as the State in various fields.

38. Even though the learned Senior Counsel for the

petitioner, Sri. Raju Joseph, relied upon the judgments of the Apex Court in **E.P. Royappa** (supra) and **P. Venugopal** (cited supra), we are of the clear opinion that it is in respect of the appointment in public employment affecting their rights protected under Part III of the Constitution of India. This we say so because, merely for the reason that the Chairman and a member belong to one community, that will, in any manner, interfere with the power and functions conferred on them under the Act, 2014, which is strictly to be discharged in terms of the powers conferred on them under law.

39. Even though the learned Senior Counsel for the petitioner also brought our attention to the Telangana State Minorities Commission Act, 1998, as per which the Chairman, Vice Chairman and members are to be appointed from different communities, we are of the view, that by itself is not a ground to arrive at a conclusion that there is arbitrariness or illegality in the matter of amendment made by the State Government to the Act, 2014.

40. The learned Senior counsel has also invited our attention to the Karnataka State Minorities Commission Act, 1994. On a perusal of Section 2(a) of the said Act, we could gather that the Chairman shall be a person of a minority community and 8 other members from the minority communities hold a degree from a recognised University, out of which not less than one each member shall be from Christian, Jain, Buddhist, Sikh and Zoroastrian (Parsis)

community. The proviso thereto makes it clear that at least one such member shall be a woman.

41. Therefore, what is relevant and important is the purpose for which the Commission is constituted, and not the community of the members of the Commission, which has no role to be played in discharging the functions. As we have stated above, the Chairman and members of the Commission have to discharge their duties without any arbitrariness or illegality in the matter of the functions assigned to them.

42. Even though the learned Senior Counsel has relied upon the judgment of the Apex Court in **Jigya Yadhav** (cited supra) we are of the clear opinion that the principles of law laid down therein are in the matter of correction in the records issued by the Central Board of Secondary Education *vis-a-vis* the provisions of the bye laws of the Central Board of Secondary Education affecting the fundamental rights of the students, and therefore the facts and circumstances involved therein cannot be imported to be applied in the case on hand.

43. Per contra, the learned Advocate General appearing for the State has invited our attention to the judgment of the Apex Court in **Dharam Dutt and others v. Union of India and others** [2004(1) SCC 712], wherein the the doctrine of colourable legislation was considered and it was held that if the legislature is

competent to pass a particular law, the motives which impelled it to act are really irrelevant; on the other hand, if the legislature lacks competency, the question of motive does not arise at all and therefore, it was held that if the Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive which persuaded the Parliament into passing the Act would be of no use at all.

44. Relying upon the judgment of the Apex Court in *Indian Aluminium Co. v. State of Kerala* [(1996) 7 SCC 637] it was also submitted that the court, therefore, needs to carefully scan the law to find out (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law; and (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution

45. Therefore it can be seen that the Act, 1992 and the Act, 2014 were brought in, to discharge the noble obligations contained under Article 29 of the Constitution of India dealing with the protection of the interests of the minorities, and clause (1) thereto stipulates that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same, and accordingly the Act, 2014 is to be interpreted in the broadest sense

in order achieve the said target rather than making a pedantic and narrow approach in the matter of appointment of the Chairperson and member from different communities.

46. Therefore, what is to be looked into is the purpose and intention of the legislation, rather than the community of the Chairperson and members of the Minority Commission appointed by the State Government. Even though allegations of *mala fides* and arbitrariness are made by stating that Act, 2014 is amended as is specified above with the intention of appointing the 4th respondent, we are unable to agree with the same, since the Act, 2014 clearly stipulates the tenure of the Chairman and the members and therefore, when the tenure is expiring, the Government is at liberty to appoint a Chairperson and member belonging to different communities or both from a community different from the present incumbents in the office.

47. In the light of the above discussion, we have no hesitation to hold that the petitioner has not made out any case to secure the reliefs as are sought for in the writ petition.

48. We also do not find any unreasonableness or other legal infirmities in the amendment made to the Act, 2014. Since we hold so, the consequential relief sought for in the writ petition for a declaration to appoint a Chairperson and member belonging to different communities, also cannot be granted.

In fine, the writ petition fails and accordingly, it is dismissed.

sd/-

**S. MANIKUMAR,
CHIEF JUSTICE.**

sd/-

**SHAJI P. CHALY,
JUDGE.**

krj/rv

APPENDIX OF WP(C) 17496/2021

PETITIONER'S EXHIBITS:

Exhibit P1	A TRUE COPY OF THE KERALA STATE COMMISSION FOR MINORITIES (AMENDMENT) ACT.
Exhibit P2	TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER UNDER RTI ACT DATED 19.4.2021.
Exhibit P2(A)	TRUE ENGLISH TRANSLATION OF EXHIBIT P2.
Exhibit P3	A TRUE COPY OF THE INFORMATION RECEIVED UNDER RTI ACT DATED 7.5.2021.
Exhibit P3(A)	TRUE ENGLISH TRANSLATION OF EXHIBIT P3.
Exhibit P4	TRUE COPY OF THE RELEVANT EXTRACT OF KARNATAKA STATE MINORITIES COMMISSION ACT, 1994.
Exhibit P5	TRUE COPY OF RELEVANT EXTRACT OF THE ANDHRA PRADESH STATE MINORITIES COMMISSION ACT 1998.
Exhibit P6	TRUE COPY OF THE RELEVANT EXTRACT OF THE TELENGANA MINORITIES COMMISSIONS ACT, 1998.

RESPONDENTS' EXHIBITS: NIL

/True Copy

PS To Judge.