

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 8TH DAY OF AUGUST 2018 / 17TH SRAVANA, 1940

WP(C).No. 35073 of 2014(H)

PETITIONER(S)

T.S.SHYAM PRASANTH,
S/O.SASINDRAN T.K., THATTUNKAL HOUSE, ASHA ROAD,
ANCHUMURI, PONNURUNNI, VYTTILA P.O., KOCHI - 682 019.

BY ADVS.SRI.JOHNSON MANAYANI
SRI.JEEVAN MATHEW MANAYANI

RESPONDENTS

1. THE SECRETARY,
RAILWAYS 543, RAIL BOARD, RAISINA ROAD, CONNAUGHT PLACE,
NEW DELHI - 110 001.
2. THE GENERAL MANAGER,
RAILWAYS, GRIEVANCE CELL, PARK AVENUE, CHENNAI.
3. THE BAR COUNCIL OF KERALA,
BAR COUNCIL BUILDINGS, ERNAKULAM - 682 031, REPRESENTED BY
ITS SECRETARY.
4. THE BAR COUNCIL OF INDIA,
INDIAN BAR COUNCIL BUILDINGS, NEW DELHI.
5. DIRECTOR OF TRAFFIC COMMERCIAL (G),
543, RAIL BOARD, RAISINA ROAD, CONNAUGHT PLACE, NEW DELHI -
110 001.
6. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO RAILWAYS, 543, RAISINA
ROAD, CONNAUGHT PLACE, NEW DELHI - 110 001.

R3 BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)
R3 BY ADV. SRI.GEORGE MATHEWS
R1,R 2,R5,R6 BY ADV. SRI.C.S.DIAS,SC, RAILWAYS
R4 BY ADV. SRI.RAJIT, SC, BAR COUNCIL OF INDIA
R6 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-08-
2018,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. THE TRUE COPY OF BAR COUNCIL IDENTITY CARD ISSUED BY THE BAR COUNCIL OF KERALA.
- EXHIBIT P2. THE TRUE COPY OF THE MEMBERSHIP ISSUED BY THE KERALA HIGH COURT ADVOCATES ASSOCIATION.
- EXHIBIT P3. THE TRUE COPY OF THE PROCEEDINGS DATED 13.06.2014 OF THE KERALA STATE HUMAN RIGHTS COMMISSION (CAMP AT ERNAKULAM) DATED 13.06.2014 IN HRMP NO.581 OF 2013.
- EXHIBIT P4. THE TRUE COPY OF THE NEWS REPORT REPORTED IN TIMES OF INDIA.
- EXHIBIT P5. THE TRUE COPY OF THE CIRCULAR ISSUED BY THE 5TH RESPONDENT DATED 01.11.2012.
- EXHIBIT P6. THE TRUE COPY OF THE PRESS INFORMATION BUREAU REPORT ISSUED BY THE MINISTER FOR RAILWAYS DATED 07.12.2012.
- EXHIBIT P7. THE TRUE COPY OF THE PETITION DATED 05.12.2012 OF THE PETITIONERS' COUNSEL FILED BEFORE RESPONDENTS 1 AND 2.
- EXHIBIT P8. THE TRUE COPY OF THE PETITION DATED 28.08.2014 FILED BEFORE THE HON'BLE MINISTER FOR RAILWAYS.
- EXHIBIT P9. TRUE COPY OF THE PETITION FILED BY THE PETITIONER'S COUNSEL BEFORE RESPONDENTS 1 AND 3 DATED 15.09.2014.
- EXHIBIT P10. TRUE COPY OF THE PANCARD ISSUED BY THE INCOME TAX DEPARTMENT TO THE PETITIONER'S COUNSEL.
- EXHIBIT P11. THE TRUE COPY OF THE JUDGMENT IN W.P.(C)24578 OF 2014 DATED 09.10.2014.
- EXHIBIT P12. THE TRUE COPY OF THE ORDER PASSED BY THE 5TH RESPONDENT DATED 02.12.2014 WITH THE COVERING LETTER.

RESPONDENTS' EXHIBITS: NIL

OKB

TRUE COPY

P.A. TO JUDGE

"C.R."

DEVAN RAMACHANDRAN, J

W.P.(C) No.35073 of 2014

Dated this the 8th day of August, 2018

JUDGMENT

The petitioner, who is stated to be a practising Advocate on the Rolls of the Bar Council of Kerala, remonstratively accuses the Indian Railways of acting unfairly and discriminatorily in refusing to recognise and accept the photoidentity cards issued by the Bar Council of Kerala as also that of the other States, as a valid proof of identity to undertake journey on trains in reserved seats.

2. The petitioner refers to Ext.P6, which is a press release issued by the Ministry of Railways, Government of India, to show me that, as an initiative to facilitate the travel of bonafide and legitimate passengers and to reduce the scope for misuse of reserved ticketing system by "unscrupulous elements/middlemen", the Ministry of Railways made it compulsory to carry any of the specified identity cards during train travel on all reserved classes of tickets. The petitioner says that, as is evident from Ext.P6, this was initially made

compulsory for Air Conditioned Classes with effect from 15.02.2012 and that subsequently, with effect from 01.12.2012, this was extended and made applicable to all classes. In effect, the petitioner submits, all categories of passengers travelling in reserved classes have to produce the original of one of the specified identity cards during their train journey.

3. The singular grievance impelled by the petitioner in this writ petition is that even though several types and categories of identity cards are accepted by the Indian Railways, the photo identity cards issued by the various Bar Councils in India are expressly excluded. This, the petitioner predicates, is unfair and arbitrary, particularly because the said identity cards are issued by the various Bar Councils acting under the provisions of the Advocates Act, 1961.

4. I have heard Sri.Johnson Manayani, the learned counsel appearing for the petitioner and Sri.C.S.Dias, the learned Standing Counsel appearing for the Indian Railways.

5. Sri.Johnson Manayani, the learned counsel for the petitioner submits that the attitude of the Indian Railways, in refusing to accept the photo identity cards issued by the various

Bar Councils, appears to be intransigent, particularly because on an earlier occasion, while considering a writ petition filed by the petitioner herein, namely W.P(C) No.24518/2014, this Court had directed the Railways to consider accepting these identity cards and to issue appropriate orders for such purpose, singularly taking cognizance of the fact that such identity cards are issued by the various Bar Councils exercising statutory functions under the Advocates Act, 1961. The learned counsel says that in spite of this, the Railways have now issued Ext.P12 again refusing to accept these identity cards citing reasons which, according to him, are completely purerile and flawed. The learned counsel points out to me that, in Ext.P12, the reasons stated by the Director, Traffic Commercial (Railway Board), in refusing to accept the identity cards are as under:

- i. Adequate numbers of ID proofs have already been prescribed to cater to the needs of all segments of society. (Details given in the brief sent to Southern Railway may be connected)
- ii. As regards Bar Councils, the following facts have been observed:-
 - (a) Bar Councils are not Government Bodies.
 - (b) Bar Councils are available throughout the country at different levels, i.e. District Levels, High Court level &

apex level (Supreme Court)

- (c) There is perhaps no uniformity in the formats of cards issued by various Bar Councils as there is no centralized body which controls functioning of these councils from where genuineness of the cards issued by the councils can be verified.

Sri.Manayani submits that, as is indubitable from the afore extracted reasons stated in Ext.P12, the Authority who issued the said order has absolutely no idea or inkling of the manner in which the Bar Councils are constituted and are functioning.

6. Sri.Manayani, thereafter asserts that the contentions of the petitioner would stand fortified if one is to merely have a glance at the list of identity cards now approved by the Railway Board, which is available in Ext.P6 itself. According to him, the following are the cards approved by the Indian Railways and that looking at the said list it is inexplicable that the identity cards issued by the Bar Councils are found not worthy of acceptance by the Indian Railways:

1. Voter Photo identity card issued by Election Commission of India.
2. Passport
3. PAN Card issued by Income Tax Department.
4. Driving Licence issued by RTO.

5. Photo identity card having serial number issued by Central/State Government which include the following:
 - (i) Pension Pay Orders (PPO)
 - (ii) Ration Card with photographs
 - (iii) Senior Citizen cards
 - (iv) Below Poverty Line (BPL) Cards
 - (v) ESI cards (with photograph) issued for taking treatment in ESI dispensaries
 - (vi) CGHS Cards (with photograph) issued to individual family members of Central Govt. employees.
6. Student Identity Card with photograph issued by recognised School/College for their students.
7. Nationalised Bank Passbook with photographs.
8. Credit Cards issued by Banks with laminated photograph.
9. Unique Identification Card "Aadhaar".
10. Photo identity cards having serial number issued by Public Sector Undertakings of State/Central Government, District Administrations, Municipal bodies and Panchayat Administrations.

7. The learned counsel for the petitioner reiteratively submits that even though the Indian Railways accepts identity cards issued by the Schools, Colleges, Nationalised Banks, Public Sector Undertakings and Local Self Government Institutions, they have chosen not to accept the ones issued by the Bar

Councils, obviously because they are misdirected in their impression about the Bar Councils, which misconception has been reflected in the afore extracted reasons shown in Ext.P12 order.

8. The learned Standing Counsel for the Indian Railways, Sri.C.S.Dias, submits that the Railways is not against the plea of the petitioner in this writ petition *per se* but they are wary of accepting of the identity cards issued by the Bar Councils because, according to them, there is no effective mechanism to verify the genuineness of such identity cards. Sri.C.S.Dias, however, fairly concedes that while this issue had been considered by the Traffic Commissioner of the Railway Board, leading to the issuance of Ext.P12 order, he had harboured a wrong impression that the Bar Councils are "available" at different levels, including District, High Courts and the Supreme Court, without being aware that there is only one Bar Council for each State or that it is vested with functions and duties under a Central statute. Sri.C.S.Dias submits that since the correct position has been made known to the competent Authority, now they have no objection in accepting the identity cards issued by

the various Bar Councils in India, if the respective Bar Councils takes upon themselves the obligation to answer any query or suspicion that may be raised by the Indian Railways with respect to individual identity cards produced before them, if so required, so that instances of fraud and counterfeiting of cards can be brought to their notice and action assumed legally.

9. I find the present stand afore-adopted by Sri.C.S.Dias, to be fair and the petitioner also submits, through his learned counsel Sri. Johnson Manayani, that the Railways would certainly obtain the right and locus to seek verification of the cards by the issuing Bar Council, should there arise legitimate suspicion of its authenticity.

10. After Sri.C.S.Dias and Sri.Manayani made their submissions as above, I elicited the specific views of the Kerala Bar Council through their Senior Counsel Sri.Gracious Kuriakose and the learned senior counsel informs me that it is the unequivocal and firm stand of the Bar Council of Kerala that the identity cards issued by them be accepted by all Authorities, including the Indian Railways and that they are always willing to offer verification of such cards as and when it is so required by

any Authority, including the Railways.

11. Once I hear the submissions of Sri.Gracious Kuriakose, the learned senior counsel as afore, it becomes ineluctable that there cannot be any further cause or concern for the Indian Railways, in accepting the photo identity cards issued by the various Bar Councils, since the respective Councils are obligated to verify and affirm the authenticity of a card issued by them, in case its genuineness is suspected for any reason by the competent Authorities of the Indian Railways. This is more so because they are statutory bodies, operating under the ambit of the Advocates Act, thus enjoining them to ensure the validity and rectitude of the cards and documents issued by them, if it is so required by any Authority, in terms of law.

12. In the above perspective and being guided by the specific averments in para 7 of the counter affidavit filed on behalf of the Indian Railways, wherein they say that they will accept the identity cards issued by the various Bar Councils, if they undertake to verify its genuinenss in case suspicions are raised on the authenticity of the cards, I order this writ petition and direct the competent Authority of the Indian Railways to

issue appropriate proceedings/orders notifying the acceptance of the identity cards issued to Advocates by the Kerala Bar Council and all other Bar Councils in India as valid proof of identity for train journey/travel.

13. This exercise shall be completed by the competent amongst the respondents 1, 5 and 6 as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment and the consequential orders shall be notified and published as per applicable procedure.

This writ petition is thus ordered.

Sd/-

**DEVAN RAMACHANDRAN,
Judge**

okb.

//True copy// P.A. to Judge