

(2022) 01 KL CK 0024
In the High Court Of Kerala
Case No : Writ Appeal No. 1736 Of 2021

Arya Ganga R

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 06-01-2022

Acts Referred:

Citation : (2022) 01 KL CK 0024

Hon'ble Judges : S.Manikumar, CJ;Shaji P.Chaly, J

Bench : Division Bench

Advocate : T.R.S.Kumar, Deepa R Menon, Swarna Thomas, P.C. Sasidharan, Prasanth S

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J

1. The captioned writ appeal is preferred by the 6th respondent in W.P.(C) No. 28700 of 2021, being aggrieved by the judgment of the learned single

Judge dated 16th December, 2021, whereby the learned single Judge allowed the writ petition and the following observations and directions were issued to

the State of Kerala, represented by Secretary, Higher Education Department, Thiruvananthapuram, the Commissioner for Entrance Examinationâ?

respondents 1 and 2, and other official respondents:

8. On a perusal of the same, till the first three paragraphs, there is no such confusion, but the problem occurred with the rejection of application of certain candidates for

want of certain essential documents including the Transfer Certificate, in original. There appears to be some force in the apprehension expressed on behalf of the

petitioner that, in case a physical or online Transfer Certificate had been obtained

and the candidate would not be able to make in the Government college, there will be a

fear of losing the admission already taken in the self financing institution. Condition mentioned herein above as per Clause 18 of the brochure, no doubt, on the plain and

simple reading of the language pertains to the applicability of the first admission but the same has been incorporated after Clause 16 which deal with the Mop Up

Allotment, perhaps would have the applicability as for the first admission, but have not taken care of the fear as expressed in the writ petition. There would have been

some clarification or deliberation by the Principals of the Government colleges in imposing the condition in producing the Transfer Certificate or other documents in original, and had it been so, this controversy would not have been arisen. Considering the predicament of other students, this Court cannot direct the respondents to

grant admission to the petitioner taking away the right of the party respondent or similar situated candidates who exercised option, as a special case by extending the last

date of counseling only for Government Law College, Thrissur, by one week, enabling reconsideration of options exercised by the candidates, i.e., who had already

applied and were rejected, including the party respondent and the petitioner. To overcome the apprehension, a notice would be published online or on the notice board

that the students would submit the original Transfer Certificate on condition of being successful in the counseling. This exercise shall be undertaken by the College

within a period of one week from today. It is made clear that the relaxation is given for all documents including the Transfer Certificate as the original thereof, of students

who have secured admission would be with the college and would be arduous to obtain and seek opportunity in mop up allotment, but if found unsuccessful, may not lose

lien. An undertaking may be taken for submission of originals on analysis of merit in aforementioned mop up allotment.â??

It is, thus, challenging the legality and correctness of the judgment, the appeal is filed.

2. Brief material facts for the disposal of the appeal are as follows:

The writ petitioner was included as rank No. 2558 in the rank list for admission to the Five Year LLB course published by the Commissioner for Entrance

Examination."2nd respondent. Accordingly, he joined a Self Financing College namely MCT College of Legal Studies, Malappuram as per the

Centralised Allotment Process. In fact, his allotment in the MCT College of Legal Studies, Malappuram was against the Viswakarma quota, a community

coming under the OBC category eligible for reservation. In fact, the writ petitioner submitted the option of colleges to the Commissioner for Entrance

Examination and he was allotted his 18th option at MCT College of Legal Studies, Malappuram. While so, as per Ext. P11 dated 25.11.2021, the

Commissioner for Entrance Examination issued a Press Release that applications can be received from eligible candidates by the respective Law College

Principals till 2 pm on 30.11.2021 for consideration for admission to the vacancies. As per the vacancy list as is evident from Ext. P12, one seat was

earmarked for Viswakarma community in Government Law College, Thrissur.

3. As per Ext. P14 dated 29.11.2021, the Principal of Government Law College, Thrissur, the third respondent, has affixed a notice on the notice board

stating that the candidates have to produce the originals of the certificates at the time of admission. Writ petitioner was 6th in the ranked list of candidates

belonging to the Viswakarma community, evident from Ext. P15. However, the case projected by the writ petitioner was that the appellant herein was

given admission overlooking the eligibility of the writ petitioner. Thereupon, writ petitioner submitted Exts. P16 and P17 representations to the

Commissioner for Entrance Examination and the Principal, Government Law College, Thrissur respectively requesting to give him admission at the

Government Law College, Thrissur. However, no action was initiated and it was accordingly that the writ petition was filed before this Court.

4. The paramount contention advanced by the writ petitioner was that the objective of the Centralised Allotment Process is to ensure that there is greater

transparency and students are given allotment based on their choice and as per the order of merit; that the writ petitioner was allotted MCT College of

Legal Studies as per Ext. P9 allotment order and thereupon, he was bound to produce his Transfer Certificate and other original certificates to the

Principal of the MCT College of Legal Studies.

5. The case advanced by the writ petitioner before the writ court was that he could not have obtained the original Transfer certificate from the MCT

College of Legal Studies for production before the Principal, Government Law College, Thrissur for the Spot Admission Process and therefore, the action

of the Principal, Government Law College, Thrissur in demanding the original Transfer Certificate from him was unjustified and arbitrary. It is the further

case of the writ petitioner that he could not have obtained the Transfer Certificate from the MCT College of Legal Studies as he was not assured of a

seat, and it was contingent on those above him in the Viswakarma list not opting for admission. It was further contended that the condition in Ext. P14

notice dated 29.11.2021 issued by the Principal, Government Law College, Thrissur to produce the originals of all certificates, was unreasonable and

arbitrary.

6. It is also the case of the writ petitioner that he had procured allotment through the Centralised Allotment Process conducted by the Commissioner for

Entrance Examination and therefore, as per Ext. P1 brochure, he is entitled for shifting to higher options in Government Colleges when seats are available,

and the option so given in the brochure would become meaningless, if the Transfer Certificate had to be obtained before appearing for Spot Admission

Process.

7. That apart, it is contended that the writ petitioner will have to pay approximately Rs.50,000/- per year in MCT College of Legal Studies, while the fees

in the Government Law College, Thrissur is less than Rs.10,000/- per year and therefore, the right of the writ petitioner to get admission based on his

position in the rank list is denied because of the arbitrary action of the third respondent. The provisions of the brochure were also relied upon to

substantiate the aforesaid contention.

8. In fact, the allotment was declined to the writ petitioner by the Principal of the Government Law College, Thrissur, since the writ petitioner has not

produced the Transfer Certificate from the MCT College of Legal Studies, which was made a mandatory requirement as per Exhibit P11 Press Release

of the Commissioner for Entrance Examination, and as per P14 notice issued by the Principal Government Law College Thrissur, by virtue of the

empowerment in Exhibit P11.

9. The learned single Judge, after taking into account the contentions advanced by the writ petitioner as per the pleadings discussed above and hearing the official respondents and the appellant herein, who was the 6th respondent, held that the terms and conditions of the brochure prescribing the limitations and conditions are sacrosanct. The learned single Judge has also taken note of clause 18 of Ext. P1 brochure dealing with "Post Allotment Activities" and the documents to be produced by the candidates who get allotment before the Principal or the Head of the Institution concerned. It was also taken note that the Transfer Certificate and the conduct certificate from the Institution where the candidate studied last have to be produced, however issued the directions as above taking into account the provisions available in Exhibit P1 Prospectus regarding Mop-up counselling, which has no bearing to the spot admission notified as per Exts. P11 and P14 discussed above.

10. The fact remains, after the allotments were over, as per clause 16 of Ext. P1 brochure, Mop-up counseling and admission was initiated, whereby the candidate can seek only vacancy occurring in Government colleges or private colleges, but similarly situated institutions. It is significantly noted that the Mop-up counselling was over and still seats were remaining. It was accordingly that as per Ext. P11 Press Release dated 25.11.2021, the Commissioner for Entrance Examination directed the Principals of the Law Colleges to receive applications till 2 pm on 30.11.2021 for consideration for admission to the vacancies. Anyhow, as per Ext. P14 notice, it was clearly specified that the applications would be accepted upto 3 pm on 30.11.2021 for spot admission and directed to make applications along with the required documents as stated in the Gazette dated 25.11.2021. It was also made clear that at the time of admission, essential documents, including the Transfer Certificate in original, must be submitted and fees must be remitted and parents should be present to put the signature on the declaration/promise regarding the prohibition of the Ragging Regulations.

11. After considering Ext. P14 notice, the learned single Judge was of the opinion that the writ petitioner could not have secured the Transfer Certificate from the MCT College of Legal Studies, since the admission was not assured and there is a likelihood of losing admission already taken in the Self Financing Institution and it was accordingly that the directions extracted above were issued.

12. The paramount contention advanced by the appellant is that the learned single Judge failed to consider Ext. P11 Press Release dated 25.11.2021

issued by the Commissioner for Entrance Examination, who was in charge of the Centralised Allotment in Law Colleges in Kerala, and as per Ext. P11,

the Commissioner for Entrance Examination empowered the Principals of Colleges to fill up the vacancies after allotment of 'Online Mop-up for filling

Existing Vacancies' to the Integrated Five Year LLB Course for the academic year 2021-2022. It is also submitted that, in Ext. P11, it is unambiguously

stated that the Principal of Government Law College is bound by Ext. P1 prospectus and the provisions of Ext. P1 prospectus is applicable in Spot

Allotment Procedure.

13. That apart, it is contended that Ext. P11 Press Release of the Commissioner for Entrance Examination makes it clear that the eligible candidates

should produce the proper documents for securing admission. Therefore, it is submitted that the learned single Judge had passed the impugned judgment

without relying upon Ext. P11 and the directions contained therein, which were to be followed strictly by the Principals of Law Colleges throughout the

State. It is also contended that the spot admissions are meant for filling up of vacancies from among the candidates who have not secured admission in

any colleges and it is not meant for candidates who have already got admission in a college and the purpose is to provide maximum opportunity for the

students to study the course. Therefore, it is submitted that the judgment of the learned single Judge requires interference.

14. The writ petitioner has also filed a counter affidavit in the writ appeal basically reiterating the contentions in the writ petition and also stating that in a

similar situation of spot admission to Engineering courses, a clear cut procedure was prescribed.

15. We have heard Smt. Swarna Thomas appeared for the appellant/6th respondent, Sri. S Prasanth (Ayyappankavu) for the writ petitioner, Sri. P. G

Pramod, learned Government Pleader for respondents 1 to 3, Sri. P. C. Sasidharan for the University of Calicut, and perused the pleadings and materials on record.

16. The subject issue revolves around Ext. P1 prospectus issued by the State Government for admission to Integrated Five Year LLB Course, Kerala,

2021-2022 published in the Gazette dated 19.07.2021 bearing G.O. (Ms.) No.

317/2021/HEDN. The dispute can be resolved by making reference to certain of the relevant provisions of Exhibit P1 Prospectus. Clause 16, which deals with Mop-up counselling/Admission Process, reads thus:

16. Mop-up counselling/Admission Process:

(a) This does not form the part of Counseling. In the mop-up allotment for filling up the remaining vacant seats, if any, may be conducted after the completion of the

Counselling process.

(b) A candidate who figures in the Rank list/Category lists prepared as per Clause 12 of the Prospectus for Admission to Integrated Five Year LLB Course is entitled to

attend the Mop Up allotment/admission process.

(c) Candidates who have obtained admission in Kerala Government merits seats for Integrated Five Year LLB course in any of the Government Law Colleges shall not be

eligible to participate in the Mop Up allotment for the same discipline in other Government Law Colleges. However, they shall be permitted to take admission in other

discipline in Government Law College through Mop up allotment.

(d) Candidates who have obtained admission in Government merit seats for a course in any of the Self Financing Law Colleges shall not be eligible to participate in the

Mop Up allotment for the same discipline in other Self Financing Law colleges. However, a candidate who got admission in Government merit seat of a Self Financing Law

College shall be permitted to take admission in the same/other discipline in a Government Law College through Mop up allotment.

17. On a reading of the provisions of clause 16 of Ext. P1 prospectus, it is clear that the Mop-up counselling/Admission Process is done for filling up the

remaining vacant seats, if any, after the completion of the Counselling process. It is true, as per the second limb of sub-clause (c) of clause 16, a

candidate who got admission in Government merit seat of a self Financing Law College shall be permitted to take admission in the same/other discipline in

a Government Law College through Mop-up allotment. It is an admitted fact that the writ petitioner did not make any attempt to secure admission in the

Mop- up allotment. On the other hand, he has made an application on the basis

of Ext. P11 Press Release issued by the Commissioner for Entrance

Examination for spot admission on the basis of the applications received before 2 pm on 30.11.2021.

18. It is true, in Ext. P11, it is stated that the Principals are given liberty to complete the admissions as per the conditions in Ext.P1 prospectus. Ext.P11

reads thus:

Commissioner for Entrance Examinations

Vth Floor, Housing Board buildings

Santhi nagar, Thiruvananthapuram - 695 001.

â?|â?|â?|â?|â?|.

No. CEE/1133/5LLB-2021/TA3

Press Release

Filling stray vacancies in Integrated 5 year/3 year LLB Courses- Reg.

Applications can be received from eligible students by the respective Law College Principals till 2 pm on 30.11.21 for consideration for admission to the

vacant seats after allotment of ""Online Mop Up for Filling Existing Vacancies"" to the Integrated Five Year LLB Courses for the academic year 2021-22.

Students included in the integrated 5 year/3 year LLB rank list can approach the respective colleges before 3PM on 30-11-2021 with the required

documents and participate in the admission procedures. College admissions can be completed by considering students who appear before 2PM on 30-11-

2021 as per the conditions in the Brochure.

Information regarding admission to the vacant seats after allotment of ""Online Mop Up for Filling Existing Vacancies"" to the Integrated Five Year LLB

Courses will be published in the website of the Entrance commissioner at www.cee.kerala.gov.in on the afternoon of 26-11-2021 and 27-11-2021.

Helpline number - 0471 -2525300

Thiruvananthapuram

25-11-2021

sd/- Commissioner for Entrance Examinations.

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19. In fact, after Ext. P11, the Principal of Government Law College, Thrissur has issued Ext. P14 notice setting out the procedure to be followed in the

matter of spot admission, which reads thus:

Government Law College, Thrissur

Ayyanthole, Thrissur-680003, Phone 04872360150

Website: www.glethrissur.com email: glethrissur1992@gmail.com

No.C- Misc/2021

Date: 29.11.2021

Notice

As per the gazette no CEE/1133/5LL.B/2021/7A3 dated 25.11.2021 by the Entrance Commissioner, the requests for allotment to the vacancy in 3year/5-

year LLB courses left after filling up the current vacancy in mop up allotment at Thrissur Law College will be accepted up to 2 pm on 30.11.2021.

Such requests shall carry the required documents as stated in the above gazette and it shall be submitted in the office with name, signature, mobile number

as proof.

The admission procedure will be commenced and candidates rank list will be published in tune with the instructions by the CEE post 2pm, on 30.11.2021

At the time of admission all essential documents including TC in originals must be submitted and fees must be remitted. Parents should be present to put

signatures on the declaration/ promise regarding Prohibition of Ragging Regulations.

Principal

Sd/-

20. On a conjoint reading of Exts. P11 and P14, it is categoric and clear that appropriate procedures that are contained under the prospectus are made

applicable while conducting the spot admission. Learned counsel for the writ petitioner heavily relied upon clause 16 of the Prospectus dealing with Mop-up counselling.

21. However, we are of the considered opinion that clause 16 deals with Mop-up counselling alone and it has no bearing on the spot admission directed to

be conducted by the Commissioner for Entrance Examination. It may be true that the writ petitioner was entitled to apply for Mop-up admission as per the second limb of sub-clause (d) of Clause 16 of Ext. P1 prospectus. But, that has nothing to do with the spot admission. However, it is clearly specified in Ext. P11 that the admissions are to be completed as per the conditions in Ext. P1 prospectus. Therefore, Clause 18 of Ext. P1 prospectus would be relevant to sort out the issue at hand and as per serial No.(viii) of clause 18, it is clear that at the time of admission, Transfer Certificate and conduct certificate from the Institution where the candidates studied last would have to be produced.

22. That apart, it was made clear in Ext. P14 notice dated 29.11.2021 issued by the Principal that all the required documents as stated in the Gazette dated 25.11.2021 would have to be produced by the candidates seeking spot admission. Gazette dated 25.11.2021 specifies the documents to be produced and that apart, in Ext. P11, it is made clear that the conditions contained in Ext. P1 prospectus has to be satisfied by the candidates seeking admission.

Which means whatever applicable and relevant provisions of the prospectus enabling the Principal of the college to provide admission to a candidate would apply for the Spot Admission as well. Above all, it was specifically made clear in Ext. P14 notice that at the time of admission, all essential documents, including Transfer Certificate in original, must be submitted.

23. Taking into account the above said aspects, one thing is clear that a clear cut procedure was made by the Commissioner for Entrance Examination as well as the Principal of Government Law College, Thrissur as per Ext. P11 Press Release and Ext. P14 notice as to the requirement of Transfer Certificate while seeking admission.

24. Admittedly, the writ petitioner has not produced the Transfer Certificate. But, at the same time, the appellant, even though lower in rank to the writ petitioner, has produced the Transfer Certificate. It was accordingly that admission was granted to the appellant. It is also significant to note that the appellant did not secure any admission in any of the Colleges as per the Centralised Allotment Process. Whereas, the writ petitioner has secured admission in the Centralised Allotment Process in a self Financing College.

25. When there was a clear cut procedure prescribed for the spot admission as per Ext. P11 issued by the Commissioner for Entrance Examination and

Ext. P14 issued by the Principal of Government Law College, Thrissur, a candidate seeking admission was bound to follow the instructions contained in

the said communications, and the Principal of the Law College was bound to comply with the directions issued by the Commissioner for Entrance

Examination.

26. Viewed in that manner, the Principal of the Government Law College, Thrissur could not have overlooked the imperative directions contained in Ext.

P11 to follow the mandatory requirements of the admission process as per Ext. P1 prospectus.

27. In that view of the matter, it can be clearly seen that there was no arbitrary or illegal action on the part of the Principal of the College for not providing

admission to the writ petitioner for want of production of the Transfer Certificate in original. It is also quite clear and evident that Exts. P11 and P14 were

issued in a situation where the seats were remaining vacant after the Mop-up counselling and therefore, the instructions given for spot admission by the

Commissioner for Entrance Examination and the Principal of the College alone were the relevant rules.

28. Taking into account the factual and legal circumstances deliberated above, we have no doubt in our mind to hold that the learned single Judge was not

right in interfering with the denial of admission to the writ petitioner and issuing directions prescribing the manner by which the admissions have to be

conducted in the spot admission process.

Accordingly, the appeal is allowed and the writ petition is dismissed .