

(2016) 12 KL CK 0077

In the High Court Of Kerala

Case No : W.A. Nos. 2443 and 2447 of 2016 (Against The Order In Ia. No.19435 of 2016 In W.P.(C). No. 21544 of 2016 Dated 14/12/2016)

Bhagath Krishnan

APPELLANT

Vs

Cochin University of Science And Technology

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 KLT 9

Hon'ble Judges : Mr. Thottathil B. Radhakrishnan and Mr. Devan Ramachandran, JJ.

Bench : Division Bench

Advocate : Sri. Santhosh Mathew, Sri. Arun Thomas, Sri. Jennis Stephen, Sri. Alphin Antony, Sri. Vijay V. Paul, Smt. Maria Roy and Smt. Veena Raveendran, Advocates, for the Appellant; Sri. S.P. Aravindakshan Pillai, SC, for the Respondent Nos. 1 and 2; Sri. Thomas A

Final Decision : Disposed Off

Judgement

Mr. Devan Ramachandran, J.—In these cases we hear the anguish and tribulation of the appellant, a young student who has been desperately trying to obtain admission and to protect such admission in studies leading to MBA (Full time) course under the Cochin University. We can ill-afford not to hear the desperation of the appellant and we have no hesitation in immediately recognising that he is entitled to succeed in the appeals even it means that we have to travel an extra yard to grant him the reliefs that, according to us, are legitimately due to him.

2. The appellant had initially approached this Court by filing W.P. (C)No.21544/2016 for a direction to the University to admit him to the course leading to the degree of MBA. The learned Single Judge had allowed the writ petition, no doubt, recording exceptional circumstances, by directing that the appellant be granted such admission on condition that he qualifies in all subjects

in the graduate examination, namely, B.Com. and that the mark list of all the subjects in the said level be produced before the registration to the first semester examinations of the MBA course. The compendious facts that led the appellant to approach the learned Single Judge are that even though he was ranked high for admission to the MBA course, he had not cleared all the papers at the B.Com. level, which he had pursued in a college affiliated to the Kerala University. He had, therefore, applied for supplementary examination and he was awaiting the results, by which time admission to the MBA course offered by the Cochin University had already commenced. As the appellant had the requisite merit for admission to the MBA course in the qualifying Management Aptitude Test, the learned Single Judge had permitted regularisation of his admission on condition that he produces the mark list of all subjects at the B.Com. level before the registration for first semester MBA examinations. Unfortunate for the appellant, he could not clear one of the papers even at the supplementary examination and consequently, he applied for revaluation before the Kerala University, being obviously confident that he had performed the paper better and deserving more marks than what he had obtained in the supplementary examination. However, since the revaluation was taking time and since the registration for the first semester examinations was drawing near, he filed I.A.No.15968/2016 in W.P.(C) No.21544/2016 seeking extension of time granted in the judgment. The learned Single Judge granted this prayer and extended the time for producing the mark list and provisional degree certificate of B.Com. till 01.11.2016.

3. The travails of the appellant did not end there. The revaluation results were not published by the Kerala University even on 01.11.2016 and he was, therefore, faced with the prospect of not being permitted to register for the first semester MBA examinations of the Cochin University. In fact, the University issued a letter dated 27.10.2016 rejecting the application for registration to the first semester MBA examinations on the sole ground that the appellant had not been able to produce the mark list and degree certificate of B.Com. even within the time granted by the Court and extended as per the order in the interlocutory application referred to above.

4. The appellant, therefore, impugned the action of the Cochin University by filing another writ petition, namely, W.P.(C)No.36496/2016. Even though the appellant had prayed therein that he be allowed to continue the studies along with a prayer to have revaluation of his paper within a time frame, the learned Single Judge declined the first prayer, but directed the Kerala University to complete the process of revaluation within a period of two weeks from the date of the judgment, which was 15.11.2016. The Kerala University, obviously in obedience to this judgment, issued the mark list on 21.11.2016 and the appellant approached the Cochin University with the same and prayed that he be allowed to register and sit for the first semester examinations.

5. However, in spite of all these developments, the Cochin University issued

another order dated 18.11.2016, which is produced as Exhibit P9 in W.P.(C)No. 21544/2016, cancelling the appellant's admission to the MBA course solely on the ground that he had not been able to comply with the directions contained in the judgment dated 05.07.2016 and interim order dated 20.10.2016 in W.P.(C)No.21544/2016, as per which he was directed to produce the certificates on or before 01.11.2016. The appellant, therefore, preferred I.A.No. 19435/2016 in W.P.(C)No.21544/2016 seeking extension of time. However, this application was dismissed by the learned Single Judge holding that the appellant cannot be granted any further time than what has already been granted to him. It is impugning this order that the appellant has filed W.A.No.2443/2016.

6. As regards W.A.No.2447/2016 is concerned, we notice that it has been filed by the appellant challenging the judgment of the learned Single Judge in W.P.(C)No. 36496/2016 to the extent to which it declined the prayer of the appellant to permit him to continue his studies in MBA course, but confining the relief to complete the revaluation by the Kerala University within two weeks. This appeal, obviously, has been filed by way of abundant caution.

7. We have heard Sri.Santhosh Mathew, the learned counsel for the petitioner, Sri.S.P.Aravindakshan Pillai, the learned Standing Counsel for respondents 1 and 2 and Sri.Thomas Abraham, the learned Standing Counsel for respondents 3 and 4. Since both the appeals are entwined in their averments, facts and circumstances, we deem it apposite to hear them together and dispose them of by this judgment. For the purpose of convenience, reference to documents and parties in this judgment, unless otherwise specifically stated, shall be as referred to in W.P.(C)No.21544/2016, from which W.A. No.2443/2016 emanates.

8. The facts of these cases present a very peculiar situation. Undoubtedly, the appellant's admission was regularised by the learned Single Judge in W.P.(C)No. 21544/2016 on the specific condition that he should produce the mark lists and degree certificate of B.Com. examinations before the last date of registration for the first semester examinations of MBA course. The time to produce the certificates was extended, by order in I.A. No.19508/2016 in the same writ petition, until 01.11.2016. However, since the Kerala University had not been able to complete the process of revaluation until that time, the appellant had obtained a judgment from another learned Single Judge in W.P.(C)No.36496/2016, as per which, the Kerala University was directed to complete the process of revaluation on or before 29.11.2016. The admitted fact is that the Kerala University issued the mark list after revaluation only on 21.11.2016. It is here that the controversy now projected in this appeal by the appellant has its genesis.

9. It is obvious and as has been submitted by the learned counsel for respondents 1 and 2 that even though the time granted by this Court to the appellant for production of the certificates before the Cochin University expired on 01.11.2016, he was able to do so only on 21.11.2016 and that in the meanwhile, as per order dated 18.11.2016, which is shown as Exhibit P9 in W.P.

(C)No.21544/2016, the appellant's admission to the MBA course itself had been cancelled. The learned Single Judge had accepted this submission and had, therefore, refused to grant any further extension beyond the period that was granted to the appellant. It is in such circumstances that the appellant has approached this Court by filing the above appeal.

10. The issue in controversy in these cases is in a narrow compass. The essential point of dissension is that the appellant had been granted time by the learned Single Judge till 01.11.2016 to produce the certificates but that he had done so only on 21.11.2016. The question, therefore, is whether the appellant is entitled to further extension so as to enable him to continue the studies in the MBA course. No doubt, the facts are extremely peculiar. The whole problem started because the appellant had not cleared two papers in the B.Com examination. He had appeared for supplementary examination in such papers in April 2016, but again he could not clear one of the papers even in that effort. He had, therefore, applied for revaluation on 27.08.2016 and he was hoping that he would be able to produce the revalued mark list before 01.11.2016. However, this was also not to be. He had, therefore, approached this Court for orders to the Kerala University to complete the revaluation which was granted by the learned Single Judge and the Kerala University was directed to complete the revaluation on or before 29.11.2016. In the revalued result the appellant had cleared the paper. Obviously therefore, nothing could be attributed to the appellant for having caused the delay in submitting his certificates before the Cochin University.

11. It would be, of course, easy to dismiss the appellant as a bad student merely seeing that his performance had been not exemplary in the B.Com. examination. We say this because first impression would present such a view. However, we notice that the appellant is a young boy whose life has thrown severe challenges before him. The pleadings in the writ petition would show that his father is suffering from a debilitating disease. It is, therefore, justifiable to infer that the appellant had not been able to devote all his time to studies and that he had been distracted on account of his father's illness. We do not propose to elaborate about the illness of his father, because we are certain that neither the appellant nor his father would even ask for any benefit from this Court taking refuge under the illness. We are afraid that even if we do so, it would cause disservice to the self respect of the appellant's father and we do not want to say anything further. We only advert to this to recognise the adversity that the appellant has weathered and in such situation, his academic performance was bound to be lesser than his calibre.

12. As we have already noticed, the delay in producing the mark list and provisional degree certificate before the Cochin University, by no stretch of imagination, can be attributed to the appellant. He had done everything possible to clear the subjects at the B.Com. level and it is indisputable that he had done so. The delay was occasioned at the hands of the Kerala University in completing the revaluation and if it had been done within time, the appellant would not have

had the misfortune of litigating this long. We see that the learned Single Judge had declined to grant any further extension only because the appellant's admission had been cancelled as per Exhibit P9 order dated 18.11.2016. However, the learned Single Judge ought to have noticed that as per the directions contained in the other writ petition, namely W.P.(C)No.36496/2016, the appellant's revaluation results had been directed to be completed on or before 29.11.2016. This was obviously done so as to enable the appellant to produce the certificates before the Cochin University to continue his studies. That being the situation, we are constrained to hazard an assumption that the Cochin University has issued Exhibit P9 order, no doubt acting as per the strict mandate of law, but without being alive to the extenuating situation that the appellant was being put to. It would be, according to us, hyper technical to hold that the appellant is not entitled to extension of time merely because Cochin University has cancelled his admission as per Exhibit P9 order in W.P. (C)No.36496/2016. The proper perspective would be that had the learned Single Judge granted the extension of time, which, we are of the firm view that the appellant is deserving, the effect of Exhibit P9 would stand completely abrogated and it would not survive since it is ex facie clear that it has been issued only because the time granted by this Court had expired. Therefore, to deny extension of time merely because of the order of the University cancelling the admission would obviously be going in circles. Since Exhibit P9 order of the University was consequent to the directions of this Court limiting the time to 01.11.2016, any variation or extension of any such time, that could have been granted by this Court, would have automatically rendered Exhibit P9 order of the Cochin University without legs to stand on.

13. At the time when the appeals were taken up for admission, we granted an interim order staying Exhibit P9 and allowing the appellant to attend the classes provisionally and subject to further orders. This order was issued on 16.12.2016. We understand that the appellant is attending the classes on the strength of the said order. We, therefore, deem it necessary that the appellant be allowed to continue the MBA course, which could be possible only if Exhibit P9 is quashed and the time granted to him to produce the certificates is extended until the date on which they were produced before the University. The pleadings in the appeals would show that the appellant had produced the certificates before the University on or before 25.11.2016, but that the same was not accepted, since the time granted by the learned Single Judge had expired by then.

14. We, therefore, vacate the order of the learned Single Judge in I.A.No.19435/2016 in W.P.(C)No. 21544/2016 and extend the time granted to the appellant for production of the mark list at the B.Com. level till 16.01.2017. In such view of the matter, Exhibit P9 would become redundant. Therefore, the same is quashed. Obviously therefore, on the production of the mark list by the petitioner before the Cochin University as ordered herein, the appellant's admission to the MBA course would stand regularised abiding by the terms contained in the judgment of the learned Single Judge in W.P.(C) No.21544/2016

without the requirement of any further orders. As regards W.A.No.2447/2016 is concerned, in view of the directions issued herein, nothing further survives and no further orders are required in this appeal.

15. We make it clear that we had issued this order in the specific circumstances of this case and noting the very singular and peculiar situation that the appellant has been put in. We recognise that the appellant being a son is the fastigium of his family's hopes and the sheet-anchor of their future. We deem it necessary that the appellant be given an opportunity to complete his course especially because his continuation or otherwise would not affect any other candidate and if the appellant is unable to continue, the seat would become vacant and unfilled. We cannot allow this to happen especially because we do not see anything that could be attributed to the appellant.

16. We notice that on account of these circumstances, the appellant has not been able to write his first semester examinations and that he has lost several working days in attendance. As regards his first semester examinations are concerned, unfortunately, the appellant has no other option but to cover the ground in any subsequent examinations as is permissible under the various Rules and Regulations of the University. However, as regards the attendance is concerned, we declare that the period from 27.10.2016, being the date of Exhibit P9 order in W.P.(C)No.36496/2016, as per which the appellant was not permitted to continue to attend the classes on the allegation that he had not complied with the directions of this Court, up to the date on which he re-joined the classes pursuant to our order dated 16.12.2016, shall be treated as valid attendance and should be reckoned as such while computing the attendance of the appellant for the course. We do not think that any further orders are required in these appeals.

17. With the above directions, the appeals are disposed of.