

(1993) 03 KL CK 0072

In the High Court Of Kerala

Case No : O.P. No's. 16495 and 17227 of 1992 and 234, 875, 1051, 1746, 1964, 2535, 2631 and 2694 of 1993 and W.A. No's. 289, 293 and 306 of 1993

Chandrasekharan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-03-1993

Acts Referred:

Constitution of India, 1950 — Article 136, 141, 142, 30(1), 32
Kerala Education Rules, 1959 — Rule 15, 16, 3, 6, 7

Citation : (1993) 03 KL CK 0072

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : Govind K. Bharathan, K.R.B. Kaimal, K.V. Sadananda Prabhu, P.V. Narayanan Nambiar, T.S. John, K K. Babu, Pirappancode V. Sreedharan Nair and M.P.R. Nair, for the Appellant; V.K. Beeran, A.A.G. II, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—On the basis of a joint representation made by 26 members of the Legislative Assembly, the Executive Committee of the North Kerala Teachers' Training School Managers, Association, and Ors. , additional seats to the T.T.C. Course was sanctioned in Government and Private Aided Teachers' Training Institutes. By G.O. (Rt.) 2991/92/G. Edn., dated 1st August 1992, additional seats to the course were sanctioned to 48 Teachers' Training Institutes. Later Anr. 19 institutes were also allowed to admit additional students by G.O. (Rt) 3485/92/G. Edn., dated 5th September 1992. These Government orders while sanctioning additional seats specifically provided that selection will be strictly in accordance with the existing rules. Some of the managements situated in Malabar area represented to Government that Malabar is an educationally backward area and so, Managers must be given freedom to fill up the additional seats without reference to relevant rules in the Kerala Education Rules. Since Government did not pass any order on that representation, they

approached this Court by filing O.P. 12117/1992, inter alia praying for a declaration that they are entitled to fill up the additional seats with persons of their choice untrammelled by any of the conditions relating to admission of candidates to the said seats. This Court by judgment dated 24th September 1992 directed the Government to take a decision on the memorandum submitted by the Petitioners as expeditiously as possible and not later than the expiry of a period of two weeks from the date of receipt of a copy of the judgment. Non-satisfied with this direction, they preferred Writ Appeal 974/1992. A Bench of this Court while dismissing the Writ Appeal on 15th October 1992, directed the Government that it should not make any selection of candidates for the additional seats before the disposal of the representations and if the Government have made any selection before the order on Exhibit P-I, that selection will be subject to its decision on the representation. Subsequent to the decision in the Writ Appeal, management again filed detailed representation before Government for a direction that in filling up the additional seats sanctioned to the Teacher's Training Institute Rules 6, 7 and 8 of Chapter XXV of Kerala Education Rules are not applicable. Government after considering the entire case, disposed of the representations made by the Managers by communication No. 68172/D3/92/G. Edn., dated 2nd December 1992 reiterating the view that admission to the additional seats will be strictly in accordance with the existing rules. Government made it clear that the request made by the management for permission to fill up the additional seats untrammelled by any of the conditions relating to admission of candidates cannot be conceded. In the meantime, many managements admitted students of their choice to the course. Managements have now come up to this Court for a declaration that they are entitled to admit students of their choice to the additional seats sanctioned by Government in the orders referred to earlier. Students, who were admitted by the management ignoring Rules contained in Chapter XXV of the Kerala Education Rules, have also come up contending that they have been admitted to the course by the management; that they have undergone the studies for one year; that they have remitted the examination fee for taking the first year examination and in case they are not allowed to take the examination, they will be put to irreparable loss and hardships. Accordingly they pray for a direction to the Government to allow them to take the examination.

2. While sanctioning additional seats to the Teachers' Training Institutes by order dated 1st August 1992, Government imposed certain conditions. They were that additional seats will be only for the academic year 1992-93; that no additional financial commitment will be met by the Government on any account towards this additional seats; and that the selection to the additional seats should be strictly in accordance with the existing rules. In the case of departmental Teacher's Training Institutes, it was ordered that additional seats are to be filled up from the existing waiting list already prepared by the selection committee for each district. In the case of management quota, it was ordered that fresh applications from candidates who are qualified for selection as on 31st March

1992 as published by the Director of Public Instruction in his order dated 17th January 1992 should be adhered to, subject to the decision of this Court in the case filed by the managements of private Teachers' Training Institutes. These conditions were reiterated while sanctioning additional seats to the other institutes as per Government order dated 5th September 1992. From these conditions, it is abundantly clear that the management are not to engage any additional staff to coach the additional students admitted to the additional seats. Since no financial commitment is to be met by the Government, the management was not to appoint any new staff or cast any additional financial burden on the Government for coaching the students admitted pursuant to the above orders. In other words, these students are to be trained with the already existing facilities in the institutes.

3. The argument advanced by the learned Counsel representing the managements of institutes situated in Malabar area is that Malabar is an educationally backward area as has been held by the Supreme Court in *State of Kerala Vs. Kumari T.P. Roshana and Another*, . If selection is made to the additional seats in accordance with the provisions contained in the Kerala Education Rules, students from Malabar may not get sufficient seats and students from Travancore and Cochin area will alone be getting admission. This will not in any way go to advance the educational improvement of the students of Malabar. It was also argued that by virtue of this Court's decision in *Younus Kunju v. State of Kerala* 1988 (2) KLT 299. Rules 6, 7 and 8 of Chapter XXV of the Kerala Education Rules do not apply to minority institutions protected under Article 30(1) of the Constitution. Majority of the Teachers' Training Institutes are run by minority communities. In respect of those institutions, Government have given absolute freedom to the management to select candidates ignoring the restrictions contained in Rules 6, 7 and 8 of Chapter XXV of Kerala Education Rules. Thereby, majority of the private institutes are having absolute freedom to select their own candidates. The imposition of the provisions contained in Rules 6, 7 and 8 of Chapter XXV in the selection of candidates to the T.T.C. Course in the institutions run by majority communities, large number of which are situated in Malabar, are against the interest of the students of Malabar and so the institutes in Malabar must be given freedom to choose their own candidates. It was also contended that additional seats were sanctioned by the Government relaxing the rigor of Rule 9 of Chapter XXIII by invoking the powers under Rule 3 of Chapter I of Kerala Education Rules. To such seats sanctioned by invoking Rule 3 of Chapter I, it is contended, Rules 6, 7 and 8 of Chapter XXV cannot be insisted on. According to counsel, when once Rule 3 of Chapter I is invoked for sanctioning, the additional seats relaxing the provisions contained in Rule 9 of Chapter XXIII, those additional seats must be treated as outside the purview of the Kerala Education Rules.

4. Learned Counsel representing the Petitioners advanced yet another argument based on the decision of this Court in *W.A. 974/1992*. A Division Bench of this Court while dismissing that writ Appeal made it clear that Government should not

make selection of candidates for the additional seats before the disposal of the representation made by Managers. In case any selection has been made before the disposal of that representation, it was directed that the selection will be subject to the decision in the representation. Selection could have been made by the Government only in terms of Rules 6, 7 and 8 of Chapter XXV of Kerala Education Rules. By virtue of the above order, it is argued that those Rules must be deemed to have been suspended in so far as selection to the additional seats are concerned. We find it difficult to accept this argument. By no stretch of imagination can it be said that the decision in W.A. 974/1992 has abrogated the provisions contained in Rules 6 to 8 of Chapter XXV in relation to the selection to the additional seats sanctioned by the Government.

5. Selection to the seats in the Teachers' Training Institute for women, Koduvayoor was the subject matter of O.P. 105/1991. A learned Single Judge of this Court disposed of that Original Petition by directing the educational authorities to take emergent action to fill up all the vacant seats on or before 16th January 1991 and that if candidates are not so selected, management can select best candidates from among those who applied for admission. That decision was not challenged in appeal by the State. Therefore it was argued that this Court can direct the management to select candidates to fill up the seats, since Government has not sent up candidates after selection as contemplated by the Rules. This argument, we are afraid, cannot be accepted. This Court is not to allow the management of private Teachers' Training Institutes to select candidates ignoring the provisions contained in the Kerala Education Rules. The decision in O.P. 105/1991 cannot be considered as one having general applicability.

6. Rule 9 of Chapter XXIII provides that the optimum strength of training classes in training schools shall be 20. Each school should have one junior class and one senior class. They together constitute one unit. Only in exceptional cases can the institute be permitted to have more than one unit. In view of this restriction, if additional seat is to be sanctioned in an institute, the restriction contained in the said Rule has to be relaxed. Government are having powers to dispense with or relax the requirements of any Rule as per Rule 3 of Chapter I of Kerala Education Rules. When additional seats were sanctioned as per the orders mentioned earlier, Government exercised their power under Rule 3 of Chapter I. The power exercised under that Rule was only in relation to Rule 9 of Chapter XXIII. The said relaxation cannot have any further impact. Admission to the additional seats sanctioned by Government are governed by the provisions contained in Chapter XXV of the Kerala Education Rules. This has been so specifically stated in the orders sanctioning the additional seats. Therefore, it is futile on the part of the managements to contend that the admission to the additional seats are outside the purview of Chapter XXV of Kerala Education Rules.

7. As per Rule 6 of Chapter XXV of Kerala Education Rules, twenty per cent of the seats in aided Training Schools are to be filled up by the Managers of the

respective schools. For filling up this twenty per cent of the seats, Managers are having absolute freedom. Out of the remaining seats, sixty per cent of the seats should be filled up by the candidates selected by a selection committee. The Selection Committee is to be headed by a member of the Public Service Commission, of which an official nominee of the Education Department is a member. This selection Committee is to prepare a select list for each revenue district. The remaining twenty percent of seats is set apart for untrained teachers employed in Government schools. This is the method of selection to the seats in a Teacher's Training Institute run by a private management. Additional seats were sanctioned by the Government subject to these provisions. In respect of institutions run by minority community, these provisions will not apply. The managements before us want to have the right to fill up all the additional seats according to their discretion. That means, they also want to have the benefit of the rights available to minority communities. This claim, we are afraid, cannot be countenanced.

8. On getting the additional seats sanctioned on condition that admission to those seats will be in accordance with the Rules in the Kerala Education Rules, management approached the Government to have absolute freedom to fill up all those seats. Government did not concede their demand. Managements now want this Court to allow them to fill up all the seats according to their discretion, ignoring the provisions contained in Rules 6, 7 and 8 of Chapter XXV on the ground that the insistence of the rules will prejudice the students of Malabar. We are not to direct the Government not to insist on the implementation of the Rules when the Government want the Rules to be implemented. In a country where the rule of law is followed, the Rules should be adhered to. Compliance with the provisions of the Rule must be insisted upon. This Court is not to allow the management to violate the Rules. In the case before us, the managements violated the Rules and filled up the additional seats by selecting candidates according to their discretion. They want this action to be legalised.

9. Students, who were admitted to the additional seats, sanctioned, by the Government, by managements have come forward with a prayer that they got admission in the schools and studied for one year. At this juncture if they are not allowed to take the examination, they will be put to great hardships. So, they want this Court to direct the educational authorities to allow them to take the examination. When a similar prayer was made before the Supreme Court in *Students of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra SLP (C) No. 2067/1991*. Their Lordships observed:

We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some Courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of regulation.

10. Learned Counsel representing the students placed before us some of the

decisions of the Supreme Court wherein that Court allowed the students who got admission even in unrecognised institutions to take the examination conducted by the university. Reference was made to decisions in *A.K.E. Society v. Director of School Education* AIR 1989 S.C. 183 and *Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others*, . In the first case, the Supreme Court allowed the students to take the examination, observing:

They are the students who were admitted on the strength of the interim order made by this Court. The students were perhaps led to believe that this Court permitted the Appellant (private management) to admit them. We consider, therefore, that it may not be proper to drive them to street if they have undergone the prescribed course with the necessary syllabi and other matters relating thereto. But it would be for the Director of School and the Registrar, Nagarjuna University to consider and satisfy themselves and not for this Court at once to permit them to appear in the examination.

Thus it is seen that the students were given that benefit only because of the interim order passed by the Supreme Court directing them to be admitted to the course. In such a situation, Their Lordships thought it proper to allow those Students to take the examination if the Director of the School and the Registrar of the University being satisfied of the course of study undergone by them. In the second case, the High Court of Punjab and Haryana directed certain students to be admitted taking the view that belated admissions were something that the students seeking such admissions would worry about rather than the institute. When this direction was challenged before the Supreme Court, Their Lordships disapproved the action of the High Court in directing more students to be admitted ignoring the claims of more meritorious. Even so, Their Lordships did not interfere with their admission because on account of the lapse of time no other student could be admitted and since the students who got admission had undergone the course of study. From the above, it is clear that students who were admitted to course against the Rules were allowed to take the examination because they were admitted by orders of Court.

11. Learned Counsel then brought to our notice the decision in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others* etc. etc., in support of their contention that the students who have undergone course must be allowed to take the examination. In that case, the Supreme Court allowed the students to continue the course because they have been continuing in the course under the orders passed by that Court. This decision also is distinguishable on facts. The directions given by the Supreme Court while exercising jurisdiction under Article 142 of the Constitution cannot be authority for the proposition that this Court can also pass similar orders. Article 142 of the Constitution empowers the Supreme Court to make orders for doing complete justice in any case or matter pending before it. High Court has no such authority. This aspect was dealt with by Their Lordships in *State of Punjab and others Vs. Surinder Kumar and others*,

and observed:

The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

The power of the Supreme Court is not curtailed by any law made by the Central or State legislature. Supreme Court is controlled only by the Constitution. The High Court is not to ignore the provisions of law in a purported attempt to do justice in the case. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others*, . Their Lordships observed:

Under the constitutional scheme this Court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of basic structure of the Constitution. The amplitude of the power of this Court under these Articles of the Constitution cannot be curtailed by law made by Central or State Legislature.

So, in an attempt to do justice, as sought for by learned Counsel representing the Petitioners, this Court is not to direct the Government to allow the students who were wrongly admitted by the management ignoring the provisions contained in the Kerala Education Rules to take the examination. The admission of the students to the T.T.C. Course is governed by the rules. Government wanted the Rules to be implemented. In such a situation, this Court cannot direct the Government to act against the law. On the basis that Supreme Court in certain cases allowed students who got admission in unrecognised institutions to take university examination, this Court is not to issue similar directions either. Decision rendered by Supreme Court based on certain concessions granted to certain parties on special facts and circumstances of those cases cannot be considered as law laid down by that Court under Article 141 of the Constitution. Therefore, the prayers made on behalf of the students who have become the victims of the illegality committed by Managers cannot have any relief from this Court. Reference may be made to the decisions in *Bharatiya Veterinary Educational Society, Bangalore v. State* AIR 1988 Kar 293, *K. Lakshmi Reddy v. Bangalore University* AIR 1991 Kar 182, *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, and *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, . In *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, , the Supreme Court deprecated the practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination through Court. On humanitarian grounds, Court cannot grant any relief contrary to law. In the instant case, managements of Teachers' Training Institutes admitted students of their choice with scant-respect to the statutory provisions.

Their request to allow them to fill up the seats on their own volition will amount to issuing a direction to the Government to allow the managements to disobey the Rules. Such a step, if resorted to by this Court, will be subversive to the rule of law. Such a step taken by the Court will pave the way for a breeding ground of corruption and it will consequently be a feeding source for indiscipline. If students are allowed to be admitted without reference to merit, it will result in slackening the standard. Judicial power is not to be exercised to control the mode of education. If it is done, it will be detrimental to the efficient management of education.

12. In the above view of the matter, we find no justification in the action of the management in admitting students to eighty per cent of the seats set apart for being filled up by the process of selection by the Selection committee. The students who secured admission without undergoing the process of selection as contemplated by Rules 6, 7 and 8 of Chapter XXV cannot be allowed to take the examination on humanitarian ground as well. According to the learned Counsel representing the management and the students who have undergone the course of study, this Court has got ample power to direct the Respondents to allow the students to take examination. In support of this argument, the decision in H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, was relied on. In that case, the Supreme Court up held the decision of the High Court quashing the appointment of the persons who were wrongly appointed in service. At the same time, on humanitarian approach, directed to treat those employees as regularly appointed with all the benefits of the past service. This direction given by the Supreme Court can only be termed as an order passed in exercise of the powers under Article 142 of the Constitution. It is more so when the Court observed:

The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the Appellants seem to deserve justice ruled by mercy.

Such a power, we are afraid, cannot be exercised by this Court.

13. As per Rule 6 of Chapter XXV of the Kerala Education Rules, twenty per cent of the seats in aided Training Schools are reserved for selection by Managers of the respective schools. Managers who got additional seats sanctioned as per the two Government Orders, referred to earlier, admitted students to the course. Out of those admitted, twenty per cent of the candidates who got admission in terms of Rule 6 of Chapter XXV are entitled to take the examination because they were validly and legally selected to the course. In this view of the matter, we direct the Respondents to allow twenty per cent of the students admitted to the course by the Managers to take the examination.

14. There is yet Anr. side of the picture, as is seen in Writ Appeal 306/1993, O.P. 17227/1992 and O.P. 234/1993. In these cases, the seats sanctioned by Government have gone waste since no candidate was selected by the Selection Committee as provided by Rule 7 of Chapter XXV. Appellant in W.A. 306/1993

sought admission to an institution on the allegation that large number of seats in that institution are lying vacant. It was represented to Court that a list has been forwarded to that institution to fill up all existing vacant seats. From among the candidates selected for admission to that institution, only one turned up. Remaining seats, namely six, have gone waste. Petitioners in O.P. 17227/1992 sought admission in one of the institutes in Kasaragod district run by the Government. On account of the absence of select list, it is averred, more than 40 seats have gone vacant. O.P. 234/1993 is one filed by a Manager. A large number of seats falling within the additional seats sanctioned by the Government remained vacant because of the absence of select list. The Petitioner, Manager, did not admit students on his volition. So, the seats have gone vacant. This contingency happened on account of the absence of a wait list of candidates. According to the learned Additional Advocate General, the practice is to prepare a select list for the vacant seats reported and not to have a waiting list. It was submitted that there is no provision by which vacancies can be filled up immediately as per the present procedure adopted by the Department. If there is any vacancy in any particular school, the Headmaster has to report the matter to the District Educational Officer for filling it up. This is a time consuming process and in certain cases, even the seats may go unfilled due to lapse of time. The learned Single Judge while disposing of O.P. 153/1993 observed that it is highly essential for the purpose of timely and proper admission of candidates to Teacher's Training course to prepare a select list at the first instance by including candidates in the waiting list.

15. Rule 15 of Chapter XXV provides that the Director may fix the date of beginning of the admission of candidates to the T.T.C. Course. Admission should be closed within two weeks of the re-opening day. No trainee should be admitted thereafter without the previous sanction of the District Educational Officer. If any candidate selected fails to join the course before the expiry of two weeks from the date of re-opening, as per Rule 16 the Headmaster of the institution should immediately report the vacancy to the District Educational Officer concerned, so that such vacancy may be filled up otherwise. Combined effect of Rules 15 and 16 of Chapter XXV is that candidates selected by the Selection Committee as per the provision contained in Rule 7 of Chapter XXV should join the Teachers' Training Course within two weeks of the re-opening day. If any vacancy arises on account of the candidate's failure to join the course, that vacancy should be reported to the District Educational Officer. Such vacancies have to be filled up by the District Educational Officer otherwise than on the basis of the select list prepared under Rule 7 of the Rules. If such a procedure was adopted by the District Educational Officers, no seat in the Teachers' Training Course would have gone waste. We were told that more than 400 seats in the Teachers Training Course 1992-93 have gone waste on account of the failure on the part of the Selection Committee to prepare a select list. This has resulted in herculean waste. Since the academic year 1992-93 has come to its fag end, we find it difficult to salvage the situation. We appraise the Government of the colossal

waste that has been caused in not filling up the sanctioned strength during 1992-93 and direct them to take appropriate remedial measures, in accordance with rules, to avoid its recurrence in the future.

In the light of the discussions made earlier in this judgment, we hold that the Appellants in the Writ Appeals and Petitioners in the Original Petitions are not entitled to any of the reliefs prayed for by them. But, we make it clear that candidates admitted to the twenty per cent of seats by the Managers as per Rule 6 of Chapter XXV of the Kerala Education Rules are entitled to take the examination. Respondents are directed to take necessary steps in this regard without any delay. Subject to this direction, the Writ Appeals and Original Petitions are dismissed. We make no order as to costs.