

(2021) 10 KL CK 0075

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21348 Of 2020

Dr.Betsy Varghese

APPELLANT

Vs

Admission Supervisory Committee & Fee Regulatory
Committee For Professional Colleges Of Kerala

RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Code of Civil Procedure, 1908 — Section 11

Citation : (2021) 10 KL CK 0075

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Single Bench

Advocate : O.A.Nuriya, Haris Beeran, .P.Sreekumar, Premchand R. Nair, Kurian George Kannanthanam, Titus Mani Vettom, R.T.Pradeep

Final Decision : Dismissed

Judgement

Mohammed Nias C.P. J

1. Challenging the decision of the Admission Supervisory Committee ('ASC' for short) rejecting the representation (Ext.P15) filed to regularise the admission of the petitioners in the 4th respondent College, this writ petition is filed.

2. The short facts necessary for deciding the writ petition are as follows:-

The petitioners, after obtaining their MBBS degree had secured admission to the Post Graduate course of MS Orthopaedic and MD Anaesthesia in the 4th respondent college for the academic year 2015-2016 based on the scores they obtained in the Karnataka Religious And Linguistic Minority Professional Colleges Entrance Examination, 2015. The ASC on account of the reason that the college did not obtain prior permission from them and also that no attempt was made by the college to ascertain whether there were suitable and qualified candidates from the entrance examinations conducted by the CEE or AIPGMEE, the tests approved by the Government of Kerala, rejected the admission given to the petitioners, which led them to challenge the same by filing WP(C)No.3734 of

2016, which came to be dismissed as per Ext.P20 judgment on 30.03.2016. The petitioners had also unsuccessfully challenged the order of the ASC approving the prospects of the college to the extent it stipulates its prior approval for admission for the students in the academic year 2015-2016.

3. A Division Bench of this Court after hearing the petitioners, ASC, The Kerala University of Health Sciences, the State Government as well as the College found that the reasoning of the ASC that the admission granted to the petitioners did not satisfy the triple test of merit, transparency and fairness as laid down by the Hon'ble Supreme Court, was justified and that no permission was sought for admitting the petitioners, who did not qualify the KEAM or AIPGMEE, the tests approved in the State of Kerala, and that no intimation was granted to the ASC about the non-availability of candidates from the rank list of the Commissioner for Entrance Examination, or the All India PG Entrance Examination and held that there was no ground to interfere with the decision of ASC rejecting the approval of admission granted to the petitioners. Special Leave Petition (C)No.15164 of 2016 filed against the said judgment was withdrawn with liberty to move a review petition before this Court as seen from Ext.P21. A review was attempted with a delay of 946 days, the same stood dismissed by Ext.P22 order dated 04.12.2019. The order in review was again challenged before the Hon'ble Supreme Court in Special Leave Petition (Civil) No.3692 of 2020, in which orders were passed on 17.07.2020 (Ext.P23), which is extracted hereunder:-

" Learned senior counsel appearing for the petitioners wants to withdraw these petitions and file a representation.

Without commenting on the merits of the prayer, the special leave petitions are dismissed as withdrawn."

4. Accordingly, a representation was filed before the ASC marked as Ext.P26 seeking to regularise the admission of the petitioners, which was rejected by Ext.P27. The writ petition is filed for quashing Ext.P27, the order of the ASC and also for a direction to them to regularise the admissions of the petitioners.

5. The Government has filed a counter affidavit stating that the petitioners initial admission itself was in violation of the conditions of the approved prospectus and that the petitioners are not qualified in the approved examination conducted and as such there is no merit in the contentions now raised by the petitioners.

6. The University has filed a statement in this writ petition pointing out that the petitioners were discharged from the institution in the year 2016 itself after the dismissal of the writ petition and therefore, there is no question of their admissions being regularised at this distance of time.

7. Heard learned counsel for the petitioners Sri.Haris Beeran, Sri.R.T.Pradeep, learned Standing Counsel for the ASC, Sri. P.Sreekumar, learned Standing Counsel for the Kerala University of Health and Sciences, Sri.Kurian George Kannanthanam, learned counsel for the 4th respondent, Sri.Titus Mani Vettom,

learned counsel for the Medical Council of India as well as Sri.Premchand R. Nair, learned senior Government Pleader for the State.

8. Sri.Haris Beeran, the learned counsel for the petitioners submits relying on the judgment in *Amalgamated Coalfields Ltd. And another v. Janapada Sabha Chhindwara and another* (AIR 64 SC 1013) that there is no *res judicata* since the question to be decided by the ASC is different from what was decided by this Court in Ext.P20 judgment. He submits that the admissions were not regularised only on the ground of not getting prior approval of the ASC which is no fault of the petitioner but that of the college. He also submits that going by the consensual agreement entered into between the State Government and the 4th respondent college, Ext.P7 as well as on account of Clause 9(2) of the Post Graduate Medical Education Regulations, 2000 the petitioners being qualified are entitled to the reliefs prayed for. The learned counsel for the petitioner at the end of the hearing on 4.10.2021 also sought two days time to file an argument note. We waited for one week and since it is not filed, we are pronouncing the judgment.

9. We hold that the judgment in *Amalgamated Coalfields Ltd. And another* (supra) does not offer any assistance to the petitioners in as much as the said decision, dealing a tax matter found that the tax liability being different for different years, the appellants therein cannot be precluded from raising new contentions regarding the subsequent assessments for different years. The same is not the case here as the writ petition, which resulted in Ext.P20 judgment was one filed for regularising the admission and which was dismissed after hearing all the respondents. The present attempt is also to regularise the very same admissions made in the year 2015-2016. The learned counsel also relied on the judgment of the Hon'ble Supreme Court marked as Ext.P24 where the Hon'ble Supreme Court did not disturb the admission granted to a student holding that they were qualified and it was the mistake of the college therein with respect to the categorisation of the candidate therein under the Socially and Economically Backward Class (SEBC) category. The said order itself mentions that the same shall not be treated as a precedent and is made only in the facts of the case. This judgment also does not lend any help to the petitioners.

10. The learned counsel also relies on the decision of the Hon'ble Supreme Court in *Anakha K. & Ors v. The Admission and Fee Regulatory Committee for Medical Education in Kerala & ors.* (Civil Appeal No. 2309 of 2021), which again found that the candidates therein were NEET qualified candidates and the disputes therein pertained to the submission of applications online as it was compulsory at that point of time. The Supreme Court found that the candidates being NEET qualified and having no other disqualification for their admission and further finding that there was no other candidates more meritorious than the appellants who were granted admission, permitted them to complete the BAMS course. The judgment also does not help the petitioners herein.

11. It has to be noticed that the petitioners, ASC, the University and the State

are all bound by the inter-partes judgment, Ext.P20 which decided the question of validity of the admissions granted to the petitioners. In the absence of the said judgment being varied or modified by the Hon'ble Supreme Court, the ASC, bound by the said judgment, could not have considered the representation on merits let alone taking a decision contrary to the findings in Ext.P20 judgment, which had become final as aforesaid.

12. In the instant case, we notice that the ASC could have rejected the representation without considering the contentions raised on merits. However, the ASC considered the representation on merits and rejected the same, though unnecessary. We hold that the challenge to the ASC order is not maintainable in view of the judgment in Ext.P20, which has become final and had conclusively determined the questions litigated. Since we hold that the above writ petition is not maintainable we are not considering the validity of the order passed by the ASC or considering the contentions raised on behalf of the petitioners that they were qualified and hence entitled to get the admissions regularised.

13. The principles enunciated by the Hon'ble Supreme Court in *Nagabhushana v. State of Karnataka and Others* [(2011) 3 SCC 408] is extracted:-

"12. The principles of *res judicata* are of universal application as they are based on two age-old principles, namely. *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of *res judicata* is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of *re judicata* has been evolved to prevent such an anarchy. That is why it is perceived that the plea of *re judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties."

14. In *Nand Ram (Dead) Through Legal Representatives and others v. Jagdish Prasad (Dead) Through Legal Representative* [(2020) 9 SCC 393] it was held that

"a decision of a competent court on a matter in issue may be *res judicata* in

another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be reopened between them in another proceeding.

xxxxx

When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the course of the right is *res judicata*. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded

15. It is worthwhile to note the passage in *Greenhalgh v. Mallard* [(1947) 2 All ER 255]

" I think that on the authorities to which I will refer it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of court to allow a new proceeding to be started in respect of them."

16. In *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others* [(1990) 2 SCC 715]

"The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court.

xxxx

The decision in *Forward Construction Co. v. Prabhat Mandal (Regd.)*, Andheri, further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive *res judicata* underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of *res judicata*.

17. The principles culled out from the above judgments clearly fortify our conclusion that the present writ petition is not maintainable. The validity of the admissions is the issue arising in the present case as well as in the earlier

occasion and the same can give rise to only one cause of action. Ext.P23 order of the Hon'ble Supreme Court cannot be taken as modifying or varying Ext.P20 judgment, where the validity of the admission was directly and substantially in issue and decided against the petitioners.

18. In the first round of litigation, that culminated in Ext.P20 judgment, the admission was invalidated because it was found by the ASC that the college had not demonstrated that there were no students available in Kerala and further that the prior permission from the ASC was not obtained to admit other students. Even if one were to go into the issue of eligibility of the petitioners to get admission to the college at this stage, it would be an exercise in futility since the finality of Ext.P20 judgment would stand in the way of allowing the reliefs prayed for by the petitioners. Allowing the claim of the petitioners for admission to the college at this belated stage would tantamount to ignoring Ext.P20 judgment that has already attained finality.

19. We have no hesitation to hold that the prayer sought in the writ petition is clearly barred by the principle of res judicata and constructive res judicata as the identity of the subject matter is one and the same. Ext.P27 order of the ASC warrants no interference.

In the result the writ petition fails and it is dismissed.