
(2014) 10 KL CK 0150

In the High Court Of Kerala

Case No : Writ Appeal No. 1045 of 2014 iN WP(C). 19154/2014

Fathima Fashna

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0150

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : M.V. Bose, Vinod Madhavan and Nisha Bose, Advocate for the Appellant; P.I. Davis, Sr. Government Pleader, Marybenjamin, SC, Admission Supervisory Committee, P. Sreekumar, SC, Kerala Uty. Health and Familywelfare Dept. Adv., and George Poonthottam, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard learned counsel for the appellant, learned counsel appearing for respondents 2 and 3 as well as learned counsel appearing for 4th respondent.

2. This Writ Appeal has been filed against the judgment dated 24.07.2014 in W.P. (C) No. 19154 of 2014 by which the learned Single Judge refused to interfere with the issue with regard to Ext.P6 letter or to grant any of the reliefs sought, except that the 4th respondent was given liberty to consider whether the petitioner may be accommodated in a seat in some other quota, provided she is eligible. Brief facts necessary to be noticed for considering this appeal are as under.

3. The appellant/writ petitioner submitted an application for admission to BDS course in the Non Resident Indian ("NRI" for short) quota. She was sponsored by her sister's husband who is working abroad. The petitioner was granted admission and started attending classes. The College authorities issued Ext.P6 letter informing the petitioner that the sponsorship offered by her brother-in-law is not permissible for consideration under NRI quota as per Government Order

dated 22.05.2013. Challenging the said letter, the writ petition was filed.

4. Learned Single Judge noticing the definition of dependent in Exts.P1 and P2 held that brother-in-law is not a relative who does not come under the definition of dependent and the petitioner is not entitled to claim a seat under NRI quota. Against the judgment of learned Single Judge, this Writ Appeal was filed. The Writ Appeal was heard on 31.07.2014 and following order was passed:

"The appellant has come up with this Writ Appeal against the judgment dated 24.07.2014 in W.P.(C) No. 19154 of 2014. In the above judgment, the learned Single Judge has refused to interfere with Ext.P6 order by which the College has informed the appellant that her brother-in-law's sponsorship under the NRI category is not permissible as per the definition contained in the Government Order GO(MS) No. 193/2013/H&FWD dated 22.05.2013. Appellant's case is that she had already been admitted and her name is included in the list of NRIs and has completed her course for the academic year 2013-14. The examinations are to be commenced with effect from 01.08.2014.

2. The learned counsel for the appellant submits that had the appellant given an opportunity, the error in the sponsorship would have been rectified thus made her eligible for the category as per the Government Order cited above.

3. In view of the above facts and circumstances, we direct that the appellant shall be provisionally permitted to appear in the BDS examinations commencing from 01.08.2014. In the meantime the appellant shall produce proper sponsorship details before the second respondent as per the Government Order dated 22.05.2013 cited above. The appellant shall furnish all necessary details pertaining to the sponsorship and complete other formalities within four weeks."

By the above order, the appellant, who had already completed one year studies, was permitted to appear provisionally in the examination commencing from 01.08.2014. The appellant was also permitted to submit proper sponsorship details before the 2nd respondent as per the Government Order dated 22.05.2013. After the order of this Court, another sponsorship letter has been submitted by the appellant which has been brought on record along with the reply statement. It is not disputed before us by either of the parties that the sponsorship now offered does not come under the definition of dependent in Ext.P2.

5. Learned counsel appearing for 2nd respondent submitted that the appellant was not eligible for admission since she was not sponsored by any of the relatives as contemplated by Exts.P1 and P2. It is further submitted that the details of NRI quota admissions were received belatedly hence the 2nd respondent Committee could not issue necessary instructions earlier. It is submitted that the College authorities cannot be permitted to take admissions of those candidates who were not eligible as per the terms and conditions.

6. Learned counsel appearing for 4th respondent submitted that no such

restrictions regarding definition of dependent can be imposed by Exts.P1 and P2. He submits that under Section 2 of Act 19 of 2006, no such restriction is envisaged. Learned counsel for the appellant submits that the appellant has completed one year and has also appeared for the examination and sponsorship defect has already been removed. Hence appellant may be allowed to continue.

7. We have considered the submissions of learned counsel appearing for the parties and perused the record. There cannot be any dispute that admission should be completed before the date fixed for completion of the admission and documents cannot be accepted after the cut off date for admission. The College is also required to submit the details of admission as per the instructions of the University. The submission raised before us by the 2nd respondent that information is also to be submitted before 2nd respondent by the College. This is disputed by learned counsel for the 4th respondent. Learned counsel for the 4th respondent submits that all informations have been sent to the University as well as to the Dental Council. Be that as it may, it is not necessary for us to consider that issue.

8. Since the fact that the defect in sponsorship has been removed, and the last date for admission was over way back in 2013 and also since the appellant has been continuing the studies for an year, it is not proper to throw out the appellant from the course after completion of one year and also after writing the examination. The sponsorship submitted earlier as per the Government Order was a debatable issue but now even as per the counsel for the respondent, the sponsorship given is under orders of this Court and well within Ext.P2 Government Order.

We leave the issue as it is, holding that the appellant, for the purpose of this case, is allowed to continue the course. However, this shall not be treated as a precedent in any other matter. The judgment of learned Single Judge is modified.

Accordingly the Writ Appeal is disposed of.