

(2013) 07 KL CK 0130

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 12537 of 2013 (N)

Fathima Memorial Educational Trust

APPELLANT

Vs

The University of Kerala and The Commissioner for Entrance
Examination Housing Board Building

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 30(1)

Citation : (2013) 07 KL CK 0130

Hon'ble Judges : K.M. Joseph, J;A. Hariprasad, J

Bench : Division Bench

Advocate : M.R. Anison, Smt. K.P. Geetha Mani and Smt. P.A. Rinusa, for the Appellant; George Poonthottam, SC, Kerala Uty., for R1 and Shri M.K. Aboobacker, Sr. Government Pleader for R2, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—Petitioner has approached this Court seeking the following relief:

a) to issue a writ of certiorari or other appropriate writ order or direction to quash Ext. P12 order to the extent of not considering petitioner's application for affiliation of permanent enhancement of 60 seats in B.Tech. Mechanical Engineering course in the Younus College of Engineering & Technology, Vadakkevila, Kollam as sanctioned by the AICTE as per Exts. P2 and P3 orders, as violative of petitioner's fundamental right under Article 30(1) and 14 and 19(1)(g) of the Constitution;

b) to issue a writ of mandamus or other appropriate writ, order or direction directing the University to grant affiliation to the additional intake of 60 seats in B.Tech Mechanical Engineering course in the Younus College of Engineering and Technology, Vadakkevila, Kollam during the Academic Year 2013-2014 based on Exts. P2 and P3 orders issued by the AICTE;

c) to issue a writ of mandamus or other appropriate writ order or direction

directing the 2nd respondent to allot seats to the petitioners college for admission to 50% of the additional intake of 60 seats in B.Tech Mechanical Engineering course sanctioned by the AICTE as per Exts. P2 and P3 orders during the year 2013-2014, so as to enable the petitioner to admit those students to the above course during the Academic Year 2013-14 itself;

Briefly put, the case of the petitioner is as follows: Petitioner is a charitable trust running various educational institutions including Younus College of Engineering and Technology which was started in the year 2002 and other institutions which are mentioned in the petition. Ext. P1 certificate shows that it was conferred with the minority status by the National Commission for Minority Community. The Engineering College is a self financing institution. There is very high demand in every year for admission to Civil and Mechanical Engineering. Ext. P2 evidences sanction given by the AICTE for additional batch of 60 students each in Civil and Mechanical Engineering. During 2012-2013 and 2013-2014 also vide Ext. P3 AICTE has sanctioned 120 seats in civil and Mechanical Engineering course. Petitioner submitted application dated 27.08.2011 before the 1st respondent University seeking affiliation for starting additional batch during the year 2012-2013. 1st respondent University rejected it by Ext. P4 stating that considering the statistics of engineering education additional increase in seats for B.Tech. degree course may not be granted. Petitioner has filed W.P. (C) No. 4084 of 2012 challenging Ext. P4 order. During the pendency of the said writ petition, a letter of consent was issued by the 1st respondent University on 08.06.2012 to start additional batch of Mechanical Engineering for 60 students during 2012-2013 vide Ext. P5. Ext. P6 is a Government Order granting administrative sanction for execution of the agreement for the increase in intake in B.Tech. Mechanical Engineering for the year 2012-2013. Ext. P7 is a Government Order by which NOC for increase in the intake in the existing B.Tech. Mechanical Engineering Course from 60 to 120 students was granted for 2012-2013. Ext. P8 is another order recording the submission of the University that the University will consider the affiliation in respect of additional course in Mechanical Engineering in accordance with the law. Ext. P9 is a Government Order issued during the academic year 2012-2013 providing for guidelines for extension of approval, sanction of new course and increase intake in Engineering Courses. Ext. P10 is yet another order by which the guidelines were relaxed. Ext. P11 is a chart showing the number of students who were passed out from the College in B.Tech. Mechanical Engineering course during the preceding three years and it shows that the pass percentage is between 46 to 59%. In paragraph 15 of the petition it is inter alia stated as follows:

Even though, Ext. P8 interim order was passed by this Hon'ble Court way back on 09.07.2012 directing the University to take a decision in the matter, it is only on 15.05.2013 the 1st respondent issued an order giving affiliation for additional intake of 60 students in B.Tech Civil Engineering, and rejecting affiliation to additional intake of 60 students in B.Tech Mechanical Engineering course in the above college.

Ext. P12 order is produced. The Apex Court has fixed time schedule which is referred to in Ext. P13.

2. The 1st respondent University has filed a counter affidavit. Therein it is inter alia stated that since pass percentage of B.Tech. Mechanical Engineering Course was only 27.14%, additional batch for the same is not granted. There are other allegations which we will refer to in the course of time as they have been reiterated by the counsel.

3. Petitioner has filed a reply producing Exts. P14 to P17. Therein it is inter alia stated that the statements in paragraphs 6 and 7 of the counter affidavit are not fully correct and is hereby denied. The statement in paragraph 7 that the pass percentage of B.Tech. Civil Engineering and that of Mechanical Engineering in petitioner's college during 2011 is 41.94% and 27.14% respectively is not factually correct. The pass percentage of B.Tech. Civil and Mechanical Engineering for the year 2011 is 41.94% and 59.42% respectively.

4. The 2nd respondent has also filed a statement wherein it is inter alia stated that in view of the calender, only 60 students for B.Tech. Mech Engineering Course are included for centralized allotment process during the year 2013-2014 by the 2nd respondent.

5. We heard the learned Senior Counsel Smt. V.P. Seemandini for petitioners, learned counsel appearing on behalf of the 1st respondent University and the learned Senior Government Pleader.

6. Learned Senior Counsel for the petitioner would submit that the reason given in Ext. P12 that the petitioner's institution has not satisfied the criteria fixed by the University regarding the pass percentage cannot be accepted. She would point out that the requirement in Ext. P9 has been fulfilled by the petitioner's institution. She would also point out that in fact in Ext. P10 it is stated that extension of approval will be given to all existing self financing institutions for the years 2013-2014 and 2014-2015. Learned Senior Counsel reiterates her arguments with reference to Ext. P11 chart showing that for the 8th semester, for the year 2010 the percentage of pass is 51.72, for the year 2011 the percentage of pass is 59.42 and for the year 2012 it is 41.79.

7. The case of the University appears to be that there is suppression of material facts. It is pointed out with reference to what is stated in paragraph 15 of the writ petition which we are extracted that the actual set of facts have been set out in the counter affidavit, viz., that pursuant to the interim order of this Court, the Syndicate considered the request for affiliation for additional batch in respect of B.Tech. Civil Engineering though the direction was to consider affiliation of additional batch in respect of B.Tech. Mechanical Engineering. Vide Ext. R1(a) decision the petitioner was informed that approved proposal need not be agreed to for additional batch in B.Tech. Civil and Mechanical Engineering. Alleging disobedience the petitioner instituted Con. Case (C) No. 1890 of 2012 to which the University filed counter affidavit narrating the correct facts and also

producing Ext. R1(a) order. Ext. R1(b) shows that this Court closed the contempt of court case. Thereafter petitioner represented for reconsidering of the application for affiliation with a note from the Minister of Education to the Vice Chancellor to the effect that the matter may be placed before the Syndicate and to take a decision taking into account all the plus points. It was pursuant to the same that the Syndicate considered the request and finding that the pass percentage of B.Tech. Civil Engineering for the year 2011 which was not available at the time of considering the original application on 03.11.2012 was 41.94%, an additional batch was granted for B.Tech. Civil Engineering. As far as B.Tech. Mechanical Engineering is concerned, the pass percentage is only 27.14% and an additional batch for the same was not granted. Learned counsel for the 1st respondent University also drew our attention to the judgment of the Apex Court in K.D. Sharma Vs. Steel Authority of India Ltd. and Others, for the proposition that if there is suppression of material facts the court may not grant discretionary reliefs and the court may not even examine the merit of the matter. Learned counsel also further drew our attention to the judgment of the Apex Court reported in Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others, wherein it is pointed out that the last date by which University should grant affiliation is 15th May every year. According to the learned counsel for the University, there is a decision taken by the University providing that if the students who have started the course do not disclose at the end of the course the pass percentage of 40%, the request for affiliation of additional batch need not be granted.

8. Learned Senior Government Pleader would also reiterate that affiliation cannot be granted beyond 15th May and also drew our attention to Ext. P13.

9. Learned Senior Counsel for the petitioner took exception to the stand of the University in relying on the decision of the University which has not seen the light of the day. She points out that Ext. P12 itself is passed on 15.05.2013 and it is therefore, that the petitioner was constrained to approach this Court on 20.05.2013. It is further pointed out that the earlier writ petition was pending in which Ext. P8 order was passed pursuant to which the University had taken the decision. She would also submit that there is no suppression of facts as such. According to the learned Senior Counsel, after filing of the contempt of court case, Ext. R1(a) order was passed and then finding that the proper remedy for the petitioner is to challenge the order, since Ext. R1(a) did not disclose any reason Ext. P14 representation was given to the Pro Chancellor. It was pursuant to the same approval was given for B.Tech. Civil Engineering additional batch while it was refused for B.Tech. Mechanical Engineering. It is pointed out that Ext. P12 is issued on the last day mentioned by the Apex Court. It is further pointed out that the alleged University order is not produced which appears to be the basis of the University's case.

10. Learned counsel for the University is not in a position to dispute that the petitioner college essentially fulfills the criteria indicated in Exts. P9 and P10. But

the further question to be considered is whether the University can be directed to give affiliation in view of the stand of the University that the University has its own criteria that there should be a pass percentage for the whole course not less than 40%. The University or the examining body certainly have a discretion in the matter of granting affiliation in the sense that it is a body which is primarily concerned with the maintenance of the academic standards. We cannot entirely ignore the alarming fact that there has been a fall in academic standards in institutions of technical education which has been touched upon by this Court which ultimately led to the Government Orders (Exts. P9 and P10) being passed. It is no doubt true that the learned Senior Counsel for the petitioner would point out that if one goes by Exts. P9 and P10, the petitioner's institution may be entitled to affiliation. Therefore, testing the case on the anvil of Exts. P9 and P10, it can be said that the petitioner is entitled to affiliation.

Learned Senior Counsel pointed out that for all the colleges they have applied the yardsticks enunciated in Exts. P9 and P10 and singled out the college of the petitioner.

We may also notice that the University has applied the standard when they came to approve the additional batch for B.Tech. Civil Engineering and petitioner has got the advantage of affiliation in B.Tech. Civil Engineering for additional batch. It is by applying the very same yardstick petitioner is denied the benefit of affiliation for B.Tech. Mechanical Engineering. Further more and more importantly may be, we are not in a position to overlook the time table fixed by the Apex Court. It may be true that the Apex Court does not say that it will not be open to the courts to interfere with the time table as such. But, nonetheless it is a time table meant to be observed by the authorities. If we interfere with the matter, it would certainly affect the time table. The Apex Court has no doubt in *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, stated that if it is a palpable illegality the court may not be helpless. We have in the facts of the case already noted that though going by Exts. P9 and P10 petitioner does satisfy the criteria, we cannot but say that the University is the ultimate authority in the matter of grant of affiliation and when the question of academic standards is a germane consideration, the percentage of 27% clearly falls short of 40%. At any rate, we may not be justified in holding that it is a case of palpable illegality though in terms of Exts. P9 and P10 it could be said to be an illegality. Petitioner has a case that it cannot be blamed for the pass percentage of little over 27% as it was allotted with the students whose efforts apparently did not result despite the efforts of the college in there being the required pass percentage. In the circumstances of the case, we are not inclined to interfere and we dismiss the writ petition.