
(1996) 10 KL CK 0065
In the High Court Of Kerala
Case No : O.P. No. 14167 of 1996

Irshad Mohamed Ali

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Citation : (1996) 2 KLJ 696

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : A.A. Abdul Hassan, for the Appellant; N. Haridas and N. James Koshy, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The petitioner is a student of the 3rd respondent Engineering College from the year 1995-96. He has filed the above Original Petition for a direction to the Principal of the said College to issue the transfer certificate. The petitioner joined the Sree Chitra Thirunal College of Engineering, which is a self financing Engineering College established by Kerala State Road Transport Corporation. The College was started in the year 1995 under the self financing education scheme. The college offered 50% of the seats as free seats on merits and the remaining seats are payment seats also on the basis of merit list. The petitioner joined the course for the Computer Science and Engineering Course under payment seat quota. The entire fees for the first year, namely, Rs. 46,800/- should be remitted at the time of admission in lump sum and that for the subsequent years at the commencement of 3rd, 5th and 7th semesters as the case may be. The petitioner remitted an amount of Rs. 48,350/-.

2. According to the petitioner, he was not interested in continuing the studies in Engineering. Therefore he appeared for the common entrance examination for admission to agricultural courses for the year 1996-97 and he was successful in getting a seat for B.Sc. Agricultural course. As the 2nd respondent, Registrar, Kerala Agricultural University, required him to produce the transfer certificate, he

approached the 3rd respondent for it, But the 3rd respondent declined to issue the transfer certificate unless the petitioner pays the entire fees for the course. The petitioner claiming that the denial of issuance of transfer certificate is arbitrary and illegal has preferred the above Original Petition.

3. The 3rd respondent has filed a statement. According to them, the petitioner was aware that under payment seat category he is liable to pay the entire fees for the whole course. Their College is a self financing Engineering College and all the expenditure are met from the income generated by way of fees collected from the students. If any student leaves the course at the close of admission in the first year or in the subsequent years, the seat will remain unfilled for the remaining years of the course which will cause heavy financial loss to the college, wasting a valuable seat in the Computer Science. The Sub Committee in their 9th Meeting held on 6-8-1996 decided that the transfer certificate would be issued to those who leave the institution in the middle of the course only after levying the tuition fees for the remaining years. The petitioner was informed when he approached the authority that he has to pay the remaining fees for issuance of the transfer certificate. Learned counsel on behalf of the 3rd respondent submitted that they have not committed any violation of any provision of law whereas the Supreme Court in the decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., enables them to collect the entire fees under the payment category.

4. I have heard counsel for the petitioner as well as for the 3rd respondent.

5. The self financing education of Professional Colleges was brought under a scheme by the Supreme Court in Unni Krishnan's case. The Supreme Court recognised the right to establish an educational institution, but held that it should be subject to such laws as may be made by the State in the interest of the public. The Supreme Court was also evolved a scheme which every authority granting recognition/affiliation shall impose upon the institutions seeking such recognition/affiliation. The Supreme Court also made it clear that it is highly desirable if the scheme is given a statutory shape by incorporating it in the Rules that may be framed under these enactments.

6. It is an admitted fact that the 3rd respondent started the institution in the year 1995 under the self financing scheme. The college got the affiliation from the All India Institute of Technical Education in the year 1995. The parties are unable to furnish to the court the regulation of AICTE. In any case the professional Colleges have come to be established after the scheme framed by the Supreme Court and are bound by it. Learned counsel for the petitioner submits that the college will not come under the scheme since it is a Government College. Hence the first question that arise for consideration is whether the 3rd respondent college comes under the scheme framed by the Supreme Court. The scheme applies to all the professional colleges. The expression professional colleges as defined under the scheme will include the colleges imparting Computer Science. Those institutions which seek permission to establish and/or

recognition and/or affiliation from the appropriate authority shall be made bound by this scheme. The 3rd respondent-college is neither a Government nor a University college.

7. The Supreme Court was of the view that the States have recognised the necessity of charging higher fees by private educational institutions. They seek to regulate the fees that can be charged by them, which may be called permitted fees and to bar them from collecting anything other than the permitted fees, called capitation fees. The scheme has recognised the right of educational institutions to collect the permitted fees. As per Clause (5) of the scheme every professional college shall intimate the competent authority, the State Government and the concerned University in advance the fees chargeable for the entire course commencing that academic year. The total fees shall be divided into the number of years/semesters of study in that course. In the first instance, fees only for the first year/semester shall be collected. The payment students will be, however, required to furnish either cash security or bank guarantee for the fees payable for the remaining years/semesters. Thus the scheme makes it clear that professional colleges are entitled to collect fees for the entire course, but it shall be divided into the number of semesters of study in that course.

8. The Supreme Court while permitting the collection of permitted fees eliminated the discretion in the matter of admission. Thus the permitted fees under the payment category has to be paid by the candidate on admission. But the Supreme Court enables the students to pay the fees in the instalments and furnish cash security or bank guarantee for the remaining years. Thus the institutions are guaranteed of the payment for the course. The underlying principle of the payment seat is that the educational institution must be allowed to sustain themselves from the fees collected from the 50% of the students who are capable of paying the fees required. That means if there are no payment seats, there is no scope for self financing institutions. If students admitted in payment category are permitted to leave the institution in the middle without paying the permitted fees then it would be defeating the scheme of self financing educational institutions. The scheme is intended to curb the collection of capitation fees or donations even before admission. The scheme recognises the payment of permitted fees in instalments. The relevant extract of the prospectus of the 3rd respondent is the follows:

5. Fees.

5.1 Free Seats: as prescribed for the Government Engineering Colleges.

Payment Seats: Tuition fees is Rs. 46,800/- per annum (payable annually only) and the other fees charged will be the same as that for free seats.

5.2: The entire fees for the first year should be remitted at the time of admission in lump and that for the subsequent years of the commencement of 3rd, 5th and 7th semesters as the case may be. Exact dates for remittance of fee will be notified by the Principal at the appropriate time. Those who fail to remit the fees

on the stipulated dates will be removed from the rolls without further notice.

9. The expressions free seats and payment seats are explained by the Supreme Court in paragraph 2 of the scheme. At least, 50% of the seats in every professional college shall be filled by the nominees of the Government or University, as the case may be, hereinafter referred to as free seats. These students will be selected on the basis of merit by common entrance examination. The remaining 50% seats (payment seats") shall be filled by those candidates who are prepared to pay the fee prescribed therefor and who have complied with the instructions regarding deposit and furnishing of cash security/bank guarantee for the balance of the amount.

10. Therefore, the word "payment seat" presupposes that the petitioner applying for under the category will be prepared to pay the entire charges for the course. On a reading of clause (2) and Clause (5) of the scheme I find, no doubt, as to the obligation to pay the entire amount. That apart clause 11 of the prospectus also says that even if anything has not been specifically covered by these clauses, the Managing Committee is entitled to take a decision in reference to that uncovered matter. In this case the Managing Committee has also taken a decision to the effect that no transfer certificate can be issued to the students under payment category, who leaves the college in the middle of the course unless he pays the tuition fees for the remaining course of study.

11. In *I.H.R.D. v. Rameshkumar* (1995 (2) KLT 331) the Supreme Court held that the entire scheme approved in *Unni Krishnan's* case was designed for private educational institutions only. In that case the Supreme Court was dealing with the two colleges, one started by the Institute of Human Resources Development for Electronics and the other by Lal Bahadur Sastri Engineering Research and Consultancy Centre as self financing institutions by two societies under the control of Government of Kerala. The question posed before the Supreme Court was whether the scheme framed in the *Unni Krishnan's* case would apply to these colleges. These two colleges were considered as self financing colleges started by the Government of Kerala. The Supreme Court approved the scheme of administration of a college with its modifications holding that the scheme as proposed broadly meets the aims and objectives propounded in *Unni Krishnan's* case. According to Supreme Court even if the Government controls the colleges for colleges started under the self financing scheme, the principles set out in *Unni Krishnan's* case would be the guiding factor. Therefore there is no merit in the contention that since the college is run by a Corporation controlled by the Government, the principles set out in *Unni Krishnan's* case would not apply. From the two decisions cited above it is clear that whether it is a Government or a private college, if it is, a college coming under and approved as self financing college under which seats are allotted on the basis of free and payment seats, the principle would have to be applied. In fact the control by the State should be considered as a plus point in the light of the consideration which moved the Supreme Court in *Unni Krishnan's* case to safeguard against the

commercialisation and exploitation as observed by the Supreme Court in the later case. At the same time the institution which is based on a self financing scheme should be protected or else the whole concept under which the institution had been established would be defeated.

12. Learned counsel for the petitioner referred to a decision of this Court in O.P. No. 14148 of 1995 contending that under similar circumstances a direction was made to issue the transfer certificate. The facts of that case is entirely different. In that case the petitioner got admission in MES. College of Engineering in the year 1994-95 which is a private self financing college. In the next year the petitioner got admission in Trichur Engineering College which is a Government Engineering College and he sought the issue of transfer certificate. Following the principles set out in clause 7 of the scheme in Unni Krishnan's case learned Judge directed the issue of the certificate. Clause 7 enables a candidate to choose any of the three colleges under the payment category. If he is admitted in any one of the three colleges and complied with the deposit and cash security/bank guarantee and thereafter if he gets admission in one of the three other colleges where the fee charges is less is entitled to get the transfer and the difference of amount shall be refunded to him. This principle is enunciated for enabling the students to join under payment category institution which is charging the less fee. The case before us is entirely different. There is no adjustment sought for. The petitioner wants to join from Engineering to Agriculture. Petitioner goes from a self financing institution to Government College where there is no payment of deposit and cash security/bank guarantee. Besides learned Judges attention was not drawn to the import of clauses (2) and (5) of Unni Krishnan's scheme and the subsequent decision of the Supreme Court in I.H.R.D. v. Rameshkumar (1995 (2) KLT 331). The question whether clause (7) can be applied to the 2nd year also was not considered. Hence the judgment will not apply to the facts of the case.

13. The reference to the provision of transfer certificate under Kerala University First Ordinances, 1978, also will not enable the petitioner to get a transfer since this regulation cannot apply to the case of self financing institution. When these regulations were made, there was no such scheme. These institutions are governed by the self financing institutions scheme. Therefore, if the provisions for getting transfer certificate are read along with the scheme, there cannot be automatic right to a student for a T.C. without a corresponding obligation to pay the remaining fees. For all these reasons stated above I hold that the 3rd respondent college is entitled to demand the payment of the entire fees for the course before transfer certificate is issued. The petitioner who has got admission under the payment category is bound by the prospectus and scheme. As a matter of fact the institution was entitled to take bank guarantee even at the time of admission stage. It would be defeating the scheme of self financing if the petitioner is permitted to leave the course in the middle without complying with the obligation for undertaking to pay the expenses for the course.

In the above circumstances, the prayer of the petitioner is rejected and the Original Petition is dismissed.