
(2015) 01 KL CK 0171

In the High Court Of Kerala

Case No : Writ Petition (C). No. 11732 of 2012 (N)

Jijo Mathew

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0171

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Jacob P. Alex and Joseph P. Alex, for the Appellant; Bechu Kurian Thomas, S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioner seeks to sustain the admission to the B.Tech Course in Engineering, which he obtained by way of his ranking in the common entrance test, conducted by the 3rd respondent. The University, however, challenges the admission on the ground of non-eligibility of the petitioner as per the prospectus. The prospectus for admission to the professional degree course 2011 produced at Ext.P4 was the basis on which the petitioner applied for admission to the professional degree in engineering.

2. The stipulation with respect to the minimum eligibility criteria is available in Clause 6.2.2(a) of Ext.P4.

"candidates who have passed Higher Secondary Examination, Kerala, or Examinations recognized as equivalent thereto, with 50% marks in Mathematics separately, and 50% marks in Mathematics, Physics and Chemistry/Computer Science/Bio-technology/Biology put together are eligible for admission."

Admittedly, the petitioner did not have 50% marks in Mathematics.

3. The petitioner would seek to sustain his admission on the basis of his performance in the entrance test, in which he has placed sufficiently high in the

ranking to obtain allotment by the Commissioner of Entrance Examinations. The petitioner would also contend that there is an anomaly in the prospectus, which has been clarified by a later amendment in the year 2014, specifically provided by way of a "Note" that the two year Kerala Higher Secondary course or examinations would be reckoned for eligibility, on the basis of the total marks of the two years, in the marklists of the respective higher secondary Boards. The petitioner had 50% in the 12th year and hence by reason of there being no clarification as was issued in the year 2014; he had competed under the prospectus of 2011. Subsequently the Government come out with a drastic change in the eligibility criteria in the year 2013, by which even students having 45% in Mathematics were considered as eligible for admission to the Engineering Course as per Ext.P6, is the further plea.

4. The Standing Counsel for the University, however, asserts that the petitioner not being eligible for admission, to the professional course, as per the prospectus, as it existed then, could not fall back upon imagined anomalies to sustain the admission. It is also specifically pointed out that the mark list of the petitioner produced at Ext.P7 would definitely indicate that the higher secondary qualification, obtained by the petitioner in the year 2011, took into account the marks of both the years, ie., 11th and 12th divisions. The petitioner does not have 50% in Mathematics, when the marks of both divisions are taken together. It is also submitted that the Principals of the Colleges, to which admissions are sought, on the basis of the allotment; are obliged to verify the eligibility before admissions are made. Allotment as such confers no right on a student to seek admission; in the absence of eligibility.

5. The petitioner was continued in the course on the basis of the interim order obtained from this Court. The petitioner is said to have completed four years, total of eight semesters and appeared in the examinations of seven semesters. The continuance of the petitioner as also participation in the examination was provisional, as per the interim order and the petitioner cannot claim equity on the basis of the continuance or participation in examinations.

6. The learned Government Pleader also supports the stance of the University. The counter affidavit filed by the 3rd respondent also specifically indicates that the eligibility conditions are not verified by the Controller of Entrance Examination. It is specifically averred that since even the student appearing for the qualifying examination is entitled to apply for the entrance examinations, the academic eligibility is not verified by the Controller. Even as per the prospectus, by Clause 11.7.2, the verification is the responsibility of the Principal of the College to which the allotment is made.

7. The anomaly in the prospectus of 2011 is projected by the petitioner with reference to the eligibility conditions in other entrance examinations and the subsequent changes brought to the prospectus by Government of Kerala itself in the subsequent years. At the outset it has to be held that the petitioner has not challenged the stipulation in the prospectus and no arbitrariness can be alleged

on the basis of stipulations made by other academic bodies. The mere fact that the IIT/JEE examinations provide for reckoning of the marks of 12th standard alone would not absolve a student appearing in the entrance examinations conducted by the Government of Kerala to seek for similar eligibility conditions to be applied in the State entrance examinations also. Different academic bodies are entitled to make different stipulations of minimum eligibility, to carry on courses, within the institutions affiliated to such academic bodies. Herein the Government of Kerala has brought out the prospectus for holding the entrance examinations to the professional courses in various institutions within the State of Kerala affiliated to different Universities within the State.

8. As to the qualification issue in the year 2013, true, there was a specific "Note" which indicated that the marks reckoned to consider the eligibility would be inclusive of both the years. The stipulation with respect to 50% minimum in Mathematics separately, was also diluted insofar as even persons who had a separate minimum of 45% in Mathematics, were eligible provided they had a minimum of 60% in Mathematics and Physics together.

9. The anomaly pointed out by the petitioner is insofar as such a Note being not available in the prospectus of 2011. The Note definitely supplied more clarity to the reckoning of marks. However, merely because a Note was supplied in the subsequent year for more clarity, it cannot be said that there exist an anomaly in the earlier prospectus. Prospectus of 2011 also specified 50% marks aggregate in Mathematics separately in the higher secondary examination of Kerala. The higher secondary examination certificate issued by the Board of Higher Secondary Examinations of the Government of Kerala, to the petitioner is produced as Ext.P7. The grading obtained in such higher secondary examination is on the basis of the grand total for the 1st and 2nd years, i.e., the 11th and 12th divisions. Two arms of the very same government issues the certificate and conducts entrance examinations. The certificate issued reckons both the years for grading and hence, the stipulation in the prospectus that 50% separate minimum should be obtained, can only be understood as 50%, minimum in both the years together. This Court does not find any anomaly in the prospectus of 2011. The eligibility conditions are crystal clear.

10. The changes made in the subsequent years also would not be relevant. A student's admission in violation of the stipulation of the prospectus, as to the eligibility conditions of the year, cannot be regularised, if the eligibility conditions are watered down in the subsequent year. Many factors would have governed such decision of the Government. Merely on the basis of a subsequent alteration, an irregular admission cannot be regularised; against the eligibility norms of that year.

11. The petitioner, if he had applied in the year 2014 would have satisfied the threshold eligibility conditions, since he had 45% marks, stipulated in Mathematics and had also 60% aggregate marks in Physics and Chemistry for both the years. The petitioner could have very well appeared in the said entrance

examination, but cannot on the basis of the eligibility criteria prescribed in that examination seek regularisation of an irregular admission. The petitioner is equipped to raise such a contention only since he had been continued provisionally by virtue of the interim order; without which he would have been thrown out in the first year itself.

12. The verification of eligibility conditions is a crucial aspect to decide the question raised herein, since the petitioner would blame the authorities for not having verified his eligibility and permitted him to be admitted to the course. At the outset, petitioner having applied with open eyes as against the stipulation in a prospectus, cannot turn around and blame the authorities for lack of verification. This is especially so in the circumstances of allotment, evident from the affidavit of the Commissioner of Entrance Examinations and the University. The Commissioner has specifically averred that no verification of eligibility conditions is done at the threshold stage of processing of the applications for entrance examinations. This is so, since even candidates appearing for the qualifying examinations are entitled to apply and appear in such examinations. Hence, there could be no fault imputed on the Commissioner for permitting the petitioner to appear in the entrance examination and for having allotted him on the basis of the rank obtained therein.

13. The next authority is the Principal of the College, who, as asserted by the University and the Commissioner, has the responsibility of verifying the eligibility conditions. Obviously, the second respondent has not done it properly. A default committed by the 2nd respondent cannot be condoned to permit an otherwise ineligible student, to be continued. Herein the student too was aware of his ineligibility and his complicity in the irregular admission cannot be discounted.

14. The verification by the University comes at a later stage. The prospectus by clause 11.7.2 requires verification within 10 days of the allotment. University, however, expresses inability to carry out such verification since vast number of admissions are made to the various professional colleges, at the commencement of an academic year. However, even in this case, the verification was made by the University, at the first instance, when examinations were scheduled and the petitioner was informed of his ineligibility, at the first instance itself.

15. The petitioner chose to challenge such eligibility by way of the present writ petition and took the risk of continuing in the course on the basis of an interim order obtained in the writ petition. The interim order made the continuance provisional and the petitioner appeared for the examination in the subsequent semesters, on the basis of such interim order, the results of which were not published. No equity can be claimed by the petitioner since the petitioner opted to continue in the course when the matter was pending before this Court. Misplaced sympathies cannot govern the decision when the question of threshold eligibility is up for consideration. *K.S. Bhoir Vs. State of Maharashtra and Others*, AIR 2002 SC 444 : (2001) 10 JT 445 : (2001) 8 SCALE 456 : (2001) 10 SCC 264 : (2002) 1 SCT 499 : (2001) AIRSCW 5055 : (2001) 8 Supreme 627

16. The learned counsel for the petitioner however, fervently pleads that the mere fact of a student not obtaining 50%, in a qualifying examination would not necessarily be a criteria of his ability. But, then, the academic body has to stipulate certain minimum eligibility conditions, and circumstances fortuitous or otherwise may govern the destinies of individuals. That fact of life cannot be applied as a rule of law and it would not be proper for this Court to meddle with an otherwise reasonable stipulation or to alter such conditions for a particular student. In any event, considering the very persuasive plea of the learned counsel, this Court directed the University to produce the marklist of the petitioner for various semesters which the petitioner had participated, on the strength of the interim order, the results of which have not been published. The University has produced the said mark lists of the semesters 1 to 7. Suffice it to say, this Court is not satisfied with the petitioner's eligibility, as evident from the results produced in sealed cover.

Writ petition would stand dismissed. Costs to be borne by respective parties.