

(2019) 05 KL CK 0075

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 14156 Of 2019

Jisin Jijo

APPELLANT

Vs

A .P.J.Abdul Kalam

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2019) 05 KL CK 0075

Hon'ble Judges : P.V.Asha, J

Bench : Single Bench

Advocate : A.C.Devasia, Anoop.V.Nair, M.S.Sandeep Sudhakaran, P.Ravindran, Elvin Peter

Final Decision : Disposed Off

Judgement

1. The petitioners in both these cases are students who completed 2nd semester/4th semester of Engineering Degree Course in various branches including Mechanical Engineering/Computer Science Engineering/Civil Engineering/Electronics and Communication Engineering in the Cochin Institute of Science and Technology, Mannathur (hereinafter referred to as 'the College'), which is a self financing college affiliated to the APJ Abdul Kalam Technical University of Kerala (hereinafter referred to as 'the University'). All of them are aggrieved by the refusal on the part of the Principal to recommend their application for inter college transfer to other Self Financing Colleges. In the case of the petitioner in W.P(c).No.14156/2019 it is stated that his application is already rejected after filing the Writ Petition. All the petitioners are students who got admission in the college in the management quota in the year 2017-18/2018-19. The parties and documents referred to in this judgment are as described in W.P.(C). No.14547 of 2019 unless otherwise specified.

2. The petitioners submit that the college has miserably failed to provide the amenities; most of the teaching staff resigned from the college on account of the non payment of salary; teaching and non teaching staff were on continuous

strike for 3 months; the teaching faculties are not qualified for teaching Engineering students; the Lab is not properly functioning for want of Lab Attendants; several of modules are yet to be completed; there is no Principal, Public Relations Officer or Administrative Officer in the college; there is no warden for both men's hostel and women's hostel; no security staff; no proper supply of electricity or food to the hostelites; transportation facilities are interrupted, etc. In these circumstances, it is stated that the petitioners found it difficult to continue the course in the college as it would affect their future adversely. As per Ext.P1 norms notified by the University, intercollege transfer is permissible between self financing colleges before the commencement of 3rd and 5th semester. Therefore, they submitted applications before the Principal. Following are the relevant provisions in Ext.P1 norms as far as the issue raised in these Writ Petitions are concerned:

"Norms for Inter College Transfer (B.Tech/B.Arch) (Revised)

1. The following Category of students are not eligible for intercollege transfer.

a. Govt. of India nominee

b. Management Quota in Aided Colleges

c. Any other category which are ineligible as per the conditions for admission prescribed by Govt. of Kerala/Govt. Of India.

5. The Transfer shall be permitted

(i) Between Govt./Govt.Aided Colleges.

(ii) Govt. and Govt. Aided colleges to self-financing colleges.

(iii) Between Self-financing colleges. (Including Govt. controlled)

6. Notification inviting application for Inter College Transfer will be issued by the University during the Second semester/Fourth semester.

Xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

10. The request for the transfer shall be submitted to the college in which the transfer is sought with the recommendation of the Principal of the college in which the student is currently studying."

The norms provide for the following procedure for the college transfer:

"Procedure for the College Transfer (Student seeks a transfer from College A to College B)

Step 1: Submit a request for transfer to the Principal where he/she is presently studying (College A)

Step 2: The principal of college A may or may not recommend the transfer. Once recommended, the recommendation cannot be reversed and hence the Principal

of college A has to relieve the student, if the student gets the transfer to college B.

Step 3: The Principal of college B shall publish the number of students that can be admitted based on the availability of vacant seats and based on the norms published by the University.

Step 4: Principal A relieves the student if he/she is selected by college B with necessary entries in the KTU portal.

Step 5: Principal B admits the student in College B with necessary entries in the KTU portal.

Step 6: Student remits the fee to the University."

3. The petitioners submitted applications for transfer to the Principal of the College. The College has received such applications from 106 students including the petitioners on 15.05.2019, as seen from Ext.P3 acknowledgement. The University has notified Ext.P4 inter college transfer schedule for the year 2019-20 which is as follows:

"Readmission Schedule 2019-20

XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX

INTER COLLEGE TRANSFER SCHEDULE 2018-19 ODD SEMESTER (S3/S5) B.TECH & B.ARCH

Activity

Start Date

End Date

Remarks

Submission of application by students directly to the Present College.

15th May 2019

25th May 2019

Apply directly to the College. Follow the procedure given along with the norms.

Recommendation of application by the Principal of the Present College.

27th May 2019

28th May 2019

Submission of application to the Opted College

29th May 2019

4 th June 2019

Recommendation of application by the Principal of the Opted college

6 th June 2019

11th June 2019

Relieving from the present College and Joining in the Opted College

12th June 2019

15th June 2019

Last date for remitting the fees to the University

18th June 2019

Last date for uploading the details on KTU portal for approval from the University (By the College)

19th June 2019

All of them submitted applications to the Principal of the College within the time limit prescribed. The date fixed for recommendation of application by the Principal is 27th to 28th of May, 2019. It is thereafter that the application has to be submitted to the opted college between 29th May and 4th June. On recommendation by the opted college between 6th June and 11th June, the students are to get relieved from the transferee college and to join the opted college between 12.6.19 and 15.6.2019 and thereafter they have to remit the fees to the University on 18.6.2019. According to the petitioners, they were assured that the Principal would issue No Objection Certificate by 18.5.2019. As there was no action, they approached the Vice Chancellor with representations similar to Ext.P5. As per Ext.P6 representation, a guardian of a student addressed the University expressing his anxiety in allowing his ward to continue the course in the college. The Writ Petitions are filed at this stage.

4. The respondent college has filed a counter affidavit in W.P(c).No.14156 of 2019 denying all the allegations raised by the petitioner and stating that the petitioner does not have any right for inter college transfer. It is stated that the mass applications for transfer are submitted at the instigation of a former teacher of the College, who joined another Self Financing Institution after termination of his service by the college and most of the students who have submitted the applications want to join the College where that teacher is presently working. According to the college, there is no deficiency in the college and it is running in tune with the norms of AICTE as well as the University. According to them, there are no deficiencies in running of the hostel, or in providing transportation facilities, as alleged. It is stated that such mass transfers would adversely affect not only the reputation of the College but its functioning itself as the funds for its running is generated from the fees collected from the students from time to time.

5. The learned Standing Counsel for the University on instructions submits that in

view of the large number of complaints received from the students and in view of their applications for transfer from the 3rd respondent college to other self financing colleges, the University has constituted a committee to look into the same.

6. Heard M/s D.Kishore and A.C.Devasia - the learned counsel appearing for the petitioners, Sri Elvin Peter - the learned Standing Counsel appearing for the University, Sri P.Ravindran - the learned Senior Counsel instructed by Sri. Anoop V. Nair the learned Counsel appearing for the college.

7. The learned Counsel for the petitioners argued that when the petitioners do not want to continue in the College and the University permits inter-college transfer, denial of No Objection Certificate/recommendation on their applications would be derogatory to their fundamental right to education under Article 21 of the Constitution of India. According to them, the enquiry being conducted by the University would not have any impact, as the inter-college transfer is permitted only before the commencement of 3rd and 5th semesters. They also apprehend vindictive measures against them on their continuance in the College stating that such open declarations were made by the College and that such measures would adversely affect the very future and the career of all these petitioners. Sri. Kishore, the learned Counsel for the petitioners relied on the judgments of this Court in *Kottayam Institute of Technology and Science v. Admission Supervisory Committee for Professional Colleges in Kerala* : 2016(4) KHC 620 and argued that the transfer can be allowed even without the recommendation of the Principal of the College, as it is only a matter of procedure. Relying on the judgments in *Neethu v. State of Kerala*: 2019(2) KLT 129 and *Thulaseedharan Nair D v. Mohandas College of Engineering and Technology*: 2019(2) KHC 643, it was argued that the petitioners are entitled to get their certificates released for admission in another College.

8. On the other hand, Sri. P. Ravindran, the learned Senior Counsel, argued that the petitioners do not have any right for transfer and the College does not have any obligation to grant NOC or to recommend their applications, as the applications are made based on the norms issued by the University which do not have any statutory force. It is argued that the Writ Petition itself is not maintainable for enforcement of guidelines. It is also argued that even as per the norms it is open to the Principal to recommend or not and only if the application is recommended, the petitioners can further process the applications.

9. The learned Standing Counsel for the University submitted that Statutes or Ordinances are yet to be framed by the University which was established only in the year 2015 and therefore norms or orders are issued from time to time for running the affairs of the University.

10. Having heard the learned Counsel on both sides, I find that as per Clause 5 of Ext.P1 norms transfers shall be permitted between Self Financing Colleges. The petitioners do not come under the prohibited category. A Division Bench of

this Court has already interpreted clause 10 of Ext.P1 norms, in the judgment in Kottayam Institute's case (supra) and held that the recommendation envisaged in Clause 10 of Ext.P1 norms is only a matter of procedure, only to ensure that the eligibility of the applicants for promotion to 3rd semester, as prescribed in Clause 7 of the norms. In the present case, it is an admitted fact that all the petitioners have cleared examination of all the semesters. They have also remitted the requisite fees from time to time.

11. Though it was argued that the mass transfer of students would affect the running of the respondent College, I am of the considered view that compelling the students, who do not want to continue in a college, will only affect the future and career of the students. An atmosphere without room for apprehensions and conducive to carry on the studies peacefully, is essential and hence it requires paramount consideration.

Therefore, there shall be a direction to the 4th respondent - the Principal of the College, to recommend the applications of the petitioners for inter-college transfer within three days of production of this judgment so as to enable the students to process the same in accordance with the norms, notwithstanding the expiry of the last date prescribed in Ext.P4. The application of the petitioner in W.P.(C) No. 14156 of 2019 shall also be reconsidered and processed as in the case of all other petitioners. Respondents 3 and 4 shall see that the petitioners are relieved in time, releasing all the necessary documents and shall take all necessary steps so as to enable them to join the new College in time, on their selection in the new College. It is made clear that in the event of any delay on the part of the 3rd respondent, the opted Colleges would be free to act upon and process the applications submitted by the petitioners as if the applications are recommended. The delay in submission of applications in the opted Colleges shall not stand in the way of positive consideration and processing of the applications and admission in the opted Colleges. Therefore, in the circumstances of the cases, the time schedule fixed in Ext.P4 for steps 2 onwards for inter-college transfer shall stand extended by 10 days each.

The Writ Petitions are disposed of accordingly.

APPENDIX OF WP(C) 14156/2019 PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE REPRESENTATION BEFORE THE 3RD RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE INTIMATION DATED 11.5.2019 ISSUED BY THE AISAT.

EXHIBIT P3 TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE 3RD RESPONDENT ON 13.5.2019.

EXHIBIT P4 TRUE COPY OF THE NORMS FOR INTER COLLEGE TRANSFER(B TECH/ B ARCH) UNDATED ISSUED FROM KTU.

EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 19.5.2019.

EXHIBIT P6 TRUE COPY OF THE REPRESENTATION BEFORE THE 1ST RESPONDENT DATED 20.5.2019.

EXHIBIT P7 TRUE COPY OF THE RE-ADMISSION PROCESS SCHEDULE ISSUED BY THE 1ST RESPONDENT. RESPONDENTS' EXHIBITS

EXT.R3(a) TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 4.7.2017 FOR GETTING A SEAT UNDER THE MANAGEMENT QUOTA IN MECHANICAL BRANCH.

EXT.R3(b) TRUE COPY OF THE ORDER DATED 15.5.2019 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.

EXT.R3(c) TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.R3(d) TRUE COPY OF THE ORDER DATED 3.7.2015 ISSUED BY THE HIGHER EDUCATION DEPARTMENT IN RESPECT OF THE ALLOTMENT OF THE SEATS, BASED ON THE AGREEMENT BETWEEN MANAGEMENT AND THE GOVERNMENT.

EXT.R3(e) TRUE COPY OF THE RELEVANT PAGES OF THE PROSPECTUS OF THE COLLEGE.

EXT.R3(f) TRUE COPY OF THE NORMS AND PROCEDURE FOR INTER COLLEGE TRANSFER ISSUED BY THE 1ST RESPONDENT.

EXT.R3(g) TRUE COPY OF THE RELEVANT PAGES OF THE REGULATIONS 2019 (DRAFT) (CIRCULATION COPY) ISSUED BY THE 1ST RESPONDENT.

APPENDIX OF WP(C) 14547/2019 PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE NORMS OF INTER COLLEGE TRANSFER FOR B.TECH.COURSE ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE APPLICATION DATED 15.5.2019 SUBMITTED BY THE 26TH PETITIONER BEFORE THE 4TH RESPONDENT.

EXHIBIT P2 (a) TRUE COPY OF THE PROCEEDINGS DATED 9.5.2019 OF THE PRINCIPAL, BISHOP JEROME INSTITUTE.

EXHIBIT P3 TRUE COPY OF THE RECEIPT EVIDENCING THE ACCEPTANCE OF APPLICATION FOR INTER COLLEGE TRANSFER DULY ACKNOWLEDGED BY THE VICE PRINCIPAL OF THE 3RD RESPONDENT COLLEGE.

EXHIBIT P4 TRUE COPY OF THE READMISSION SCHEDULE FOR 2019-20 ISSUED BY THE 1ST RESPONDENT UNIVERSITY.

EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 20.5.2019 SUBMITTED BY THE 3RD PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P6 TRUE COPY OF THE REPRESENTATION DATED 20.5.2019 SUBMITTED

BY THE 7TH PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 25.5.2019 SUBMITTED BY THE PETITIONERS AS WELL AS OTHER STUDENTS BEFORE THE 2ND RESPONDENT.