
(1986) 06 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No's. 1930, 2191, 2264 and 2700 of 1986

K. Sunil and Others

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 05-06-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala University Act, 1974 — Section 23, 38
Kerala University Regulations, 1972 — Regulation 11

Citation : AIR 1987 Ker 24

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : S. Easwara Iyer, for the Appellant; P. Gopalakrishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—These writ petitions are filed by the students who have joined the various Engineering Colleges for the Engineering Course under the University of Kerala. Regulation 11 framed by the University insists on a pass of all subjects in Semester numbers 3 and 4 for being admitted to 7th semester. The petitioners were not able to pass all the subjects of the semesters 3 and 4. They made a plea for relaxation. That was considered favourably by the Syndicate. A resolution was passed on 26-2-1986, by which it was resolved :

"(ii) The VI Semester students who have not passed the III and IV Semesters be promoted to the VII Semester as a very special easel in relaxation of the existing Regulations."

2. Ordinarily, and without any other intervening factors, the petitioners would have been allowed to join the 7th Semester on the basis of the above decision of the Syndicate. The Vice-Chancellor of the University, however, felt that the resolution was beyond the competence of the Syndicate, and that the resolution could be treated only as of a recommendatory nature and the correct and

competent authority for dealing with such an academic matter is the Academic Council itself.

3. It may be noted that the above resolution had been passed by the Syndicate after a judgment of this Court in O. P. Nos. 269, 729, 811 and 813 of 1986 dated 12-2-1986 wherein this Court had directed the University to consider the question whether any relaxation in relation to Clause 11 of the Regulation was justified in the circumstances. The judgment upheld the validity of the Regulation, as had been done by this Court on earlier occasions in O. P. Nos. 5383, 3223, 9510, 4568 of 1983 and connected cases of 1983.

4. The petitioners felt that these decisions of the Syndicate were not promptly and properly implemented by the University and the Colleges in which they were pursuing their education. They, therefore, approached this Court for a writ compelling the University Authorities to recognise and implement Ext. P 2 resolution and permitting the petitioners to undergo the seventh semester course for the B.Sc. (Engg.). An interim application was made for permission to join the 7th semester course pending disposal of the writ petition. This Court by order dated 7-4-1986 granted that prayer, and permitted them to join the 7th semester on the basis of Ext. P 2 resolution, but only provisionally. It was specifically made clear that that was subject to final orders to be passed in the writ petition.

5. Apparently as a result of the stand taken by the Vice-Chancellor of the University, the matter came up before the Academic Council. By a resolution dated 29-4-1986, the Academic Council resolved :

"The Academic Council considered along with the recommendation of the Standing Committee, the recommendation of the Syndicate that the Regulation relating to the promotion to the VIIth Semester class in Engineering Colleges be relaxed so that the VIth Semester students who have not passed the III and IV semesters be promoted to the VII Semester as a very special case.

Resolved that the existing regulations in respect of promotion to the VIIth Semester class in Engineering Colleges need not be relaxed and that the VIth Semester students who have not passed the III and IV semesters be not promoted to the VIIth semester."

6. This aspect has been brought to the notice of the Court by a verified petition. Counsel for the petitioner has taken objection to it by contending that the proper course would have been to file a counter-affidavit by the appropriate authority. The contention is not without force. However, there is no dispute regarding the resolution which has been passed by the Academic Council. The substance of the dispute has therefore, to be adjudicated.

7. There could not possibly be any doubt that the powers of the Syndicate are those enumerated in Section 23 of the Kerala University Act and that that section does not envelop a matter regarding the relaxation or variation of the provisions

of Regulation 11. The Syndicate may be powerful and decisive, but only in the field permitted by the legislature. Once a matter is outside its field, a resolution or decision would lack the life and vigour of an effective order. It will be, as the Vice-Chancellor termed it, only of a recommendatory character. The proper authority may refer to all these aspects when it considers the question. The proper authority, it is conceded, is the Academic Council. It cannot be said that the Academic Council, which is a responsible authority of the University, has not properly adverted to the relevant materials when they took the resolution referred to above. The decisions of the highest court have repeatedly emphasised that the court will not interfere with the decisions of academic bodies, in the absence of compelling reasons. No such reason exists in the present case.

8. Counsel for the petitioners submitted that the admission to the various semesters is governed by the regulations and, therefore, a further action in relation to the relaxation of those Regulations as enjoined by the judgment of this Court could be attempted only by an amendment of the existing Regulation. I am not inclined to accept the submission. Regulation 11 is already there with full force and effect. The proper authority may have the power and competence to make relaxation. Unless and until relaxation is made, the existing regulation will govern the field. The decision whether the Regulation should be modulated or modified, in a given situation vests with the Academic Council, in the present case. That decision need not necessarily have the garb of a Regulation. Powers of relaxation, inherent or expressly conferred, (as for example under Rule 39 of the K. S. S. R.) have been exercised by ordinary executive orders. This is in tune with the concept of relaxation itself. Relaxation operates in an area where the facts of the particular case warrant relaxation to meet out equity and justice. When there is a generality of cases, calling for a change which has application in the generality of cases, an amendatory process of the rule or regulation itself would be the apposite procedure. (See Sreedharan Pillai v. State of Kerala 1973 K. L. T. 151. The facts of the present case only make out, if at all, a case for relaxation and not one for general variation of the existing regulation. It will be too much to expect the University Bodies to take all their decisions only by the cumbersome procedure of an amendatory process with reference to the very many regulations or statutes. Such a procedure was not necessary for the purpose of considering a question whether relaxation was called for in the case of the petitioners. Inasmuch as a proper and competent body has taken a decision that no relaxation is necessary, the petitioners have necessarily to conform to the requirements of Regulation 11. Concededly they have not conformed to the same. They will certainly have to face the necessary consequences.

9. Counsel pleaded for further directions, touching all those strings of sentimentalism, by emphasising that this Court had already passed an interim order in pursuance of which the petitioners have already spent time in studying the 7th semester, and that the students may have to undergo undue hardship, if at this belated stage, the students have to undergo the same course again. It is ordinarily difficult to resist such an appeal. However, I feel that listening to such

grounds for merciful action will be at the cost of academic standards, which have necessarily to be maintained at a high level in the State. While sympathising with their plight, I am, therefore, unwilling to dilute the academic standards of the educational institutions. That prayer, notwithstanding the pressing and persuasive character of the plea, has to be rejected. The writ petition fails "and it is accordingly dismissed. There will be no order as to costs.