

(2016) 09 KL CK 0063
In the High Court Of Kerala
Case No : W.P.(C) No. 23829 of 2016

Kerala Self Financing Engineering College Managements"
Association

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Citation : (2016) 4 KLT 1018

Hon'ble Judges : Mr. K. Surendra Mohan and Mary Joseph, JJ.

Bench : Division Bench

Advocate : (M.I. Johnson), Sr. Government Pleader, for the Respondents; K.P. Dandapani (Sr. Advocate) and Millu Dandapani, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J. - An interesting question of public importance arises for determination in this case. The petitioner is an Association of the Managements of Private Self Financing Engineering Colleges. They challenge Ext.P5, an order of the first respondent by which, the practise of admitting students to Self Financing Engineering Colleges from a Pre-Normalization List prepared on the basis of the Common Entrance Examination conducted by the 2nd respondent has been done away with.

2. The facts of this case are more or less admitted. As already noticed above, the petitioner is an Association of the Managements of Private Self Financing Engineering Colleges : It is stated that they have more than 100 Colleges as members. For the purpose of making admissions to the various courses conducted by them, they enter into seat sharing agreements with the Government every year. As per the terms of such agreements, the Government is permitted to allot the students for admission to 50% of the total seats available. The said seats are generally referred to as "merit seats". Allotments to such seats are made on the basis of a Common Entrance Examination conducted by the Commissioner for Entrance Examinations who is the 2nd respondent

herein. The Entrance Examination so conducted is in the OMR (Optical Mark Recognition) format where each candidate is expected to answer questions on the basis of the multiple choices provided, by indicating their choices. The answers are evaluated and a rank list is prepared on the basis of the marks obtained by each candidate. However, for the purpose of making admissions to the merit seats, as per the provisions of the Prospectus, the marks obtained for the optional subjects of each candidate are added on to the score obtained by each candidate at the Entrance Examination. The process is called Normalization. It is only after such Normalization that the candidates are ranked by the 2nd respondent by publishing a rank list. As per the terms of the agreements entered into between the petitioner and the first respondent during the previous years, a Pre-Normalisation Rank List used to be prepared and handed over to the Managements. Admissions used to be made by them to the Management Seats on the basis of the said list. It is the said procedure that has been done away with by Ext. P5. The contention of the petitioner is that, denial of permission to admit students on the basis of the Pre-Normalization list would result in a number of candidates who have performed well in the Common Entrance Examination being denied admission. As a result, merit would be the casualty. A large number of Engineering Seats in the various Colleges throughout the State would also remain unfilled, it is contended.

3. According to the counsel for the petitioner, the admissions to the various courses under the petitioner are made from the Rank List prepared on the basis of the Common Entrance Examination conducted by the 2nd respondent (hereinafter referred to as the "Rank List of KEAM 2016" for short). Therefore, there is no likelihood of any unqualified or ineligible candidate being admitted. The only difference is that, in the case of Management seats, the marks obtained by each candidate at the Entrance Examination alone would be the criterion for granting admission. It is contended by the learned counsel that, after completion of the valuation process, each candidate is required to upload the marks obtained by them in the core subjects at the qualifying examination on the website of the 2nd respondent. The students who do not upload the said marks, would not be ranked in the list prepared by the 2nd respondent after the process of normalization. Such students, though meritorious would therefore lose their chances of getting admission. Since a large number of seats in the Engineering Colleges all over the State remain unfilled every year, it is necessary that eligible candidates who were not ranked after Normalization also are admitted to the seats available as Management Quota for the members of the petitioner. Such a facility was being extended to them, during the previous years. The denial of the same by Ext.P5 is therefore unsustainable, it is contended.

4. It is further contended by the counsel that, Ext.P1 agreement entered into between the petitioner and the first respondent binds inter parties. Ext.P5 is in violation of the terms of the said agreement and cannot therefore be sustained. According to the counsel, the reason stated in Ext.P5 that admissions on the basis of the Pre-Normalization List was against the directions of the Supreme

Court, was not correct. Going by the terms of Ext. P1, Clause 18 thereof was to be applicable for three years, namely, 2015-2016, 2016-2017 and 2017-2018, as provided by Clause 26 thereof. However, when the Government Order Ext.P2 was issued, it was unilaterally provided that the same was applicable only for the current academic year. The same according to the learned counsel, is without any authority. According to the counsel, the management was free to admit students on the basis of any selection process according to their choice, provided the same was merit based, fair, transparent and non-exploitative. On the basis of the above contentions, the counsel seeks the issue of orders setting aside Ext.P5.

5. The learned Government Pleader, who appears for the respondents on the other hand contends that the Writ Petition is devoid of merits and is liable to be dismissed. According to the learned Government Pleader, the Government Order Ext.P2 has been issued in accordance with the dicta laid down by the Supreme Court in various decisions on the point. The petitioner cannot claim any right to admit students on the basis of the Pre-Normalization Rank obtained by a candidate at the KEAM, 2016. In fact, no such list is prepared by the 2nd respondent. The Rank List is prepared in accordance with the stipulations contained in KEAM 2016 Prospectus. The Prospectus does not envisage the preparation of any such Pre-Normalization Rank List. The scores obtained by a candidate at the KEAM 2016 does not and cannot reflect the true merit of a candidate. Any permission to admit students on the basis of a Pre-Normalization Rank List could result in merit being the casualty. Therefore, no such procedure is permissible in law. It is also pointed out that, since the member colleges of the petitioner Organization had already admitted students in accordance with the stipulations in Clause 18 of Ext.P2, they are estopped from challenging the said clause alleging that the same should be made applicable for the subsequent years also. The learned Government Pleader places reliance on the decisions of the Apex Court on the point to support his contention that, merit is and should be the primary criterion in admitting students to the member colleges of the petitioner. It was keeping in mind the above objective that Ext.P5 Government Order has been issued. The same is therefore perfectly valid and not liable to be set aside, as sought for by the petitioner. Since Ext.P2 Government Order was not challenged by the petitioner at the appropriate time, the present belated challenge against the same cannot be countenanced. The counsel also points out that, neither Ext. P3 agreement nor Ext. P4 Government Order applicable to the current academic year contains a Clause similar to Clause 18 in Ext.P1. For the said reason also, the challenge against Ext.P5 has to fail. The learned Government Pleader therefore seeks dismissal of the Writ Petition.

6. Heard. It is not in dispute that admission of students to the Engineering Courses conducted by the various member Colleges of the petitioner are to be made on the basis of the ranking of the candidates in KEAM 2016. The claim of the petitioner is that, they are entitled to be furnished with a Pre-Normalization Rank List of the candidates who had appeared at the KEAM 2016 and that, they are entitled to admit students on the basis of such Pre-Normalization Rank List.

It is therefore necessary to take note of the process of Normalization that is adopted by the 2nd respondent. For the purpose, a reference to the relevant clause of the KEAM 2016 Prospectus is necessary. As per Clause 6.2.2 of the Prospectus, candidates, who have passed Higher Secondary Examination, Kerala or Examinations recognised as equivalent thereto with 50% marks in Mathematics separately, and 50% marks in Mathematics, Physics and Chemistry put together are eligible for admission. Persons who have not studied one or the other of the subjects other than Mathematics are granted eligibility on the basis of the marks obtained in other optional subjects that are permitted. Such subjects are, Chemistry, Computer Science, Bio Technology, Biology etc. Therefore, all candidates who satisfy the criteria of eligibility stipulated by Clause 6.2.2 of the Prospectus are persons eligible to be considered for admission to Engineering Courses.

7. Clause 9.4 lays down the scheme of the examinations. Clause 9.4.1 deals with Engineering and Medical Examinations. For convenience of reference, the Clauses from 9.4.1 to 9.4.4 are extracted hereunder :

"9.4.1. The Engineering and Medical Entrance Examinations (KEAM-2016) will be objective type with Multiple Choice Questions and based on single response. For each question, five suggested answers would be given, of which only one will be the Most Appropriate Response. The candidate will have to select and mark the alphabet (A, B, C, D or E) corresponding to the most appropriate response in the OMR Answer Sheet. (A specimen answer sheet is appended as Annexure XXIV).

9.4.2. The question paper for objective type examinations will be given in the form of Question Booklets. Candidates will be permitted to take the question booklet with them at the end of examination.

9.4.3. For Engineering and Medical Entrance Examinations, each Paper will have 120 questions to be answered in 150 minutes.

9.4.4. Scoring, negative marks: For each correct response in the Engineering and Medical Entrance Examinations, the candidates will be awarded FOUR marks, and for each incorrect response, ONE mark will be deducted from the total score. For all these papers, in the event of failure to answer a question, (that is, no response is indicated against a question in the answer-sheet) no deduction from the total score will be made. More than one answer indicated against a question will be deemed as incorrect response, and will be awarded negative marks. Therefore the candidates are advised not to attempt an answer, if they are not sure of the correct response, because mere guessing may lead to choice of wrong answers, with the consequent penalty of negative marks. However, the candidates who fail to answer at least one question in each paper will be disqualified."

A perusal of the above Clauses shows that a candidate at the Entrance Examination is expected to answer objective type questions by indicating his response to the most appropriate answer from the options that are provided in

the Question Booklet itself. Negative marks for wrong answers are also contemplated. Each paper would contain 120 questions that are to be answered in 150 minutes.

8. As the scheme of the Examination itself indicates, the attempt is to evaluate the merit of the candidate by taking into account the manner in which he or she has responded to the number of questions that had to be tackled. The extent to which a proper assessment of the merit of a candidate could be made depending entirely on the score of the Entrance Examination is uncertain. It is for the said reason that, the experts in the field have evolved a process of Normalization which is meant to provide a better and more complete assessment of the merit of a candidate. The process that is stipulated is to add the marks scored by each candidate in his or her optional subjects at the qualifying examinations also.

9. The relevant portions of Clause 9.7.4 of the KEAM 2016 Prospectus that deal with the procedure for preparation of the Rank List read as under :

"9.7.4. Preparation of Rank Lists :

(a) There will be separate rank lists for

i. Engineering Courses

ii. Architecture Course

iii. Medical and Allied Courses

iv. BAMS Course

The Rank List(s) published by the CEE shall not be utilised by any person/ institution/authority other than CEE for the purpose of admission to any Professional Course(s), without prior written permission of the Government of Kerala.

(b) Rank list for Engineering courses

(i) Equal weightage of 50:50 shall be given to the score obtained in the Entrance Examination for Engineering (Paper 1 and Paper II put together), and the grade/marks obtained in the final year of the qualifying examination for Mathematics, Physics and Chemistry put together, after effecting the standardisation procedure as described in Clause 9.7.4(b)(iii). In case, the candidate has not studied Chemistry, the marks obtained in Computer Science shall be considered. In case, the candidate has not studied Chemistry, Computer Science and Biotechnology, the marks obtained in Biology shall be considered.

(ii) The final year marks of the qualifying examination of each subject Mathematics, Physics and Chemistry/Computer Science/Biotechnology/Biology of the students who have passed the subject, received from the respective Boards, shall be transformed out of 100. The marks of the three subjects shall be computed out of 300 after effecting standardisation in each subject.

(iii)*****

(vi) The score obtained by the candidate in the Engineering Entrance Examination (Paper 1 and Paper II put together) shall be computed out of 300, and added to the total standardised marks of Mathematics, Physics and Chemistry/Computer Science/Biotechnology/Biology as the case may be, of the final year of the Qualifying Examination, computed out of 300, both corrected to four places of decimals. The rank list for Engineering Courses shall be prepared based on the total marks obtained out of an index mark of 600, computed as above."

The process of Normalization stipulated by the Prospectus, as above, is intended to ensure that the assessment of merit of each candidate who is ranked is, to the extent possible, realistic and correct. The total score arrived at by taking into account the marks obtained by the candidate at the qualifying examination and the score obtained at the Entrance Examination would together form the basis of assessment of the merit of each candidate. Such an assessment is more conducive to the proper evaluation of the merit of a candidate. This is because, candidates from different courses of study appear for the Entrance Examination. Candidates who are qualified at the plus 2 examination conducted by the State, candidates who are qualified as per the CBSE, CISCE and other courses also take part in the Entrance Examination. Candidates who are qualified through equivalent courses abroad also appear. There is no common process of evaluation of the candidates for the reason that, each of the courses follow a different pattern of assessment of the merit of a candidate. Through the Entrance Examination, their merit at tackling the OMR type questions is assessed. But, the said assessment cannot be a complete or true measure of the merit of a candidate. Therefore, the assessment of the candidate made after the course of study undertaken by him or her as per the qualifying examination is also a necessary input that would have to be taken into account. Unless both the scores obtained at the Entrance Examination and the marks of the qualifying examination are taken into account, there cannot be a proper assessment of the merit of a candidate. Therefore, the process of Normalization that is adopted by the above provisions cannot be found fault with. It is further clear from the above provisions that, they do not contemplate the preparation of a Pre-Normalization Rank List based only on the score obtained by a candidate at the Entrance Examination. Therefore, the contention of the learned Government Pleader that no Pre-Normalization Rank List as demanded by the petitioner is in existence, appears to be correct. It is also not right to admit students on the strength of the marks obtained at the Entrance Examination alone. This is for the reason that, as evident from the format of the Examination, it is not possible to assess the merit of a candidate merely on the basis of his proficiency in indicating his response to the 120 objective type questions for which multiple

choice answers are provided. The marks of the qualifying examination of a candidate is the measure of the merit of the said candidate that has been assessed after a course of study and an examination format that is programmed to make an assessment of his proficiency in the subjects that he had studied during the entire course. Therefore, only a process of taking into account both the marks of the Entrance Examination as well as the marks of the qualifying examination would be able to properly assess the true merit of a candidate. Since it is necessary that admission of candidates to Engineering Courses should be primarily on the basis of merit, no procedure that would have the result of sacrificing merit could be accepted as proper or correct. For the above reasons, we are not satisfied that contentions of the counsel for the petitioner can be accepted.

10. The contentions of the petitioner have to fail for other reasons also. It is worth noticing that, Ext. P1 agreement is dated 16.6.2015. It is true that. Clause 18 thereof provides for the furnishing of a Pre-Normalization List of the KEAM Entrance Examination to the member Colleges of the petitioner. Clause 26 thereof provides that the said agreement shall be valid for the years 2015-2016, 2016-2017 and 2017-2018. However, when Ext.P2 Government Order was issued incorporating the terms of Ext.P1, we find that a specific clause limiting the application of Clause 18 of Ext. P1 only to the academic year 2015-2016 was incorporated. It is only Ext.P2 Government Order that applies generally to all concerned. Ext.P1 being an agreement, can only bind inter parties.

11. A contention has been put forward by the counsel for the petitioner that the first respondent while issuing Ext. P2 had no power to limit the terms of Ext. P1 to the year 2015-2016 alone. However, the petitioner cannot be permitted to raise the said contention, at this length of time. They had accepted Ext.P2 without any demur and had in terms of the provisions thereof, completed the admissions during the year 2015-2016 without questioning the said clause. Therefore, they cannot turn around now and question the said clause. Apart from the above, for the current year they have admittedly entered into Ext.P3, a fresh agreement. The terms of the said consensual agreement has been incorporated into a Government Order dated 30.6.2016, which is evidenced by Ext.P4. Neither Ext.P3 nor Ext.P4 contains a clause entitling the petitioner to be supplied with a Pre-Normalization Rank List as claimed in this Writ Petition. Ext.P3 agreement has been entered into on 28.6.2016. Ext. P5 Government Order is issued on the previous day of the said agreement, 27.6.2016, doing away with the procedure of admitting students from a Pre-Normalization Rank List. The sequence of events clearly show that, after the issue of Ext.P5 on 27.6.2016, the parties have entered into Ext.P3 consensual agreement on the next day, after deleting the provision provided for the furnishing of a Pre-Normalization Rank List. Thereafter, on 30.6.2016, Ext. P4 Government Order has also been issued in terms of Ext. P3. It is clear from the above that, all parties had conducted themselves, accepting the position that there would be no provision for admitting students on the basis of a Pre-Normalization Rank List. In the absence of any clause entitling

the petitioner to be provided with a Pre-Normalization Rank List either in Ext.P3 or P4, the present claim for such a list has only to be rejected.

12. The counsel for the petitioner has attempted to put forward a contention that, Ext. P6 norms formulated by the All India Council for Technical Education, (AICTE) prescribe only a pass in 10 + 2 Examination with Physics and Mathematics as compulsory subjects along with one among the subjects of Chemistry/Biotechnology/Biology/Technical subjects. 45% marks in the qualifying examination is sufficient for satisfying the eligibility criteria, it is contended. However, it is settled proposition of law that, the norms issued by the bodies like AICTE can only be treated as the Bench Mark and there is no prohibition in stipulating a higher qualification for admission. This is in view of the fact that achieving excellence should be the primary objective and any stipulation directed at achieving the said purpose would be perfectly in order.

13. The counsel for the petitioner has at tempted to place reliance on the decision in Islamic Academy of Education v. State of Karnataka (2003 (3) KLT SN 88 (C.No. 118) SC : (2003) 6 SCC 697) to contend that, the restriction imposed on the process of admission by Ext.P5 is unjustified for the reason that the managements of unaided professional Colleges have an absolute right to make admissions by formulating their own procedure. The only rider is that such procedure should be fair, transparent, non-exploitative and merit based. In the present case, the managements would be admitting students only on the basis of the marks obtained at the Common Entrance Examination, KEAM 2016. The object is only to give an opportunity to those students, who have not uploaded the marks obtained by them at the qualifying examinations, in accordance with the stipulations contained in the Prospectus of KEAM 2016. Therefore, it is contended that there is no justification for doing away with the procedure of making admissions on the basis of the Pre-Normalization Rank List. However, we do not find that the said contention could be sustained in view of the dictum in the decision in Islamic Academy of Education (supra). It has been laid down by the Apex Court that, it is merit that has to be given the paramount importance in so far as admissions are concerned, especially to professional Colleges. The relevant paragraphs read as under :

"196. Technical profession in general and medical profession in particular in ail countries and in all ages has been considered to be a noble profession. To acquire excellence, these professions demand a very high calibre, which criterion can be satisfied only by the meritorious students. If we want to achieve a very high standard which would be comparable to the standard of the developed countries, then merit and merit alone should be the basis of selection for the candidates.

197. Secondly, not only to maintain high standard of education, but also to maintain uniformity of standard, the right of selection of candidates for any professional course cannot be left to the discretion of any individual management. Efforts must be made to find out one single standard for all the

institutions.

198. Thirdly, to ensure high standard of education and for that purpose to ensure admission to the most eligible candidates, requiring merit in a poor country like ours, the tuition and other fees should be within the reach of common people."

14. The above position has been reiterated by the Supreme Court in P.A. Inamdar v. State of Maharashtra (2005 (4) KLTSN 3 (C.No. 3) SC = (2005) 6 SCC 537). Speaking for the Constitution Bench, Lahoti C.J. has summed up the position with respect to the admission procedure, in paragraphs 137 and 138 thereof, which read as follows :

"137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated herein above, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty."

15. It is clear from the above that, the admission procedure to professional Colleges has to be fair and should satisfy the tests of being transparent, merit based and non-exploitative. If the State finds that the above criteria are not satisfied by the admission procedure, the State has got the power to step in and to formulate its own admission procedure. Therefore, going by the dicta in the above cases, it is clear that the State has the power to issue Ext. P5. As already found above, a procedure of attempting to assess the merit of a candidate solely on the basis of the score obtained at the Entrance Examination would be defective. Only the process of equalization or standardisation would make the assessment complete. Therefore, it is held that Ext.P5 Government Order, doing away with the procedure of admission from a Pre-Normalization Rank List

followed by the members of the petitioner is in order. For the foregoing reasons, we find no grounds to set aside Ext.P5 or to grant any of the reliefs sought for. The Writ Petition fails and is accordingly dismissed.