

(2022) 07 KL CK 0201

In the High Court Of Kerala

Case No : Writ Appeal No. 450 Of 2022

MES Dental College Palachode, Perinthalmanna Represented
By Its, Principal, Pin 679338

APPELLANT

Vs

Shahana P.S

RESPONDENT

Date of Decision : 21-07-2022

Acts Referred:

Kerala High Court Act, 1958 — Section 5

Citation : (2022) 07 KL CK 0201

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : E.C.Ahamed Fazil, R.Lakshmi Narayan, K.P.Harish

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J.

1. This appeal is preferred by the 4th respondent in W. P. (C) No. 8336 of 2018 challenging the judgment of the learned Single Judge dated 03.03.2022, whereby the learned Single Judge directed the appellant to refund the amount of Rs. 5,00,000/- remitted by the petitioner towards liquidated damages as per the KEAM Prospectus within a period of one month along with other consequential directions.

2. Brief material facts for the disposal of the appeal are as follows:-

3. Petitioner / 1st respondent is a student of BAMS degree course of OLR Government Ayurveda College, Olloor. Petitioner got admission in the year 2017. She applied for medical course through Kerala Engineering, Architecture, Medical and Allied Courses (KEAM). Ext. P1 prospectus for admission to professional Degree courses, Medical Engineering etc. had been approved by the State Government as per its order dated 30.01.2017, and the petitioner has applied in the medical stream in accordance with the guidance provided under the prospectus.

4. Petitioner became successful in the entrance examination and in the 5th phase of allotment petitioner was allotted admission to the 3rd respondent college i.e. Sree Sankara Dental College, Varkala which was the 54th option given by the petitioner. Accordingly petitioner remitted an amount of Rs. 2,90,000/- in favour of the Commissioner of Entrance Examinations, the 2nd respondent towards fees. In the 6th phase petitioner was allotted MES Dental College, Perinthalmanna in the Government seat set apart to the said self-financing college. Allotment to the allied medical courses had not been started at that time and allotment process for the allied medical courses including Ayurveda, started only on 15.09.2017.

5. In the 8th phase of allotment, petitioner was given allotment in the Government seat of BAMS course in KMCT Ayurveda Medical College, Kozhikode. She had remitted Rs. 75,000/- accordingly in favour of the Commissioner of Entrance Examinations towards fees. In the 9th phase of allotment, petitioner was allotted BAMS course in Government Ayurveda College, Olloor. The amount to be remitted by the petitioner is Rs. 12,000/- and balance of Rs. 60,000/- from Rs. 75,000/- already paid to the Commissioner had to be refunded by the Commissioner for Entrance Examinations.

6. But when the petitioner approached the 4th respondent i.e. the MES Dental College, Perinthalmanna for return of the certificates and documents, consequent to the admission secured by her in the 6th phase, she was directed to pay an amount of Rs. 5,00,000/- towards liquidated damages for getting the certificates. According to the petitioner, in order to secure the certificates submitted by her for production before the KMCT Ayurveda Medical College, Kozhikode, she had to pay the said amount, and it is thus seeking return of the liquidated damages paid to the appellant, and for payment of the fees made to the Commissioner for Entrance Examinations in earlier allotments, the writ petition was filed.

7. Learned Single Judge after taking into account the provisions of the prospectus has found that the petitioner was admitted to the BAMS course on the basis of centralized allotment process in the Government Ayurveda College and therefore it cannot be said that the discontinuance of the petitioner's study in the MES Dental College, Perinthalmanna was after closing of admissions. It was also found that the complication that arose in the case on hand is due to the fact that the allotment process for admission to allied medical courses started belatedly and was not conducted along with the general allotment process and therefore the petitioner cannot be penalized for the same. It was also found that as the petitioner has discontinued her study from the MES Dental College, Perinthalmanna before closing the admissions pursuant to the centralized allotment process, no liquidated damages can be extracted from the petitioner. Such a finding was rendered by the learned Single Judge by interpreting the term 'after closing of admissions' appearing in the prospectus, to mean that "after closing of admissions through the centralized allotment process". It is thus challenging the legality and correctness of the judgment that the MES Dental

College, the 4th respondent has preferred the appeal.

8. We have heard learned counsel for the appellant Sri. Ahamed Fazil, Sri. K. P. Harish, learned Senior Government Pleader and Smt. R. Ranjanie for the writ petitioner / 1st respondent and perused the pleadings and material on record.

9. The sole question emerges for consideration is whether any interference is required to the judgment of the learned Single Judge.

10. The paramount contention advanced by the appellant in the appeal is that the learned Single Judge overlooked clause 11.6.8(i) of Ext. P1 prospectus which deals with allotment as per the guidelines. It is further contended that as per the schedule fixed by the Hon'ble Supreme Court of India, no student shall be admitted to medical or dental colleges after 31st August of each year and hence no allotments should be made to the MBBS / BDS courses after 31.08.2017 and therefore the said regulation which forms part of the prospectus governs the term closure of admission as far as courses under MBBS / BDS courses are concerned.

11. Therefore it is contended that on an erroneous appreciation of facts and law involved in the case, learned Single Judge interpreted 'after closing of admissions' appearing in the prospectus incorrectly as if to appear that the admission process is done through centralized allotment process and the petitioner was admitted to BAMS course on the basis of centralized allotment process by the Commissioner of Entrance Examinations, and further finding that it cannot be said that the same amounts to discontinuance of course after closure of admission, is not a correct approach to the guidelines provided under the prospectus.

12. It is also submitted that as evident from Exhibit P7 option registration details and Ext. P11 notification, after securing admission in the appellant college, writ petitioner revised her option and she was allotted to KMCT Ayurveda College on 19.09.2017 and from there in the 9th phase of allotment she again revised her option and she was allotted to Government Ayurveda College on 09.10.2017 for BAMS course which according to the appellant was much after the cut off date for closure of admission specified by the Hon'ble Supreme Court, which date is adopted by the Commissioner for Entrance Examinations in Ext. P1 prospectus as per clause 11.6.8(i).

13. The sum and substance of the contention put forth by the appellant is that under the said circumstances, the learned Single Judge overlooked the fact that the act of the petitioner amounts to discontinuance of course after closing of admission in the same academic year and hence appellant college is entitled for the liquidated damages as stated in clause 12.2.4(a)(iii) of Ext. P1 prospectus, and therefore not liable to return the same.

14. On the other hand learned counsel for the petitioner / 1st respondent advanced arguments fully supporting the judgment of the learned Single Judge.

It is further pointed out that petitioner has made the application as per the KEAM prospectus 2017 for the medical courses as provided under clause 1.3.3 which includes MBBS, BDS, Bachelor of Ayurvedic Medicine and Surgery (BAMS) etc. Therefore the contention advanced by the learned counsel for the petitioner is that the petitioner has secured the higher option of BAMS in the Government Ayurveda College, Olloor in the 9th phase of allotment, which the petitioner was entitled to in accordance with the option given by the petitioner as per the guidance provided in Exhibit P1 prospectus.

15. That apart it is pointed out that petitioner was allotted with the Dental course in the Sree Sankara Dental College, which was her 54th option and later allotments were provided to her in the higher option made by her, and finally the higher option of BAMS course in the Government Ayurveda College, Olloor could be secured only in the 9th phase of allotment. Therefore according to the petitioner there was no revision of options given by her at any point of time as contended by the appellant so as to interfere with the centralized allotment process.

16. Therefore, according to the learned counsel for the petitioner, the learned Single Judge was right in issuing directions to return the liquidated damages of Rs. 5,00,000/- paid to the appellant college.

17. The learned Senior Government Pleader also supported the arguments advanced by the appellant and submitted that admission was given to the petitioner on the basis of Ext. P17 notification dated 09.10.2017 which was issued for final phase of centralized allotment to Ayurveda, Homeopathy, Siddha, Unani and allied courses published and therefore as per the note prescribed thereunder, the candidates getting allotment to these colleges in the said phase should invariably join the allotted colleges before 05:00 p.m. on 13.10.2017 and should continue their studies in these colleges; otherwise they are liable to pay liquidated damages as per clause 12.2.4(a)(i) or 12.2.4(c) of the prospectus for KEAM 2017; and such candidates are not eligible for refund of fee, if any paid to the Commissioner for Entrance examinations as per clause 12.2.3 of the prospectus.

18. We have evaluated the rival submissions made across the Bar.

19. It is an admitted fact that the application was submitted by the petitioner in the centralized allotment process and she has opted for various courses in the medical stream in accordance with the procedure prescribed under the KEAM prospectus 2017.

20. Clause 11 dealing with the centralized allotment process reads thus:-

"The Centralised Allotment Process will be done through the Single Window System (SWS) to give allotments to the various courses and colleges under the Engineering/ Architecture/Medical streams in the State, based on the options submitted by the candidates who have been included in the rank list of the

Engineering/Architecture/ MBBS&BDS/Medical & Allied/Ayurveda courses for the year 2017, prepared by the Commissioner for Entrance Examinations (CEE), Kerala. This is a system of 'Allotments through Online Submission of Options'. The options are willingness of a candidate who qualified with a rank in the rank lists of KEAM-2017 to join a course-college combination prioritized as per his/her aspiration and desire subject to the conditions specified in Clauses 6 and 9.7.5. The CAP through which the Options are registered is a simple and transparent process of allotment to the Professional Degree Courses and it gives the candidate opportunity to exercise his/her options for courses and colleges of his/her choice conveniently in the order of his/her preference considering all those available to be chosen from. The allotments will be strictly based on the options exercised, the rank obtained and eligible reservations of the candidate. Candidates should register options only to those courses/colleges which they are sure to join on allotment. If the candidate fails to remit fee/join the college, he/she will lose the allotment as well as all the existing options in the stream to which the allotment belongs. The options once lost will not be available in the subsequent phases. When an allotment is given to a candidate, the previous allotments, if any, shall automatically be cancelled."

21. Therefore it can be seen that the options given by the candidates are registered in the manner prescribed under clause 11. Procedure for registering options in his / her option registration page is prescribed under clause 11.5.5 which specifies that by entering the option number for a course-college combination, the candidate can fix his / her preference numbers for the course-college combinations displayed in the option registration page and there, all the eligible options of the candidate will be displayed course-wise and the candidate is expected to enter his / her preference number for a particular combination.

22. Clause 11.5.6 deals with registering of the options and saving / revising the options registered reads thus:-

"(i) All eligible options of the candidate will be displayed on the Option Registration Page. The candidate may follow the directions given therein to register the options. The data entered may be saved regularly by clicking the 'Save' button, so that the data already entered is not lost due to unexpected reasons. The candidate should enter only those options in which he/she is interested. Candidates should also note that he/she will be considered for allotment only to those courses and colleges opted by him/her. So, a candidate who has not opted for a course-college combination will not be considered for allotment for that combination. Existing options, registered by the candidate and available in the Option Registration Page, can be cancelled by entering the number '0' against that particular option to be cancelled and by clicking the 'Update' button. All options registered by the candidate will be processed. If a candidate gets allotted to a particular seat, based on his/her option, he/she is bound to accept it, failing which, he/she will lose that allotment as well as all the existing options in the stream to which the allotment belongs. The options once

lost will not be available in the subsequent phases.”

23. Therefore on a reading of the said clause it is categoric and clear that an allotment made on the basis of the option given had to be accepted, failing which the candidate will lose not only that option but all the existing options in the stream to which the allotment belongs.

24. Clause 11.5.9 deals with rearranging option priority which reads thus:-

“A candidate may change his/her option priority any number of times within the time schedule permitted. The priority of options registered at the time of closing of the facility for registering options alone will be considered for processing. No candidate will be allowed to register options afresh to any stream at any stage after the stipulated time as notified by the CEE. The option list once finalized cannot be augmented after the stipulated time for registering options. But the modification of the option list will be allowed only for cancellation/deletion and for re- arrangement of priority of options at the time specified in the notification by the CEE.”

25. Clause 11.6.2 deals with remittance of fee which reads thus:-

“The prescribed fee for the Course will have to be remitted by the candidate to the Account of the CEE in specified branches of State Bank of Travancore (SBT) to be notified by the CEE or by way of Online Payment, as per the time schedule prescribed. After the candidate remits the fee in the first allotment, a fee receipt will be issued by the bank/can be printed from the Online Payment page, as token of allotment and remittance of fee. Those candidates who do not remit the fee on or before the date prescribed for the same will lose their allotment as well as all the existing options in the stream to which the allotment belongs. The options once lost will not be available in the subsequent phases. The second allotment will be published on the date specified. Candidates who have not received any allotment in the first allotment and who have received an allotment in the second allotment will have to remit the prescribed fee for the course allotted. If a candidate has a different allotment than the one received in the first allotment, the fee for which is higher than that remitted as per the first allotment, he/she will have to remit the difference in fee. The amount to be remitted in this manner will be shown in the allotment memo of the candidate. If the fee for the course allotted in the second allotment is less than or same as the fee remitted as per the first allotment, no further remittance is to be made by the candidate. The same process will be repeated in the subsequent allotments.”

26. Clause 11.6.3 deals with admission for all courses which reads thus:-

“Candidates allotted to courses, and who remit the fee as prescribed, should take admission in the college allotted as per the schedule prescribed by the CEE. Candidates who do not take admission will lose their allotment as well as all the existing options in the stream to which the allotment belongs. The options once lost will not be available in the subsequent phases. The candidates are liable to

pay admission fee as prescribed by the University concerned at the time of admission. If a candidate who got admission in any course, in any allotment of any phase under CAP conducted by the CEE, discontinues the course by taking TC to join another college or course which is not the part of CAP or for any other reasons not related to CAP will lose their allotment as well as all the existing options in the stream to which the allotment belongs. The options once lost will not be available in the subsequent phases.”

27. Clause 11.6.4 deals with online option confirmation for participating in subsequent phases of allotment which reads thus:-

“Candidates who are having valid options and who are willing to participate in the second allotment/subsequent allotment have to log in to his/her Option Registration Page and confirm their options by clicking the ‘Confirm’ button available in his/her Option Registration Page. Candidates can delete their unwanted options or alter the priority of existing options only after the online option confirmation.

Online Option Confirmation is mandatory before each phase of allotment for participating in that particular phase of allotment. The facility for Online Option Confirmation will be made available in the website before each phase of allotment. A candidate who does not confirm the higher order options by clicking the ‘Confirm’ button available in his/her Option Registration Page, his/her higher order options belonging to the course(s) included in that phase will not be available in subsequent phases also. However, his/her existing allotment shall be retained, subject to the conditions of Clause 11.6.2 and 11.6.3

(i) After each allotment, the options below the ‘allotted one’ of the candidate will automatically be removed from the option list of the candidate. For example, if a candidate had registered 45 options in all, and if he/she is allotted his/her 34th option, all options from 35 to 45 will be removed from the option list. Since the 34th option is the allotted one, it will not be seen in the option list. Options from 1 to 33 only will remain valid and will be considered for future allotments.

(ii) If a candidate is satisfied with an allotment and does not want to be considered against his/her remaining options, he/she will have the facility to cancel all the remaining options. He/she may cancel options in a particular stream alone. He/she may also cancel specific options among the remaining options as per his/her desire. The candidate will also have the facility to alter the priority of the remaining options. But the candidate will not be permitted to register any fresh options to the existing ones.

(iii) The facility for confirmation and cancellation/ deletion/alteration will be available for a specified period of time as notified, after which the facility will be withdrawn. A candidate retaining all or any of the options after each allotment is bound to accept the next allotment, if any, given to him/her. If the candidate fails to accept the allotment, he/she will lose all the allotments/ admission and will lose the existing options in the stream to which the latest allotment belongs.

(iv) Forfeiture of the claims in CAP: The claims in Centralised Allotment Process conducted by the CEE will be cancelled under the following reasons.

(i) Non payment of tuition fee as specified in the allotment memo.

(ii) Non joining of the course/college within the stipulated time as specified by the CEE.

(iii) Discontinued with TC to join courses other than the courses allotted by the CEE or for any other reason."

28. Clause 11.6.7 deals with the general rules related to registering of options which reads thus:-

"(i) Candidate can register all the available options if he/she desires so. However, it is not compulsory that the candidates should exercise all the options.

(ii) A candidate will not be allotted a seat in a course of a college if he/ she has not opted the course-college combination during option registration process of CAP-2017.

(iii) A candidate is bound to accept an allotment as per the priority registered in the Option list and he/she has to surrender the seat already occupied by him/her, if he/she is allotted based on options furnished against arising/future vacancy. Request to retain the existing admission after an allotment is made, based on the option registered, will not be considered under any circumstances.

(iv) Failure to report for admission in the allotted institution, after remitting the required fee within the stipulated time will result in the forfeiture of his/her allotment to that course and cancellation of all the existing options in the stream to which that allotment belongs.

(v) For each phase of CAP 2017 subsequent to the initial phase, confirmation of the higher order options by logging in to the Option Registration Page and clicking the 'confirm' button is mandatory to participate in that phase of allotment even if no cancellation/re-arrangement of options is desired. Non-confirmation of higher order options for a particular phase of CAP will lead to automatic deletion of higher order options belonging to the course(s) included in that phase, making them unavailable for the subsequent phases also."

29. Clause 11.6.8 deals with allotments as per guidelines which reads thus:-

"(i) As per the schedule fixed by the Hon'ble Supreme Court of India, no student shall be admitted to Medical/Dental colleges after August 31st of each year. Hence no allotments for 2017-18 will be made to the MBBS/BDS courses after 31.08.2017.

(ii) As per the guidelines of Central Council of Indian Medicine, allotments to BAMS, BSMS and BUMS courses for 2017-18, will not be made after 31.10.2017. Similarly, no allotments to the BHMS course for 2017-18 will be made after 15.10.2017, as per the guidelines of Central Council of Homoeopathy.

(iii) Allotment/ Admission to Engineering courses will not be made after 15th August of every year vide judgment of the Hon'ble Supreme Court of India dated 13.12.2012 in the Civil Appeal No.9047 and 9048 of 2012."

30. Clause 11.7.3 deals with failure to pay the tuition fees / report for admission which specifies that candidates who do not pay the tuition fee or who do not take admission on the prescribed date will lose their allotment as well as all the existing options in the stream to which that allotment belongs.

31. On a conjoint reading of the above said provisions of Ext. P1 prospectus, it is explicit that, there is a clear cut procedure prescribed for registering the options and taking admission on the basis of allotment granted by the Commissioner of Entrance Examinations in accordance with the options provided by a candidate. There is no case for the Government or for the appellant that the petitioner has deviated from the procedure prescribed under the guidelines when the admissions were provided to her as per the option made by her. On the other hand the provisions make it clear that if the successive higher options made by a candidate if allotted and not accepted, it would lead to cancellation of higher options in the stream in that phase and the subsequent phases also by virtue of clause 11.6.7(v).

32. Clause 11.7.4 deals with cancellation of higher options after joining a college which reads thus:-

"Candidates who join the college on the dates specified can cancel their remaining options fully or partially or change the priority of their remaining options before the dates prescribed and as specified in clause 11.6.4. A candidate interested in subsequent allotment must login to his/her Option Registration Page and click the 'confirm' button available therein and can delete their unwanted options or alter the priority of existing options."

33. The contention put forth by the petitioner relying upon clause 11.7.4 is that even though she got admission as per the lower options made by her, at no point of time, she has cancelled the higher options.

34. Clause 12.2.3 deals with no refund of fees which specifies as follows:-

"(i) No refund of fees will be made to candidates who apply for Transfer Certificate/ Cancellation of admission under any circumstances, after the last allotment notified by the CEE. They will have to pay Liquidated damages as stipulated in Clause 12.2.4.

(ii) The candidate who does not take admission in the last phase of allotment in the respective courses will not be eligible for refund of fees. They will have to pay Liquidated damages as stipulated in Clause 12.2.4."

35. Clause 12.2.4 deals with liquidated damages, which reads thus:-

"(a) Levying amount towards liquidated damages from candidates discontinuing their studies:

(i) If any candidate admitted against 'Government' seats in courses other than MBBS/BDS in Government/ Aided/ Government Controlled Self-financing/ Private Self-financing/ KAU/ KVASU/ KUFOS Colleges, discontinues the studies after the closing of admissions in the same academic year, to join other Courses /Colleges or for other purposes, he/she is liable to pay liquidated damages of Rs.75,000/- (Rupees seventy five thousand only). The liquidated damages for those candidates discontinuing courses in Government Engineering Colleges will be Rs.50,000/-(Rupees fifty thousand only). In all such cases the Transfer Certificate will be issued only after remitting the liquidated damages to the admitting authority concerned. Candidates belonging to SC/ST/OEC are exempted from this rule. Candidates belonging to 'Keralite' category, as per Clause 6.1 (i), whose annual family income is below Rs.75,000/- and who have submitted Income Certificate along with the printout of the application for admission to Professional Degree Courses 2017 will also be exempted from payment of Liquidated damages. Candidates who are transferred from one institution to another as per proceedings of the University concerned are exempted from payment of liquidated damages. The students admitted in Government/Management seats in Professional Colleges who discontinue their studies to join at any stage of the Course in National Defence Academy / Naval Academy/ Defence Institutions are exempted from the payment of Liquidated damages.

In the case of Private Self financing Engineering Colleges, the date of closing of admission and levying of liquidated damages from the candidates discontinuing studies will be notified separately.

(ii) The candidates admitted against Management seats in courses other than MBBS/BDS in Self financing colleges under Govt. control, on discontinuance of course after the closing of admissions in the same academic year, are liable to pay liquidated damages of Rs.75,000/-, irrespective of annual family income/ nativity/ reservation status.

(iii) If any candidate admitted against Government Seats in the Government/ Government Controlled/Private Self financing Medical & Dental Colleges and management seats in Government controlled self financing colleges allotted by the CEE for MBBS/BDS courses discontinues after the closing of admission in the same academic year, to join other Courses/Colleges or for other purposes, he/she is liable to pay liquidated damages of Rs.10,00,000/- (Rupees Ten Lakhs only) in the case of MBBS course and Rs. 5,00,000/- (Rupees five lakh only) in the case of BDS course, irrespective of annual family income/ nativity/ reservation status and also liable to be debarred from appearing the Entrance Examinations and/or allotments conducted by the CEE for a period not exceeding two years. In case of failure to remit the penalty, the same is liable to be recovered under the Revenue Recovery Act."

36. Analyzing the situations and the rival submissions made by the respective parties, we are of the considered opinion that the petitioner has not cancelled her

higher options at no point of time. So long as the centralized admission process continued, she was not only entitled but also bound to accept the higher options in the stream provided by the Commissioner for Entrance Examinations during the process of admission as per the provisions discussed above.

37. Here what we could gather is that the State Government had published the last date for admission to the final phase of centralized allotment to Ayurveda, Homeopathy etc. only as per Ext. P17 notification dated 09.10.2017 whereas the MBBS / BDS notification was published on 19.09.2017 evident from Ext. P12 wherein the last date was 22.09.2017; whereas in Ext. P17 the last date for BAMS course was before 05:00 p.m. on 13.10.2017.

38. Therefore the whole confusion was created consequent to the delay in issuing the notification by the Government of Kerala. Looking from that angle, it can be seen that there were no laches or any other legal infirmities on the part of the writ petitioner in securing admission in accordance with the options given by her in the centralized allotment process.

39. Considering so, it can never be said that the learned Single Judge was not legally correct in issuing the directions for return of the liquidated damages by the appellant and the fees paid by the petitioner to the Commissioner of Entrance Examinations.

40. In that view of the matter, we are of the undoubted opinion that the appellant has not made out any case for interference with the judgment of the learned Single Judge there being no jurisdictional error or other legal infirmities, in an intra court appeal filed under Section 5 of the Kerala High Court Act, 1958.

Needless to say, writ appeal fails and accordingly, it is dismissed. However since the time period prescribed in the Judgment for return of the amount is already over, appellant is granted one month time from today to comply with the directions contained in the judgment of the learned Single Judge.