

(2013) 11 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 9653 and 9722 of 2013

Muhammed Abdussathar

APPELLANT

Vs

University of Kerala

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2013) 4 KHC 857 : (2013) 4 KLT 1008

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : M. Rajagopalan Nair, G. Biju, S. Jayaprakash Madavoor and V.A. Vinod, for the Appellant; Sunitha Vinod, Government Pleader and George Poonthottam, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioners in both the Writ Petitions are students of the Pattam Thanu Pillai Memorial College of Education, Thiruvananthapuram, affiliated to the first respondent University. The college, in which the petitioners had obtained admission for the B.Ed. course is impleaded as the 4th respondent. Admittedly, the petitioners have been admitted to the course against the norms prescribed in Ext. P7 prospectus. The petitioners were all graduates in English Language and Literature who had sought for admission in B.Ed. English Language and Literature. The essential requirement for admission to the B.Ed. course is evident from Ext. P7 prospectus under clause 5.4.2.1(a) which is extracted here.

English: B.A. Degree with English language and Literature/Functional English/ B.A. Communicative English with 50% mark in Part III or 50% marks in M.A. English language and Literature/Functional English/Communicative English or B.A./B.Sc., with 50% of marks for Part I English and not less than 50% marks for Master's Degree in English Language and Literature.

The petitioners did not have the 50% marks stipulated in Part III. However, they

claimed continuance in the course on the ground that they had 50% aggregate marks in Part I, Part II and Part III, taken together and that hence as per the Regulations of NCTE produced as Ext. P5, they were entitled to be admitted to the B.Ed. course. Essentially, the argument of the Learned Counsel for the petitioners is that when NCTE has prescribed 50% aggregate marks as the essential qualification, the prescription of 50% marks for Part III alone would result in the lowering of standards, and since it has been judicially declared that such lowering of standards is not permissible; the petitioners are entitled to continue in the course to which they have been admitted.

2. The learned standing counsel for the respondent University however, would take a contrary stand in so much as holding out the prescription in the prospectus, as a prescription of higher standard and not lower standard. The University by way of a statement, contends, since the main subject in the graduate stream is the subject in which B.Ed. is also imparted, relevance is on the main subject and subsidiary subjects and not the result of the languages which a graduate student takes as Part I and Part II.

3. The petitioners were all admitted by the 4th respondent College as per Ext. P7 prospectus. First and foremost, the petitioners knew of their disentitlement when offering themselves for admission, under Ext. P7, since, they were all graduate who did not have the 50% marks in the Part III subjects at the graduate level. They chose to seek and obtain admission in the 4th respondent College under Ext. P7 knowing fully well that they were not so qualified to get admission. No challenge to the provisions in the prospectus were also made at that point of time. The 4th respondent College having admitted them, when the first semester examinations were approaching the mark lists were to be forwarded to the University, for verification and issuance of hall tickets. It is admitted by both sides that the University verifies the mark lists only at that stage. The University having verified the mark list and found the disentitlement of the petitioners under Ext. P7 prospectus declined to permit the petitioners to write their examinations.

4. The Petitioners, hence, were before this court claiming their entitlement to continue as per the NCTE norms. It is also seen from the records that this court has provisionally permitted the petitioners to appear for the first semester examinations. The Writ Petition has come up on the petitioner moving a second application again for provisional admission to the second semester examinations. In the context of unnecessary hardship caused to the students by the provisional admission to examinations and the possible eventual dismissal of their claims as such; this court on the consent of both the parties heard the matter finally.

5. As has been noticed above, the petitioners got admitted to the 4th respondent College, fully knowing that they were not entitled to be admitted to the B.Ed. course under the 1st respondent University; as is clear from Ext. P7 prospectus. In any event, on the contention now being raised regarding the higher standards "prescribed by NCTE", this court has necessarily to look into the same. The

higher standards so alleged to be prescribed is by clause 3(2)(a) of Appendix IV being Norms and Standards for Bachelor of Education Programme, which is extracted here under.

Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme

6. The primary fallacy in such a contention is that one has to read the word "aggregate" into the norms prescribed by the NCTE. The petitioners' contention is that the prescription of 50% mark for Part III is a lowering of standards which is not permissible, since NCTE prescribes 50% aggregate. The University has explained the prescription in its counter affidavit as follows:

In the State of Kerala, degree courses offered are in three parts, namely Part-I, II and III. Among the three Part-III deals with optional subjects which is the most crucial in so far as further education or otherwise on the basis thereof is concerned. Therefore, the Academic Council has fixed 50% marks for Part III optional subjects at graduation wherever graduation is considered as the eligibility criteria for admission to the B.Ed. course. It is a well settled proposition of law that the State Government and/or the affiliating University can fix standards higher than that fixed by the Apex body.

The Bachelors degree awarded is in the subject concerned and the eligibility for admission to B.Ed. in the same subject would, necessarily, have to be based on the marks in the relevant subject.

7. The contention of the University seems to be very reasonable. The B.Ed. course in which the petitioners have now obtained admission is in English Language and Literature. Their graduate studies were also in the English Language and Literature. The main subject with subsidiaries is included in Part III and English and Regional Language are imparted as Part I and Part II respectively; which is common for all graduate students. Part III is the main subject in which a candidate is awarded a degree and the B.Ed. course is pursued to acquire eligibility for employment as tutors/teachers in that main subject, which is offered for graduate study. It is quite reasonable if the academic body prescribes a higher percentage for the Part III subjects, the main subject and subsidiary subjects. It is also pertinent that the main subject is the subject in which the graduate degree is awarded and the subject pursued in the B.Ed. course.

8. The question with respect to standards i.e. whether it be lowering or raising, has to be decided on this background. On a reading of the standards prescribed by the NCTE and the University, the only possible inference is that providing for 50% marks in the main and subsidiary subjects of graduate study would only be a raising of standards. If it be a higher standard prescribed by the University, then, the same is not liable to be challenged going by the binding precedent in *Visveswaraya Technological University and Another Vs. Krishnendu Halder and*

Others, The Honourable Supreme Court after quoting from a Constitution Bench decision in *Preeti Srivastava Dr. v. State of Madhya Pradesh*, (1999 (3) KLT SN 31 held as follows:

Once the power of the State and the examining body, to fix higher qualifications is recognized, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State.

In the teeth of the binding precedents as also the findings of this court, the condition prescribed by the University is definitely raising of standards. An apparent conflict is perceived in the present case, since the main subject for graduation and that for which B.Ed. was pursued are both English. At the graduate level, English language and literature is the main subject and Part I also is a paper in English. While Part I is common to all graduate studies and the test is of language skills; the examination in Part III subjects test the subject proficiency of a student. As per Ext. P7, students who opted any other subject in graduation can also seek admission to B.Ed. English; if they have a postgraduation in English with 50% as also 50% in Part I English for graduation. This indents clear application of mind by the academic body in deciding the basic eligibility criteria for B.Ed. One has also to look at a different situation of another subject, to better understand the prescription. If a graduate in Physics is seeking admission for B.Ed. in that subject, can it be said that the aggregate marks including that of languages would be prescription of a higher standard than the prescription of minimum marks for the main and subsidiary subjects? Definitely the answer would be in the negative.

The Writ Petitions are hence found to be devoid of merit and the same are dismissed without costs. Needless to say that the result of the petitioners who had appeared provisionally for the first semester examination are not liable to be declared.