

(2016) 10 KL CK 0056

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7764 of 2016 (U)

Namboothiri Trust

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 ILRKerala 866 : (2016) 4 KerLJ 583

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Dama Seshadri Naidu, JJ.

Bench : Division Bench

Advocate : Sri. T.A. Unnikrishnan, Sri. T.R. Kannan and Sri. K.K. Akhil, Advocates, for the Petitioner; Smt. K. Githa (Ponkunnam), Advocate, for the Respondent No. 3; Sri. Bijoy Chandran, Senior Government Pleader and Smt. Mary Benjamin, SC, Admission Supervisory Co

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J. - In Perspective:

A student secures admission in a college, completes the first year, applies to the University for inter-college transfer and secures it; the college compels the student to pay liquidated damages for the loss of fee it suffers because of the student's leaving the college mid-course. The regulations provide for when a student must pay liquidated damages and when she can be exempted. Has the student earned the exemption?

The Controversy:

2. The petitioner, a Trust, runs a self-financing institution-a School of Architecture, which is a member of Architecture College Management Association ("the Association"). The third respondent ("the Student") joined the college on 17.7.2013 in one of the 50% seats under government quota. In the second year, she applied and obtained an inter-college transfer and joined another college at some other place. She was, in this bargain, compelled to pay to the college Rs.

2,85,000/- as liquidated damages--the aggregate fee of all the remaining years.

3. As the Student had been compelled to pay the liquidated damages, she complained to the second respondent, the Admission Supervisory Committee for Professional Colleges in Kerala ("the Committee"). After considering the college's objections, the Committee passed Ext.P4 order directing the college to refund the amount to the Student. Assailing Ext.P4 order of refund, the College filed this writ petition.

Regulatory Regime:

(a) Agreement

4. Ext.P1 agreement ("the Agreement") entered into between the Government and the Association governs various aspects of the students' admission into colleges. Clause-17 of the agreement enables the educational agency to retain the tuition fee remitted by the student, in the event the student admitted in the management quota or Government quota discontinues his or her studies at any time after 15th day of July 2013. It further provides that if any student, admitted to the college, cancels the admission for any reason whatsoever, the educational agency shall be entitled to collect the tuition fee of the entire course. The provision has, however, provided an exemption: if the seat so vacated gets filled up by a new candidate, the tuition fee collected under this clause shall be refunded to the student.

(b) Prospectus:

5. The KEAM Prospectus issued by the Government through G.O.(Ms) No.734/2013/H.Edn., dated 18.12.2013 ("the Prospectus"), is an elaborate statutory scheme vitally affecting the admissions. Clause 12.2.4 (a)(i) of KEAM Prospectus reads as follows:

12.2.4 Liquidated damages

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

(i) If any candidate admitted against "Government" seats 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 course/colleges or for other purposes he/she is liable to pay liquidated damages of Rs.75,000/- (Rupees Seventy Five Thousand only for the courses other than MBBS/BDS. 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 application for admission to Professional Degree Courses 2013 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 National Defence Academy/Naval Academy are exempted from the payment of Liquidated damages".

(emphasis added)

6. Clause 12.2.4 (b) (ii) deals with a student discontinuing a course after the first academic year. The Clause-ii reads:

"for Government seats in private self-financing/Government controlled self-financing colleges, liquidated damages shall be levied either as in clause 12.2.4 (a)(i) and (iii) or fees for remaining years, whichever is higher, irrespective of annual family income/nativity/reservation status".

Submissions:

The College"s:

7. The learned counsel for the College has assailed the Committee"s action as illegal and arbitrary. According to him, the college could admit no new student in the resultant vacancy because the student left the college in the second year. Both the Agreement and the Prospectus, asserts the learned counsel, enable the college to recover the liquidated damages from the student leaving the college after the admission process was completed-- especially, in the second year. He has, therefore, urged this Court to set aside Ext.P4.

The Committee"s:

8. The learned Standing Counsel for the Committee contends that clause 17 of the Agreement enables the college to collect liquidated damages from the student only if the student cancels her admission; here, it is a mere inter-college transfer, which is permitted by the University.

9. The learned Standing Counsel has also drawn our attention to Clause 12.2.4 (a)(i) of the Prospectus, to hammer home her contention that the candidates who get transferred from one college to another as per the University"s orders are exempted from the payment of liquidated damages. It is her specific contention that clause-17 of Agreement must be read in conjunction with the Prospectus.

The Student"s:

10. The learned counsel for the student has adopted the argument advanced by the learned Standing Counsel.

11. Heard the learned counsel for the College; Mr. Bijoy Chandran, the learned

Senior Government Pleader; Mrs. Mary Benjamin, the learned Standing Counsel for the Committee; and Smt. Gita K.K., the learned counsel for the Student.

Issue:

12. The singular issue that emerges for consideration is whether the College is justified in collecting the liquidated damages from the Student who left the college in the second year under inter-college transfer, though.

Discussion:

13. Indeed, the facts are not in dispute. The student, after completing the first year, applied to the University of Kerala for an inter-college transfer and secured it. On the premise that the seat vacated by the student in the second year could not be filled with any other student and that it resulted in financial hardship to it, the College has compelled the student to pay Rs. 2,85,000/- as liquidated damages.

14. The Committee, on complaint, ordered refund through Ext.P4. The Committee's justification is that both the agreement and the prospectus exempt the student from the burden--paying the liquidated damages--if the transfer is inter-college. To ascertain whether the action of the college is legal, we may have to refer to the regulatory regime governing the issue.

Analysis:

15. Analysed, clause 12.2.4 reveals that it applies at two stages if a student's transfer occurs: (a) a student discontinuing in the year of admission, and (b) a student discontinuing beyond the year of admission. For our purpose, we will focus on the latter, which alone applies to the facts.

16. But, before that, we need to analyse clause 12.2.4 (a) (i) a little deeper for it affects other parts of the provision--at least, it is argued thus. An analysis of Clause 12.2.4 (a) (i) leads us to these:

(a) A student should have been admitted in a "government seat", say, in a private self-financing college (which the petitioner college is); (b) the student should have discontinued the studies after the closing of admission (as the Student did here); (c) in the same academic year (but the student here discontinued the next year); (d) to join other course/colleges (yes, applicable); (e) then the student is liable to pay liquidated damages; and (f) the Transfer Certificate will be issued only after the student remits the liquidated damages.

17. Exemptions are provided: (1) candidates belonging to SC/ST/OEC are exempted from this rule; (2) candidates belonging to "Keralite" category with annual family income below Rs. 75,000/-, too, are exempted; (3) candidates who are transferred from one institution to another as per proceedings of the University concerned are exempted; (4) the students who discontinue their studies to join National Defence Academy/Naval Academy are exempted.

18. Clause-17 of the Agreement, which is also incorporated in Ext.P3 as clause-19, highlights two aspects: "discontinuation/cancellation" and "for any reason whatsoever".

Law's Impact:

19. It is the learned Standing Counsel's specific contention that there was neither discontinuation nor cancellation. She has, in fact, gone one step further to assert that the University effected the transfer and the student could not be made to suffer financially on that count. She has also submitted that the very college has given its assent to the student's transfer.

20. First, concerning the consent given by the college, we may observe that in *Kottayam Institute of Technology and Science v. The Admission Supervisory Committee*, Unreported Judgment 30.08.2016 in W.P.(c) No. 28344 of 2016 to which one of us-- P.R.Ramachandra Menon (J) - is a party, holds that the consent to be given by the college is formal and compulsive, too. It is a matter of mere procedure, so to say.

21. On the second contention that the student has neither discontinued nor cancelled her admission, we do acknowledge that we may be tempted to accept the respondent's contention if we have an unwavering allegiance to textualism. It is, however, a technical submission bereft of any justification--regrettably. First, the Agreement and the Prospectus have taken care of one essential aspect: The College should not suffer financially if a student leaves the college after the admission is over and the seat, thus vacated, remains unfilled. Contrary to what has been contended by the learned Standing Counsel, the transfer, in the first place, is at the student's instance. Her volition should not be deleterious to the College.

22. Words employed in a statute or regulation are not inert; the context they have been couched in imparts a definite colour of meaning to them. Here, discontinuation or cancellation is in the context of the College, not of the student. The regulation employs the expression "for any reason whatsoever". The belated transfer of the student and, more particularly, the seat vacated by the student remaining unfilled result in the student's discontinuation in the college or, in the alternative, the cancellation of her admission. The Student's intention is the continuation of studies, at some other college; the impact of that intention is discontinuation, in the college the Student secured admission. Legislatively, the impact and motive-often-conflict. And neither has an edge. Sometimes the courts have favoured the impact theory, and sometimes the motive theory, in discerning meaning from the legislation. It is, thus, an established canon of construction that the impact theory can be applied if there is any ambiguity in legislative interpretation.

23. If we examine the entire scheme of inter-college transfers, we find the executive intent unmistakable: The College should be compensated under certain circumstances. All that we have to look for is whether any of those circumstances

is present here.

Has the Inter-College Transfer been Saved?

24. As far as Clause 12.2.4 is concerned, sub-clause (a) (i) provides for an elaborate compensatory mechanism for the college if a student leaves the college after the admission is closed. It has, however, provided for an exception, too. Candidates who get transferred from one institution to another through the proceedings of the University concerned are exempted from paying the liquidated damages. It has also provided for other instances of exemption, which are not germane here. In sub-clause (b) (ii), the protection given in the first year for the students stands withdrawn if she discontinues the course after the first year. It is beyond the pale of any controversy that the student has secured transfer in the second year. The student is liable to pay the liquidated damages which are nothing but the fees for the remaining years irrespective of annual family income, nativity or reservation status, all of which are under exempted category in sub-clause (a)(i).

25. And the protection given to the student getting inter-college transfer applies only under sub-clause (a)(i) which is, as has already been observed, does not apply here. A perusal of sub-clause (a)(i) clearly shows that the entire remedial mechanism and the exclusionary provisions in sub-clause (a)(i) apply to the students in the year of admission, but not beyond.

26. Thus, Clause 17 of the agreement and sub-clause (b)(ii) of 12.2.4 read harmoniously with clause 12.2.4 (a)(i), the inescapable conclusion is that the College is justified in demanding and collecting the liquidated damages from the student. So the contrary contentions advanced by the counsel for the respondents cannot stand legal scrutiny.

Ineluctably, Ext.P4 is set aside. The writ petition, in the result, is allowed as prayed for. No order on costs.