
(2003) 04 KL CK 0080

In the High Court Of Kerala

Case No : O.P. No"s. 2524 of 1999 and 32187 of 2001

Thomas P. John

APPELLANT

Vs

Cochin Univ. of See. and Tech. and Others

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 171(9)

Citation : (2003) 1 KLJ 903

Hon'ble Judges : Kurian Joseph, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas, for the Appellant; V.M. Kurian, for the Respondent

Final Decision : Allowed

Judgement

Mr. Jawahar Lal Gupta, C.J. (Oral)

1. Is the action of the University in charging a higher rate of fee from the petitioners in these two cases violative of Article 14 of the Constitution? This is short question that arises for consideration. The petitioners, who were admitted as NRI's, allege that the University had charged free at a lower rate from the students who joined before them as well as from those who followed them. They alone were subjected to a higher rate of fee. There was no rational basis for this differential treatment. Thus, the petitioners complain that the action is violative of Article 14 of the Constitution. They pray that it be annulled and the University be directed to refund the extra fee charged from them. A few facts as relevant for the decision of the case may be briefly noticed. The 22 petitioners in OR 25424 of 1999 were admitted to the four years" B.Tech. Course in the years 1997-98. Similarly, the 12 petitioners in O.P. 32187 of 2001 has joined the B.Tech. course in the years 1998-99.

2. The University had commenced the course in the year 1995-96. At that time, the University had reserved 10% seats for Non-Resident Indian Students ("NRI"

for shorts). Such students were required to make a deposit of US\$ 5000 at the time of their admission by way of "development charges". Thereafter, they had to pay a fee of Rs. 20,000 per semester. As against this, the other categories of students had to pay fee at the rate of Rs. 20,000 per semester. The result was that the NRI students had to pay an extra amount of Rs. 5000 at the time of their initial admission to the first year. From the year 1996-97, the University decided to charge fee from the NRI students at the rate of US\$ 4000 per annum. As against this, the general category students had to pay at the rate of Rs. 20,000 per semester. This practice was followed for the three years viz. 1996-97, 1997-98, 1998-99. From the years 1999-2000 the old provision made in the year 1995-96 was restored. The petitioners who have been admitted during the years 1997-98 and 1998-99 allege that the action of the University was arbitrary and unfair. In any event, the University itself having decided to reduce the fee even in respect of the NRI students from the year 1999-2000 onwards, they were entitled to parity of treatment. The representations having borne no fruit, they have approached this Court through the two petitions. They pray that the action of the University in charging them at a higher rate than that applied to the students who got admitted before and after them be annulled and the excess fee be ordered to be refunded.

3. The University contests the petitioners' claim. A counter affidavit has been filed by the Registrar. It has been inter alia averred that the NRI students are not admitted to the course on the basis of merit. The B. Tech programme conducted at the Centre for Undergraduate Studies in Engineering is a self-financing course. The course is run with the funds collected by way of fees. The fee levied on the petitioners is legal and valid, with regard to the averments of the petitioners regarding the rate of fees, it has been mentioned that for the 1st batch of students, a fee of Rs. 15,000 per semester was fixed. In addition, each student had to deposit Rs. 1 lakh as a refundable security. No student under the NRI quota was admitted for the 1st batch. The NRI students of the 2nd, 3rd and 4th batches were to pay fee at the rate of US \$ 4000 per year. For the 5th batch, a deposit of US \$ 5000 towards development charges and Rs.20,000 per semester as in the case of other students was fixed. It has been admitted that the Syndicate of the University had reduced the fee for the year 1999-2000 before the making of the admissions. It is the case of the University that "the fee structure for different batches may vary." The fee structure announced for a particular batch has to continue "since change of the fee midway may lead to shortage of funds required for the conduct of the courses since the cost sharing courses are solely dependent on the fee collection and no other support from any agencies comes forth for the continuations of the courses.

On these premises, the respondent University maintains that its action is legal and valid.

4. Mr. Bechu Kurian Thomas, learned counsel for the petitioners in these two petitions has contended that the action of the University is totally arbitrary and

unfair. It suffers from the vice of discrimination. The petitioners cannot be made to pay for the other students. The action of the University offends Article 14 of the Constitution. On the other hand, Mr. V.M. Kurian, learned counsel for the respondents submitted that the NRI students constituted a separate class. The petitioners were admitted in accordance with the terms of the prospectus the fee structure. They are now estopped from challenging it.

5. The two questions that arise for consideration are:-

1. Is the action of the University in charging fee at different rates from the students on the basis of the batches in which they were admitted arbitrary and unfair?

2. Are the petitioners estopped from challenging the impugned action? Regarding 1.

6. Admittedly, the B.Tech course was commenced in the year 1995-96. A fee of US \$ 5000 had to be deposited by each NRI student by way of development charges. In addition, the NRI students had also to pay Rs. 15,000 per semester like other students. Thus, there was an additional charges of US \$5000 for the first year from the NRI Students. During the rest of the course they were entitled to parity of treatment with other candidates. In the year 1996-97, a departure was made. The NRI students were required to deposit US \$4000 by way of fee per year. Resultantly, each student was required to pay US \$16,000 for the four year course. As against this, the other candidates were required to pay Rs.40,000 per annum viz. Rs. 1,60,000 for the full course. In the year 1999-2000, the fees were again revised. The NRI students were required to make a deposit of US \$5000 at the time of their entry into the course. Thereafter like all the other students they had to pay an amount of Rs.40,000 per annum.

7. It deserves mention that even after the revision of rate of fee in the year 1999 the students who had been admitted earlier were not given the benefit of the reduction in fee. The University insisted on charging them US \$4000 for the years 1999-2000 and even subsequently. It is in the background of this factual position that the question as posed above has to be considered.

8. It is true that there is always a presumption in favour of the validity of an order. It is also true that the burden of proving that the provision offends Article 14 lies on the person who raises the challenge to it. However, in the present case, the petitioners have categorically alleged that there is no rational basis for subjecting them to a higher rate of fee than the rate fixed in the years 1995-96 and 1999-2000. In the written statement filed on behalf of the University no basis for a differential treatment has been disclosed. No facts or figures have been given to indicate as to why the three batches of students were treated differently from the persons who preceded them or those who succeeded them. The only averment made in the written statement filed on behalf the University is that reducing the fee will lead to difficulty not required to be shared by others? Why have the petitioners been subjected to a differential treatment? There is no

answer.

9. It is true that the NRI students are not admitted on the basis of general merit. It may also be assumed that they can be treated as a separate class. It may also be fair to assume that the University has the right to fix the fees. But it must act fairly. The NRI students, as a class, cannot be treated differently on the basis of the year of admission unless a rational basis for differential treatment is made out. In the present case, nothing has been placed on record to show as to why the NRI students for different batches have been treated differently. In this situation, the charge of discrimination appears to be well founded.

10. Mr. V.M. Kurian submits that the petitioners were not admitted on the basis of their merit. They were granted admission against a special class of NRI students.

11. The counsel is absolutely right. Thus, there can be a valid basis for charging them differently. On this basis, the levy of US \$5000 as an initial deposit on account of development fee could be perfectly justified. However, the action of the University in charging fee at the rate of US \$4000 per year from the students admitted during the period from 1996-97 to 1998-99 and at a lesser rate from those for the earlier or later years cannot be sustained unless a valid justification is offered. No reason having been disclosed in the written statement, the infirmity is apparent. The action is per se discriminatory.

12. There is another aspect of the matter. Each NRI student admitted during the period from 1996-97 to 1998-99 has been charged at the rate of US \$ 16000 for the course. As against this, if any NRI student had been admitted in the year 1995-96 he would have paid US \$5000 plus Rs. 1,20,000 for the full course. Even the students admitted after the petitioners in the year 1999-2000 have to actually pay US \$5000 plus Rs. 1,60,000 for the full course. In other words, while the petitioners have been called upon to pay an amount of Rs.8 lakhs approximately, the persons before and after them are required to pay a much lesser amount. There is, thus, an apparent disparity in the rate of fees charged from the persons who are similarly situated.

13. The University may have a right to fix the fee. It may also have the right to classify the students into different categories. However, no authority, much less than a statutory body, can, act arbitrarily. Every decision of a statutory authority has to be based on consideration of relevant facts. The process of decision making must indicate that relevant facts have been taken into consideration. No irrelevant consideration has weighed with the authority. The action must be founded on good reason. In the present case, the test is not satisfied. No reason for a differential treatment has been disclosed in the written statement or at the hearing of the case.

14. Mr. Kurian has referred to the decisions of the Supreme Court in *Union of India and Others Vs. M.V. Valliappan and Others*, and *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, . The first of these decisions

related to the legal validity of Section 171(9) of the income tax Act, 1961. The question was being examined in the context of de-recognition of a partial partition. In Nallamilli's case their Lordships of the Supreme Court were considering the provisions of tenancy and land laws as applicable in the State of Andhra Pradesh. Neither the factual nor the legal position in the two cases has any relevance to the facts of the present case. Otherwise, it is well settled that Article 14 does not forbid classification. However, such a classification must have a rational basis. It must have reasonable nexus with the object sought to be achieved. The action must be fair and reasonable. Even if it is assumed that the funds had to be collected by way of fees for meeting the expenses of running the courses, the University had to place material on record to show that the expenses during the period from 1996-97 and till the petitioners pass out are different from those charged from the students admitted in the year 1995 on in the year 1999-2000 or thereafter. No such data has been placed on record.

15. In view of the above, the first question is answered in favour of the petitioners and against the University. It is held that the action suffers from the vice of discrimination. It is arbitrary and unreasonable. Thus, it offends Article 14 of the Constitution.

Regarding 2.

16. Mr. Kurian contends that the petitioners are estopped from challenging the rate of fee. They had applied for admission to the B. Tech course on the basis of the representation made in the prospectus. The fee structure had been clearly disclosed. They had accepted it. Thus, they are estopped from challenging it.

17. It is undoubtedly true that the University had issued a prospectus. The fee structure had been disclosed. The petitioners had sought admission in pursuance to the stipulations made in the prospectus. However, it has to be remembered that estoppel is a principle of equity. Reference in this regard may be made to the decision of their Lordships of the Supreme Court in Waman Shrinivas v R.B. & Co.(AIR 1959 SC 689). It was clearly held by their Lordships that "an agreement to waive an illegality is void on grounds of public policy and would be unenforceable.

18. Mr. Thomas has also referred to the decision of their Lordships in Indira Bai Vs. Nand Kishore, wherein it was observed as under:

Estoppel is a rule of equity flowing out of fairness striking on behaviours deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid and law in administration of justice.

In the present case, invoking the rule of estoppel against the petitioners would lead to injustice and be wholly inequitable.

19. There is another aspect of the matter. No citizen can be denied equality before law. In the context of waiver of fundamental right their Lordships of the

Supreme Court were pleased to observe as under in *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, :

It is not open to a citizen to waive his fundamental rights conferred by Part III of the Constitution. The Supreme Court is the bulwark of the fundamental rights which have been for the first time enacted in the Constitution and it would be a sacrilege to whittle down those rights.

Thus, even by their own volition, the petitioners could not have given up their right to parity of treatment with others who were similarly situated.

20. In view of the above, the second question is also answered against the respondents. It is held that the petitioners are not estopped from challenging the validity of the action of the respondents. No other point has been raised. In view of the above, the writ petitions are allowed. The University is directed to refund the extra fee charged from the petitioners. It may be noticed in this connection that initially the levy of an additional fee had been stayed by this Court. However, on a subsequent date, the order of stay was vacated. At that time an undertaking was given by the University that in case the writ petition is allowed, the disputed amount of fee shall be refunded. The University shall do so within two weeks from the date of receipt of a certified copy of this order. In case of failure to refund within the time as aforesaid, it shall be liable to pay the amount along with interest at the rate of 10% from the date of deposit till the date of refund. The University is also directed to declare the result of the petitioners forthwith.