

(1996) 11 KL CK 0022
In the High Court Of Kerala
Case No : W.A. No. 1401 of 1996

University of Kerala and Others

APPELLANT

Vs

Alex Saji and Others

RESPONDENT

Date of Decision : 26-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Kerala University Act, 1974 — Section 2

Citation : AIR 1997 Ker 259 : (1997) 2 ILR (Ker) 483 : (1996) 2 KLJ 649

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : S. Gopakumaran Nair, for the Appellant; Subhash Cyriac and K.K. Dinesan, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Balakrishnan, J.—In these two Writ Appeals a common question of law arises. The learned Single Judge by the impugned judgment declared that Clause 9(a) (ii) of the guidelines prescribed by the University is arbitrary, discriminatory and unreasonable. The appellant-University challenges the decision.

2. We heard appellants counsel and counsel for the respondents. Petitioners in the Original Petition had appeared for the pre-Degree examination conducted by the Appellant University. In anticipation of the result, they appeared for Engineering entrance examination. In order to get admission to the Engineering course, candidates belonging to general category must obtain a minimum of 50% and candidates belonging to other backward communities a minimum of 45% marks in the qualifying examination. In the Pre-Degree examination, these students could not secure the minimum marks required for getting admission to Engineering course. They filed application for revaluation. Even by the marks obtained by them after revaluation, they were not eligible to get admission to Engineering course. The petitioners in the p.p. contended that they had in fact secured additional marks on revaluation but those marks were not added to the

original marks secured by them as it was less than 5% of the total marks. This was so done in view of Clause 9(a) (ii) of the guidelines prescribed by the University for revaluation. Clause 9 of the guidelines reads as follows:

"9. Answer books will be revalued by two examiners and the revaluation results will then be finalised as follows:

a. The original marks secured by the candidate will not be changed in the following cases;

i. If the valued average marks are less than the marks secured in the original valuation;

ii. If the revalued average marks exceeds the marks secured by the candidate in the original valuation by less than 5% of the maximum marks of the paper.

b. If the revalued average marks exceeds the marks secured by the candidate in the original valuation by 5% or more of the maximum marks of the paper, the revalued average marks will be taken as the final marks and the marks secured by the candidate in the original valuation will be changed accordingly."

3. According to the contesting respondents, Clause 9(a)(ii) is arbitrary and illegal as the candidates are not allowed to get the actual additional marks received by them on revaluation. The revaluation is done by two examiners. The examiners are not told about the original marks secured by the candidate. On revaluation, the average marks is taken and if it is less than the marks secured in the original valuation the original marks will prevail. If it exceeds the original marks by more than 5% then it will be added to the original marks and final marks will be awarded. According to counsel for the University, this decision was taken after much deliberation and the procedure is fair and reasonable, whereas the contesting respondents would contend that this provision is arbitrary.

4. Clause 9(a)(ii) of the guidelines has been held to be unreasonable and arbitrary on the ground that the candidate is entitled to revalued average marks as that should be the proper marks ought to have been assigned to the candidate. We are not inclined to accept this view. In the matter of valuation of answer scripts there will be marginal variation. The answer written by a student will appear to one examiner as fair and satisfactory, whereas to another examiner the same answer may not appear to be quite reasonable or satisfactory. The awarding of marks also will vary depending upon the way in which the examiners value the answer given by the candidate. Even in the case of Mathematics paper there is bound to have marginal variation. This is exemplified in this case itself. In the case of first respondent in W. A. 1401/96 in one of the Mathematics paper he secured the original marks of 48. On revaluation one examiner granted 45 marks and another examiner granted 50 marks. This clearly shows that there would be variation in the award of marks depending upon the way in which the examiners appreciate and values the answers. The University has taken a reasonable and fair criterion for giving

revalued marks learned counsel for the contesting respondents contended that the students seek only the average of marks granted by two additional examiners who revalued the answer-sheets and that was the proper marks the students ought to have been awarded. If it is a question of recounting of marks it can be said that the students are entitled to get the marks secured by them on recount and any error committed in the recount of marks is to be set right but in the case of revaluation if there is only marginal variation the student is not entitled to get as of right the additional marks secured on revaluation. We do not think that the guidelines 9(a)(ii) is either arbitrary or illegal. Moreover, in matters like this the Court should be slow in interfering with a procedure followed by the University. It has been so held by the Supreme Court in, *Bhushan Uttam Khare v. Dean, B.J. Medical College*. That was a case relating to revaluation of answer sheets. The Supreme Court held:

"In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. In this case there had been sufficient material before the Executive Council to proceed in the manner in which it has done. The University had not acted on non-existent rule for ordering revaluation, Ordinance 146 is comprehensive enough to include revaluation also for further action. The fact that two examiners were also the members of the Committee which recommended for revaluation cannot result in any bias even if they had been directly concerned with the original valuation. Though in the second revaluation also there had been some changes between the original valuation and the revaluation results, but it is not so glaring or demonstrably unconscionable as seen in the first revaluation."

5. Clause 9(a)(ii) of the guidelines was held to be arbitrary and discriminatory and unreasonable. We have shown that it is not discriminatory as the candidate is given additional marks in case the difference is more than 5% of the original marks. We are also unable to hold that this clause is unreasonable. It may be noticed that in the year 1991, a five member committee was constituted by the Syndicate to make recommendations regarding the revision of the guidelines relating to revaluation of answer sheets. The Committee at its meeting among other things decided that a variation of 5% in awarding marks could normally occur in two independent valuations of the same paper and hence, it would be appropriate to fix the 5% limit for effecting a change in marks scored on revaluation and it was on the basis of the recommendation of this Committee the Syndicate decided to adopt the guidelines for conducting revaluation with effect from April, 1991 and these guidelines are being strictly followed and the University has not been invested with any discretionary power to, adopt a different method. When such a public authority acts reasonably and in good faith and upon lawful and relevant grounds of public interest the decision of such authority cannot be easily set aside on the ground of unreasonableness, unless

the decision is so absurd that no reasonable person could ever dream that it lay within the powers of the authority. If the decision is within the confines of reasonableness, it is no part of the Court's function to look further into its merits and when the Court's review a decision there can be no right to interfere with the balancing consideration which are relevant to the power that is exercised by another. Regarding the reasonableness of the decision it is worthwhile to quote a passage in the book "Administrative Law" by H.W.R. Wade (Fifth Edition) at page 363 :

"With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority. As Lord Hailsham L.C. has said, two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable."

In our opinion the University has taken a reasonable stand while fixing the guidelines. Therefore, we hold that Clause 9(a)(ii) of the guidelines prescribed by the University are not liable to be quashed.

Writ Appeals are allowed.