

(1997) 11 KL CK 0031

In the High Court Of Kerala

Case No : W.A. No's. 1174 and 1316 of 1997

University of Kerala and Others

APPELLANT

Vs

Thomas Samuel and Another

RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Citation : (1997) 2 KLJ 625

Hon'ble Judges : U.P. Singh, C.J;S. Sankarasubban, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar and S. Gopakumaran Nair, for the Appellant; S. Radhakrishnan and R.S. Kalkura, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Both these writ appeals arise from a common judgment rendered by a learned Single Judge disposing of O.P. Nos. 1989 of 1997 and 1408 of 1997. O.P. No. 1989 of 1997 was filed by two students who were studying for the first year Pre-degree course under the Kerala University. O.P. No. 1408 of 1997 was filed by one Rajan Varghese, on behalf of his son. Rajesh Varghese, a student of the first year Pre-degree course of Max Ivanios College.

2. After the S.S.L.G. examination, the students have to undergo a two year Pre-degree course before joining the degree course. Pre-degree course is of two years duration and the students opt for their elected subjects so that they can prosecute higher studies in the subjects they like. Till 1994, the procedure regarding examination was as follows: At the end of the first year, the University has to conduct an examination. At the end of the 2nd year, the final examination is conducted. The success in the final year examination depends upon the total marks obtained by the students in the first year examination as well as the 2nd year examination. No student fails in the first year, as a student can automatically go into the second year.

3. From the academic year 1994, the Kerala University changed the procedure of

examinations. A new scheme called "The Unified and Restructured Pre-degree Course Scheme" was introduced by the University of Kerala in 1996. This is produced as Ext. P-1 alongwith O.P. No. 1989 of 1997. As per this Scheme, first year Pre-degree examination will be covered fully through internal examinations and second year Pre-degree examination will be covered fully through external examination. The college will conduct the internal examination on behalf of the University. All students are expected to get 33 per cent for each of the five papers in order to qualify them to take the second year Pre-degree examination to be held by the University. Those who fail to get 33 per cent in any paper will get two more chances to qualify themselves for the second year Pre-degree examination to be held by the college. So far as the second year Pre-degree examination is concerned, a minimum of 35 per cent is required for each of the five papers. The important deviation from the previous procedure was that the marks obtained in the first year examination will not be added to the second year examination. So the success or failure in the Pre-degree examination ultimately depends upon the marks obtained in the second year Pre-degree examination. This scheme was introduced from die academic year 1994-95 onwards.

4. It seems that there were some differences of opinion among the academicians in continuing the scheme mentioned above. The non-adding of the first year marks to the second year treated a sense of indiscipline among the students. According to the academicians, many of the students were of the view that it was enough if they study to get a pass mark in the first year examination, with the result, these students became less attentive and were not punctual in attending classes. Therefore, the Principals of various colleges of Kerala represented to the Government that old scheme should be restored. Government, in turn, transmitted these letters to the Universities. After considering these letters, the Academic Council of the Kerala University by order dated 15th January 1997 decided to re-introduce the old scheme with effect from March, 1997 onwards. This is produced as Ext. P-3 in O.P. No. 1989 of 1997. According to Ext. P-3, from first year 1996 admissions onwards, there will be no separate minimum for a pass in the first year examination. The results of Pre-degree examination be published only after the candidate has registered for the second year examination. However, the marks secured by the candidate for the first year examination will be furnished after completion of the first year examination. For declaring the results the marks obtained by the candidates in the first year examination will be carried and added to the marks obtained by them in the second year examination.

5. As already stated, the Original Petitions are filed on behalf of the students who were studying in the first year Pre-degree when Ext. P-3 was issued. They filed these Original Petitions challenging the application of Ext. P-3 to those who are in the first year Pre-degree in 1996-97. Ext. P-3 is dated 15th January 1997. According to the. Petitioners, at the time of their admission, they were told that it was the re-structured scheme that was applicable to them and the marks obtained in the first year will not be added to the second year marks. The

success in the examination depended only on the marks obtained in the second year examination. The Petitioners contended that their mental attitude was influenced by the restructured scheme and they were not prepared to take a public examination as now envisaged under Ext. P-3. According to them, the examinations, were to be held in April 1997 and in that short time, they would not be able to make up to get good marks in the examination.

6. A counter-affidavit was filed on behalf of the University. In the counter-affidavit, they refer to the communication sent by the Government of Kerala with regard to the petition submitted by the Council of Principals of colleges in Kerala. The Council of Principals of colleges were of the view that first year and second year Pre-degree examinations should be conducted by the Universities and that marks secured in the first year examination should be carried over to the second year examination. The resolution further stated that since the marks secured was not counted anywhere, even the best students in the campus become lethargic during the first year itself. It is further submitted in the counter that this resolution was considered by the Academic Council and the Academic Council passed Ext. P-3 order. The counter further states that even the internal examination was conducted by the University, even though originally, in the scheme, it was stated that it will be conducted by the colleges. It was further averred in the counter-affidavit that there was no prejudice caused to the students. As a matter of fact, the students were better placed because they could appear for the second year examination even if they failed in the first year examination. No separate minimum is fixed in the first year to appear for the second year. It was also stated that this will create a discipline among the students.

7. Learned Single Judge, after hearing the parties held that the scheme should not be implemented for the students who have joined the Pre-degree course In June 1996. According to the learned Judge, if the University wanted the students to write the University examination, the University should have given sufficient time to the students. While persons like the Petitioners were admitted to the course, it should have notified that they have to write the University examination for the first year. As per the scheme, Petitioners need write only the internal examination to be conducted by the college for the first year and they have to secure 33 percent marks in each paper in order to qualify to write the second year examination. Learned Judge found force in the contention of the Petitioners that the students were not given sufficient time to prepare for the examination. In that view of the matter, learned Judge held that the Petitioners need write only the internal examination as per the scheme in force.

8. When the writ appeals were admitted, an interim order was passed as follows:

...pending hearing of these appeals, the operation of the judgment of the learned Single Judge dated March 11, 1997 shall remain stayed and the marks obtained by the examinees in the internal examination, for which they have already appeared, shall be carried over to the second year in accordance with Ext. P-6

order, i.e. the new Examination Scheme; but the same shall be subject to the result of these appeals.

9. We heard senior counsel for the Appellants, Shri T.P. Kelu Nambiar and counsel for the Respondents, Shri S. Radhakrishnan and Shri R.S. Kalkura.

10. Counsel for the Appellants submitted that so far as the conduct of examinations are concerned, it is related to academic matters of the University. With regard to these academic matters, if the University appoints expert committee for the purpose of preparation of the scheme, etc., this Court will not interfere in the implementation of the scheme unless this Court finds that the scheme is opposed to any statute or regulation. Learned Counsel for the Respondents submitted that the students were admitted in 1996 on the belief that no University examination will be conducted in the first year. Hence they were not prepared to take the University examination at the end of the academic year. Further, it was contended that it was only the Kerala University which had gone back to the old scheme whereas other two Universities in Kerala-Calicut University and Mahatma Gandhi University-are following the new scheme. It was further submitted that in effect, it may create difficulty for admission to degree courses when the competition is among all the students who are studying in the Universities in Kerala.

11. We examined both the schemes. As per the new scheme, a student will have to get at least a minimum of 33 percent marks in order to enable him to seek registration for the second year Pre-degree examination. There is no change of syllabus. The only difference is that the marks obtained in the first year will not be carried over to the second year. So far as the old scheme is concerned, University examinations are conducted in both the years. There is no minimum fixed for passing in the first year examination. Marks obtained in the first year will be added to the marks obtained in the second year examination and the success or failure of the students depends upon the total of the marks obtained by the students in both these years together. Even though in the new scheme it is stated that the first year examination will be only internal examination, it has come out in the counter-affidavit that the first year examinations are conducted by the University itself. Prescription of the scheme of examination has to be left to the academicians. It was felt that the new scheme created a sort of laziness among the students which further resulted in indiscipline. The Principals of various colleges in Kerala, therefore, recommended to the Government that the new scheme should be given a go by and old scheme should be resorted to. Government referred the matter to the University. The Academic Council, which is an expert body on the subject, considered the matter and took the view that the old scheme should be followed. We don't think we can interfere with the decision of the Academic Council. M.P. Menon, J., sitting in Division Bench, in *Sugunan v. University of Kerala* 1984 KLT 1086 held as follows:

Except in cases where a clear violation of the norms, statutory or otherwise, is discernible, the courts will not interfere with the assessment made by expert

academic bodies, if such assessment is bona fide.

12. The Hon"ble Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, held as follows:

17. ...While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair, to keep the court out.

13. To the same effect, there is a decision of the Supreme Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, where Their Lordships relied on the decision of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and held as follows:

32. ...The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which Chancellor has acted.

Thus, the above decisions would show that unless it is shown that there has been a violation of any Act or Rule, opinion of the expert body will not be interfered with by this Court. There are no mala fides alleged in this case. Hence, there is nothing wrong in the decision of the Academic Council reverting to the old scheme of examination for the pre-degree course.

14. The next question is whether anything is wrong in implementing the decision of the Academic Council for the academic year 1996? The decision was taken on 15th January 1997. The examinations were to be conducted in April, 1997. The students were already preparing for examination for the first year. That was also to be conducted by the University and also prescribed a minimum for getting a pass. The only difference is that the marks obtained in the first year should be added to the second year. It cannot be said that students do not have any sufficient time for preparing for the examination. There is no estoppel on the ground that at the time when the students joined the course, the scheme was that the marks in the first year will not be added. The University authorities are the best persons to find out which system of examination is suitable for the students. In this context, we also lays stress on the recommendations of the Principals of various colleges that the new system had created indiscipline among students. No question of discrimination arises because Exts. P-3 and P-6 apply to all the students of the Kerala University. Hence we don't agree with the learned Single Judge in holding that the scheme of examination should not be introduced for the students who have joined Pre-degree course in June 1996. We are told that the first year examination was conducted by the University in April 1997. The marks obtained by students in the first year will be added to the marks which will be obtained by them in the second year.

15. Another argument raised by counsel for the Respondents is that since the other two Universities in Kerala, Mahatma Gandhi University and Calicut University were following the new scheme, students of the Kerala University will be put to disadvantage in admission to the degree courses. That is a matter which should be brought to the notice of the authorities in charge of admission to the degree courses. Hence we allow these appeals, and set aside the judgment of the learned Single Judge.