

(1982) 11 KL CK 0002
In the High Court Of Kerala
Case No : W.A. No. 602 of 1982

University of Kerala

APPELLANT

Vs

Benoy Thomas

RESPONDENT

Date of Decision : 10-11-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1983) KLJ 229

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : V. Bhaskaran Nambiar, for the Appellant;

Final Decision : Dismissed

Judgement

Subramonian Poti, Ag C. J.

1. The respondent in the Writ Appeal is a student in the evening class of the Law College at Ernakulam. The University is awarding merit scholarships for the students of the LLB/B.Ed. courses and rules have been framed in this behalf. These rules provide for four University Merit Scholarships of the value of Rs. 900/- per annum for the students undergoing the LL.B course and out of this four, two will be for science candidates and two for non-science candidates. The rules provide that candidates for the award of the scholarships should possess a first class bachelors degree obtained at the University Examination held immediately preceding the award of the scholarships. In the absence of eligible candidates from the immediately preceding University Examination candidates who had obtained a first class in the previous examination at the first appearance also will be considered. Clause 3 which is relevant for the purpose of this appeal may be extracted here:

3. These scholarship shall be awarded annually by the syndicate on the basis of merit as judged by the aggregate percentage of the total marks secured in all in the case of science students and B.A./B.Com. in the case of non-science students.

Clause 13 of these rules is the one impugned in the Original Petition and that clause has been struck down as discriminatory by a learned Single Judge. That clause reads:

13. Employed people undergoing University courses shall not be eligible for the award of the scholarships.

Evidently the impugned clause operates to exclude a class of persons from the benefit of the rules which in the normal course must be available to persons who are similarly situate. By excluding employed people from the scope of benefit of the clause they are prima facie treated as a different class and the justification for this would necessarily depend upon the object of treating them as a different class and the method adopted to serve that object.

2. Normally in a case where there is a challenge to a rule as violating the right of equality under the Constitution it is for the authority which is responsible for the rule to indicate the reasons why there has been such classification. We have gone through the affidavit. The counter affidavit indicates the background for clause 13 in the rules. It appears that a person who held a merit scholarship got an employment at one time and the said person continued to enjoy the scholarship. It was then that the University Syndicate considered the matter and decided that when a student becomes employed the benefit of merit scholarship will not be available to such student any more. The above statement in the counter affidavit will only serve as furnishing the background far the rules and would not be sufficient to justify the action. The only paragraph in which, if at all, we could read some justification is paragraph 3 of the counter affidavit which we extract here:

3. The petitioner seeks to quash Clause 13 of Ext. P4 under which employed people undergoing University courses are not eligible for the award of the scholarships. Admittedly the petitioner is employed and undergoing University course for his LL.B. degree in the Law College Ernakulam. It is submitted that the petitioner has no right to insist that he should be awarded the scholarship. Under the National Scholarships Scheme formulated by the Ministry of Education and Social Welfare the principle for awarding National Scholarship scheme is that "no brilliant student is prevented on grounds of poverty from pursuing an academic career and a scheme of National Scholarships for the award of merit scholarships for Post-Matric studies was started by the Government of India in 1961-1962 and was continued from year to year.

The statement about the National Scholarship Scheme is not followed up by any further statement that this principle was adopted in the impugned rule. If we are to assume that the case is that the same scheme was adopted we will then have to consider whether the object could be achieved by the process adopted.

3. A scholarship may be granted in order to promote educational interests. It may serve as an incentive to students to put forth their best efforts so that they may earn the scholarship by reason of merit. That may go to improve the

general standard of efficiency at least among those students who aspire for the scholarship. That will certainly serve a laudable purpose in that event. A scholarship may, on the other hand, be awarded not for merit, but by way of assistance to those who, by reason of poverty, are unable to prosecute their studies. It will then be not a merit scholarship, but a scholarship to the indigent. A scholarship may also be intended to promote merit, but at the same time confine its operation to those who are unable to prosecute their studies without assistance. The object would then be to enable those persons who could rank among others on the basis of merit, but are unable to do so for want of means, to be assisted financially. That again would serve a good purpose. We will assume that in this case the object is to promote merit subject of course to restricting the benefit to those who cannot afford the means of proper education, not that we find any categorical averment that such is the object of Clause 13, but we are proceeding on the basis of the learned arguments of the learned Advocate General.

4. Any rule which provides for conferment of scholarships to those who stand high in the merit, but restricts it to only those who are poor may be a justifiable classification. But has the object been achieved in this case? Does the rule as it stands operate to achieve that object? The learned Single Judge has found that it does not and for reasons which we will now state we also agree with the learned Single Judge. In the Law College at Ernakulam there are students who take to the evening course as well as students who take to the day time course. The evening course is intended for those who are employed. It is only persons who are employed that are admitted to the evening course. That is a matter not in controversy. May be that some of them may not continue in employment once they have been admitted. All the students who are employed are denied the benefit of scholarship while all the students who are unemployed stand the opportunity of being considered for the scholarship. Could it be said that student's who are employed are well off and students who are not employed are poor deserving consideration by way of scholarship intended for an indigent person, or a person who cannot prosecute his studies without assistance? That will certainly be a wrong assumption. Among students who are unemployed there may be persons who have considerable assets of their own or who have considerable income of their own. Such income may be much than the income of a person who is employed. When we consider the question of means of a student required to pursue his education it is not merely the assets of the student or his income that is relevant, for, his parents on whom he depends will normally finance the prosecution of his studies. May be that a student has no assets or income of his own, but his parents may be rich and they will be able to afford a good education for him. In such a case to say that merely because the student is unemployed he is a student deserving assistance from the State while a student who is employed no doubt, but financially not so well off is not entitled to the benefit of the scholarship would be illogical. To reckon employment of the candidate or his non-employment as the criterion for determining whether he is

poor or not would be a thoroughly irrational approach and therefore cannot be sustained. The rule is therefore discriminatory and violative of Article 14. The rule has to be struck down as has been done by the learned Single Judge. We uphold the judgment of the learned Single Judge and dismiss the appeal.