
(2001) 10 KL CK 0077
In the High Court Of Kerala
Case No : O.P. No. 27143 of 1999

Wesley Philip

APPELLANT

Vs

University of Kerala

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Citation : (2001) 10 KL CK 0077

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar, P.G. Rajagopalan, M. Gopikrishnan Nambiar and Shiraz Abdulla, for the Appellant; S. Gopakumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—One of the questions arising for decision in this case is whether the petitioner, who has no legal right to get the reliefs sought for, should be allowed them merely because a similar other person secured an undue benefit arising from the failure of the authorities to challenge certain interim orders passed by this Court.

2. The petitioner appeared for the Engineering Entrance Examination, March, 1994 and thereafter appeared for the Pre Degree examination in April, 1994. He noticed that there was wide disparity between the marks awarded to him in Papers I & II obtained for Mathematics for the Pre Degree examination. While he secured 56 out of 60 for the Ist paper, he could get only 17 out of 90 for the IInd paper.

3. For the purpose of admission to the Entrance examination for the Engineering course he needed 50% of the aggregate for the two paper viz. 75 out of 150. Petitioner had secured only 73 marks out of 150. Faced with this difficulty, the petitioner applied for revaluation. He was, however, not called for interview for the Engineering admission for the obvious reason of want of adequate marks and therefore he filed O.P. No. 10738 of 1994 before this Court. In C.M.P. No. 19139

of 1994 filed therein he got an interim direction enabling him to appear for the interview. He was interviewed and admitted to the Engineering course based thereon.

4. In the revaluation one of the examiners awarded him 20 out of 90 marks for the IInd paper in Mathematics, while the other retained the original mark of 17 out of 90. The average was 18.5, rounded to 19. Under Rule 9(1)(ii) of the Rules governing revaluation, the benefit of higher marks obtained in revaluation could be actually given only in case the variation between the original marks and the marks fetched in revaluation was atleast 5%. As regards the petitioner, the variation (19 against 17) did not come within this limit and hence the petitioner was not awarded any higher mark on revaluation.

5. The petitioner challenged the vires of Rule 9(a)(ii) aforementioned also in said Original Petition. IN the meantime he had progressed with his course based on provisional admission secured with the aid of the interim directions of this Court. Ultimately, the Original Petition, O.P. No. 10738 of 1994 was allowed, but in Ext. P6 judgment a Bench of this Court allowed the appeal filed by the University and dismissed the said Original petition. The consequence was that the continuance of the petitioner in the Engineering College was rendered unjustified and impossible. Faced with this situation he challenged Ext. P6 decision before the Apex Court through an SLP. However, the Apex Court dismissed the SLP on 3.2.1997 as per Ext. P7 judgment. Though the petitioner could complete the semester as revealed from Ext. P8 course certificate, he was not allowed to sit for the final examination in view of the dismissal of the SLP.

6. Shri. T.P. Kelu Nambiar, who represented the petitioner, submitted that there was one more candidate similarly situated as the petitioner and in his case after the dismissal of his Original Petition by a Bench of this Court, instead of going to the Apex Court he filed a fresh Original Petition and obtained an interim order enabling him to sit for the examination and ultimately passed out. Shri. Nambiar submits that whatever be the merits of the petitioner's eligibility to undergo the Engineering course, now that he has already completed the course, albeit through interim orders of this Court and in view of Ext. P11 judgment of the Court allowing the said other candidate, Alex Saji, to have the benefit of appearance in the examination with eligibility for declaration of result of the Engineering final examination, the petitioner might also be given the same benefits. In other words, merely for the sin of going to the Apex Court rather than filing another Original Petition before this Court as done by Alex Saji, the petitioner might not be deprived of the fruits of the efforts he made during the 8 semesters. It is pointed out that the denial of the aforementioned benefit would amount to undue discrimination by this Court between Alex Saji and the petitioner. The maxim Act is Curiae Neminem Gravabit was relied on by Shri. Nambiar to contend that the Court's orders should not stand in the way of substantial justice.

7. I have heard the learned Standing counsel appearing for the University, who

relied on case law in support of his contention that the court should not go aid of a person who does not have any legal right and based only on misplaced sympathy.

8. With the passing of Ext. P6 judgment by a Bench of this Court the challenge made by the petitioner to Rule 9(a)(ii) of the revaluation Rules of the Kerala University failed with the result that the marks obtained by the petitioner for the IInd paper in Mathematics for the Pre Degree Examination continued to be 17/90 and the aggregate 73/150. For admission to the Engineering course the minimum aggregate marks required was 75/150. It follows that the petitioner was not qualified to be admitted to the Engineering course. With the dismissal of the SLP through Ext.P7 judgment, the petitioner had lost all rights to undergo the Engineering course albeit he had not only secured admission for the Engineering course, but also had progressed substantially by the time the judgment in the SLP was delivered. But that was solely because of the interim orders given by this Court. The impact of the dismissal of the SLP was that the petitioner lost all his rights to continue in the course and it is taking into account this fact that he was not allowed to sit for the Engineering Examination by the University.

9. It is true that pursuant to Ext. P10 order Alex Saji, a similarly placed candidate was granted the benefit of pronouncement of the result and issued with qualifying certificate in respect of his appearance in the B. Tech (Mech.) Engineering Course. I note from Ext. P11 that this Original Petition itself was ultimately disposed of with the following observations:

"In view of the interim order passed by this Court in C.M.P. No. 2026 of 1998 dt. 16.2.1998, I am satisfied that no live issue survived for consideration in this Original Petition which is accordingly closed".

10. The turn of events thus lead to a situation where a similarly placed candidate Alex Saji could, with the aid of Ext. P11 judgment walk out of the Engineering College as a successful Degree holder, whereas the petitioner, who did not file an Original Petition like Ext. P10 and chose to surrender to the situation emanating from the dismissal of his SLP through Ext. P7 could not appear for the examination. The question is whether this Court, in the circumstances, would be justified in stepping in to set right the malady arising from alleged discrimination and to direct that the petitioner also be allowed to sit for the examination.

11. A similar question came up before a Bench of three Judges in the Apex Court in Guru Nanak Dev University Vs. Parminder Kr. Bansal and another, . That was a case where under the relevant rules the petitioner therein, who had not passed the M.B.B.S. examination was not qualified to undergo medical internship course. However, by virtue of an interim order of the High Court he was admitted to the internship course. Thereafter the High Court also passed final orders in the Original petition directing that the internship of the petitioner be regularised. The Apex Court upheld the defence contention that the final order in the Writ Petition

did no more than validate and perpetuate the interlocutory error without any pronouncement on or adjudication of the basic issues of eligibility; that this type of orders would introduce an element of indiscipline in academic life and expose the system to ridicule and render any meaningful control of academic work impossible. It also held as follows:

"We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

12. In *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, the question of granting reliefs to some students who underwent education in affiliated institution came up for consideration of the Supreme Court. It was contended that refusal of permission to the candidates to sit for the examination would work out serious injustice to the students. The Court, however, relying on the dictum in *Guru Nanak Dev University's* case quoted above, observed that the Central Board of Secondary Education neither directly nor indirectly had held out to the students at any point of time that the institutions in which they were prosecuting their studies have been affiliated or were going to be affiliated in the near future and that notwithstanding the fact that the students would be inconvenienced, they cannot be granted any relief because to permit students of unaffiliated institutions to appear for the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and that the court would not be justified to sustain the orders issued by the High Court on misplaced sympathy.

13. In view of the said position of law, notwithstanding the fact that the petitioner would be seriously inconvenienced and would be forced to a situation where years of his labour and academic efforts would be wasted, I am of the view that this Court would not be justified in intervening in favour of the petitioner albeit another person Alex Saji, who was similarly situated like the petitioner has already walked out of the College with his degree and is enjoying the benefits of his academic pursuits which was possible only because of the orders, interim and final passed by this Court in Exts. P10 and P11.

14. The present petitioner was obviously unqualified to be admitted for the Engineering course and he continues to be so though it is a fact that under the interim orders he could complete his Engineering course in the College. In view of the unequivocal declaration of law by the Apex Court I do not think that, in the circumstances, the Court will be justified in giving him a benefit, to which he is not legally entitled.

The Original Petition is without merit and it is accordingly dismissed.