

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WA.No. 539 of 2015 () IN WP(C).11732/2012

AGAINST THE JUDGMENT IN WP(C) 11732/2012 of HIGH COURT OF KERALA
DATED 30-01-2015

APPELLANT/PETITIONER :-

JIJO MATHEW
PALAKUNNATHU HOUSE, KODUMON EAST PO, KODUMON
ADOOR, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX

RESPONDENTS/RESPONDENTS :-

1. UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, THIRUVANANTHAPURAM, PIN:695031.
2. PRINCIPAL
SREE NARAYANA INSTITUTE OF TECHNOLOGY, THEPPUPARA
EZHAMKULAM, ADOOR, PATHANAMTHITTA DISTRICT, PIN:691 554.
3. THE COMMISSIONER FOR ENTRANCE EXAMINATION,
5TH FLOOR, HOUSING BOARD BUILDINGS, SANTHI NAGAR
THIRUVANANTHAPURAM, PIN:695001.
4. THE STATE OF KERALA REPRESENTED BY ITS SECRETARY
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN:695001.

R3 & R4 BY GOVERNMENT PLEADER SRI.P.I.DAVIS
R1 BY SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

W.A. No.539 of 2015

Dated this the 4th day of March 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard the learned counsel for the appellant and the learned Government Pleader.

2. This writ appeal has been filed by the writ petitioner against the judgment of the learned Single Judge dated 30.1.2015 passed in W.P.(C) No.11732 of 2012, by which, the writ petition was dismissed. The parties are referred to as referred in the writ petition. The petitioner's case in the writ petition are as follows :- The petitioner has appeared in the Kerala State Entrance Test for Engineering in the year 2011. He was declared selected in the State merit category and was allotted the institution, respondent No.2. The petitioner took admission and pursued his course in Mechanical Engineering first year. At the time of first year examination, the University raised an objection regarding the eligibility of the petitioner to the admission. The objection was that, according to the Prospectus for admission to the Professional Degree Courses, a candidate should have secured 50% marks separately in Mathematics in the Higher Secondary examination.

Hence, the petitioner could not have admitted. At that stage, the petitioner filed this writ petition. This Court entertained the writ petition and passed an interim order, by which, the petitioner was permitted to write the examination and continue his subsequent courses provisionally and he continued his courses up to 4th year. When the petitioner was in the last year of the course, the writ petition was heard and dismissed on 30.1.2015. The learned Single Judge upheld the objection of the University and took the view that as the petitioner did not have 50% marks in Mathematics, when the marks of both 11th and 12th divisions are taken together, he could not have been admitted.

3. Learned counsel for the appellant submits that there was ambiguity with regard to the terms and conditions as laid down in the Prospectus. He has referred to Clause 6.2.2 sub clause (a) and submits that the petitioner had 55% marks in Class-XII. But the University had added Class-XIth examination and thus, took the objection that aggregate is less than 50%. Learned counsel submits that in the year 2014 a 'Note' was added in the Prospectus clarifying the situation, but there was no such 'Note' in the earlier Prospectus at the time when the petitioner appeared in the examination and was declared as selected.

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4. Learned Standing Counsel appearing for the University submits that preferring to the mark sheet of the petitioner, it gives the total marks of both 1st and 2nd year of Higher Secondary examinations. It is submitted that the University's objection was valid based on the criteria as laid down in the Prospectus. Learned counsel further submits that although the petitioner had appeared upto 4th year, since his appearance was on the basis of the interim order of this Court, for which, the petitioner cannot claim any benefit.

5. We have considered the submissions made by the learned counsel appearing for both parties and perused the records.

6. The Prospectus, as per which, the petitioner was admitted, in which, Clause 6.2.2 sub clause (a) is to the following effect :-

"Candidates who have passed Higher Secondary Examination, Kerala or Examinations recognized as equivalent thereto, with 50% marks in Mathematics separately, and 50% marks in Mathematics, Physics and Chemistry/Computer Science/Bio-technology/Biology put together are eligible for admission."

The above Clause discloses that the candidates, who have passed Higher Secondary Examination, Kerala or examinations

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recognized as equivalent thereto, with 50% marks in Mathematics separately and 50% marks in Mathematics, Physics and Chemistry/Computer Science/Bio-technology/ Biology put together are eligible for admission. Apparently, the Clause did not specify or clarify that the marks of Higher Secondary Examination should include only the 1st year or both 1st and 2nd years, which fact was subsequently clarified in the 2014 Prospectus, where a 'Note' has been added to Clause 6.2.2, in which, 'Note-(i)' is to the following effect :-

"In two year Kerala Higher Secondary courses or examinations recognised equivalent thereto with two year course where the Board Examinations are conducted in both years, the total marks of two years in the respective subjects as shown in the mark lists of the respective Higher Secondary Boards will be considered for academic eligibility."

7. Learned counsel appearing for the University is right in his submission that in the mark sheet, which was filed by the petitioner, where both marks of 11th and 12th have been added in the total marks and we find substance in the objection raised by the University.

8. However, looking into the fact that there was no such clarification in the Clause when the petitioner was declared

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selected in the said quota and took admission and he had already completed his 4th year of Engineering course, we are of the view that at this stage, cancelling the admission of the petitioner may cause hardship and loss to the appellant. Thus, in the facts of this case, we are of the view that the petitioner shall be allowed to complete his course and the judgment of the learned Single Judge dismissing the writ petition is set aside. We, further make it clear that this order is passed in the factual situation of the appellant's case and it shall not be treated as a precedent.

The writ appeal is disposed of accordingly.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt