

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

W.P(C).No. 10985 of 2008 (G)

PETITIONER(S):

MUHAMMED NISHAN.N.P.,
S/O.N.P.MUHAMMED BASHEER, 1ST YEAR B.D.S., STUDENT,
ROYAL DENTAL COLLEGE, CHALISSERY, PALAKKAD,
RESIDING AT NELLAYA PUTHANPEEDIYAKKAL, HOUSE,
THOOTHATHA, MALAPPURAM DISTRICT.

BY ADVS.SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.S.PRASANTH (AYYAPPANKAVU)

RESPONDENT(S):

1. PRINCIPAL, ROYAL DENTAL COLLEGE,
IRON HILLS, CHALISSERY P.O.,
PALAKKAD DISTRICT-679 536.
2. THE UNIVERSITY OF CALICUT,
TENHIPALAM, MALAPPURAM, REPRESENTED
BY THE REGISTRAR.
3. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO GOVERNMENT, HIGHER
EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADVS. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM
R2 BY ADV. SRI.SANTHOSH MATHEW, SC, CALICUT UNIVERSITY
R3 BY SENIOR GOVERNMENT PLEADER, SRI. THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C) NO.10985 OF 2008

APENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: RELEVANT PAGES OF PROSPECTUS FOR ADMISSION TO PROFESSIONAL DEGREE COURSES, 2007 KERALA.
- EXHIBIT P2: TRUE COPY OF MARK LIST DATED 22.05.2006 FOR THE HIGHER SECONDARY EXAMINATION OF THE PETITIONER.
- EXHIBIT P2(A): TRUE COPY OF THE COMMUNITY CERTIFICATE DATED 20.2.2007 AND INCOME CERTIFICATE DATED 02.6.2007.
- EXHIBIT P3: TRUE COPY OF REPRESENTATION DATED 11.2.2008 TO THE 1ST RESPONDENT.
- EXHIBIT P4: TRUE COPY OF LETTER DATED 23.2.2008 OF THE 1ST RESPONDENT TO THE CALICUT UNIVERSITY.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.10985 of 2008

Dated this the 12th day of October, 2015

JUDGMENT

This writ petition is filed by the petitioner challenging a letter issued by the 1st Respondent dated 23.02.2008 to the Deputy Registrar of the Calicut University, Calicut, intimating that an inadvertent error has occurred in the admission of the petitioner concerning the mark verification and thereby the 1st Respondent has taken corrective action by expelling the student from the College.

2. Brief facts required for the disposal of the writ petition are as follows:

3. Petitioner was a first year student of B.D.S Course in the 1st Respondent College. While continuing so, the Principal of the College has instructed him not to attend classes since some mistake was noticed on verification of his marks. He is aggrieved by the said action of the College authorities. Petitioner claims that he is a member of Muslim-Mappila community and his family is permanently residing at

Thootha in Malappuram District and thereupon he is entitled to get 5% relaxation of marks in the qualifying examination. Petitioner had secured admission in the 1st Respondent College under NRI Quota. But the petitioner claims the benefit of clause 6.2.4 of Ext.P1 Prospectus in the matter of relaxation of marks, which read thus:

"6.2.4 Relaxation in marks:

For all the courses, candidates belonging to Socially and Educationally Backward Classes (as per G.O.(P) No.208/66/Edn. dated 2.5.1966 and amendments thereof), with a total annual family income not exceeding Rs.2.5 lakhs, will have a relaxation of 5% marks in the qualifying examination. They need only 45% marks in the case of Biology and 45% marks in the case of optional subjects put together. The Scheduled Castes and Scheduled Tribes candidates need only a pass in the qualifying examination. However, for admission to MBBS/BDS courses, candidates belonging to SC/ST categories need 40% marks in Physics, Chemistry and Biology put together in the qualifying examination (As per the Guidelines of Medical Council of India).

The relaxation in marks in the qualifying examination extended to SEBC candidates only will be applicable to OEC candidates even if they are allotted against the un-availed seats of SC/ST quota."

4. It is the further contention of the petitioner that, petitioner is a candidate belonging to socially and educationally backward class, his total family income is only Rs.60,000/-,

much less than the prescribed limit of Rs.2.5 lakhs prescribed in the clause cited *supra* and therefore he is entitled to get 5% relaxation in qualifying mark and by virtue of the said provision, petitioner need to secure only 45% marks in Biology and 45% in three optional subjects put together. Petitioner further contends that he is entitled to get the said relaxation as prescribed under clause 6.2.4. in Ext.P1 Prospectus in view of strict compliance of the stipulations contained thereunder.

5. When the matter came up for admission before this Court, a learned Judge of this Court by an interim order dated 11.04.2008 permitted the petitioner to continue his Course of study provisionally and subject to the result of the writ petition.

6. The thrust of the contentions advanced by the petitioner is that apart from orally informing the petitioner that he should not attend classes by the Principal of the College, no communication was received by him expelling him from College and having not done so, merely by issuing a communication by the College to the 2nd Respondent University, petitioner is not liable to discontinue his Course. It is also contended that the action of the 1st and 2nd Respondents

is violative of the principles of natural justice. Moreover, since he is entitled for the eligibility as prescribed under clause 6.2.4 of Ext.P1 Prospectus and the same is not disputed by the Respondents in the writ petition, it is deemed to be admitted.

7. I have heard learned counsel for the petitioner Smt. Varsha Bhaskar, learned counsel for the 1st Respondent, Sri. Tony George Kannanthanam and Sri. Santhosh Mathew for the 2nd Respondent and perused the records.

8. Learned counsel for the petitioner submits that by virtue of the interim order passed by this Court, petitioner has completed the B.D.S. Course and is presently doing Internship. The said submission made by the learned counsel was confirmed by the learned counsel for the 1st Respondent.

9. Having considered the rival submissions and going through the records, the pinpointed allegation made by the petitioner that there was no communication issued either by the 1st Respondent or the 2nd Respondent, expelling him from the College or preventing from attending classes, which stands undisputed as on today, I am of the considered opinion that the action of the 1st and 2nd Respondents preventing the petitioner from attending the B.D.S. Course or expelling him

from the College was not in accordance with law. Moreover, the said action is absolutely in violation of the principles of natural justice. The 1st Respondent having admitted the petitioner to the Course in the year 2007 after verification of the records, if at all they had to take any action pursuant to any incompetent document, definitely, the 1st and 2nd Respondents should have heard the petitioner before such an action was taken. Moreover, going by Ext.P4 document, which is a communication addressed by the Principal of the College to the Deputy Registrar of the 2nd Respondent University, no copy is marked to the petitioner.

10. On the other hand, same will clearly establish that the action initiated by the Principal expelling the petitioner from the College is a unilateral decision taken without hearing the petitioner. Therefore, at this distance of time, I am to accept the contentions raised by the petitioner in the writ petition. In the absence of any rival assertion made by the Respondents to the specific pleadings made in the writ petition, the pleadings raised by the petitioner are deemed to be admitted under law and therefore I accept the same. Moreover, in a case of this nature concerning education of a

student, if the Respondents had any real grievance against continuance of the petitioner, they ought to have filed a counter, controverting the allegations and brought to the notice of the Court, the legal provision which prevents the petitioner from continuing the education at the earliest point of time. Having not done so, after the course is completed by the petitioner successfully, Respondents are not entitled to raise any contention controverting the statements made in the writ petition at this belated point of time. In that view of the matter, I set aside Ext.P4 being illegal and violative of the principles of natural justice.

The writ petition is allowed accordingly, also noting the fact that petitioner has completed the B.D.S Course and is now doing Internship.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
12.10.2015