

The Registrar vs Bimal

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Court : Kerala

Decided On : Feb-24-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : WA/332/2023

Appellant : The Registrar

Respondent : BIMAL

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR FRIDAY, THE 24TH DAY OF FEBRUARY 2023 / 5TH PHALGUNA, 1944 W.A.NO.332 OF 2023 AGAINST THE JUDGMENT IN W.P.(C)NO.489 OF 2023 DATED 06.01.2023 OF THE LEARNED SINGLE JUDGE OF THE HIGH COURT OF KERALA APPELLANT/1ST RESPONDENT: THE REGISTRAR KANNUR UNIVERSITY, THAVAKKARA, CIVIL STATION P.O., KANNUR DISTRICT, PIN, PIN - 670002 BY ADV I.V.PRAMOD RESPONDENTS/PETITIONERS 1 TO 4 AND RESPONDENTS 2 TO 4:

1 BIMAL S/O. BIJU. C.R., AGED 21 YEARS, CHOORANOLIL HOUSE, ALAKKODE. P.O., THALIPARAMBA, KANNUR DISTRICT, PIN- ., PIN - 670571 2 DANY JACOB S/O. JACOB, AGED 21 YEARS, SURYAPALLI HOUSE, CHERTHALA P.O. ALAPPUZHA DISTRICT, PIN-, PIN - 3 ASHIK NEHAR. N S/O. MUSTAFFA. N, AGED 24 YEARS, NEERULPPAN HOUSE, EDAVANNA P.O., MALAPPURAM DISTRICT, PIN-, PIN - 4 MIDHUN. M.J. S/O. M.B. JAYAN, AGED 21 YEARS, MULLASSERIL HOUSE, MUKKUDIL P.O., RAJAKKAD, IDUKKI DISTRICT, PIN-., PIN - 685566 5 THE DIRECTOR OF PHYSICAL EDUCATION, KANNUR UNIVERSITY, MANGATTUPARAMBA, KANNUR, KANNUR DISTRICT, PIN-, PIN - 670002 6 THE CONVENER, SOUTH WEST INTER UNIVERSITY ATHLETICS (MEN & WOMEN) CHAMPIONSHIP

ASSOCIATE PROFESSOR (BIOMECHANICS) & SPORTS SECRETARY, TAMILNADU PHYSICAL EDUCATION AND SPORTS UNIVERSITY, MELAKOTTAIYUR P.O., VANDALUR-KELAMBAKKAM ROAD, CHENNAI, PIN-, PIN - 600127 7 AIU AIU HOUSE, 16 COMRADE INDRAJIT GUPTA MARG (KOTLA MARG), OPP. NATIONAL BAL BHAWAN, NEAR I.T.O, NEW DELHI, PIN, PIN - 110002 BY ADV U.P.BALAKRISHNAN OTHER PRESENT: SMT O.M.SHALINA- STANDING COUNSEL - R7; SMT DEVISHRI R-GOVERNMENT PLEADER THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ
W.A.No. 332 of 2023 in W.P.(C)No.489 of 2023 Dated this the 24th day of February, 2023

JUDGMENT

Anil K. Narendran, J.

The appellant is the 1st respondent in W.P.(C)No.489 of 2023, which was one filed by respondents 1 to 4 herein, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 6th respondent herein, namely, the Convener, South West Inter-University Athletics (Men & Women) Championship, Tamil Nadu Physical Education And Sports University, Chennai, to permit them to participate in the South-West Inter-University Championship 2022-23 scheduled to commence on 09.01.2023 at Chennai. They have also sought for a writ of mandamus commanding the 6th respondent herein to permit them to participate in their respective events in the South- West Inter-University Championship 2022-23. Respondents 1 to 4 herein moved the writ petition as today motion on 06.01.2023 and the learned Single Judge disposed of that writ petition on 06.01.2023 itself, whereby Kannur University was directed to sponsor respondents 1, 2 and 4 herein for South-West Inter-University Championship 2022-23 and the University was directed to complete all consequential actions not later than the close of working hours on 07.01.2023. Paragraphs 4 and also the last paragraph of the judgment dated 06.01.2023 in W.P.(C) No.489 of 2023 read thus;

4. When I consider the afore submissions, it is evident that, though petitioners 1, 2 and 4 may not have satisfied the benchmark fixed by the University, they have emerged first position in their respective events. Since no other person has been sponsored by the University for the said events, I am of the view that they should be given the latitude of participating in the South West Inter-University Competition, to begin on 09.01.2023, since it will cause prejudice to no one else. As far as the 3rd petitioner is concerned, I am afraid that I cannot find him eligible for any benefit, because the student who emerged first would be the only one entitled to such, but he has not approached this Court yet. In the afore circumstances, I order this writ petition in favour of petitioners 1, 2 and 4 and direct the Kanuur University to sponsor them for the South West Inter-University Competitions 2022-23; for which purpose, all consequential action shall be completed not later than the close of the working hours on 07.01.2023."

3. Challenging the aforesaid judgment of the learned Single Judge, the appellant is before this Court with this writ appeal, invoking the provisions under Section 5 of the Kerala High Court Act, 1958.

4. On 16.02.2023, when this appeal came up for admission,

the learned Standing Counsel for Kannur University was directed to place on record the norms prescribed by the University for sending participants to South-West Inter-University Athletics Championship, 2022-23. The learned Standing Counsel for the University pointed out that Kannur University was not made a party to the writ petition, instead the Registrar of the University was arrayed as the 1st respondent. Registrar (Judicial) was directed to submit a report on the above aspect.

5. On 23.02.2023, when this appeal came up for further

consideration, the learned Standing Counsel submitted that a statement on behalf of the Kannur University has already been placed on record, producing therewith as Annexure A1, copy of the minutes of the selection committee meeting held on 23.12.2022, and Annexure A2 table dated 04.01.2023 showing the name of the participants qualified for South West Zone Inter-University Athletic Meet-2022-23.

6. We have heard Sri I.V. Pramod, the learned Standing

Counsel for Kannur University for the appellant, Sri U.P. Balakrishnan, the learned counsel for respondents 1 to 4 (writ petitioners) and Smt.O.M.Salini, the learned Standing Counsel for the 7th respondent Association of Indian Universities.

7. The 1st respondent herein is the University winner of

shot put for the academic year 2022-23. He is the record holder in the University for the said item. The 2nd respondent herein is the University winner in both high jump and long jump and gold medal winner of 4x100 relay team. The 3rd respondent herein is the University winner of decathlon and the 4th respondent herein is the runner up in the event of 100 meter sprint and winner of 4x100 relay team. In order to substantiate the said fact Ext.P1 result of the 27th Kannur

University Inter-Collegiate Athletic Meet 2022-23 conducted at Government Brennen College, Dharmadam, is produced along with the writ petition. The 6th respondent is the Convener of South-West Inter-University Athletics (Men & Women) Championship 2022-23 at Chennai, scheduled from 09.01.2023 till 12.01.2023. The document marked as Ext.P2 is a communication dated 21.11.2022 of the 6th respondent Convener, enclosing therewith the list of Universities which have already forwarded their entries up to 20.11.2022. As per Ext.P2, the last date of entry is 15.02.2022 and the last date of detailed entry is 25.12.2022. The document marked as Ext.P3 is the list of Athletes provisionally selected from Kannur University for participating in the South-West Zone Inter-University Athletic Championship. The grievance of the respondents 1 to 4 herein was that the Director, Directorate of Physical Education, Kannur University decided to conduct a Trial Meet for selection of Athletes to the South-West Zone Inter-University Athletic Championship, 2022-23 at Chennai, discarding Ext.P3 list prepared by the Selection Committee. The trial was held on 04.01.2023. In the trial list, the name of the 4th respondent herein was not included. In the trial, respondents 1 to 3 failed, since they could not meet the norms fixed by the Director, Directorate of Physical Education, Kannur University. In the writ petition, they pointed out that Mahathma Gandhi University sent their 1st and 2nd winners to participate in the Inter-University Athletic Championship, in all events. Similarly, Kerala University and Calicut University sent their University winners to participate in the Inter-University Athletic Championship, in all events. The 1st respondent herein secured 1st position in shot put in the University Meet with a University record of 13.30 meters. As evident from Ext.P4 Meet result of Mahathma Gandhi University, the University winner Ajnas P.S. who was selected for Inter-University Athletic Championship secured only 12.49 meters. Similarly, the 2nd winner Anu S. Jose who was also selected for Inter-University Athletic Championship secured only 12.38 meters. The document marked as Ext.P5 is the Annual Calendar of National University Games for the year 2022-23. Relying on Ext.P5, it is contended that atleast 16 students from those who participated in the Inter-University Athletic Championship can be selected for All India Meet, for each event. Hence there is no difficulty in sending the University winners to the Inter-University Athletic Championship. The document marked as Ext.P6 is the list of

events published by the 6th respondent Convener of South-West Inter-University Athletic Championship, 2022-23 and the document marked as Ext.P7 is the list published by the Director, Directorate of Physical Education, Kannur University of the Athletes who have qualified for the South- West Zone Inter-University Athletic Championship, 2022-23.

8. Along with a statement dated 22.02.2023 filed by the

learned Standing Counsel for Kannur University, the minutes of the Selection Committee meeting held on 23.12.2022, whereby Kannur University sponsored Athletes to South-West Zone Inter-University Athletic Championship, 2022-23 is produced as Annexure 1. The stand taken by the University is that the University sponsored only students who had qualified in accordance with the criteria prescribed by the Selection Committee. The document marked as Annexure 2 is the list of Athletes qualified for participating in South Zone Inter-University Athletic Championship, 2022-23.

9. Admittedly, respondents 1 to 4 herein have not chosen to

challenge the criteria adopted by Kannur University for selecting Athletes for participating in the South Zone Inter-University Athletic Championship, 2022-23. They have also not challenged their non- inclusion in the list of Athletes for the said Athletic Championship.

10. A reading of paragraph 3 of the judgment of the learned

Single Judge would show that, the learned Standing Counsel has pointed out the fixation of certain norms by the Kannur University for selecting candidates for the South-West Inter-University Athletic Competition, 2022-23 when the writ petition came up for admission on 06.01.2023. It was also pointed out that, since, respondents 1, 2 and 4 herein fell short of the timing prescribed for being selected for Inter-University Athletic Championship, no Athletes have been sponsored by Kannur University in those events, namely shot put, long jump, high jump and decathlon. In so far as the 3rd respondent herein is concerned, he came only 2nd in the selection trial. The Athlete who came first also fell short of the timing

prescribed for being selected for Inter-University Athletic Championship. Taking note of the said stand of the learned Standing counsel for Kannur University, the learned Single Judge, in paragraph 4 of the judgment, found that respondents 1, 2 and 4 herein have not satisfied the benchmark fixed by the University, though they have emerged first in their respective events. Since no other Athlete has been sponsored by Kannur University for the said event, the learned Single Judge found that respondents 1, 2 and 4 herein should be given the latitude of participating in the South-West Inter-University Athletic Championship, 2022-23 scheduled to begin on 09.01.2023, which will not cause prejudice to anyone else.

11. In Bihar Eastern Gangetic Fishermen Cooperative

Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145] a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Paragraph 15 of the said decision reads thus;

"15. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute to enforce its performance. See: Lekhraj Satramdas Lalvani v Deputy Custodian-cum-Managing Officer [AIR 1966 SC 334], Dr. Rai Shivendra Bahadur v The Governing Body of the Nalanda College [AIR 1962 SC 1210] and Dr. Umakant Saran v State of Bihar [(1973) 1 SCC 485]. In the instant case, it has not been shown by respondent No. 1 that there is any statute or

rule having the force of law which casts a duty on respondents 2 to 4 which

they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Art.226 of the Constitution and the High Court was not competent to issue the same." (underline supplied)

12. In Oriental Bank of Commerce v. Sunder Lal Jain

[(2008) 2 SCC 280] the Apex Court held that, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. In the said decision, the Apex Court noticed that the principles on which a writ of mandamus can be issued have been stated in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris and F. G. Ferris, Jr. that, mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. Paragraphs 11 and 12 of the said decision read thus;

"11. The principles on which a writ of mandamus can be issued have been stated as under in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris and F. G. Ferris, Jr. :

Note 187.- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ,

issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed. Note 192.- Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty. Note 196.- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well settled principles which have been established by the

Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned - an interest which private litigants are apt to over look when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances. Note 206.- The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

13. These very principles have been adopted in our country. In

Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v Sipahi Singh [(1977) 4 SCC 145], after referring to the earlier decisions in Lekhraj Satramdas Lalvani v. N.M. Shah [AIR 1966 SC 334], Dr. Rai Shivendra Bahadur v. Nalanda College [AIR 1962 SC 1210] and Dr. Umakant Saran v. State of Bihar [(1973) 1 SCC 485], this Court observed as follows in paragraph 15 of the reports: "15. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a

failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Art.226 of the Constitution and the High Court was not competent to issue the same." Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant bank to declare their account as NPA from 31st March,

2000 and apply RBI guidelines to their case."

14. In State of U.P. v Harish Chandra [(1996) 9 SCC 309]

the Apex Court held that, under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. Paragraph 10 of the said decision reads thus;

"10. Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule the High Court relying upon some earlier decisions of the court came to hold that the list does not expire after a period of one year which on the face of its erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to

understand how the High Court issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

15. In Bhaskara Rao A.B. v CBI [(2011) 10 SCC 259] the

Apex Court reiterated that, generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass orders or directions which are contrary to what has been injected by law. Vide: State of Punjab v Renuka Singla [(1996) 8 SCC 90], State of U.P. v Harish Chandra [1996 (9) SCC 309], Union of India v Kirloskar Pneumatic Co. Ltd. [(1996) 4 SCC 453], University of Allahabad v Dr. Anand Prakash Mishra [(1997) 10 SCC 264] and Karnataka SRTC v Ashrafulla Khan [(2002) 2 SCC 560].

16. In view of the law laid down in the decisions referred to

supra, conclusion is irresistible that, no mandamus can be issued directing Kannur University to send Athletes, who failed to meet the benchmark fixed by the University for participating in South-West Inter-University Athletic Championship 2022-23. When respondents 1, 2 and 4 herein failed to meet the benchmark fixed by the University, they cannot contend that there is any failure on the part of the University in performing its statutory duty. Respondents 1, 2 and 4 herein, who failed to meet the benchmark fixed by the University have no legal right to seek a writ of mandamus commanding Kannur University to send them for South-West Inter-University Athletic Championship 2022-23 at Chennai. Therefore, the learned Single Judge went wrong in directing Kannur University to sponsor respondents 1, 2 and 4 herein for South-West Inter-University Athletic Championship 2022-23, by the impugned judgment dated 06.01.2023 in W.P.(C)No.489 of 2023.

17. During the course of arguments, the learned Standing

Counsel for Kannur University would point out that though respondents 1, 2 and 4 participated in South-West Inter-University Athletics Championship, 2022-23, they could not secure any prize.

18. In such circumstances, we find no reason to sustain the

impugned judgment dated 06.01.2023 of the learned Single Judge in W.P.(C)No.489 of 2023 and the same is set aside. Consequently, the writ petition

stands dismissed. It is made clear that the respondents 1, 2 and 4 herein shall not be entitled for any benefits whatsoever, on account of their participation in South-West Inter-University Athletic Championship 2022-23, on the strength of the impugned judgment dated 06.01.2023. Any certificate of participation issued by the 6th respondent Convener shall be cancelled, immediately on receipt of a copy of this judgment. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE Dxy APPENDIX OF WA 332/2023 PETITIONER ANNEXURES Annexure-1 A true copy of the minutes of selection committee meeting dated 23/12/2022 Annexure-2 A true copy of the table dated 4/1/2023

showing the name of participants qualified for participating in the South West Zone Inter University Athletic Meet 2022-23

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