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Sameera.T.S., vs the State of Kerala,

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Court : Kerala

Decided On : Sep-30-2021

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WA/1249/2021

Appellant : Sameera.T.S.,

Respondent : The State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943 WA NO. 1249 OF 2021 AGAINST THE ORDER/JUDGMENT IN WP(C) 14996/2021 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/WRIT PETITIONERS: 1 SAMEERA.T.S., AGED 18 YEARS, D/O.THALHATH, T.S.HOUSE, PULIPPARA PANGODE P.O., PIN-695 609. 2 ADHEEL MATHEW, AGED 18 YEARS, S/O.MATHEW PHILIP, ARA ACRE BUNGLOW, PAPER MILL P.O., PUNALUR, VILAKKUDY, KOLLAM-691 332. BY ADVS. ARUN KRISHNA DHAN T.K.SANDEEP ARJUN SREEDHAR ALEX ABRAHAM RESPONDENTS/RESPONDENTS 1 TO 3:

1 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM-695 001. 2 THE COMMISSIONER OF ENTRANCE EXAMINATIONS, OFFICE OF THE COMMISSIONER FOR ENTRANCE EXAMINATIONS, HOUSING BOARD BUILDING, SHANTHI NAGAR, THIRUVANANTHAPURAM-695 001. 3 THE DIRECTOR OF HIGHER SECONDARY EDUCATION, OFFICE OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDING, SHANTHI NAGAR, THIRUVANANTHAPURAM-695 001.

SRI.ASOK M CHERIAN ADDL.AG FOR RESPONDENTS SRI.ANTONY MUKKATH, SR. GP THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30.09.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of September, 2021 S. Manikumar, C.J. Instant writ appeal is filed by the writ petitioners, challenging the judgment of the learned Single Judge in W.P.(C).No.14996 of 2021 dated 17.09.2021, whereby, the reliefs sought for were declined and the writ petition was dismissed.

2. W.P.(C) No.14996 of 2021 was filed with the following reliefs:

i) declare Clause 9.7.4(b), (c) of Ext.P4, in so far as it provides 50% weightage to grade/marks obtained in the Class XII Examinations for professional Engineering/ Architecture courses for the ensuing academic year 2021-22 is per se discriminatory, arbitrary and violative of Articles 14 and 21 of the Constitution of India and accordingly to strike down the same;

ii) a writ of mandamus or any other appropriate writ order

or direction commanding the 1st respondent to give admission to professional courses within Kerala State for the academic year 2021-22 solely on the basis of the marks secured by the candidates in the common entrance examination conducted by the 2nd respondent as per Ext.P4 Prospectus, without taking into account or giving weightage to the marks obtained by the candidate in Class XII in any manner.

3. Basic facts for the disposal of the appeal are as follows: Appellants were the students of Mother Theresa Memorial

Central School, Pangode and Oxford Central School, Kollam respectively, who have completed the XII Standard, under the CBSE Board, in the year 2021. The minimum qualification required for higher education in the State of Kerala is passing higher secondary education in State syllabus or higher secondary education in CBSE syllabus or higher secondary education in ICSE syllabus. It is an admitted fact that, as far as professional degree courses in medicine, engineering, architecture etc., are concerned, admissions are regulated on the basis of a rank list prepared through a common entrance examination and the students, who secure 45% marks in the XII standard, are eligible to apply for the entrance examination.

4. The grievance of the appellants is that, for the admissions

in the engineering colleges, in the State of Kerala, for the academic year 2021-22, it is proposed to render equal weightage of 50:50 to the score obtained in the entrance examination and the marks obtained in the XII standard, which is unjust and illegal in the present scenario of the mode of marks awarded in the XII standard of CBSE and ICSE streams, due to Covid - 19 pandemic, and the way in which the XII standard examination was conducted and the marks awarded by the State Board.

5. It is admitted by the appellants that, for admission to

engineering, equal weightage of 50:50 score, obtained in the entrance examination and the marks obtained in XII standard, has been in prevalence from

2011 onwards. According to the appellants, during the academic year 2020-21, altogether different situation prevailed as no Plus Two examination has been conducted for CBSE and ICSE students and instead, marks have been awarded on the basis of the scheme submitted by the CBSE and ICSE. But, in so far as the State syllabus students are concerned, a name sake examination has been conducted for Plus Two and a highly liberalized system of evaluation was done, in the light of the prevailing pandemic situation, and resultantly, there was no proper evaluation of the academic merit of the students, who have completed Plus Two course, during the academic year in question, in any of the three basic channels for higher studies.

6. Sum and substance of the contention advanced by the

learned counsel for the appellants is that, marks of the entrance examination alone ought to have been taken as the criteria for drawing up the rank list and providing admissions to various professional courses, within the State, for the academic year 2021- 22.

7. It is also an admitted fact that appellants have participated

in the entrance examination, in accordance with the stipulations contained in Ext.P4 prospectus issued by the Commissioner for Entrance Examinations, Kerala, for the academic year 2021-22 right from the submission of applications till the admissions are made. The modality under which preparation of the rank list is specified in the prospectus, wherein, it is clearly stated that the rank list would be prepared by giving equal weightage of 50:50 to the score, obtained in the entrance examination and the marks obtained in the XII standard examination. Reading of the prospectus would also make it clear that the prescriptions are made on the basis of a formula of standardisation, approved by the expert committee constituted by the Government.

8. Before the writ court, State Government have filed a detailed counter affidavit, contending that the Commissioner for Entrance Examinations has invited online applications for

admission to professional degree courses as per the notification dated 31.05.2021, and the procedure to various professional degree courses for the year 2021 was done, as per the provisions in the prospectus for the academic year concerned. It is further contended that, as per Clause 1.4(a) of the prospectus, the admission to engineering colleges shall be regulated on the basis of merit, as assessed, by giving equal weightage of 50:50 to the marks obtained in the entrance examination for engineering (Paper I and Paper II, altogether) and the grade or marks obtained for mathematics, physics and chemistry put together in the final

year of the qualifying examination, after effecting the standardisation procedure, as per the formula contained in the prospectus. The other relevant portions of the prospectus are relied upon by the Government, in order to contend that the petitioners had not made out any case in the writ petition enabling them to secure any reliefs.

9. Anyhow, the learned single Judge, after taking into account the provisions of the prospectus and relying upon various

judgments of the Apex Court, has arrived at the firm conclusion

that the petitioners have not made out any case justifying interference, exercising the power of discretion conferred under Article 226 of the Constitution of India.

10. Heard Mr.Arun Krishna Dhan, learned Counsel for the appellants and Mr.Asok M. Cherian, learned Additional Advocate General appearing for the respondents, and perused the pleadings and the materials on record.

11. The basic contention advanced by learned counsel for

the appellants is that, the learned single Judge has failed to take note of the fact that the examination conducted by the State Board did not have sufficient standard, and the C.B.SE and I.C.S.E having not conducted any examination for Plus Two and a policy for evaluation was made for assessing the general academic merit of the students for award of marks, which cannot be equated with the marks awarded in a regular examination, if standardisation, as stipulated in the prospectus, is done for preparation of the rank list for the professional degree

courses, it would materially affect the students, who have secured high marks in the qualifying entrance examination conducted as per the prospectus in force.

12. We have evaluated the contentions advanced by the

learned Counsel for the appelllants, as well as learned Additional Advocate General, who has advanced arguments relying upon the requirements contained in the prospectus. In our considered opinion, the apepllants have participated in the entrance examination fully knowing well that the standardisation of the marks would be done in accordance with the formula fixed by the State Government as per the advice of the expert committee in the year 2011.

13. The petitioners, having participated in the entrance examination knowing fully well the manner in which the rank list would be prepared, cannot turn around and contend that the

provisions contained in the prospectus regarding the standardisation of the marks of the qualifying examination and the entrance examination is illegal and arbitrary, which thus means, if the appellants had any objection to the rules contained in the prospectus, which is the rule of the game, they ought to have challenged it before participating in the examination. In absentia of any such attempt from the part of the appellants, the action can only be viewed as an afterthought and making a preparation for a future challenge in the event of any eventualities adverse to the appellants in the admission process.

14. The issue is no more res integra, since the Honble Apex Court had occasion to consider the said legal aspect in its various judgments and it is only appropriate that some of the decisions are referred to, enabling us to arrive at a logical conclusion, in respect to the arguments advanced by the learned counsel for the appellants.

15. In Dr.G.Sarana v. University of Lucknow & Others (AIR

1976 SC 2428) it was held by the Honble Apex Court that the appellant who knew about the composition of the selection committee and took a chance to be selected, cannot thereafter question the constitution of the committee.

16. In Om Prakash Shukla v. Akhilesh Kumar Shukla (1986

Supplementary SCC 285), wherein, a three-Judge Bench of the Honble Apex Court held that, petitioner appeared in the examination without any protest was not entitled to challenge the result of the examination. The same view was reiterated by the Honble Apex Court in Madan Lal & Others v. State of J & K & Ors

(AIR 1995 SC 1088), wherein, at paragraph 9 held that, it was held

that the petitioners, who have participated in the written test and oral interview on the basis of the notification issued after the selection procedure is over, is not entitled to attack the constitution of the selection committee.

17. In Manish Kumar Shahi & Others v. State of Bihar & Others [(2010) 12 SCC 576], the aforesaid principle was reiterated

and held that the petitioner who has approached the writ court under Article 226 of the Constitution of India, after finding that his name does not figure in the merit list prepared by the commission, is not entitled to get any relief.

18. In Pradeep Kumar Rai and Others v. Dinesh Kumar

Pandey and Others [(2015) 11 SCC 493], the question considered was in respect of a promotion to a post and the selection process thereto, wherein the Apex Court held that the challenge to selection process after participating in the interview and declaration of adverse result, is not maintainable, since the participation in the selection process was without raising any objections. So also, we find that the prospectus was prepared by the Government, taking into account the expert opinion in regard to the manner in which the rank list is to be prepared. In our considered opinion, the contentions raised by the appellants with respect to the manner in which the State Board has conducted the examinations and the evaluation done by the C.B.S.E and the I.C.S.E thus enabling the students to secure more marks due to the peculiar nature of the questions provided and performance assessed, respectively, cannot be verified by the writ court in a proceeding under Article 226 of the Constitution of India.

Furthermore, there are no materials produced by the appellants before the writ court even prima facie to establish such an averment made, so as to grant any relief to the appellants, and therefore, the writ court was of the clear opinion that the appellants were not entitled to secure any relief there being no arbitrariness or illegality.

19. In the light of the above discussions and decisions, we

have no hesitation to hold that the appellants have not made out any case for interference in an intra court appeal filed under Section 5 of the Kerala High Court Act, 1958, there being no error in exercise of the discretionary jurisdiction, or other legal infirmities justifying our interference. The writ appeal is, therefore, dismissed. Pending interlocutory applications, if any, shall stand closed. Sd/- S.Manikumar Chief Justice Sd/- Shaji P.Chaly Judge vpv //TRUE COPY// P.A. TO JUDGE

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