**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Tesla Thomas Vs. State of Kerala**

**Tesla Thomas Vs. State of Kerala**

**SooperKanoon Citation** : sooperkanoon.com/50893

**Court** : Kerala

**Decided On :** Apr-09-2015

**Judge** : Honourable Mr.Justice K.Vinod Chandran

**Appellant** : Tesla Thomas

**Respondent** : State of Kerala

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT:- THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN THURSDAY,THE9H DAY OF APRIL201519TH CHAITHRA, 1937 W.P.(C).No.9782 of 2014 (W) ---------- PETITIONER(S):- ---------- TESLA THOMAS, THEKKANKATTIL HOUSE, PLLATHAI.P.O., KALAVOOR, ALAPPUZHA-688522. BY SRI. TESLA THOMAS (PARTY IN PERSON). RESPONDENT(S):- ---------- 1. STATE OF KERALA, REPRESENTED BY SECRETARY TOGOVERNMENT, HEALTH & FAMILY WELFARE DEPARTMENT, THIRUVANANTHAPURAM-695001.

2. THE CENTRLA COUNCIL FOR HOMEOPATHY, REPRESENTED BY ITS SECRETARY,ANUSANDHANAM BHAVAN, 61-65, INDUSTRIAL AREAL, OPPOSITE TO D BLOCK, JANAK PURI, NEW DELHI-110058.

3. THE PRINCIPAL, SANCTIONING AUTHORITY/CONTROLLING OFFICER, GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE,

THIRUVANANTHAPURAM-695001.

4. KERALA UNIVERSITY OF HEALTH SCIENCES, REPRESENTE DBY ITS REGISTRAR, MEDICAL COLLEGE.P.O., THRISSUR-680596.

5. SREE VIDHYADHIRAJA HOMOEOPATHIC MEDICAL COLLEGE & HOSPITAL, REPRESENTED BY ITS PRINCIPAL, THIRUVANANTHAPURAM-695050. R1 & R3 BY GOVERNMENT PLEADER SRI.R.RANJITH. R2 BY ASSISTANT SOLICITOR GENERAL OF INDIA SRI.N.NAGARESH R4 BY STANDING COUNSEL SRI.P.SREEKUMAR. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0904-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- WP(C).No.9782 of 2014 (W) ---------- APPENDIX PETITIONER(S)' EXHIBITS:- ---------- EXT.P1. TRUE COPY OF THE COMMUNICATION DATED69-2011 ISSUED BY THE4H RESPONDENT TO THE PETITIONER. EXT.P2. TRUE COPY OF THE COMMUNICATION ISSUED BY THE2D RESPONDENT TO THE SECRETARY,ASSOCIATION OF INDIAN UNIVERSITIES DATED19-11. EXT.P3. TRUE COPY OF THE COMMUNICATION ISSUED BY THE2D RESPONDENT BY THE SECRETARY,ASSOCIATION OF INDIAN UNIVERSITIES DATED99-11. EXT.P4. TRUE COPY OF THE COMMUNICATION ISSUED BY THE2D RESPONDENT TO THE PETITIONER DATED1110-11. EXT.P5. TRUE COPY OF THE MEMO DATED3110-11 EVIDENCING THE ADMISSION OF THE PETITIONER IN THE5H RESPONDENT COLLEGE. EXT.P6. TRUE COPY OF THE REPRESENTATION DATED289-12 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE VICE CHANCELLOR OF THE4H RESPONDENT UNIVERSITY. EXT.P7. TRUE COPY OF THE COMMUNICATION DATED301-13 ISSUED BY THE4H RESPONDENT OT THE PETITIONER. EXT.P8. TRUE COPY OF THE REPRESENTATION DATED162-2013 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE VICE CHANCELLOR OF THE4H RESPONDENT UNIVERSITY. EXT.P9. TRUE COPY OF THE APPLICATION DATED69-2013 SUBMITTED BY THE APPLICANT. EXT.P10. TRUE COPY OF THE ANSWER DATED910-13 RECEIVED PURSUANT TO EXT.P9. EXT.P11. TRUE COPY OF THE RELEVANT PAGES AMENDED REGULATIONS (DEGREE COURSE)

DATED1706.2005 ISSUED BY THE2D RESPONDENT AS PER SECTION20AND33OF CCH ACT, 1973. EXT.P12. TRUE COPY OF THE REGULATIONS PRESCRIBED BY THE2D RESPONDENT FOR POST GRADUATE COURSE1989 DATED0103.2012 AS PER SECTION20AND33OF CCH ACT, 1973. RESPONDENT(S)' EXHIBITS:- ---------- NIL. Vku/- [ true copy ] K. Vinod Chandran, J.

---------- W.P.(C). No.9782 of 2014-W ---------- Dated this the 9th day of April, 2015

JUDGMENT

The petitioner is aggrieved with the refusal of the University to permit him to continue in the BHMS Course in which he was allegedly admitted in the academic year 2011-12, by the 5th respondent college which is affiliated to the 4th respondent University. The admission itself is stoutly refuted by the University, on the ground that the 5th respondent had never sent the name of the petitioner for registration, for the course commencing in the academic year 2011-2012. The University also contends that the petitioner's admission, if at all made by the 5th respondent; was made flouting all regulations and is hence irregular.

2. The petitioner sat for Pre-degree examinations, from the University of Kerala in the year 1998, the marklist of which is produced along with Ext.P10 series of documents. The petitioner obtained his Pre-degree qualification with optional subjects of Physics, Chemistry and Mathematics. Subsequent to that, the petitioner is said to have sat for the Biology paper, under the WP(C).No.9782 of 2014 - 2 - National Institute of Open Schooling, in which he is said to have obtained 54% marks, which is evidenced by Ext.P11 certificate. On the basis of the said qualification in Biology, which he acquired almost 13 years after the Pre-degree qualification, the petitioner sought for admission in the 5th respondent college to the BHMS Course affiliated to the 4th respondent University.

3. The petitioner's specific contention is that the Central Council for Homeopathy, as per Section 20 of the Homoeopathy Central Council Act, 1973 [HCC Act], is empowered to prescribe the standards for admission to the course and the petitioner satisfies the prescription made by such apex body; being the Central

Council for Homeopathy. The petitioner also relies on Ext.P2 issued by the Central Council for Homeopathy to contend that the petitioner's qualification in Biology acquired from the National Institute of Open Schooling coupled with his Pre-degree qualification obtained from the Kerala University, entitles him to seek admission for the BHMS course of the University.

4. The learned counsel for the respondent University at the outset contends that the petitioner was not a student, registered by the 5th respondent, with the University. It is also stated that the WP(C).No.9782 of 2014 - 3 - petitioner had as early as on 06.09.2011, made an application for eligibility certificate, on the basis of the aforesaid qualifications, for admission to the BHMS course. The University after consideration of the same had declined such eligibility by Ext.P1 dated 06.09.2011, on the ground that the qualification obtained from the National Institute of Open Schooling is a compartmental qualification in one subject alone and that cannot be clubbed with the Pre-degree qualification obtained from the Kerala University. The learned Standing Counsel also relies on Ext.P7 order which has dealt with the issue extensively and comprehensively.

5. The learned counsel for the respondent college however contends that though the registration of the petitioner was not uploaded, the same was sent through the local delivery system; which despatch is entered in the local despatch register. The petitioner in fact specifically contends that the uploading of his application could not have been done, since he did not have a registration number in the entrance exam and the University refused to accept the local delivery made by the 5th respondent College.

6. The rejection of the University for continuance of the petitioner in the BHMS is based on Ext.P7; the reasons for which WP(C).No.9782 of 2014 - 4 - are extracted hereunder: "1. While verification of Original certificates of students for 2011-12 Batch, admitted to Sri. Vidyadhiraja Homeopathic Medical College, it is seen that online registration of 39 students only was done by the college and your name was not entered. The College has not produced any valid reason for not registering the name of Tesla Thomas by online along with other students. More over the College has not contacted the University for registering the student.

2. As per the regulations of the course, the selection of students for the BHMS course shall be made strictly based on the merit as decided by the competent authority approved by the Govt. of Kerala/KUHS. Selection in BHMS colleges is made from the rank list prepared by Commissioner of Entrance Examinations. In management quota also, rank list is prepared based on the entrance rank of the applicants. As per the Principal's report, you had not attended any competitive entrance examinations.

3. You have produced a letter from CCH that Sri. Tesla Thomas fulfills the prescribed minimum qualification for making an application for BHMS Degree course, but it is inadequate for the admission to BHMS course in KUHS. As per the eligibility Criteria of KUHS for admission to BHMS course, the student should have secured 50% of marks in Physics, Chemistry and Biology taken together. But you have passed Pre- WP(C).No.9782 of 2014 - 5 - degree Course with Physics, Chemistry and Maths with Third Class and passed the Biology examination compartmentally from National Institute Open School and the KUHS has rejected your request for eligibility certificate on 06.09.2011.

4. As per the Principal's letter to University's enquiry, Sri. Tesla Thomas was selected in the Management quota and he belongs to OBC (Latin Catholic Community), but for getting relaxation in marks under SEBC category, the candidate should produce income certificate (Below 4.5 lakhs per annum) issued by the competent authority at the time of admission. But the copy of certificate attached by you in your application, is dated 01.12.2005 which is not valid in 2011. Again your qualification in this category is still unclear." 7. Primarily it is to be noticed that the contention that the University has diluted the conditions of eligibility cannot at all be countenanced. The counter affidavit of the Central Council for Homeopathy also refers to State of T.N. v. Adhiyaman Educational and Research Institute [(1995) 4 SCC104 in which, specific reference is made to para 41; wherein it was held that if there are vacancies in courses, it would be unconstitutional for the State to decline admittance to students, only on the ground that they WP(C).No.9782 of 2014 - 6 - could not achieve the minimum standards prescribed by the academic bodies; which are more rigorous than the minimum requirements specified by the apex bodies. It was held that on such vacancies

being available it was the duty of the State or the academic body to reduce the standards of minimum eligibility so as to follow the lesser norms prescribed by the apex bodies to fill up the seats remaining vacant.

8. The learned Standing counsel for the University alertly points out that; precisely the very said paragraph was overruled by the Hon'ble Supreme Court in Visveswaraiah Technological University and Another v. Krishnendu Halder and Others [(2011) 4 SCC606. Further it is also to be noticed that the Hon'ble Supreme Court in Dr.Preeti Srivastava v. State of M.P. [(1999) 7 SCC120 categorically found that though the apex body would be entitled to prescribe the minimum standards, the restriction is only against the academic bodies and respective States diluting such minimum standards and not in providing more rigorous standards of eligibility for admission.

9. Section 20 of the Act which was specifically read out by the petitioner also speaks of the prescription of `minimum WP(C).No.9782 of 2014 - 7 - standards'. In such circumstances, it cannot be said that the minimum standards prescribed by the apex body has to be, in all situations accepted as the minimum benchmark, by the academic body to which a particular course is affiliated; which body/University conducts the examinations and issues certificates. Definitely a lesser standard cannot be adopted; but a higher eligibility quotient would be permissible.

10. Looking at the issue, in that background it has to be found that Exhibits P2, P3 and P4 are inconsequential. Exhibit P2 is merely a communication placing the issue raised before the Association of Indian Universities (AIU). It is not clear as to what is the statutory status of AIU and how its opinion regulates the apex body, herein the Central Council of Homoeopathy. Yet again Exhibit P4 is a decision said to have been taken by the Executive Committee of the apex body, which is contrary to the regulations issued by the Council; viz., as Homoeopathy (Degree Course) Regulations, 1983, specifically Regulation 4, which is extracted hereunder: "4. Minimum Qualifications: No candidate shall be admitted to the B.H.M.S. (Degree) Course unless he has: WP(C).No.9782 of 2014 - 8 - (a) Passed the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects; (b) Attained the age of 17 years on or before 31st

December of the year of his admission to the first year of the Course; (c) Blind (including colour blind), deaf and/or dumb candidates shall not be allowed for admission in the course". The Regulation speaks of passing the Intermediate exam with Physics, Chemistry and Mathematics, while the petitioner has passed Intermediate with Physics, Chemistry and Mathematics and did Biology under Open Schooling in a totally different academic body. The regulation definitely speaks of a Course with Physics, Chemistry and Biology and does not contemplate any compartmental qualification in each of the subjects from different academic bodies.

11. Further, the reliance placed by the Council in its counter affidavit on Adhiyaman Educational and Research Institute (supra) does not reflect the correct position of law. Visveswaraiah Technological University (supra) found that Dr.Preeti Srivastava (supra) and State of T.N. v. S.V.Bratheep WP(C).No.9782 of 2014 - 9 - [(2004) 4 SCC513 clarified Adhiyaman Educational and Research Institute (supra). It was held so by the Hon'ble Supreme Court in Visveswaraiah Technological University (supra): "The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is twofold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the examining body, to fix higher qualifications is recognised, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by the AICTE, will be binding and will be applicable in the respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State".

12. The counter affidavit of the Council, is non-committal insofar as not clearly recognising the eligibility of the petitioner, but finding fault with the University, for not having ensured the eligibility of the student at the proper time and "raising objection in the 3rd term". The facts disclose to the contrary, since the University has WP(C).No.9782 of 2014 - 10 - never registered the petitioner for the Course

and the irregular admission was made by the College. The equivalence sought for by the petitioner was also rejected at the outset by Exhibit P1 dated 06.09.2011. The same was not challenged then and the petitioner sought and obtained admission with the 5th respondent, behind the back of the University. The continuance in the course on the basis of such irregular admission cannot enure any claim of equity on the petitioner.

13. With respect to the eligibility conditions, the prospectus is brought out by the State, for carrying out admission to the professional courses, in this case, the professional course in Homoeopathy. The minimum qualifications too are listed out in the said prospectus. Only students who have registered for the entrance examination and ranked thereon are permitted to be admitted to a professional course, affiliated to the respondent University; which is the academic body with respect to the medical education within the State. The 5th respondent college is also regulated by the agreement, which it has with the State Government and no admissions could be made of students who have not appeared in the entrance examinations. WP(C).No.9782 of 2014 - 11 - 14. As was noticed earlier, it was the specific contention of the petitioner that the petitioner has not appeared in the entrance examination and it is only for that reason, the petitioner did not have a registration number and the University declined to accept the registration of the petitioner. The University's contention is that details of 39 students alone were uploaded by the 5th respondent University, for the academic year 2011-12. The 5th respondent college being regulated by the agreement executed with the Government of Kerala, any admissions made would necessarily have to be from the students who are ranked in the entrance examination. The admission made by the petitioner with the 5th respondent is hence found to be irregular.

15. With respect to the qualification of the petitioner also, he does not satisfy the minimum requirements as prescribed by the respondent University and the Government of Kerala. Any student who is entitled to participate in the entrance examination conducted by the State of Kerala, to the professional medical courses has to have 50% aggregate marks in Physics, Chemistry and Biology. Definitely such qualification cannot be said to have been satisfied by appearance in examinations in different systems that too under WP(C).No.9782 of 2014 - 12 -

different academic bodies. In the petitioner's case, the petitioner had appeared for the Pre-degree examination and obtained such qualification from the Kerala University with optional subjects of Physics, Chemistry and Mathematics. The petitioner cannot be permitted to club any other qualification obtained compartmentally, especially under an open system of education and contend that the marks of one single paper obtained under the said system has to be clubbed alongwith the marks obtained in the Pre-degree under the Kerala University. It is also to be noticed that even if such mark in Biology obtained under the National Institute of Open Schooling is clubbed with the marks in Physics and Chemistry obtained by the petitioner in the Intermediate course, even then, the petitioner would not satisfy the 50% aggregate requirement. The petitioner falls short of having the minimum required aggregate percentage of 50%. For all the above reasons, the contentions raised by the petitioner are found to be not sustainable and the writ petition is found to be devoid of merit and would stand dismissed. No costs. Sd/- K.Vinod Chandran, JV/vku. Judge [ true copy ]

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**