

HIGH COURT OF KERALA

Bench: JUSTICE BECHU KURIAN THOMAS

Date of Decision: 18 January 2024

W.P.(CrI.) No. 1037 of 2023

KARUVANGADAN MUKTHAR @ MUTHUPetitioner

Versus

- 1. SUPERINTENDENT, CENTRAL PRISON, KANNUR**
- 2. DEPUTY SUPERINTENDENT OF POLICE, NARCOTIC CELL,
MALAPPURAM DISTRICT**
- 3. COMMISSIONER FOR ENTRANCE EXAMINATIONS,
THIRUVANANTHAPURAM**
- 4. PRINCIPAL, KMCT LAW COLLEGE, MALAPPURAM DISTRICT**

Legislation:

Section 302 of the Indian Penal Code, 1860

Article 226 of the Constitution of India

Rule 258 of the Kerala Prisons and Correctional Services Rules, 2014

UGC (Open and Distant Learning Programmes and Online Programmes) Regulation, 2020

Subject: Writ petition filed by a life convict for a direction to join a three-year LLB course at KMCT Law College and for related facilities to complete his education.

Headnotes:

Convict Seeking Education Opportunity – Petitioner, a life convict, seeks permission to join LLB course at KMCT Law College and to complete admission process – Also requests for emergency leave to attend the college for this purpose. [Para 1]

Educational Rights of Convicts – Acknowledging reformation as a key objective of criminal jurisprudence, the petitioner asserts his right to

education while incarcerated, challenging the traditional confines of prison rules. [Paras 4, 14]

Opposition by College Authorities – Fourth respondent (college) resists admission of convict citing potential disciplinary issues, minority institution rights as per T.M.A. Pai Foundation v. State of Karnataka, and UGC regulations prohibiting online law courses. [Paras 6, 11]

Legal Precedent and Equality – Reference to Pattakka Suresh Babu v. State of Kerala, where life convicts were allowed online education – Arguments of discrimination by the college as they had admitted another convict under similar circumstances. [Paras 8, 11]

Fundamental Rights and Reformation – Emphasis on the fundamental rights of convicts, including the right to education as a pathway to rehabilitation and reformation, overriding objections of the college. [Paras 13, 14]

Decision – Court directs the college to admit the petitioner for the LLB course and arrange for his online education – Provision for escort leave for necessary physical presence for admission formalities, acknowledging the unique circumstances and the principle of reformation. [Paras 16, 17]

Referred Cases:

T.M.A Pai Foundation and Others v. State of Karnataka [(2002) 8 SCC 481]

Pattakka Suresh Babu v. State of Kerala (2024 (1) KHC 55)

Representing Advocates:

Petitioner: Sri. Sunny Mathew, Sri. Anooj J.

Respondents: Smt. Sreeja V (Public Prosecutor), Sri. Kurian George Kannanthanam (Sr.), Sri. Saneer P.M, Sri. Tony George Kannanthanam

BECHU KURIAN THOMAS, J.

W.P.(Crl) No.1037 of 2023

Dated this the 18th day of January, 2024

JUDGMENT

Petitioner is a convict undergoing imprisonment at the Central Prison, Kannur. He seeks a direction to enable him to join the three year LLB course at the fourth respondent college. Further directions are also sought to enable him to complete the admission in the college and also to grant emergency leave to participate in the said process.

2. Petitioner was convicted and sentenced to undergo life imprisonment for various offences, including section 302 of the Indian Penal Code, 1860. While undergoing incarceration, he appeared for the entrance examination for the three year law course and successfully cleared it. Petitioner was allotted to the fourth respondent college, and he was directed to appear before the College on 11.10.2023. However, since he was not granted leave to join the college, he approached this Court under Article 226 of the Constitution of India.

3. When the matter came up for admission on 09.10.2023, this court directed the fourth respondent to keep one seat for the three year LLB course vacant, which order continues even now.

4. According to Sri. Sunny Mathew, learned counsel for the petitioner, the Government has already allotted the petitioner to the fourth respondent college and for the admission purposes, leave ought to be granted to him. It was submitted that when reformation is one of the objectives of criminal jurisprudence, a life convict ought to be permitted to undergo education as it will enable him to maintain his links with society.

5. Smt. V.Sreeja, the learned Government Pleader referred to rule 258 of the Kerala Prisons and Correctional Services Rules, 2014 and contended that though the prison rules permit granting of leave for educational purposes, the nature of education is confined to those that are delineated therein.

6. Sri. Kurian George Kannanthanam, the learned Senior Counsel instructed by Sri.P.M.Saneer, learned counsel for the fourth respondent on the other hand vehemently objected to the reliefs sought for and stated that granting admission to convicts will affect the discipline of the college. The learned Senior Counsel also attempted to impress this Court that, as a

minority institution, the management cannot be compelled to admit any candidate. According to him, as held in the decision in **T.M.A Pai Foundation and Others v. State of Karnataka and Others** [(2002) 8 SCC 481] minority institutions have a right to reject students, and it cannot be compelled to admit any person against their wish and choice. Learned Senior Counsel also referred to the UGC (Open and Distant Learning Programmes and Online Programmes) Regulation, 2020 and submitted that law as a course is prohibited from being imparted through the online mode and, therefore, the petitioner cannot be given admission to their college.

7. I have considered the rival contentions.

8. At the outset itself, it has to be mentioned that in a recent decision in **Pattakka Suresh Babu v. State of Kerala** (2024 (1) KHC 55), a Division Bench of this Court had considered an identical issue. In the said case, leave was sought for a life convict to obtain admission under the fourth respondent college itself. After referring to all the legal principles, it was held that the right of the convicts to pursue their studies must be honoured and a balance must be struck between the interests of society and the rights of the convict. The two applicants therein, who were life convicts, were permitted to undergo the classes online, utilising the technology available at the jails and in the colleges.

9. Concededly, pursuant to the direction in **Pattakka Suresh Babu's** case (supra), the fourth respondent college admitted the said convict to the three year LLB course for the academic year 2023-24 and he is undergoing the course of study. A reading of the said judgment indicates that the Principals of the colleges in that case expressed their willingness to permit the applicants therein to attend the classes online and had no objection for admitting those students to the colleges.

10. However, in the instant case, the fourth respondent college has vehemently opposed the grant of admission or any direction to grant leave to the petitioner to avail admission at the college. The discriminatory stance now adopted by the college cannot be countenanced. The learned Senior counsel submitted that the college could not, in the earlier instance, seriously object to the suggestion and consequent direction to grant admission and that, they have, in the present case, decided to oppose the grant of admission on legal grounds. Even though the said stance is apparently arbitrary and even discriminatory, it is necessary to consider the contentions raised by the learned Senior Counsel legally.

11. In **T.M.A. Pai Foundation's** case (supra), the Supreme Court had referred to the right of minority institutions to refuse to grant admission and also to reject students to its colleges. However, it was observed that their right to refuse admission to a student cannot be whimsical, arbitrary or fanciful. When the allotment issued by the Commissioner of Entrance Examination in respect of Pattakka Suresh Babu, another convict, was adhered to by the fourth respondent, refusing admission to the petitioner, who is identically placed is fanciful, whimsical and arbitrary. It is noticed that petitioner has sought admission for the same course and for the same year as that in **Pattakka Suresh Babu's** case (supra).

12. Further, admittedly, Ext.P1 allotment letter issued by the Commissionerate of Entrance Examination, allotting the petitioner to the fourth respondent college has not been challenged. The fourth respondent has thus acquiesced into the said allotment. The allotment is based upon an understanding arrived at between the State Government and the College, though the learned Senior Counsel submitted that there is no such arrangement this year. If the fourth respondent was not willing to adhere to the allotment, it was open to them to challenge the said allotment. As long as the said allotment has not been challenged, Ext.P1 is binding upon the fourth respondent.

13. The contention regarding the UGC (Open and Distant Learning Programmes and Online Programmes) Regulation, 2020, has already been considered by the Division Bench in the decision in **Pattakka Suresh Babu's** case (supra). It has also been observed that a convict does not cease to be a human being even while he is lodged in jail, and he enjoys all his fundamental rights guaranteed by the Constitution of India including the right to life. The right to education having been formally recognised as a human right in the Universal Declaration of Human Rights in 1948, and the convict, having cleared the entrance examination and being allotted to the fourth respondent's college, is entitled to be granted all facilities for undergoing the course of study within the limits of law.

14. In this context, it is worthwhile to observe that the criminal jurisprudence in our country is based on the principles not only of deterrence or retribution but also of reformation. Rehabilitation of a convict can pave the way for the reformation of the individual and bring him back to civic society. In this context, compulsory education must be viewed in contradistinction to voluntary education. Compulsory education may bring in resentment, while voluntary education may pave the way for the reformation of the individual.

Therefore, when a prisoner has expressed his willingness to undergo a course of study, especially that of law, it creates an opportunity for reforming the individual and may enable him to come back to society, upon his release, if it happens. The education of a convict can bring hope and aspirations for a better life in the future. Thus, when the prisoner expresses his willingness to undergo a course of study and has even gained admission after a competitive examination, the objection raised by the college cannot be countenanced and on the other hand, is to be deprecated.

15. Since the issues raised by the learned Senior Counsel have already been considered by the Division Bench of this Court, a further elaborate consideration is not required.

16. Though there is a delay in completing the formalities for admission, considering the peculiar circumstances of this case and since one seat was directed to be kept vacant, neither the University concerned nor the fourth respondent shall raise any technicalities in granting admission to the petitioner.

17. In the light of the above discussion, there will be a direction to the fourth respondent to grant and complete the admission process of the petitioner for the three year LLB course based on Ext.P1 allotment letter to the seat kept vacant as per directions of this Court. There will be a further direction to the first respondent as well as the fourth respondent to make necessary arrangements for enabling the petitioner to undergo his course of study in the fourth respondent through online mode. If, in case, the presence of the petitioner is required for admission to the college, the first respondent shall arrange an escort leave for the petitioner on the date fixed for the interview.

The writ petition is allowed as above.

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