

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

&

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 04TH DAY OF JUNE 2019 / 14TH JYAISHTA, 1941

WA.No. 1362 of 2019

AGAINST THE JUDGMENT IN WP(C) 14156/2019 of HIGH COURT OF KERALA
DATED 31.5.2019

APPELLANT/RESPONDENT NO.3:

THE COCHIN INSTITUTE OF SCIENCE AND TECHNOLOGY,
ETTAPPALLY, MANNATHOOR.P.O, MUVATTUPUZHA,
ERNAKULAM-686 723 REPRESENTED BY ITS PRINCIPAL
DR.S.R.DEEPA.

BY ADVS.
SRI.ANOOP.V.NAIR
SRI.M.S.SANDEEP SUDHAKARAN

RESPONDENTS/PETITIONER/RESPONDENTS 1, 2, 4 & 5:

- 1 JISIN JIJO,
AGED 22 YEARS, S/O.JIJO,
MAZHUVANCHERY HOUSE, SOUTH VAZHAKULAM.P.O,
CHEMBARAKI KARA, ALUVA, PIN-683 105.
- 2 THE A.P.J ABDUL KALAM TECHNICAL UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM, REPRESENTED BY ITS VICE
CHANCELLOR, THIRUVANANTHAPURAM-695 016.
- 3 THE A.P.J ABDUL KALAM TECHNICAL UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM, REPRESENTED BY ITS REGISTRAR,
THIRUVANANTHAPURAM-695 016.

W.A.Nos.1362 & 1363 of 2019

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**4 RAJENDRA BABU COMMITTEE,
ADMISSION SUPERVISORY/FEE REGULATORY COMMITTEE FOR
PROFESSIONAL COLLEGES, HEAD OFFICE: TC 15/1553-4,
PRASANTHI BUILDINGS, M.P.APPANA ROAD, VAZHUTHAVADU,
THIRUVANANTHAPURAM-695 014.**

**5 STATE OF KERALA,
REPRESENTED BY SECRETARY TO EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

R2 & R3 BY ADV.ELVIN PETER P.J., SC.

R1 BY ADV.SRI.A.C.DEVASIA

BY SR.GOV'T. PLEADER SRI.V.TEKCHAND

R4 BY SMT.MARY BENJAMIN, SC

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04.06.2019
ALONG WITH WA.1363/2019, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

JUDGMENT

Hrishikesh Roy, C.J.

Heard the learned counsel Sri.Anoop V.Nair and Sri.P.Deepak appearing for the *Cochin Institute of Science and Technology*, which is the common appellant in these two Writ Appeals. Also heard the learned counsel Sri.K.R.Ganesh representing the *A.P.J. Abdul Kalam Technological University of Kerala*. The writ petitioners/students are represented by the learned counsel Sri.A.C.Devasia and Sri.D.Kishore.

2. The appellant engineering college was started in 2012 in the self-financing sector. Currently it is affiliated to the *A.P.J. Abdul Kalam Technological University* which came into existence in the year 2015. The affiliation status of the engineering colleges in Kerala were transferred to the new university, under the deemed provisions of the *A.P.J. Abdul Kalam Technological University Act, 2015*.

3. The present matter relates to the application made by the writ petitioners/students seeking inter-collegiate transfer from the *Cochin Institute of Science and Technology* to another self-financing college, under the same university. The college principal did not accord permission for the inter-college transfer, prompting the aggrieved students to file the W.P.(C)No.14156 of 2019 and the W.P.(C)No.14547 of 2019 respectively.

4. The students had secured admission in the management quota in the year 2017-2018 and 2018-2019 and according to them, the amenities and infrastructure in the college were inadequate. They were also concerned by the fact that several teachers have resigned from the *Cochin Institute of Science and Technology* and have joined other engineering colleges.

5. The college however took the stand that the students do not have any right to seek inter-college transfer. The deficiencies projected by the students were repudiated by the college with the contention that they have fulfilled the norms stipulated by the University as also by the *All India Council for Technical Education (AICTE)*.

6. On the issue of inter-college transfer, the stand of the University was that since large number of students have applied for transfer, they have constituted a committee to look into the grievances raised by the students.

7. After due consideration of the rival submissions, the learned Judge was of the view that the students cannot be compelled to continue in a college which, according to their perception, would be detrimental to their studies and their career. The right of the students to seek a transfer to another self-financing college was found to be merited by the court. In the impugned judgment (31.5.2019), the learned Judge observed that the College shall not stand in the way of the students seeking inter-college transfer to another self-financing college.

8. Assailing the above verdict, the learned counsel for the appellant contends that if such inter-college transfer is permitted, the functioning of the appellant college would itself be put to jeopardy. If large scale migration of students take place from the college to another self-financing institute, the possible adverse impact on those opting to continue in the *Cochin Institute of Science and Technology* is highlighted by the appellant.

9. On the above projection, the first thing that strikes us is whether the right of student to pursue studies in a particular institute should be curtailed by taking into account the possible impact on the College in question through transfer of students to

another self-financing college. On the projection by the college that infrastructural facilities are adequate and quality teachers are available, it requires to be stated that deficiencies are primarily matters of perception of the students themselves and should not normally be adjudicated by a writ court. But if the students do have a perception of deficient infrastructure or absence of quality faculty, to compel such students to continue in a college, where they are not confident about their future, would hardly be justified.

10. The learned counsel for the appellants have not been able to draw our attention to any condition either statutory or contractual, that obliges a student admitted to their college, to necessarily continue their course of study in the same institution, for the entire duration of the course. While reference is made to the procedures stipulated in the non-statutory norms (Ext.P4) issued by the University to regulate inter-college transfers, we do not see how such norms can impinge upon the rights of the students to opt for continuing his/her studies, in a different college. It would be more logical to say that the right of a student to pursue his/her education in a college of his/her choice is Fundamental. So long as he/she satisfies the eligibility criteria and they have been accepted by the authorities of the transferee college, there can be no legal barrier in the quest for a preferred option.

11. The freedom to choose the college of his/her choice for pursuit of their studies is according to us, an aspect of the Fundamental Right to privacy, guaranteed under *Article 21* of the *Constitution*. In *K.S.Puttaswamy and Another v. Union of India and Others*, reported in (2017) 10 SCC 1 the Supreme Court found that the focus of the guarantee of fundamental rights was the individual and that the fundamental right to life envisaged under *Article 21* was a right to a life with dignity. The right of a person to individual autonomy in matters of personal choice and preferences was seen as integral

to his dignity and thereby his fundamental right under *Article 21* of the Constitution.

Paragraphs 298 and 299 of the judgment read as follows:

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298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha suffixed right of privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value

which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.

299. Privacy represents the core of the human personality and recognizes the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and, in turn are shaped by their social environment. The individual is not a hermit. The lives of individuals are as much a social phenomenon. In their interactions with others, individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of society. Equally, the life of the individual is being consistently shaped by cultural and social values imbibed from living in the community. This state of flux which represents a constant evolution of individual personhood in the relationship with the rest of society provides the rationale for reserving to the individual a zone of repose. The lives which individuals lead as members of society engender a reasonable expectation of privacy. The notion of a reasonable expectation of privacy has elements both of a subjective and objective nature. Privacy at a subjective level is a reflection of those areas where an individual desire to be left alone. On an objective plane, privacy is defined by those constitutional values which shape the content of the protected zone where the individual ought to be left alone. The notion that there must exist a reasonable expectation of privacy ensures that while on the one hand, the individual has a protected zone of privacy, yet on the other, the exercise of individual choices is subject to the rights of others to lead orderly lives. For instance, an individual who possesses a plot of land may decide to build upon it subject to zoning regulations. If the building bye laws define the area upon which construction can be raised or the height of the boundary wall around the property, the right to privacy of the individual is conditioned by regulations designed to protect the interests of the community in planned spaces. Hence while the individual is entitled to a zone of privacy, its extent is based not only on the subjective expectation of the individual but on an objective principle which defines a reasonable expectation.

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12. It is apparent therefore that the fundamental right to life under *Article 21* encompasses the right of an individual to make choices and take decisions impacting the evolution of the individual. When a student feels that he can secure better education in another college and there is no legal bar in exercise of such option, to compel the students to continue their curriculum from the same college would hardly be reasonable. It would also fail the constitutional guarantee of freedom of choice, as enunciated in the quoted passage.

13. The norms under which the appellants support their decision to deny transfer

to the writ petitioners/students, are non-statutory in nature. Although the appellants have raised contentions against the findings of the learned single Judge based upon those norms, no arguments were advanced before us, and we have not been called upon to pronounce on the legality of the norms. We have therefore refrained from considering the said issue in these appeals.

14. Resultantly, we see no reason to interfere with the impugned judgment of the learned single Judge, for the reasons stated in the said judgment as supplemented by the reasons in this judgment. The Writ Appeals are found devoid of merit and are thus dismissed.

Sd/-

**Hrishikesh Roy,
Chief Justice**

Sd/-

**A.K.Jayasankaran Nambiar,
Judge**

vpv

/true copy/

P.A. To Judge

APPENDIX

PETITIONER'S EXHIBITS:

**ANNEXURE I TRUE COPY OF THE RC BOOK IN RESPECT OF THE
VEHICLES OWNED AND RUN BY THE APPELLANTS
COLLEGE.**