

(2000) 02 KAR CK 0073
In the Karnataka High Court
Case No : Writ Petition No. 29434 of 1998

A. Ramadas

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 12 (4), 14
Karnataka Lokayukta Act, 1984 — Section 12 (3)
Penal Code, 1860 (IPC) — Section 120 B
Prevention of Corruption Act, 1988 — Section 13 (1) (d)

Citation : (2000) ILR (Kar) 4385 : (2001) 3 KarLJ 292

Hon'ble Judges : R. Gururajan, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri Ashok Haranahalli, for the Appellant; Sri A.N. Jayaram, General and Sri A. Nagarajappa, A.G.A. and Sri N.B. Bhat, for the Respondent

Judgement

R. Gururajan, J.—This petition is filed by way of public interest seeking to purify the administration in admitting the students to the privileged medical education in the State of Karnataka with the following prayers.-

"Wherefore it is prayed that this Hon"ble Court may be pleased to issue a writ of mandamus directing the respondents 1 and 2 to initiate action against Dr. S. Kantha on the basis of the report submitted by the Lokayuktha (respondent 3),
and/or

Direct the respondent 5 to initiate appropriate action against Dr. S. Kantha for her removal from the post of Vice-Chancellor, Rajiv Gandhi University of Health Sciences,

and/or

Direct the first and third-respondents to prosecute Dr. S. Kantha for having committed offences as per complaint produced at An-nexure-D,

and

Pass such other and further orders as deemed fit in the circumstances of the case".

2. The facts in brief as stated in the petition are as under:-

For the academic year 1993-94 admissions were made by the State Government on the basis of the result in the entrance test. There was no Common Entrance Test (GET) in existence at that point of time. The Selection Scrutiny Committee (for short "the Committee"), in collusion with the officials and students, admitted non-meritorious students giving a go-by to the academic ranking after the test. The Committee members accepted the manipulated rankings in the admission form by placing students at higher rankings even though they had in fact not been placed at a higher ranking in the entrance test. Committee consisted of Dr. M. Ramanna, the then Director of Medical Education as Chairman, Dr. Jai Renukarya, the then Deputy Director of Medical Education as Secretary and Dr. Mrs. Kantha, the then Principal of Bangalore Medical College as the Principal. The State Government, on coming to know about the several illegalities committed by the Committee, referred the matter for investigation to the Karnataka Lokayukta (for short "Lokayukta") and the Lokayukta, after investigation, came to a conclusion that fraudulent admissions were made for the said year. A first information report (FIR) in Cr. No. 966 of 9-3-1994 was submitted to the Sessions Judge, Bangalore. Later, the Lokayukta submitted a report that Dr. Kantha is not involved in the matter and her name was dropped from the proceedings. The State Government, later, cancelled the admissions of the students which was subject-matter of writ petition in this Court. The cancellation was upheld by this Court and the same was taken by way of an appeal to Hon'ble Supreme Court in Civil Appeal Nos. 9436 to 9453 of 1995. The Supreme Court, in their proceedings, requested the Chief Justice of the High Court to nominate a District and Sessions Judge to undertake an inquiry with regard to the illegalities committed by the Members of the Committee in the matter of admissions. An inquiry was held by Sri T. Mahesh Hegde, District and Sessions Judge and he (the Enquiry Officer) found that the members of the Selection Scrutiny Committee including the Chairman were equally guilty, having been promoted (Lokayukta investigation is still pending). The Selection Scrutiny Committee included respondent 6. The Hon'ble Supreme Court not only condemned the fraud played by the students but also ruled that but for the (officials") active role, the students could not have secured the seats in the highly objectionable and un deplorable manner. Later the Lokayukta submitted a report on 24-10-1997 recommending disciplinary action-against Dr. Mrs. Kantha, Dr. Jai Renukarya and Mr. Prakash u/s 12(3) of the Lokayukta Act (for short "the Act"). The Competent Authority, though required to act, have failed to take action within the prescribed period.

3. Petitioner states that the respondents 1 and 2 failed to take action against Dr. Mrs. Kantha despite the report by the Upalokayukta including prosecution. She

was, at that point of time, working as Vice-Chancellor of Rajiv Gandhi University. In these circumstances, to maintain purity in public administration, the petitioner has sought for the reliefs.

4. Along with the petition, the petitioner has enclosed the judgment of the Hon"ble Supreme Court. Annexure-C is proceedings initiating action against Dr. Jai Renukarya and Dr. Mr. Prakash. Annexure-D is the FIR submitted to the Sessions Judge, Bangalore.

5. Respondents 1 to 5 have filed a counter-statement contending inter alia as under:-

They admit that a Committee was constituted by the Government for scrutinising the selection in the year 1993-94. The Chairman of the Committee was Director Dr. M. Ramanna and the members were the Deputy Director, Medical Education and the Principals of Bangalore Medical College Dr. Mrs. S. Kantha and Government Pharmacy College and Dental College. The Deputy Director of Medical Education was appointed as a Member Secretary. They also admit that there were certain illegalities in the matter of admission. The Government, on coming to know of the incident, instructed Dr. Ramanna to go on leave and Dr. S. Kantha, Principal of Bangalore Medical College was posted as Director on 9-11-1993. She cancelled the illegal admissions vide her report dated 30-11-1993. The matter was referred to the Lokayukta. Lokayukta submitted a report on 27-7-1995 and sanction to prosecute two officials was granted by the Government. They also admit that Hon"ble Supreme Court directed an inquiry and Sri Mahesh Hegde, District and Sessions Judge in his report stated that all the members of the Selection Committee including the Chairman were guilty. They further state that the Secretary to Government, Health and Family Welfare Department, by a letter dated 14-11-1995 informed DPAR that although the Dr. Mrs. Kantha was the Member of the Scrutiny Committee, she was subjected to an inquiry and although the her (respondent G's) name was included originally in the FIR, she has been completely exonerated in the final report of the Lokayukta in terms of Document No. R-3 (letter dated 14-11-1995). The counter further states that Sri Mahesh Hegde, District and Sessions Judge, in his report dated 17-7-1995 stated that all the members of the Selection Scrutiny Committee including the Chairman are guilty. The Chairman of the Committee has expired and sanction has been given" to prosecute all the members of the Committee, In para 8 they state that respondent 6 was the member of the Selection Scrutiny Committee and she was subjected to the enquiry conducted in this matter. The Lokayukta in its report dated 18-3-1995 including her name. She was responsible for bringing the matter to the attention or the Government and thereby subjected the same to the enquiry or the inquiry by the Lokayukta. Having regard to these facts, it is clear that Dr. Kantha is not involved. They further state that by letter dated 29-5-1998, the Registrar, Karnataka Lokayukta has informed the Secretary to the Government that in view of the provision of Rule 214(2)(b) of the Karnataka Civil Services Rules ("the Rules" for short),

disciplinary proceedings cannot be initiated against Dr. Ramanna and Dr. Kantha as they have retired from service. The same has been accepted by the Hon''ble Upalokayukta and ordered to close the matter. It is said that the investigation did not so far disclose involvement of respondent 6 in the criminal case. Since the Lokayukta has given a definite finding that the investigation does not disclose the involvement of Dr. Kantha in any of the criminal cases registered by the police wing of Lokayukta, the prayer sought for cannot be granted.

6. Respondent 6-Dr. Kantha got herself impleaded and she also filed a statement. She has alleged lack of bona fide in the writ petition. She has stated that she has demitted the office of Vice-Chancellor. Hence second prayer does not survive. The Lokayukta has given a finding that the investigation does not disclose her involvement in the matter. In fact she was responsible for initiation of the proceedings by Lokayukta. The Lokayukta has completed its enquiry by investigation and sent its report long after Hon''ble Supreme Court of India made its observations. She is not aware of any report by Lokayukta. She has denied the allegations and wanted the petition to be dismissed.

7. The matter was heard at length and the learned Counsel for the petitioner argued at length and stated that the respondents, in spite of a report by Sri Mahesh Hegde, District and Sessions Judge at the instance of Hon''ble Supreme Court, have failed to take action against Dr. S. Kantha. Her involvement cannot be disputed. He argued that the judgment of the Hon''ble Supreme Court read as a whole, discloses the sorry and sad state of affairs in the matter of admission in spite of adverse report by Sri Mahesh Committee. No action was taken either departmentally or otherwise and it is a case for prosecution by the Government. Per contra, Sri A.N. Jayaram, learned Advocate General appearing for the State took us through the material on record and contended that the Police Wing of Lokayukta has found her not guilty. He admitted that no disciplinary proceedings could be initiated against her under Rule 214(2)(b) of the Rules. She had already demitted the office of the Vice-Chancellor and no further action is needed on the facts and circumstances of this case.

8. Sri Bhat, learned Counsel for respondent 6 argued that no case is made out for any action against respondent 6. It is his case that his client was responsible for detecting the illegal acts committed by the Standing Committee. He further argued that now that she has retired, no action can be taken departmentally and she has also demitted the office of the Vice-Chancellorship. In short, he wanted the matter to be dismissed by us.

9. After hearing at great length, we are passing the following order:-

At the outset we are sorry to note that for a professional course like medicine, undeserving candidates have been selected ignoring the merited candidates by playing virtually a fraud in selection, a fraud to the detriment of the general public. We cannot but repeat what the Hon''ble Supreme Court has said in this regard. The Hon''ble Supreme Court in its final order dated 17-10-1995, has

noticed that in the Mahesh Committee report, members of the Selection Committee including the Chairman who are equally guilty have been promoted. The candidates secured admission by furnishing incorrect ranking in collusion with Selection Scrutiny Committee. The Hon"ble Supreme Court in para 6 has noticed as under:-

"In view of the aforesaid facts and circumstances, the question that arises for consideration is as to what appropriate order should be passed, because of the fraud played initially. As to this, the submission of Sri Venugopal for the appellants is that the State may not be allowed to blow hot and cold inasmuch as the members of the then SSC (who colluded with the appellants having been even promoted, it does not lie in the mouth of the State and its concerned officers to demand punishment of the appellants alone. The learned Counsel submitted that both promotion of members of the then SSC and punishment of the appellants cannot go together; they have to be treated alike and have to rise or fall together".

The Supreme Court has further stated:-

"On the State Counsel being asked by us as to whether the State is prepared to restore the status QUO ante regarding the posts which the concerned members of the SSC were holding at that time, cold shoulder is shown. Shri Nagaraja states that the officers of this State cannot be punished without giving them opportunity. It is really not a question of punishment to them but taking back the reward given. As the State is not prepared to do so, we do not think if we would be justified in punishing only one party to the fraud. This would not be equitable. So, even though we strongly decry and condemn the fraud played by the appellants, the present is not an occasion where any punishment is deserved at the behest of one who is not prepared to punish the main culprit, as the members of the SSC have to be regarded because, but for their active role, the appellants would not have succeeded in their highly objectionable and deplorable act".

(emphasis supplied)

It is also to be noticed here that the Hon"ble Supreme Court has requested the Hon"ble Chief Justice of the High Court to nominate an officer to undertake the enquiry which officer may not be below the rank of District and Sessions Judge. Pursuant to the order Sri Mahesh Hegde, District and Sessions Judge was appointed and he has submitted a report and in the report he has stated that all the members of the Selection Committee including the Chairman is guilty.

10. We also called for files to satisfy ourselves in view of the grave allegations made therein. The file was placed before us.

11. It is admitted by all concerned that a Selection Scrutiny Committee was constituted for selection for admission to medical education in the State of Karnataka. It is further admitted that the selection for admission is on the basis

of the rankings. It is also admitted that the Committee consisted of Dr. M. Ramanna, the then Director of Medical Education, Dr. Jai Renukarya, Deputy Director of Medical Education and Dr. Mrs. Kantha, the then Principal of Bangalore Medical College (respondent 6). It is also a matter of record that 26 students, by playing a fraud got selected as confirmed by the Hon''ble Supreme Court, It is also admitted that the matter was referred to Lokayukta and the matter was seized by the Lokayukta for investigation and proper action in accordance with the Karnataka Lokayukta Act, 1966 (hereinafter referred to as "the Act"). Respondent 6 admittedly is governed by the Act.

12. From the file we see the report of the Director, Bureau of Investigation. At page 6 he has noticed several irregularities in the matter. In the report it is noticed in para 28 as follows.-

The candidates have definitely received unlawful gain. Favour has definitely been shown to these candidates in permitting them to secure their medical seats which otherwise they are not eligible to obtain. The question is who showed the favour. The Member Secretary is the one who has directly issued these certificates and he is definitely accountable for showing this favour. But, knowing the importance of the subject, and the attention it was receiving from the general public and the Government who have constituted Selection Scrutiny Committee for this very purpose, the members of the Selection Committee have failed to do their job. This failure cannot be treated as accidental. This failure to oversee and the entrustment of these jobs to Dr. Jai Renukarya is to be inferred as deliberate. Only this postulate can explain the occurrence of this kind of fraud on such a big level".

(emphasis supplied)

In conclusion, in para 31 he recommends on the basis of the available evidence, registration of the case against 26 beneficiaries and the Members of the Committee for criminal conspiracy to show undue favour to the candidates u/s 120B of the IPC read with 13(1)(d) of the Prevention of Corruption Act, 1988. The Hon''ble Upalokayukta, after noticing the entire issue at para 37 has ruled as under:-

"The conduct of the 26 candidates is said to constitute misrepresentation and cheating under the Indian Penal Code. While all the Members of the Committee and Sri M.R. Prakash, F.D.A'', have committed the criminal conspiracy to secure admission letters/intimation letters aforesaid but for which 26 candidates would not have obtained admission to the medical colleges. The Committee's failure to scrutinise the wrong rank numbers of 26 candidates constitute an illegal omission on their part as known to Section 32 of the Indian Penal Code and the issue of the admission letters/intimation letters in respect of these candidates to the concerned medical colleges conferred unlawful gain and favour upon them within the scope of Section 13(IXd)(i) of the Prevention of Corruption Act, 1988. The proposal, therefore, to register cases against 26 students and all the Committee

Members and also against Sri M.R. Prakash, F.D.A. for the concerned offences under the Indian Penal Code and the Prevention of Corruption Act, 1988, is approved".

The A.R.E. has made certain reference to respondent 6 in the light of the earlier notings and stated that the B.O.I, has registered 26 cases. In all these cases respondent 6's name is mentioned as she happened to be one of the Members of the Selection Scrutiny Committee. There are several notings in the file. Again in the notings at 203, it is seen that an official A.R.E.-2, after going through the report of the Sri Mahesh Hegde and the judgment of the Hon'ble Supreme Court, has come to a conclusion that in his view the Court has formed an opinion that the members of the S.S.C. (Selection Scrutiny Committee) are mainly responsible. At Notes 226 and 227 it is stated that in view of the observations of the Hon'ble Supreme Court, the members of the S.S.C. are mainly responsible for maladministration. The third respondent (respondent 6 herein) has been the member of the S.S.C. Hence, along with respondents 1, 2 and 4, this matter has to be proceeded against respondent 3 as well according to the provisions of the Karnataka Lokayukta Act. The matter was placed before the Upalokayukta. The Upalokayukta has directed to examine whether the judgment of the Hon'ble Supreme Court or any other material brings out a prima facie case against respondent 3 (respondent 6) also. After examination, a note was put up at 242 and 243 reading as under:-

"242. Under para 4 of the said decision, it has been observed with reference to the findings of the enquiry officer, that the members of the selection Scrutiny Committee, including the Chairman, are all equally guilty.

243. The collective consideration of the above aspects culminates into a conclusion that the third respondent, being the member of the selection Scrutiny Committee, is equally responsible for the malpractices, along with the other respondents and it is as such, there is a prima facie case as against the third respondent also to proceed further, along with the other respondents".

(emphasis supplied)

Thereafter, the Upalokayukta, in the light of the investigation has stated that:

"The involvement of respondent 3 (respondent 6) has been thoroughly examined in paras 234 to 243 which contains a reference to the observations of Supreme Court as well. I agree therefore that respondent 3-Dr. Kantha is also jointly and severally, responsible for the wrongful acts of the Selection Scrutiny Committee along with respondents 1, 2 and 4. The draft u/s 12(3) of the Karnataka Lokayukta Act therefore referred to in para 230 will be now modified to include recommendations for proceedings against respondent 3 as well".

(emphasis supplied)

Subsequently a report was sent to the Government as early as 24-10-1997 by the Upalokayukta. In the said report, the Upalokayukta has observed as under:-

"Respondents 1, 2, 3 and 4 are mainly responsible for the issuance of intimation letters/admission letters to the 26 candidates, whose admission ticket numbers were not published or were not included in the computer sheet. They have failed to verify as to whether the said 26 candidates have secured rank numbers as stated by them in their information slips. They have failed to perform their duties with all dedication as expected".

The Upalokayukta has also observed as under:-

"In terms of the provision u/s 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, the Selection Scrutiny Committee was required to scrutinise all the documents required to be produced by the candidates and was required to take a decision on such scrutiny. But, the members of the Committee, have failed to do the same and thereby, they are jointly and severally responsible for the acts of the Selection Scrutiny Committee".

While concluding, the Upalokayukta has recommended to initiate disciplinary proceedings against respondent 6 and also directed to debar respondents from taking part in selection of candidates for admission in medical colleges. Action was also to be communicated to the Upalokayukta u/s 12(4) of the Karnataka Education (Prohibition of Capitation Fee) Act, 1984.

13. Subsequently on 28-3-1998 an order, said to be u/s 12(4) is sent to the Lokayukta stating that no action is possible against respondent 6 in view of her retirement. It is also stated that action is taken against Dr. Jai Renukarya and Sri M.S. Prakash. We also see the document at Annexure-R5.

14. We also see a note on 25-5-1998 wherein a reference is made to the compliance with Section 12(3) report dated 24-10-1997 and the Government in their letter dated 28-3-1998 have intimated their inability to conduct disciplinary proceedings on account of retirement of respondent 6. It is also stated therein that the Government has requested the Lokayukta to inform the stage of the prosecution. In response to the said request at para 286 it is stated that the investigation done so far does not disclose involvement of Dr. Kantha, respondent 6 in any of the criminal cases registered by the Police Wing of the institution. The Upalokayukta at page 289 has approved inability to hold enquiry in view of Rule 214(2)(b). The Upalokayukta noted with regard to non-involvement in the investigation done so far. We also see a letter dated 25-5-1998 in reply to the letter dated 28-3-1998 by the Lokayukta saying that the investigation done so far does not disclose involvement of Dr. Kantha in any of the criminal cases registered by the Police Wing of this institution. A copy is also addressed to respondent 6. These materials prima facie reveal to us that the Lokayukta u/s 12(3) has categorically stated that respondent 6 is also to be included for the purpose of action on account of her involvement in the light of the judgment of the Hon''ble Supreme Court, Mahesh Hegde's report and Section 14 of the Karnataka Education (Prohibition of Capitation Fee) Act, 1984. In response to it,

a letter dated 28-3-1998 has been issued purporting to be u/s 12(4) of the Act. Nothing has been stated with regard to the various observations made by the Upalokayukta except stating that no proceedings should be initiated on account of her retirement. Now, the present endorsement dated 28-5-1998 also states that investigation done so far does not disclose involvement of Dr. Kantha. Therefore, it is clear that the investigation is not complete in all respects. It is not the case of the respondent 6 that the investigation has been fully completed and that she is not involved in any of the cases. There is no categorical assertion forthcoming in the file. On the other hand, the earlier investigation and the subsequent report under Rule p 12(3) would categorically show the collective responsibility in these matters. In the circumstances we deem it proper to issue a direction to the respondent to complete the investigation and it is needless to say that while so doing, the investigation may take into consideration the observation made by the Hon"ble Supreme Court, report made by the Mahesh Hegde Committee, Section 14 of the Karnataka Education (Prohibition of Capitation Fee) Act, 1984, the collective responsibility for arriving at proper conclusion.

15. The file further indicate that as a matter of fact respondent 6 was made Chairman. Instead of her attending the meetings, she has deputed her assistant one Smt. Yeshoda to various meetings and she has also attended a few interviews. The image of a public body is at stake and the very object of holding and awarding competitive marks is defeated on account of the fraud played by the students as referred to by the Hon"ble Supreme Court.

16. The report was submitted u/s 12(3) of the Act on 24-10-1997. The said report categorically states within three months it should be made known the action taken. We are sorry to say that a reply was sent only on 25-3-1998. A mandate is provided for submission of intimation of the action taken u/s 12(3) in this matter. The same is also not kept in mind while passing the order u/s 12(4) of the Act.

17. The contention of the respondents that the prayer cannot be granted on account of a definite finding by the Lokayukta for investigation not disclosing the involvement of respondent 6 cannot be accepted in the light of the materials available in the file. The words "investigation done so far" indicate that the investigation is not complete in all respects. An affidavit has been filed by the Under Secretary, who has nothing to do with the Lokayukta in the matter. Therefore, he cannot be permitted to say that the Lokayukta has ordered the matter to be closed. What is ordered to be closed, as we see from the file is with regard to initiation of disciplinary proceedings on account of retirement in terms of Rule 214(2)(b). The Lokayukta has not closed the investigation as sought to be made out in the statement of objections. Respondent 6 has filed a counter stating that it is on account of her the admissions have been cancelled. But what is forgotten is the observations of the Hon"ble Supreme Court in respect of the very cancelled admissions in the judgment referred to above. The cancellation by

itself cannot be a ground for seeking immunity from all proceedings. In these circumstances, we deem it is proper to direct the Police Wing of the Lokayukta to complete the investigation within three months from today and submit its report to the Lokayukta for further action. Thereafter the Lokayukta would send appropriate reports after taking into consideration the material facts referred to above and take such action as deemed fit in accordance with law.

18. If a public authority omits to take into consideration the relevant material for the purpose of a proper investigation, such investigation suffer non-consideration of what is relevant for a proper investigation. In the case on hand, relevant material has been omitted and the irrelevant material has been referred to while issuing an order u/s 12(4) of the Act. Hence, the endorsement issued u/s 12(4) of the Act has to be necessarily set aside with certain directions only insofar as closure of prosecution against respondent 6 is concerned.

19. Before concluding, we must say that but for this public interest litigation, the matter which attracted the public criticism of a fraud played in securing admission to the coveted professional course would have gone unnoticed. The Hon"ble Supreme Court's observations makes very sad reflection on the working of the Committee. To maintain confidence and the trust of the general public in selection to the coveted professional course, the Government must see that such things do not recur. We are also sorry to note that in spite of the material available on record at every point of time respondent 6 has been allowed to retire without any conditions and she has been rewarded with the post of Vice-Chancellor of the University during the pendency of these proceedings against her.

20. The purity of education is polluted on account of several omissions and commissions committed by the Selection Committee in preferring non-meritorious candidates at the cost of merited candidates. The responsible job which was entrusted to the Committee has been done in a very casual manner and we express our unhappiness and unsatisfactory way of dealing with these matters.

21. This being a public interest litigation and enough time and money is spent on this litigation to perform public administration. We have found substance in the submissions of the petitioner insofar as closure of prosecution is concerned. In the circumstances, we deem it proper to award costs to the petitioner.

22. In conclusion we pass the following order:

(i) The prayer for the removal of respondent 6 from the post Vice-Chancellor has become infructuous in view of her (respondent 6) demitting her office as Vice-Chancellor.

(ii) We modify the relief by way of a direction to the police wing of respondent 4 to have a proper investigation in the light of what we stated above and submit the same for further action to the Lokayukta in accordance with law.

(iii) We set aside the endorsement issued u/s 12(4) of the Act insofar as closure of prosecution against respondent 6 is concerned.

(iv) Respondents 1 and 2 are directed to pay a cost of Rs. 10,000/- to the petitioner within four weeks from today.

23. Ordered accordingly.