
(2008) 07 KAR CK 0075
In the Karnataka High Court
Case No : Writ Petition No. 9777 of 2006

Asha Mohan

APPELLANT

Vs

Common Entrance Test Cell and Another

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Selection of Candidates for admission to professional Institutions Rules, 2005 — Rule 17, 17 (2), 17 (3)

Citation : AIR 2009 Kar 961 : (2008) ILR (Kar) 3861 : (2009) 1 KarLJ 638 : (2008) 5 KCCR 619 SN

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : B. Papegowda, for the Appellant; N.K. Ramesh, for R1 and M.V. Seshachala, for R2, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—Petitioner has sought for a writ of certiorari to quash the order passed on 15.4.2006 - Annexure - A and also for a mandamus to refund the fee paid to the 1st respondent by the petitioner or in the alternative, to direct the 2nd respondent to refund the entire fee paid by the petitioner and also to declare Rule 17(2) of the Selection of Candidates for admission to professional Institutions, 2005 as arbitrary and ultra vires the Constitution.

2. The petitioner's daughter had appeared for the CET, 2005 for admission to Medical/Engineering course. She was allotted a seat in K.S. Hegde Medical college, Mangalore in the year 2005. She had paid Rs. 1,72,000/- for the medical seat through the CET Cell and also got admitted to Hegde Medical Academy by paying the registration and other fees and also got admitted to the college hostel by paying Rs. 20,000/-. According to the petitioner, her daughter could not continue her education due to health reasons and also for the reason that she could not adjust to the environment. Thereafter, she surrendered the medical seat to the Management on 22.9.2005 and also intimated the 1st respondent by letter dated 23.9.2005. The college is said to have promised to return the entire fee of Rs. 1,72,000/-. However, petitioner's daughter got herself admitted to

BNM Institute of Technology for Computers Science course during the same academic year. Stating that the 2nd respondent college did not refund the amount of Rs. 1,72,000/- as promised by them despite writing letter to them for refund of subscription fee, hostel fees, etc., hence, this petition also challenging Rule 17(2) of the Rules on the ground that the said Rule is not applicable to the petitioner since the seat was kept vacant and it was filled by giving admission to some other student and there is no loss either to CET Cell or to the college.

3. Heard the Counsel representing the parties.

It is seen, though the petitioner's daughter was allotted a seat and she got admitted to Medical course in the 2nd respondent college, expressing her inability to continue studies, she discontinued the course and immediately sought for refund. According to the petitioner, the 2nd respondent college is said to have undertaken to repay the amount as submitted. However, as per the submission of the 2nd respondent's Counsel, after the seat became vacant, it was intimated to the 1st respondent CET Cell but, the said intimation reached the CET Cell only after the casual vacancy round was over and selection process was complete. As per annexure-A which is the endorsement given by the CET/1st respondent on 15.4.2006, the candidate has left the college as such, the seat was only available to the management. Another merited student could not be intimated or could not take the seat and it was left with the management as such the CET Cell is not responsible for the same. As per Rule 17(2) of the Rules, the amount deposited with the 1st respondent has been forfeited to the Government since the petitioner's daughter did not take a decision well within time and it is not demonstrated that the amount has been transmitted to the college from the 1st respondent Authority. Exercising Rule 17(2) the respondent has forfeited the amount.

4. Rule 17(2) clearly provides for forfeiture of 20% of the amount if such surrender is before the casual round but, after the casual round is over and selection process is complete, as per Rule 17(3), the entire fee shall be forfeited. The very purpose and object of Rule 17 is to enable the candidate who have got admission to pursue their courses. In the event any decision is taken well in advance to cancel such admission, in order to see that inconvenience is not caused to another candidate, penal provision is introduced by forfeiting 20% of the amount. However, if it is not intimated well in advance before the seats are filled up in the casual vacancy round, the subsequent Clause provides for forfeiting the entire amount. In the circumstances, Annexure-A cannot be found to be arbitrary or without any basis. Only in order to maintain discipline, such a rule is enforced.

5. However, if the candidate has withdrawn and joined some other course, it is at the risk of the candidate only for which CET cannot be blamed and if the management is benefited by giving admission to some other student and an undertaking is given by the management in this regard, it is for the petitioner to pursue with the 2nd respondent.

Petition is disposed of accordingly.