

(2012) 09 KAR CK 0113

In the Karnataka High Court

Case No : Writ Petition No's. 84889-84902 of 2012 (EDN-ADM)

Ashwini Kumar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 09 KAR CK 0113

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : R.J. Bhusare, for the Appellant; Mallikarjun Sahukar, High Court Government Pleader for Respondents-1 and 2, for the Respondent

Judgement

Aravind Kumar, J.—Petitioners are students studying in Nittur Polytechnic College, Bidar, Government Polytechnic College, Bidar, Government Polytechnic College, Aurad (B), Yadgir Polytechnic College, Yadgir and Nivedita Polytechnic College, Yadgir in different branches of Diploma Courses which colleges are controlled by second respondent. Petitioners-1 to 13 claim to have completed their course in fourth semester and were anticipating to be admitted to fifth semester and petitioner No. 14 is seeking admission to third semester after having compiled course in second semester. Petitioners are seeking for quashing of the Circular dated 24.07.2012 Annexure-A issued by second respondent whereunder the carry over system to next semester is permitted only in the event of candidates having not failed in not more than 8 subjects in previous semesters and also for a direction to full carry over system as per circular dated 02.08.2010 Annexure-C.

2. Learned Counsel for the petitioners and respondents would fairly submit that similar writ petitions were filed before Principal Bench at Bangalore and an order came to be passed on 10.09.2012 in W.P. Nos. 32330-437/2012 by receiving an affidavit filed by Sri. S. Vijay Kumar, Joint Director (CDC), Department of Technical Education whereunder it was agreed to by the State in the said affidavit

that respondents would promote/admit diploma students who have failed in 10 or less subjects in semesters-I to IV and same would be applicable only for the academic year 2012-13 and for the academic year 2013-14 onwards, carry over system will be strictly in accordance with circular dated 01.08.2009.

3. Learned Government Advocate would fairly admit at this, stage that affidavit of the Joint Director was filed in the said writ petitions before Principal Bench.

4. For the purpose of reference and convenience, undertaking given by the Joint Director in the affidavit filed on 10.09.2012 in W.P. Nos. 32330-437/2012 made available by learned Government Advocate is extracted as under:

3. That all efforts required to enhance the limit of carry over from the permitted eight subjects for being promoted to Fifth Semester to ten subjects only for the academic year 2012-13 will be made from the Technical Department as a one-time measure under the prevailing facts and circumstances. Since a decision in this regard has been proposed with the consent of the Principal Secretary and Hon"ble Minister for Higher Education and on account of paucity of time, I hereby given an undertaking on behalf of the Respondents to promote/admit Diploma students who have failed in ten or less subjects in Semesters I to IV. It is hereby made clear this enhanced carryover facility will be applicable only for the academic year 2012-2013 and for the academic years 2013-14 onwards, the carryover system will be strictly in accordance with the Regulations appended to Government Order dated 01.08.2009.

5. Sri. R.J. Bhusare, learned Counsel for petitioners submits that petitioner Nos. 8 and 14 in these writ petitions would be entitled to the benefit of said undertaking given by Joint Director and as such, he prays for suitable orders being passed insofar as petitioners Nos. 8 and 14.

6. Insofar as other petitioners who have failed in more than 10 subjects are concerned, his argument is of three fold:

(i) that petitioners are from rural background and to cope up with higher standards of education, it will consume some time and number of subjects to be studied in first year diploma will be more and facilities provided at certain colleges are not up to standard and also that teaching faculty would not cover all the subjects within the period of a semester and as such, petitioners were not able to pass in all the subjects and as such, they should be allowed to carry over all the subjects by promoting to V semester. Elaborating his submission on this issue, he would submit that keeping in mind this factual background, circular dated 02.08.2010 was issued by second respondent which provided for benefit of carry over to fifth semester during the academic year 2010-11 even though candidates did not pass in all the subjects of first and second semesters and submits that by giving a go by to said decision, present circular dated 24.07.2012 has been issued and it affects the students who have failed in more than 8 subjects and they will not be able to go to V semester and prays for quashing the same.

(ii) When admission to third semester is permitted if students have failed less than 8 subjects, students aspiring for admission to fifth semesters should be given same benefit or in other words, he seeks for an exemption to be extended to these students by permitting them to carry over 16 subjects. On this ground, he submits that authorities had permitted the students to take up V semester by carrying over all subjects and as such he seeks for retaining carry over system as per earlier circular dated 02.08.2010.

(iii) The embargo/restriction imposed under the impugned circular would be applicable prospectively namely, to students who get admitted in the present academic year and it cannot be made applicable to students like the petitioners who have already been admitted to the course in the previous academic years and who are in the midst of the course.

On these grounds, petitioners seek for allowing the writ petitions and quashing the impugned circular.

7. Per contra, learned HCGP appearing for respondents would support the circular impugned in the present writ petitions and would hasten to add that as a one time measure, a concession was given by the State and said concession could be extended in these petitions only to those who are eligible to such concession and submits prayer made by other petitioners be rejected as otherwise it would result in standards of education falling down.

8. Having heard the learned Advocates appearing for contesting parties, this Court is of the considered view that in view of the affidavit filed by Joint Director of Technical Education on 10.09.2012 as recorded in W.P. Nos. 32330-437/2012 and the orders passed thereon same as found in para 10 of W.P. Nos. 84980-257/2012, it would suffice if petitions filed by petitioners Nos. 8 and 14 are disposed of by directing the respondent State of Karnataka represented by its Secretary, Technical Education Examination Board and the Director, Technical Education Department to issue instructions to the colleges in which these petitioners are studying as already directed by this Court in W.P. Nos. 32330-437/2012 which reads as under:

i) to promote the students (petitioners Nos. 8 and 14) to the 5th and 3rd semesters respectively of the Diploma course if they have failed in 10 or less subjects in Semesters 1 to 4;

ii) to hold additional classes for the petitioners and all other students similarly circumstanced, in which they shall attend to secure the required minimum percentage of attendance to appear for 5th semester examination when conducted;

iii) to promote students to the 3rd semester of the Diploma course if failed in 10 or less subjects in 1st and 2nd semester;

iv) to conduct internal examinations for the said students;

v) that the aforementioned "carry over system" is a one time measure applicable to the said students for the academic year 2012-13 only;

vi) that students promoted to the 3rd or 5th semester of Diploma course pursuant to the interim order if found to be ineligible for promotion having failed to comply with the aforesaid "carry over system", be discharged and the course fee refunded forthwith;

vii) to permit the aforesaid students to pay the course fee etc, without fine, within a fortnight from today;

The respondent-State is further directed to issue appropriate order declaring that the promotion of the aforesaid students to higher semesters during the academic year 2013-2014 in the Diploma Course, shall be strictly in accordance with the Government Order dt. 1.8.2009.

Thus, writ petitions filed by petitioners-8 and 14 stand disposed of in terms of the aforesaid order.

9. Insofar as remaining petitioners are concerned, undisputedly they are failed in more than 10 subjects. Perusal of the impugned circular would go to show that candidates aspiring to get admitted to third or fifth semesters as the case may be would be entitled for admission only if they have failed in less than 8 subjects. Thus, the eligibility criteria for the next semester has been fixed under the impugned circular. It is to be noticed that time and again, Hon'ble Apex Court has repeatedly held that scope of judicial review with regard to fixation of eligibility criteria is limited or in other words, circumscribed by the regulations, policies, circulars that govern.

10. In the case of Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, , Hon'ble Apex Court has held as under:

13. No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact, the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any, fixed by the Central Body under a Central enactment. The order of the Division Bench, is therefore, unsustainable.

(emphasis supplied by me)

Thus, until and unless it is established that such criteria prescribed by the State or University as the case may be is arbitrary, whimsical and strikes to the conscience of the Court, such criteria fixed by them could not be interfered with.

11. In the case of Mahatma Gandhi University and Another Vs. Gis Jose and

Others, , Hon"ble Supreme Court has deprecated practise of permitting the students to pursue their studies to appear in the examination particularly under the umbrage of interim orders. It has been held that when the Rules stare straight into the face, plea of sympathy and concession would be against legal provisions, regulations, criteria fixed by State or University as the case may be and such sympathies even if any should recede to background. In fact, it has been held that misplaced sympathy should not be shown in utter breach of the Rules in the words of their Lordships it reads as under:

8. Learned Counsel for the student relied on a judgment of this Court in the case of Selin Mary Mammen vs. Mahatma Gandhi University & Others (Civil Appeal No. 689 of 2004 delivered on 03.02.2004) a judgment delivered by Lahoti, J. Apart from the fact that the factual position is different in that case, there were no timely notices given regarding the irregular admission to the student as in the present case.

9. The misplaced sympathies should not have been shown in total breach of the Rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, . In paragraph 6 of the Judgment, this Court observed as follows:

6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions.....

12. The power of this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India is to ensure Rule of law prevails and not to issue directions or writs to perpetuate illegality or to act in disregard to the statutory provisions, regulations and policy decisions like the one in hand. In this regard, dicta laid down by the Hon"ble Apex Court in K.S. Bhoir Vs. State of Maharashtra and Others, would be of assistance and as such, relevant paragraph is extracted herein below:

11. The aforesaid observations by the High Court were in the context of the extraordinary and difficult situation that had arisen due to revision of the merit list. It is in this light the aforesaid observation has to be read and understood. It is no doubt true that a large number of students who were already admitted in the colleges and incurred a lot of expenditure in taking admissions were to be dislodged by issue of the revised merit list. In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However, the compassion and sympathy has no role to play where a rule of law is required to be enforced. The High Court has rightly declined to

issue any direction to the Central Government to grant one time increase in the admission capacity in the medical colleges, otherwise it would not have been proper exercise of jurisdiction under Article 226 of the Constitution. Adjusting equities in exercise of extraordinary jurisdiction under Article 226 is one thing, and the High Court assuming the role of the Central Government and the Medical Council u/s 10A of the Act is a different thing. The Court cannot direct to waive the mandatory requirement of law in exercise of its extraordinary power under Article 226. It is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law. However, it does not mean that the High Court is powerless in that regard. It can do so only when it finds that there was some illegality in the order of the Central government in refusing to increase the admission capacity in various colleges. The increase in admission capacity is permissible only when a scheme, in accordance with the regulations, is submitted by a medical college u/s 10A of the Act to the Central Government and the Medical Council is satisfied that the scheme complies with the requirement of the Act and regulations and thereafter the Medical Council recommends for such an increase in admission capacity. So long as the requirements u/s 10A of the Act are not complied with, no permission can be granted by the Central Government. If any direction is issued by the High Court to the Central Government to increase the admission capacity in a medical college, it would be in the teeth of the statutory provisions and amounted to amending the provisions of Section 10A. It is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law.

13. When the State/University in its wisdom have fixed criteria for churning out excellence in education by restricting the promotion to next semester namely, in the instant case, from fourth to fifth semester and from second to third semester by stipulating that a candidate should not have failed in more than eight subjects cannot be construed either to be arbitrary, capricious or which would strike conscious of the Court.

14. Keeping these principles in mind, when the contention of learned Counsel for petitioners is examined, it does not detain this Court too long to reject said contention for myriad reasons. At the outset, it has to be noticed that Annexure-C which is the circular dated 02.08.2010 which is strongly relied upon by learned Counsel for petitioners would not be of any assistance whatsoever to the petitioners inasmuch as, circular itself stipulates that it would be applicable for the academic year 2010-11 only. Said circular being restricted only for the said academic year, no right flows to the petitioners to claim that it has to be extended for subsequent academic years also. Though petitioners have contended that on account of various factors, they were unable to successfully

complete their subjects or pass the subjects of earlier semesters as a ground to appear for the next semester or in other words, said contention cannot be accepted for permitting full carry-over: Merely-because for a particular academic year certain concession was extended cannot hold good for all times to come. Hence, the contention of learned Counsel that said regulation which was in force/vogue on the date petitioners got admitted and it should hold good for all time to come or in other water and it is liable to be rejected and it stands rejected. University/State would be in its domain to fix eligibility criteria by taking all aspects into consideration.

15. Insofar as second contention is concerned with regard to the circular impugned in present writ petitions has to be held prospective i.e., applicable only to those students who get admitted in the present academic year and cannot be made applicable to students who are already admitted to the course either in the previous academic year or earlier thereto cannot be accepted. Even according to petitioners themselves, circulars governing the promotion was issued from time to time and only because for the academic year 2010-11 i.e., on 02.08.2010 it was resolved to permit students to carry over all the subjects even though to the next semesters though failed in all subjects cannot be a ground to contend that under the impugned circular, petitioners are not required to pass in all the subjects except to the extent of eight subjects. Impugned circular issued relates to academic year in question and by applying prospective applicability, it cannot be held that it would apply only to students who get admitted to the present academic year. Said contention is also liable to be rejected and accordingly it is rejected.

16. Insofar as the third contention is concerned, when, a candidate aspiring for admission to third semester is permitted to retain 8 back subjects and on prorata, it has to be extended to the candidates aspiring for fifth semester namely by permitting them atleast 16 back subjects to be "carried over", is liable to be rejected at the threshold. The Government Order dated 02.08.2010 which permitted full carry over was applicable only for the academic year 2010-11 merely because respondents have fixed the norms of failing 8 subjects would entitle the candidate to go to third semester, same cannot be extended to the candidates aspiring for fifth semester on prorata basis i.e., by allowing such candidates to retain 16 subjects for the previous semesters-I to IV. Said analogy does not appear to be logical and it would run counter to the circular governing such admission and this Court would not decide the policy to be adopted by the Education Department. It is left to the realm or domain of respondent-authorities and if in their wisdom they have resolved to extend only 8 subjects or 10 subjects (now by way of concession) for both III and IV semesters, it cannot be extended on prorata basis, as claimed by the candidates aspiring to be admitted to fifth semester. For the reasons as aforesaid, writ petitions filed by petitioner Nos. 1 to 7 and 9 to 13 stand rejected. Costs made easy.