

(1996) 05 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition Nos. 39411 to 39513, 39660 to 39664, 39747 to 39749, 39706, 39914, 40089 to 40113, 40577 to 40579, 40832, 40975, 41236 to 41265, 41541, 43922 to 43925 and 43000 of 1995

B. Narendra and Others

APPELLANT

Vs

Shanti Vardhak Education Society's Rural Engineering College, Bhalki, Bidar District and Others

RESPONDENT

Date of Decision : 27-05-1996

Acts Referred:

Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 4(2)

Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993 — Rule 2

Citation : (1997) 7 KarLJ 6

Hon'ble Judges : G. C. Bharuka, J

Judgement

1. These writ petitions herein, except Writ Petition No. 40975 of 1995, have been filed by 194 students, who have been granted Provisional Admission Orders, Common Entrance Test Cell allotting seats to them under various courses in Rural Engineering College, Bhalki (respondent 1), to direct the said college to admit these petitioners as per the allotments made in their favour. On the other hand, Writ Petition No. 40975 of 1995, has been filed by 170 students, who are purported to have been admitted by the Management of the 1st respondent in excess of the N.R.I.-Management quota, for issuance of a writ of mandamus directing the Government and the Director of Technical Education to approve their admission.

2. For appreciating the controversies raised herein in its proper perspective, it is necessary to narrate the sequence of events which has led to the entangling of students in these uncalled for litigations because of the acts and omissions committed by the Governmental agency and the Management of the Private Engineering Colleges.

3. It is known to all concerned that to overcome the evil of charging capitation

fee and to regulate the process of admission to various Professional Institutions the State Legislature has enacted the "Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984" (in short, "the Act"). Subsequently, the State Government pursuant to the powers conferred on it under the Act, framed "Karnataka Selection of Candidates for admission of Engineering, Medical and Dental Courses Rules, 1993" (in short, the "Admission Rules"). Since then, admission of students to the Professional Colleges are being regulated as per the provisions of the said rules as supplemented or supplanted by the directions issued by the Supreme Court in this regard, from time to time.

4. By GSR 54, dated 20-5-1995, the State Government made certain vital amendments in the Admission Rules by redefining the expression "Karnataka Students" and by restricting the admission to Professional Colleges only to such Karnataka Students. This was done by substituting clause (1) of Rule 2 and Rule 5 of the said Rules. The result of these amendments is that no non-Karnataka student can be admitted to these institutions, except as provided under Rule 12-B of the Rules which provides for reservation of seats for non-resident Indian candidates and others.

5. The said amendments led to making of serious allegations against the State Government before the Supreme Court as has been noticed in T.M.A. Pai Foundation and Others v State of Karnataka and Others¹. In paragraph 16 of the report, it has been noticed by the Supreme Court that Sri Rama Jois, learned Counsel appearing for certain non-Karnataka students complained that:-

"State Government is in truth colluding with the Managements of professional colleges with a view to defeat the scheme framed by this Court and that while amending the Rules on one hand restricting the admissions to Karnataka students, the Government has permitted the Managements to issue advertisements inviting applications for admission to these colleges to be submitted directly to them. Even the Amendment of Rules in 1995 (referred to above), says Sri Jois, is in truth intended to allow these colleges to admit students of their choice directly since it is a well known fact that all the payment seats cannot be filled by Karnataka students".

6. It appears that the Supreme Court being persuaded by the said complaint, held that the restrictions placed by the 1995 amendment to the rules which provided that only Karnataka students as redefined shall be admitted against the payment seats, shall not operate for the Academic Year 1995-96. It was further directed that out of the payment seats 15% shall be allotted to the non-Karnataka students as was done during the previous academic year and if any of the seats reserved for Karnataka students remain vacant that shall be added to the 15% quota of non-Karnataka students.

7. The Supreme Court under its said order dated 11-8-1995, also delineated the outer time limits for allotment of seats by the CET in respect of Medical and Dental Colleges. The said direction is contained in para 20(3)(c). Similarly, with

regard to Engineering College, the direction was to the following effect:

"So far as engineering and other colleges are concerned, the rules, regulations and orders made by the concerned Council, Government and this Court shall continue to govern for this academic year. There shall be no change insofar as these colleges are concerned. In short, the position obtaining in the Academic Year 1994-95 shall apply and continue for Academic Year 1995-96. The allotment of students to these colleges shall be completed by September 30, 1995. Any seats remaining unallotted-or any seats remaining unfilled on or after 16th October, 1995, shall be allowed to be filled by the Management".

(emphasis supplied)

8. It is a matter of record that for the reasons and explanations put forth before the Supreme Court, since by the cut off dates the CET Cell could not allot all seats available for allotment by it, though large number of students were still in waiting, the Government decided to approach the Supreme Court for seeking extension of time for the said purpose. Accordingly, the Principal Secretary to the Government, Education Department, sent a note to the Director of Technical Education on 14-10-1995, directing him to give wide publicity in newspapers and also over the Radio and Television requiring the Private Engineering Colleges not to admit any student against unallotted/unfilled Engineering seats till further directions. Accordingly, the Director of Technical Education (hereinafter in short "D.T.E."), issued a press note to that effect on 15-10-1995 (Annexure-R2). He also sent phonograms to all Private Engineering Colleges including the 1st respondent-College on 15-10-1995, itself. Copy of the said phonogram has been placed at Annexure-R3. The said information was also announced on All India Radio at 6.15 pm and on Doordarshan, as a part of news on that very date, i.e., 15-10-1995 at 7 pm. The extracts of the said announcements made by the said agencies have been placed at Annexures-R4 and R5. Through the said communications and announcement, which were made through all possible public media, not only the Management of such Engineering Colleges were directed not to admit any student of their own till further orders, but parents and the students were also advised not to seek such admissions through Managements. The Association of the 1st respondent-College, namely, Karnataka Unaided Private Engineering College Association (Registered) under the letter dated 28-10-1995, addressed to the Government took a strong exception to the said communications and announcements made by and at the instance of the Government by retorting:

"It is unfortunate that the Director of Technical Education has sent Telegrams on 16-10-1995, directing the colleges not to make admissions as there were writ petitions pending in the High Court. Such a direction was issued without any authority conferred upon him either by the rules or by the Supreme Court order".

9. In reply to the statements made on oath on behalf of the Government, the Chairman of the 1st respondent-College has taken a plea of complete ignorance

of the directions and announcements made through public media and so far as the sending of phonogram is concerned, his plea is that it was received by them only at 5.30 pm on 17-10-1995, i.e., after they had completed the process of admission by admitting 170 students on that very date.

10. Admittedly, immediately after informing the respective College administration and the students of their parents through all possible public media and by way of abundant caution by personal communications to the colleges, the State Government filed I.A. No. 33 of 1995, on 18-10-1995, in Writ Petition No. 31719 of 1993, T.M.A. Pai Foundation's case, supra, pending before the Supreme Court for extension of time by inter alia stating and praying therein:

"As per the order of this Hon"ble Court, the Managements are allowed to fill up the vacant seats in respect of Medical and Dental Courses only after 30-10-1995. In respect of Engineering Course, the Managements are allowed to fill up the vacant seats after 16-10-1995. That being the case, no harm or prejudice will be caused if time is extended to the CET Cell to allot seats from among the students available in the waiting list. The State Government, in view of the vacant seats and large number of deserving students in the waiting list in the above said courses, intimated all the Private Managements not to fill up the said vacant seats until an order is passed by this Hon"ble Court on this application. Therefore, it is prayed that this Hon"ble Court be pleased to extend the time by 3 weeks from the date of order that may be passed by this Hon"ble Court on this application for allotment of vacant seats in respect of Medical, Dental and Engineering Courses, in the interest of justice".

(emphasis supplied)

11. Accordingly, on 20-10-1995, upon hearing the Counsel for the parties, the Supreme Court made the following order:

"Time as prayed for is granted. We made it clear that no further extension shall be granted".

12. The effect of the said order was that whereas under its order dated 11-8-1995, the Supreme Court had directed the CET to complete the allotment of students to the Engineering Colleges by 30-9-1995, this cut-off date stood extended by its above quoted latter order to 10-11-1995, being three weeks from the date of the said order.

13. Subsequent thereto, the Special Officer, CET Cell got published on the Spot Counselling and Admission Notice pertaining to Engineering seats on 23-10-1995, in the leading daily newspapers. The Counselling for Karnataka quota was fixed between 29-10-1995 to 1-11-1995, whereas that for non-Karnataka was scheduled between 3rd to 7th of November, 1995.

14. Pursuant to the said notice, the petitioners except those in W.P. No. 40975 of 1995, participated in the Counselling and were accordingly allotted Engineering seats in the 1st respondent-College. But when they approached the principal of

the 1st respondent-College with Provisional Admission Orders granted by the Special Officer, CET Cell, he refused to admit them by giving the endorsements of the following type (Annexure-B series):

"Ref. No. SVES/REC/ADM/95-96/2169

Dated 8-11-95

Endorsement

As per the order of the Hon"ble Supreme Court of India dated 11-8-1995, we have already filled up the unallotted/unfilled seats on 17th October, 1995. No seats are available for allotment. However, if the Government is agreeable to increase the intake we have no objection for admitting this student Sri SUBHRANSH SHEKHAR, s/o..... CET No. A 2963 Rank 4035.

Sd/Principal Rural Engineering College Bhalki" The said endorsement and the refusal of the principal of respondent-College to admit the CET allottees has led to the filing of the present set of writ petitions.

15. In the said background, the question that needs to be decided are:-

(i) Whether the College Management had any authority in law to admit students in excess of its N.R.I. quota as provided under Rule 12-B of the "Admission Rules"?

(ii) Whether the Special Officer of the CET Cell has acted unauthorisedly and illegally by allotting students to the respondent-College after 16-10-1995; and

(iii) Whether this Court has any jurisdiction to direct either:-

(a) to increase the intake of any Educational Institution; or (b) approve admissions made in excess of permissible intake?

16. Re. Question No. (i):

The right of the College Management to admit students of its own has to be adjudged keeping in view the statutory provisions and the Supreme Court directions issued in this regard from time to time.

17. So far as the statutory provisions are concerned, as noticed above, the admission to Professional Colleges are being regulated by the provisions of the Act and the "Admission Rules" framed thereunder. Section 4 of the Act inter alia provides for regulation of admission to Educational Institutions. Section 4(2) of the Act which is material for the present purposes reads as under:

"4(2) Regulation of Admission to Educational Institutions, etc.-Subject to such rules, or general or special orders, as may be made by the Government in this behalf and any other law for the time being in force.-

xxx xxx xxx.

(2) In order to regulate the capitation fee charged or collected during the period

specified under the proviso to Section 3, the Government may, from time to time, by general or special order, specify in respect of each private educational institution or class or classes of such institutions.-

(a) the number of seats set apart as Government seats;

(b) the number of seats that may be filled up by the Management of such institution.-

(i) from among Karnataka students on the basis of merit, on payment of such cash deposits refundable after such number of years, with or without interest as may be specified therein, but without the payment of capitation fee; or (ii) at its discretion:

provided that such number of seats as may be specified by the Government but not less than fifty per cent of the total number of seats referred to in clauses (a) and (b) shall be filled from among Karnataka students.

Explanation.-For the purpose of this section, Karnataka students means persons who have studied in such educational institutions in the State of Karnataka run or recognised by the Government and for such number of years as the Government may specify.

(3) An educational institution required to fill seats in accordance with item (i) of sub-clause (b) of clause (2), shall form a committee to select candidates for such seats. A nominee each of the Government and the University to which such educational institution is affiliated shall be included as members in such committee".

For the sake of convenience, I have noticed that the expression "Government Seats" has been explained in clause (e) of Section 2 of the Act, to mean such number of seats in such educational institution or class or classes of such institutions in the State as the Government may, from time to time, specify for being filled up by it in such manner as may be specified by it by general or special order on the basis of merit and reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and such other categories, as may be specified, by the Government from time to time, without the requirement of payment of capitation fee or cash deposit.

18. Pursuant to the said powers, apart from making "Admission Rules" under Section 14 of the Act, the State Government had been issuing general or special orders under Section 4(2) of the Act specifying the number of seats which can be filled by the Management of educational institutions. Apart from this, clauses (g) and (n) of Rule 2 of the Admission Rules has defined "free seats" and "payment seats" to mean the seats specified as free seats and payment seats in such institutions as may be notified by the Government. Both free seats and payment seats so notified excluding the N.R.I. quota prescribed under Rule 12-B, are to be allotted only pursuant to the Common Entrance Test held under the said rules. Therefore, so far as the statutory provisions are concerned, to my

understanding, the Management of the educational institutions had no authority to admit students beyond the percentage provided under Rule 12-B of the Rules which in the case of Engineering Colleges is only 5%. In the present case, during the Academic year 1995-96, the permissible intake of the college was 405 and as admitted by the Chairman of the Governing Council of the college himself in his first statement of objections, the N.R.I. quota was fixed at 19 only. Therefore, under statutory provisions the Management of the 1st respondent could not have admitted more than 19 students of their own.

19. So far as the right of the Management to admit students as per the Supreme Court's directions is concerned, one has to start with the scheme laid down by the Apex Court in Unni Krishnan J.P. and Others v State of Andhra Pradesh and Others, AIR 1993 SC 2178 and subsequent orders passed in this connection. The right of the Management to admit students against seats remaining vacant after a cut-off date is contained in paragraph 9 of the said scheme which reads as follows:

"After making the allotments, the Competent Authority shall also prepare and publish a waiting list of the candidates along with the marks obtained by them in the relevant test/examination. The said list shall be followed for filling up any casual vacancies or "drop-out" vacancies arising after the admissions are finalised. These vacancies shall be filled until such date as may be prescribed by the Competent Authority. Any vacancies still remaining after such date can be filled by the Management".

20. The relevant portion of the Supreme Court's order dated 11-8-1995, referred to above, needs to be construed and understood in the context of the said paragraph 9 of the Unnikrishnan's scheme. What was directed by the Supreme Court under its order dated 11-8-1995 was that the allotment of students by the CET Cell to Engineering Colleges should be completed by 30-9-1995 and any seat remaining unallotted/unfilled on or after 16-10-1995, shall be allowed to be filled by the Management. Therefore, even as per the Supreme Court's order, the mandate was to the Government to pass appropriate orders permitting the Management to fill up the seats which had remained unallotted/unfilled by the given date. In my opinion, till the State Government as required under Section 4(2) of the Act had not permitted the College Managements pursuant to the Supreme Court's order to fill up the vacant seats of their own, the law did not permit the Management to go ahead with the admissions by their own. In case, the Government had failed to abide by the Supreme Court's directions, the College Management like that of the 1st respondent could have moved either this Court or the Supreme Court for implementation of the said directions. Admittedly, the 1st respondent-College was not a party before the Supreme Court in W.P. No. 713 of 1993, in which the order dated 11-8-1995, was passed. In the said background even going by the ordinary prudence of an honest and law abiding person, the Management of the 1st respondent could not have self presumed that the Supreme Court had given it an absolute right to admit

students in excess of N.R.I. quota even without obtaining the appropriate permission from the State Government as required under Section 4(2) of the Act.

21. However, even if it be presumed that the Managements were allowed to fill up the seats lying unfilled/unallotted till 16-10-1995, nonetheless, they were bound by the directions issued by the State Government which has the statutory competence to do so under Section 4(2) of the Act. These directions, as noticed above were notified through all public media like the newspaper, radio and television. The Association of the colleges had come to learn of the said directions on the very day the same was issued. It cannot be denied that such informations/directions having vital bearing on the rights of the Management of the Colleges spreads within no time like a wild fire, particularly with the present availability of fast information communication systems. For these reasons, I find it difficult to accept the plea of ignorance and innocence raised on behalf of the 1st respondent. I am of the firm view that the Management has tried to set up the said improbable and unbelievable pleas only in order to justify its ill-advised and ill-conceived efforts of overreaching the Apex Court. I accordingly hold that the Management has admitted students of its own in excess of its quota illegally and mala fide.

22. Mala fide on the part of the Management is further substantiated by the fact that it had collected tuition fee from most of the students, who are all non-Karnataka, and are purported to have been admitted by it on a single day that is, on 17-10-1995, during the period prior to 11-8-1995, that is much before the Supreme Court had permitted granting of admissions to non-Karnataka students. This fact is borne out from the details furnished by the 1st respondent in its first statement of objections. Apparently, there could have been no valid reason for the College, Management to persuade the non-Karnataka students to deposit huge amounts with them when it was known to all concerned that the State Government had banned the admission of non-Karnataka students by amending the "Admission Rules". These acts of the Management squarely substantiate the complaints which had been laid by Mr. Rama Jois before the Supreme Court (see para 5 supra). The mala fide intention of the Management is further demonstrated by the fact that as per its own showing it had learnt about the Government directions restraining them to admit students on 17-10-1995, but no acceptable evidence has been placed on record to show that they had informed either the Government or the CET Cell regarding 202 students in the college in excess of Management quota, though, in the statement of objections, a bald statement has been made of sending an information in writing to the said effect, but it has not been stated as to how that communication had been made. The stand seems to be clearly an afterthought to cover up the illegal acts, done by the Management. Mr. Srinivas Reddy, learned Additional Government Advocate appearing on behalf of the respondent namely the CET Cell and the DET, on instructions, deny to have received any such communication. Moreover, the prudence on the part of the Management required that once the Management had learned about the Government's directions and the Supreme Court's order

extending the date upto 10-11-1995, for allotment of unfilled seats in Engineering Colleges, then it ought to have immediately approached the Supreme Court for restraining the CET Cell from making any further allotments in the 1st respondent-College, since according to them, wrongly or rightly, they had filled up all the seats. But the Principal of the College, presumably under the instructions of the Management waited till further allotments were made by the CET Cell pursuant to the second order of the Supreme Court and thereafter, under the acknowledgement dated 7-11-1995, started refusing to admit the students allotted by the CET Cell to build up a pressure on the Government to increase its intake capacity. The act was grossly mala fide. The students and their parents, who obtained such admissions through Management have also equally contributed in prompting the Management in indulging in such illegal acts because the Government had done its best to inform even the parents and students through public media not to become victim of the ill-designs of the Management, but the warning was totally ignored by such students and their parents. It has been noticed by the Supreme Court in T.M.A. Pai Foundation and Others v State of Karnataka and Others, AIR 1995 SC 1938, that "it is common knowledge that each seat under the quota is sold for huge sums not all accounted for and not all in Indian currency". This explains the Management's eagerness to anyhow and on any plea howsoever flimsy or technically it may be, to usurp the liberty of admitting students of its own.

23. For the said reasons, I am of the considered opinion that the Management of the 1st respondent-College had neither any authority under the statutory provisions nor as per the directions of the Supreme Court to admit students in excess of its N.R.I. quota, that is 19 students during the Academic Year 1995-96 and their act of admitting students in excess thereof was clearly illegal and mala fide.

24. Re. Question No. 2:

As noticed above, the CET Cell has allotted students to the respondent-College under and in accordance with the authority conferred on it under the provisions of the Act, the "Admission Rules" and the two Supreme Court orders dated 11-8-1995 and 20-10-1995, referred to above. Therefore, no fault can be found in allotments made by them.

25. Re. Question No. 3:

Section 53(10)(b) of the Karnataka State Universities Act, 1976, provides that the maximum number of students to be admitted to a course of study shall not exceed the intake fixed by the University or the Government, as the case may be and any admission made after this section came into force in excess of the intake shall be invalid. Clause (c) of the section further provides that no student, whose admission has become invalid under clause (b) shall be eligible to appear nor shall be presented by the College to appear at any examination conducted by the University. It is well-settled that this Court cannot issue any writ or direction to

any Statutory Authority to act in violation of or contrary to law. It is also well-settled that the intake of an educational institution is fixed by the Statutory Authorities keeping in view the infrastructure of the institution and the requisite teachers and students' ratio to be maintained in this regard, so that the requisite standard of education in the given branch be maintained ensuring excellence of education. Therefore, the intake so fixed by the experts in the field cannot be disturbed by this Court under the writ jurisdiction - *State of Maharashtra v Minoo Noazer Kavarana and Others*, (1989)2 SCC 626, *Thaper Institute of Engineering and Technology (Deemed University)*, *Patiala v Abhinav Taneja and Others*, AIR 1990 SC 1222; *State of Punjab v Renuka Singla*, Sic. For the said reasons I do not find it permissible to direct the respondent-authorities to approve the admission of the petitioners in Writ Petition No. 40975 of 1995, who have been given admissions by the Management in excess of their quota.

In the result, all the writ petitions, except Writ Petition No. 40975 of 1995, are allowed, directing the 1st respondent to permit them to continue with their studies as regular student is allowed with costs assessed at Rs. 2,000/- in respect of each of

the petitioners which will be adjusted against the fees payable by such students to the 1st respondent-College. Writ Petition No. 40975 is dismissed, but without costs.