

(1981) 12 KAR CK 0022
In the Karnataka High Court
Case No : W.A. 842-846/81

Bangalore University

APPELLANT

Vs

Vidya Ganapathi Education Society and Another

RESPONDENT

Date of Decision : 17-12-1981

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka State Universities Act, 1976 — Section 53

Citation : (1982) 2 KarLJ 217

Hon'ble Judges : D. M. Chandrashekhar, C.J.;N. Venkatachala, J

Judgement

Venkatachala, J.-These appeals are from the common order of Puttaswamy, J., in W.P Nos. 4839 to 4843 of 1981. Respondent-2 therein, namely, the University of Bangalore (hereinafter referred to as "the University") has presented W.A. Nos. 842 to 846 of 1981, while respondent-3 therein, Shri Vidyaganapathi Nursery and Primary Education Society (hereinafter referred to as "the Education Society"), has presented the writ appeal which has not yet been numbered.

2. The material facts which led up to there appeals, are briefly these: By its letter dated 20-9-1979 addressed to the University, the Education Society sought for affiliation of its College in which it proposed to start the B.Edi., Course during the year 1980-81. In the month of June 1980, the Education Society invited applications from intending students to join the first year B.Ed., Course in its College. In July 1980, the Education Society admitted 135 students for that course.

3. The Education Society had sent to the State Government a copy of its letter dated 13-6-1980 addressed to the University. The Government forwarded that copy of the letter to the University on 29-7-1980 for being processed under S.53 of the Karnataka State Universities Act, 1976 (hereinafter referred to as "the Act") . The University, by its letter dated 2-9-1980, appears to have intimated to the State Government that affiliation could not be granted to the College of the Education Society as its application for affiliation had not been made as required

under S.53 (2) (a) to (i) of the Act. Thereafter, the Education Society appears to have sent to the University a regular application along with application fee of Rs. 3,000. However, the State Government appears to have intimated the Education Society by its letter dated 17-1-1981, that it was too late to grant affiliation for the College of the Education Society for the year 1980-81.

4. But, on the representation of the Action Committee of the students of the first year B.Ed., class of the College of the Education Society, the Vice-Chancellor of the University appears to have called, for a report in the matter from the Dean of Faculty of Education. The Dean appears to have reported to the Vice-Chancellor that innocent students had been exploited by the Education Society.

5. In October-November 1980 five more Colleges, i.e., Sarvajna College, Dr.Ambedkar College, Sanjaya Gandhi College, M.V.J. College and New Horizon College which were not different from the College the Education-Society, started B.ED, Courses therein and admitted students therefor without securing affiliation through the University as required under S. 53 of the Act. Later, they, it is said, obtained invalid affiliation from the State Government though the University appears to have been not in favour of granting affiliation to them, as well. However, the State Government promulgated the Karnataka State Universities (Amendment) Ordinance 1981 (hereinafter referred to as "the Ordinance") to get over that situation. S. 2 of the Ordinance amended S. 53 of the Act by inserting the following non-obstacle clause.

"10) Notwithstanding anything contained in sub-sections (2) to (9), the State Government, may subject to such terms and conditions as may be specified in the order grant to a college affiliation to a University on receiving an application from the College either through the University or otherwise and affiliation so granted be deemed to have been granted in accordance with law and no suit or proceeding shall be entertained, maintained or continued in any Court questioning the validity of the affiliation so granted."

Under the above Ordinance, the above clause was made to be effective between 1-1-79 and 31.3.81.

6. In exercise of the extraordinary powers taken by it under the said Ordinance, the State Government validated the invalid affiliation which had been granted by it to those 5 Colleges.

7. The unfortunate position that emerges by reason of not granting affiliation to the College of the Education Society, was that the students of that College, who had been admitted as early as in July 1980, were not permitted to take the first year B.Ed., Examination to be held by the University for the year 1980-81 in the month of April/May 1981. Yet, the Education Society did nothing to protect the interest of its students.

8. Five such students approached this Court by presenting writ petitions out of which the present appeals have arisen.

9. In the writ petitions, the prayers were not only for issue of writs in the nature of mandamus to the State Government and the University to accord affiliation to the College of the Education Society, but also for issue of a further mandamus directing the University to permit the petitioners to take the first year B.Ed., Examination in April/May 1981.

10. The main ground urged in the writ petitions, was the differential treatment accorded by the State Government as between the College of the Education Society and the five other Colleges to whom affiliation was granted by the Government. It was contended that such differential treatment was plainly discriminatory and violative of Art 14 of the Constitution. On 20-3-1981, at the time of issuing rule nisi in the writ petitions, the learned single Judge made an ex-parte interim order directing the University to permit the petitioners to take the examination as sought by them. However, on 3-4-1981 that interim order came to be vacated by the learned single Judge after recording the undertaking of the University which was to the effect that it would admit the petitioners and others similarly situated, to the examination in the event of this Court allowing the writ petitions.

11. On 26-5-1981, the learned single Judge who heard the writ petitions, allowed them and directed the University to admit 135 students of the College of the Education Society to the first year B.Ed., Examination, provided their applications were sponsored, through some other affiliated Colleges of Education. However, he upheld the action of the State Government and the University in having refused to grant affiliation for the College of the Education Society for the academic year 1980-81.

12. Feeling aggrieved by the order of the learned single Judge, the University has preferred W.A. Nos. 842 to 846 of 1981, while the Education Society has preferred the writ appeal which has not yet been numbered.

13. Shri G.V. Shantharaju, learned Counsel for the University, strenuously contended that the order of the learned single Judge directing the University to admit 135 students to the examination of the first year B.Ed. Course would result in obliterating the difference between a College for which affiliation has been granted and a College for which affiliation has not been granted and undermining the maintenance of academic standard by the University.

14. On the other hand, Shri "H.B. Datar, learned Counsel for respondent-2, submitted that it was unfortunate that the University had objected to the admission of the 135 students of the College of the Education Society, while the University did not raise any objection to the admission of nearly 1000 students of those other live Colleges who were similarly circumstanced. He also submitted that the State Government had singled out the College of the Education Society for hostile treatment, while it (the Government) granted affiliation to those five other Colleges similarly circumstanced.

15. In view of the above submission of Shri Datar we called upon the learned

Additional Government Advocate,, who appeared for the State Government, to file a statement of objections to the writ petitions, making the stand of the Government in the matter clear. The Government has filed its statement of objections. In para-3 thereof, it has been stated thus:

"3. With regard to the request of Shri Vidya Ganapathi Nursery and Primary Education Society, Bangalore, to start a B.Ed., College the matter was examined by the Government. As a matter of fact, the Cabinet had taken a policy decision as long back as on 10-6-1976 not to permit the opening of fresh B.Ed., Colleges. Unfortunately, the policy decision taken by the Government of 10.6.76 was not brought on record while processing the applications of the institutions for smarting fresh B.Ed, courses during the current year 1980-81. When the request of this society to start a fresh B.Ed., College for the academic year 1980-81 was considered the earlier policy decision of the Government was brought on record. It is submitted in this connection that in the paper on Education and Manpower 1978-83 prepared by the Planning Department, a suggestion was made to reduce the problem of unemployment. A disturbing feature that may be noticed in this connection is that as on 20.9.1980, the number of unemployed B.Ed., Graduates on the live registers of Employment Exchanges is 3980. With the opening of 13 new Colleges, there will be an additional 1320 Graduates. Therefore, the Government was of the view that the opening of a fresh B.Ed., College would aggravate the problem of unemployment. Another fact that came to the notice of the Government was that B.Ed. Course has become a commercial concern rather than an educational concern. If the imparting of Education in this particular faculty becomes a commercial concern, then the quality of training would suffer. These and the allied matters were considered by the Government and a decision was taken to reject the request of the Society. Besides, it was too late to grant permission to start fresh B.Ed., Course during the year 1980-81. Accordingly, a communication was addressed on 17.1.1981 to the Secretary-Correspondent, Sri Vidya Ganapathi Nursery and Primary Education Society, stating that the Management may approach the Bangalore University during the year 1981-82 in accordance with Section 53 of the Karnataka Universities Act well in time."

16. Though it is stated in the above para of the objection statement that the claim of the Education Society for affiliating its B.Ed. College for the year 1980-81, was refused on 17-1-81 on the ground that it was too late to grant such permission, the State Government as admitted in para 1 thereof, that at about the same time, granted affiliation to the other five Colleges similarly circumstanced even. without waiting tor then applications being processed by the University as required under S. 53 of the Act. After having come to know that such grant of affiliation was not in accordance with the provisions of the Act, the Government, as pointed out earlier, resorted to the Ordinance issued on 22-2-81 to validate such invalid grant of affiliation. Such admission is contained in the following passage in the statement of objections:

"..... When the affiliations were granted to those institutions, the report of the University in respect of each institution had, not yet been received. However, having regard to the exigencies of the circumstances and the urgency, the Government took a decision for granting temporary affiliation for a period of one year, i.e., for the year 1980-81. On 22-2-81, the Governor of Karnataka in exercise of the powers conferred by clause (1) of Art. 213 of the Constitution of India promulgated an Ordinance called the Karnataka State Universities (Amendment) Ordinance, 1981, effecting amendment to S. 53 of the Karnataka State Universities Act, 1976 directing that sub-sec. (9) should be inserted to S. 53 of the Act. By virtue of this Ordinance, the affiliations granted to the five institutions mentioned above became valid, even though they were granted contrary to the provisions of the University Act, 1976, then in force."

17. The justification pleaded by the State Government in para-3 of its statement of objections, for not granting affiliation to the new College of the Education Society, is far from convincing. The existence of unemployment among medical and engineering graduates, has not deterred the Government from granting affiliation to a number of newly started Medical and Engineering Colleges. In the cases of those Medical and Engineering Colleges, the Government has not chosen to raise the objection that those Colleges are commercial concerns rather than educational institutions and that the quality of education would suffer in such institutions.

18. In the statement of objections, it is not the case of the State Government that those other five Colleges to which it granted invalid affiliation and subsequently validated such affiliation under the Ordinance, were in any way different from the College of the Education Society. When it granted affiliation for those other five Colleges, its refusal to grant affiliation to the College of the Education Society, was wholly discriminatory and violative of Art 14 of the Constitution. The plea of the State Government in its statement of objections that the granting of affiliation to other five Colleges by the State Government and the validation thereof by means of an Ordinance could not confer on the Education Society a right to claim affiliation to its College, ignores the State's constitutional obligation not to discriminate between persons similarly circumstanced.

It was open to the State to refuse, affiliation to all the Colleges on the ground of non-fulfilment of conditions and requirements for granting affiliation. But, it cannot be heard to say that it was open to the State Government to grant affiliation for such Colleges which it chose and to refuse affiliation to other Colleges which it did not. so choose. Such action is plainly arbitrary and discriminatory. Perhaps, being aware of the unsustainability of its action, the Government has not chosen to appeal from the common order of the learned single Judge.

19. Even so, the question is whether we should uphold the contention of the University that the petitioners who claim to have studied in a College to which

affiliation had not been granted, are not entitled to be admitted to the examination to be held by the University. That the University did not choose to challenge the validity of the action of the Government in, arbitrarily granting affiliation to five other Colleges, should not, however influence our decision on the above question.

20. Before answering the above question, it will be advantageous to refer to a few decisions of the Supreme Court dealing with similar situations.

(i) *State of Kerala v. T.P. Roshana*, AIR 1979 SC 765, is one of them. There, 30 students who had been admitted to Medical Colleges in Kerala State in accordance with a scheme of distribution of seats in those Colleges as between students of different regions of that State, were subsequently unseated because the High Court of Kerala held that that scheme of distribution of seats was invalid and that several other students had better claims for being admitted to those Colleges in the absence of such scheme. In that situation, the Supreme Court directed the State Government to increase the number of seats in Medical Colleges in that State by 30 to avoid unseating of those 30 students who had already been admitted to the Medical Colleges and would lose one year of their valuable time if they were unseated. Krishna Iyer, J., who spoke for the Court, observed that the principle of affirmative action was within its jurisdiction under Art 32 and Art 136 of the Constitution and that that deserved the exercise of such power.

(ii) *Smitha Johnbai v. State of Gujarat*, AIR 1981 SC 1633, is another decision. There, certain students had been admitted to institutions for Primary Teachers Training Course Certificate Examination under State Government's orders which were withdrawn by it when the writ petitions challenging the validity of those orders were pending. In that situation, the Supreme Court directed that these students who were unseated should be treated as having been admitted for the limited period of 1 year and in so directing, the Supreme Court however, observed that such directions were issued only with a view to mitigate the harshness of law by blending fairness and equity.

(ii) *Vishnudas Hundumal v. State of Madhya Pradesh*, AIR 1981 SC 1635, is yet another decision, in that, the facts were these, The petitioners as holders of stage carriage permits under the Motor Vehicles Act, were operating their stage carriages on certain routes. There were other permit holders who were similarly operating their stage carriages on the same routes. The Madhya Pradesh State Road Transport Corporation framed and published a scheme of nationalisation which covered portions of the routes of all those permit holders. That scheme having come into force after its approval, the permits of the petitioners to the extent they overlapped the notified routes under the scheme, were curtailed. In so far as the permits of other operators were concerned though they also overlapped the routes notified in the scheme they were not curtailed. It was contended before the Supreme Court that the State Government and the Corporation in not curtailing the permits of other permit holders who were

similarly circumstanced, had practised hostile discrimination. On behalf of the Corporation and the State Government, no attempt was made to justify the discrimination. But, it was pleaded that it was a case of unconscious and unintentional discrimination by oversight. Rejecting the plea of inadvertence, the Supreme Court said thus:

"6. Conceding that this was discrimination unconsciously indulged into by inadvertence or oversight on the part of a governmental agency, by this order we only propose to rectify the same and not reject the which scheme. Such an approach would be destructive of a wholesome effort towards nationalisation of bus transport which is generally undertaken in public interest. When discrimination is glaring the State cannot take recourse to inadvertence in its action resulting in discrimination. The approach is what is the impact of State action on the fundamental rights of citizens. In this case denial of equal protection is complained of. And this denial of equal protection flows from State action and has a direct impact on the fundamental rights of the petitioners. We, therefore, propose to take a constructive approach by removing the discrimination by putting the present petitioners in, the same class as those who have enjoyed favourable treatment by inadvertence on the part of the Regional Transport Authority.

7. Accordingly, we hereby direct that the order conditions in permits curtailing the permits of the petitioners prohibiting them from passing over the overlapping portion of their route with the notified route be quashed and declared to be of no consequence till all the operators including those excluded and similarly situated are similarly treated."

21. In the present cases, 135 students had joined the College of the Education Society, hoping that the College would be granted affiliation for the academic year 1980-81 in the same manner as affiliation was granted to many new Colleges after they started working. If those 135 students had fulfilled all the academic requirements other than the requirement that they should have studied in an affiliated College, it would be unjust and harsh to deny them admission to the examination while about 1000 students who studied in those other five Colleges (which were also newly started) were permitted to take the examination. Even if the State Government had inadvertently granted affiliation to those five other Colleges, the 135 students of the College of the Education Society should be treated like the students of those other 5 Colleges for the limited purpose of admission to the first year B.Ed., Examination for the year 1980-81. Therefore, in our view, the learned single Judge has rightly held that those 135 students can be permitted to take the examination if they fulfil all the academic requirements except the requirement of having studied in an affiliated College. Such holding, in our view, also well accords with the aforesaid decisions of the Supreme Court.

22. In the result, we dismiss W.A. Nos. 842 to 846 of 1981.

23. As the Education Society had not presented any writ petition impugning the refusal to grant affiliation to its College, it cannot now challenge the decision of the learned single Judge in so far as he upheld such refusal to grant affiliation to that College. In the result, we dismiss the writ appeal of the Education Society.

24. However, we direct the parties to bear their own costs in these appeals