

**(1984) 11 KAR CK 0040**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 16802 and 17792 of 1984

B.K. Ajit Kumar

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 29-11-1984

**Acts Referred:**

Capitation Fee Act — Section 10, 14, 6, 8  
Constitution of India, 1950 — Article 162, 30

**Citation :** (1985) ILR (Kar) 3573

**Hon'ble Judges :** Chandrakantaraj Urs, J

**Bench :** Single Bench

**Advocate :** H.B. Datar, H. Subramanya Jois and D.L.N. Rao, for the Appellant;  
V.C. Brahmarayappa, Government Advocate R1 and 2 and S.G. Sundaraswamy,  
for R-3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Chandrakantaraj Urs, J.

1. These two Petitions are disposed of by the following common order as they involve the determination of the validity of the circulars impugned and the interpretation of the provisions of law and orders made thereunder. They are disposed of at the stage of preliminary hearing after notice.

2. Respondents in first of the Petitions are the State of Karnataka, the Director of Medical Education, M.R. Medical College, Gulbarga, J.J. Medical College, Davanagere, M.S. Ramaiah Medical College, Bangalore, Kempegowda Institute of Medical Sciences, Bangalore and Dr. B.R. Ambedkar Medical College, Bangalore. In the other Petition, the respondents are the State of Karnataka, the Selection Committee for Admission to the I year M.B.B.S. Degree Course and Kempegowda Medical College, Bangalore. All the respondents have been served in one or the other Writ Petition but only M. R. Medical College, Gulbarga and J.J. Medical College Davanagere, are represented. M.R. Medical College, Gulbarga has filed its statement of objections also. In both the Petitions notices were served by

hand issued to the petitioners, while respondent-State and other Government Agencies were served by directing the Government Advocate to take notice. This procedure was adopted and the matter heard in view of the urgency as the academic year for the I year M.B.B.S. Course has to commence from January, 1985 and these Petitions relate to admissions to Medical Colleges.

3. Petitioners in both the Writ Petitions are applicants for seats for the I year M.B.B.S. Course. Petitioner in W.P. 16802 of 1984 has applied for what is known as "Cash Deposit Seats" in all the five respondent colleges in the Petition, while the petitioner in W.P.17792/84 has applied to only Kempegowda Medical College which, unfortunately is not represented by Counsel or otherwise. The prayer in the Writ Petitions is that the circular issued by the 1st respondent-State dated 16th October, 1984 should be quashed and a mandamus issued to the concerned Medical Colleges to admit the applicants-petitioners on the merit of their performance in the entrance test held by the Government for admission to the I year M.B.B.S. Course for all seats in Government Colleges, for Government seats in Private Medical Colleges and for Cash Deposit Seats in Private Medical Colleges and not on the basis of their performance in the Pre-University Examination in the subjects, Physics, Chemistry and Biology.

4. Colleges who are represented and the Learned Government Advocate have resisted the contention of the petitioners and claimed that the Circular in question which is at Annexure-E to W.P.No. 16802/84 is in conformity with the law declared by Courts as well as the provisions of law governing admission of students on Cash Deposit to I year M.B.B.S.Course and the Rules and orders made in that behalf by the Government, in exercise of the power conferred on the Government by the relevant, Statute.

5. Before deciding the rival contentions, it would be useful to briefly recount the history of the unfortunate predicament of students not only in this State but elsewhere in India who have sought admission to Medical Colleges both Private and Government. The practice had been for long to regulate admission to Government Medical Colleges by Rules made in exercise of its executive power under Article 162 of the Constitution, by the Government. Those orders were made year after year with some change or other to suit the needs of all Sections of the Society providing for academic eligibility, reservation to be made to certain classes of persons, the mode of selection, the method of allotment to various Medical Colleges run by the Government etc., but in no way detracting from the minimum standard prescribed by the concerned University and also making selection by the Selection Committee constituted under the said Rules subject to the approval of the concerned University. On account of demand for more and more seats for Medical Education, several Private Educational Institutions were started in this State as well as in other parts of the Country. What began as a reasonable charge for admitting students in Private Medical Colleges run by the Private institutions including those which could be termed as minority institutions under Article 30 of the Constitution, assumed alarming proportions in the matter

of charging the Capitation Fee running sometimes to several lakhs of rupees. The Government also found that in permitting the Private Medical Colleges to be started on the Capitation Fee basis had resulted in more meritorious students not getting medical education on account of their poverty as only well-to-do people secured admission to Private Medical Colleges on account of their affluence with minimum academic eligibility prescribed. It is in that Circumstance that the State of Karnataka intended to regulate admissions to private medical colleges and Engineering Colleges by fixing intake of each of the professional colleges in conformity with the standard laid down by the University and the Indian Medical Council, the manner of collecting Capitation Fee and its phased reduction over a period of five years, control of the fund collected as Capitation Fee in addition to reserving to itself certain number of seats in each of the private educational institutions offering professional courses to be filled up by the Government itself. Such an order passed in respect of Engineering Colleges in the State came up for consideration before this Court in the case of Hyderabad-Karnataka Education Society, Gulbarga, and others -v.- State of Karnataka, in 1983 and the same was decided against the State by me judgment reported in Hyderabad Karnataka Education Society, Gulbarga and Others Vs. State of Karnataka, . In that Judgment for the reasons given therein, part of the order concerning reservation of seats in favour of the Government, control of the Capitation fee fund in the manner provided in the order and similar encroachment on the rights of Management of Private Medical Colleges came to be struck down while the right to fix intake and standard to be maintained were left alone. At that point of time, the Government was acquiring a certain number of seats to be filled up in the professional colleges by it on basis of an agreement or understanding reached with the Management of Private Medical Colleges. It was only in the academic year 1982-83 that some of the Colleges refused to concede any seat in favour of the Government to be filled up by the Government. It is in this background that Karnataka Act 37/1984 known as Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (hereinafter referred to as the "Capitation Fee Act") came to be passed. It was, however, preceded by two earlier Ordinances made in 1983. However, by sub Section (2) of Section 1 of the Capitation Fee Act it was deemed to have 1. Hyderabad Karnataka Education Society, Gulbarga and Others Vs. State of Karnataka, come into force on the 11th day of July, 1983. That Act and the amendments made thereto from time to time were challenged before this Court in Writ Petition No. 12324 of 1984 and connected matters. Rama Jois., J. by his Judgment dated 3rd September, 1984, Bapuji Educational Association Vs. State, of upheld the validity of the Act barring two sections which were struck down as violative of the fundamental rights of the Managements of the Private Medical Colleges. I shall make appropriate reference later in the course of the order to the provisions so struck down. However, in view of the lapse of time in disposing of the petitions challenging the validity of the Act, seats reserved in favour of the Government in Private Engineering Colleges and filled by the Government for the academic year 1984-85 were saved as the academic year for the professional courses had already commenced. It is stated that the

Managements have accepted that position by reaching some understanding before the Division Bench of this Court in Writ Appeal No. 1810 of 1984 and connected matters directed against the Judgment dated 3-9-1984 of Rama Jois, J.

6. The Capitation Fee Act provides for its application and defines specifically. "Backward classes", "Capitation fee", "Educational Institutions", "Government", "Government Seats", "Management", "Minority Educational Institutions" and "Scheduled Castes". By Section 3 of the Capitation Fee Act, collection of Capitation Fee is prohibited notwithstanding anything contained in any law for the time being in force, subject, however, to the extent the Government may permit to do so by orders issued periodically specifying the time up to which Capitation Fee may be collected but in no case exceeding five years. Section 4 of the said Act provides for regulation of admission to educational institutions. Section 5 similarly provides for regulation of fee. Section 6 of the Capitation Fee Act provides for expenditure and maintenance of accounts. Section 7 provides for penalties. Section 8 of the said Act provides for offences by Companies. Section 9 provides for power to enter and inspect. Section 10 of the said Act exempts the minority institutions protected by Article 30 of the Constitution from the operation of the provision of the Act. Section 11 provides for cognizance of offences. Section 12 of the Capitation Fee Act which is important provides for the provisions of the said Act to have over-riding effect over all other laws. Section 14 of the Capitation Fee Act confers power on the State Government to make Rules. Section 15 of the said Act relates to validation which incidentally has been amended while the above Petitions were being heard, by the Ordinance to which reference will be made later.

7. Purporting to exercise the power conferred by the Capitation Fee Act, on 21st June, 1984, by Order No. ED 28 TEC 84, Rules for conducting Entrances Test to Private Engineering Colleges, Medical Colleges and Dental Colleges in Karnataka State were promulgated. The Rules are called the Karnataka Entrances Test for admission to certain professional Courses Rules, 1984 (hereinafter referred to as the "Test Rules"). By Order dated 1-8-1984 bearing No. HFW. 136 MSF. 84, the Government promulgated the Rules called the Karnataka Medical Colleges (Selection of Candidates for Admission) Rules, 1984 (hereinafter referred to as the "Admission Rules") which may in passing, refer as similar to the executive Rules which were being issued from year to year earlier. However, by notification dated 8-8-1984, purporting to act in exercise of the powers conferred by Sections 3, 4 and 5 of the Capitation Fee Act, the Government framed Rules called the Karnataka Private Medical Colleges (Prohibition of Capitation Fees, Fixation of Intake and Allocation of Seats among different categories, etc.,) Rules, 1984 (hereinafter referred to as the "Allocation Rules").

Arguments were advanced both for the Petitioners and the Respondents, represented on the basis of the provisions and the meaning to be attached thereto of these Rules read with the provisions of the Act.

8. Sri H. B. Datar and Sri Subramanya Jois, Learned Counsel appearing

respectively for the petitioners have strenuously contended that the provisions of the Capitation Fee Act must be construed strictly and the Rules and the Orders issued thereunder be given the same force attached to the Statute and therefore, construed strictly. They have argued that, if so understood then the reference to merit in the relevant Rules must be construed as having reference only to the merit as defined in the Test Rules of 21 June, 1984 in so far as they relate to Cash deposit seats. I will refer to the specific Rules in question at a later stage. But, here itself, I must point out that in the Capitation Fee Act neither "Cash deposits seats" nor the term "Merit" is defined. It is only in the Test Rules that the terms "Cash Deposit Seats" and "Merit" are defined.

9. As against that argument Mr. S. G. Sundaraswamy, Learned Counsel for M. R. Medical College, Gulbarga, and Mr. V. C. Brahmarayappa, Learned Government Advocate appearing for the State, have taken a firm stand that the provisions of the Act undoubtedly must prevail, but if the Act is silent on any specific issue or question, then only those Rules which are relevant for the purpose for which they are made should be read independently of each other and meaning given to the provisions thereof in the light of the object sought to be achieved by those Rules. Notwithstanding that argument, they have stated that each of the Rules do not entrench upon the other Rules concerning admission unless a specific reference thereto is made. Therefore, the thrust of the argument for the Colleges and the State is that colleges having inherent right to deal with seats required to be filled by the Selection Committee constituted for the purpose of filling seats available to the management of the College should be guided only by the Admission Rules of 1-8-1984 and the other Rules would have no relevance for determining admission to the seats available for being filled up by the Management.

9. In order to appreciate these rival contentions, it is necessary to go into the Scheme of the Rules. The Test Rules which are the earliest in point of time purports to be Rules for conduct of Entrance Test for admission to Government, Aided and Private Engineering Colleges, Medical Colleges and Dental Colleges in Karnataka State. That is the heading given to the Rules. While in the case of Engineering Colleges the Rules have application only to Government, Aided and Private Engineering Colleges, that distinction is not maintained in the language with reference to Medical Colleges and Dental Colleges in Karnataka State. However, if one looks at Rule-1 of the Test Rules, it is seen under Sub-rule (2) of that rule at clause (a) reference is made to Government seats and Cash Deposit seats in B.E., B.Tech., B. Arch course in Government and University Engineering Colleges, all aided Engineering Colleges including the Karnataka Regional Engineering College, Suratkal and Private unaided Engineering Colleges in the State. But a look at clause (b) of the same sub-rule, it merely states that the Rules are applicable to all Government Medical Colleges and all Private Medical Colleges, further maintaining some distinction which really does not exist in practice. If that is read together with the Government Order promulgating the Test Rules, it is seen that against the heading "Subject" it is stated that "Entrance Test for admission to Government seats and Cash Deposit Seats in

certain professional Courses". On the one hand, Counsel for the petitioners have strenuously contended that the Rules should be read as they are to be found without reference to either the heading or the Government order and construed strictly and if so construed this Court should not hesitate to hold that the Test Rules apply to every one seeking admission to professional Courses in the Karnataka State. To my mind, this appears to be extremely difficult proposition to accept. If the contention is correctly understood, the necessary logical inference would be that no seat for a professional Course in the State of Karnataka should be filled unless the concerned student has taken the entrance test prescribed by the Test Rules. But, on facts, there is no dispute that such a proposition is not warranted as there are some seats available to the Privately managed professional institutions which can be and have been filled without reference to the entrance test. Despite the ambiguity in the language or lapse on the part of the draftsman, the Rules must be construed so as to make them applicable to those seats to which they are intended on account of practical difficulties.

Undoubtedly, the Allocation Rules of 8-8-1984 are Rules framed deriving power under Sections 3, 4 and 5 of the Capitation Fee Act. Section 3 of the Capitation Fee Act does no more than impose a prohibition on collecting capitation fee except as prescribed by the Government in that behalf from time to time. Section 4 of the said Act has reference to regulating admissions to the educational institutions and provides for the minimum qualification for admission being the ones prescribed by the concerned University for study of any course in the institutions maintained by or affiliated to such University, subject however, to the Government being empowered prescribe to higher minimum qualification for any course of study in the interest of excellence of education. The same Section, in Clause (b) of Sub-section (1) provides for intake being limited by the Government from time to time. We need not concern ourselves with Sub-section (2) of Section 4 of the Capitation Fee Act except to notice that under Sub-clause (i) of Sub-section (2) of Section 4, the Karnataka students who apply for seats on payment of Cash Deposit shall be admitted on the basis of merit while under sub clause (ii) at its discretion. Attention has been specifically drawn to this because by the earlier Judgment of this Court, Clause (a) of Sub-section (2) of Section 4 of the Capitation Fee Act has been struck down as unconstitutional. That Clause reserved to the Government the right to indent a specific number of seats in Private Medical Colleges for itself. If that Sub-section is read without reference to Clause (a) thereof, then the Government derives no power to regulate admission to private medical colleges for Karnataka students on the basis of merit or otherwise, except the control exercised by Sub-section (1) of Section 4 of the Capitation Fee Act.

11. However Mr. Datar contended that merit should necessarily mean the merit defined under the Test Rules as the words "Cash Deposit" as well as "Merit" occur in Sub-clause (i) of Clause (b) of Sub-section (2) of Section 4 of the Capitation Fee Act. We are not concerned with Section 5 of the said Act as it

relates to regulation of fee, only meaning thereby tuition fee and other fees than the Capitation Fee and control of the Capitation Fee.

12. It is in the light of these provisions that the allocation Rules must be examined. The Allocation Rules, under Rule-3 fixes the intake for the academic year 1984-85 in respect of Private Medical Colleges in the State. Under Rule-4 of the said Rules seats are allocated amongst different categories. The categories are Government seats indented in exercise of the power derived from Clause (a) of Sub-section (2) of Section. 4 of the Capitation Fee Act. The second category is the seats allotted to be filled in by the Managements of the Colleges concerned from among Karnataka students who pay deposits not in excess of Rs. Fifty thousand so determined in exercise of the power conferred by Section 3 of the Capitation Fee Act. The third category of seats are also to be filled up by the private Managements but not subject to the limit of Rs. 50,000/-applicable to Karnataka students but to an enhanced limit of Rs. 1,50,000/ from students other than foreign students. What flows from the categories is that the Government indented seats are not Cash Deposit seats. Cash Deposit Seats are not Capitation Fee seats and in the Capitation Fee seats while foreign students are liable to be charged more than Rs. 1,50,000/-, Indian students can be charged not more than Rs. 1,50,000/- This is the scheme of Rule 4 of the Allocation Rules. We are not concerned with Rule 5 of the Allocation Rules which deals with tuition fee. Rule 6 of the said Rules is important because it prescribes eligibility for candidates for admission to 1st year M.B.B.S. Course and that is said to be in accordance with the Admission Rules of 1-8-1984. Rule 7 of the Allocation Rules provides for the procedure for admission. Sub-rule (1) thereof provides for selection to the Government indented seats in the manner provided under the Admission Rules of 1-8-1984 while sub rule (2) of the same Rules provides for the Cash Deposit seats concerning Karnataka students in Private Medical Colleges to be filled up on the basis of merit by the Selection Committee constituted by the Colleges concerned having on such Committee a representative of the Government and the concerned University, but different from the Selection Committee constituted for Government Colleges and Government seats in Private Colleges. These sub-rules have also been relied upon by both sides to emphasis the use of the word "Merit".

13. Mr. Datar, therefore, has placed reliance on the definition of Cash Deposit seats and merit in the Test Rules and contends that those definitions should necessarily be linked to the merit referred to in the Allocation Rules as well as the Admission Rules.

14. Mr. Sundaraswamy and Mr. Brahmarayappa, Learned Counsel for M. R. Medical College, Gulbarga and the State respectively, on the other hand contend that having regard to Rule 3 of the Admission rules merit should be judged on the basis of the aggregate marks obtained in the relevant subjects in the qualifying examination, namely, IT year P.U.C. Examination conducted by the Karnataka Pre-University Board or equivalent. They have attempted to support

this contention by referring to the undisputed fact that the Capitation fee seats are not bound by any one of these Admission Rules. Their arguments is, if those seats are not controlled by any entrance test, then it would be denying the fundamental right of the management to fill the Cash Deposit seats in accordance with the provision made by the Admission Rules and the Capitation Fee Act, that is, Section 4(2)(b) at its discretion without reference to any entrance test. They have further supported this argument by placing reliance upon my decision in Hyderabad-Karnataka Education Society's case. In that decision, I merely followed the ruling of the Supreme Court in R. Chitralekha and Another Vs. State of Mysore and Others, . Among other things in Chitralekha's case the Supreme Court laid down the ruling that the Government was free to prescribe higher qualifications for admission to its colleges just as private Engineering colleges had its right to admit students of its choice subject to, in both cases, the students being qualified to enter that course. What is taken advantage of is the converse of the ruling. If the Government can prescribe higher qualifications, it is optional to the management to prescribe such higher qualification or not. Mr. Sundar Swamy's contention has been, if the ruling is so understood, the minimum eligibility prescribed is the sole criteria for admission and the merit for admission would be merit referred to in the Admission Rules as well as the Allocation Rules and the Capitation Fee Act, as otherwise, the freedom enjoyed and conceded by the Government is denied to the private colleges impinging on the fundamental right guaranteed under Article 19 of the Constitution to the managements of the institutions.

I am inclined to agree with the contention advanced for the colleges. I have already expressed myself in favour of reading down the application of the Test Rules. I am convinced having regard to the scheme of the Test Rules and the power conferred upon the Government by the Capitation Fee Act, the Rules must be read independently of each other to the extent it is necessary and in complement of each other to the extent it is necessary. Otherwise, discrimination will result and the students who are from outside Karnataka and students who are from foreign countries have the benefit of entering professional courses in Karnataka State for those seats available to them without entrance test while the Karnataka students who are seeking similar, if not at the same price, seats in the same private Medical Colleges, are compelled to take entrance test held by the Government. I am, therefore, of the view that the Karnataka students cannot be so discriminated merely because they are paying Rs. 50,000/- and not Rs. 1,50,000/- as Capitation fee. Even otherwise, there is no compulsion that colleges should receive Rs. 1,50,000 as Capitation Fee. It is only the upper limit that is prescribed. In other words, even from non-Karnataka students, the College may, for the seats allocated to Capitation Fee, receive less than Rs. 1,50,000/-. Thus whatever way one may look at, there is discrimination against Karnataka Students if the view canvassed for the respondents is accepted. Between Capitation Fee seats and the Cash Deposit seats, the total allocation of seats constitute 50 per cent or more. Having regard to the Capitation Fee Act and the

Rules, it is clear that the Test Rules are intended for Government Colleges and for Government seats in private Medical Colleges and not the cash deposit seats as the rule itself says. If a rule should be so interpreted as to result in discrimination and violation of Art. 14 then that interpretation must be discarded.

Mr. Datar has contended that nobody has challenged the validity of the rule and therefore, the rule should be strictly construed as it is. One need not challenge the validity of the rule. If a particular interpretation is possible and that interpretation leans towards the validity of the rule, then, one which leads to invalidity should be discarded. By restricting the Test Rules to only Government seats in private Medical Colleges and excluding the cash deposit seats from them, no injury is caused to the Government or others.

15. Mr. Datar's argument that there is disobedience of what is otherwise a direction given in terms of Sub-section (1) of Section 4 of the Capitation Fee Act to maintain excellence of standards in Karnataka at one point of time appealed to me. But then, excellence of standards cannot be maintained or achieved by discriminating in the manner I have already pointed out. As earlier mentioned by me in Hyderabad-Karnataka Education Society's case , Supra, if the Government wants to raise the standards of professional Courses and Professional Education in Karnataka, then the minimum standard or minimum qualification itself should be raised to eliminate people of minimum standard from getting benefit of the specialised education in professional fields.

I am, therefore, satisfied that the circular in question which I must not fail to point out is contrary to the earlier circular directing the opposite of which is now impugned, is well within the competence of the Government to issue. These circulars have no binding force on the colleges. There-fore, colleges which want to obey the circular may do so, Those Colleges which do not intend to heed the circular need not obey the circular and may admit the students with merit at the qualification examination. That much restriction to maintain standards would more than fulfill the excellence mentioned in sub section (1) of Section 4 of the Capitation Fee Act.

16. In this view of the matter, the petitioners have not, acquired any legal right to claim admission solely on the basis of their entrance test performance. In the statement of objections filed on behalf of M.R. Medical College, Gulbarga it is stated that the petitioner in the second of the petitions who had applied therefore a Cash Deposit seat has obtained in the qualifying II P.U.C. examination less than the last selected. Therefore, having come to the conclusion that entrance test is not a mast for every candidate except the one who seeks seats in Government College, or Government seats in Private Medical Colleges, the question of seeking a mandamus against the respondents does not arise.

17. I must also not fail to mention that in the light of the judgment of Rama Jois, J. in the earlier petitions where the validity of the Act was questioned, in the absence of Section 4(2)(a) which has been struck down, the Test Rules can only

be applicable only to Government Medical Colleges and none other. Nor is it possible to hold it as an additional qualification prescribed for educational excellence as the test is held only in the qualifying subjects prescribed under the admission rules.

18. In the result, these petitions are rejected. I must not fail to observe that no other infirmity or contravention of the order and Rules of the Government or provisions of the Capitation Fee Act have been pointed out. Therefore, these petitions must necessarily be rejected.