
(1996) 02 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 19595 of 1993

C. Naganna

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 22-02-1996

Acts Referred:

Karnataka Educational Institution (Prohibition of Capitation Fee) Act, 1984 — Section 14 (1)
Karnataka Educational Institution (Prohibition of Capitation Fee) Rules, 1984 — Rule 10 (6), 11C, 12 (5)

Citation : AIR 1997 Kar 48 : (1997) 1 KarLJ 665

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Ashok Hinchigi, for the Appellant; Smt. L.Y. Premavathi, Govt. Pleader, for the Respondent

Judgement

1. By this petition the petitioner has prayed that this Hon"ble Court may be pleased to issue the writ in the nature of certiorari, quashing the impugned rules published vide, Notification No. ED 33 TA SE VI 92, dated 10-3-1993, copy of which is Annexure-A to the writ petition and to grant such further reliefs as this Court deems fit.

2. Annexure-A to the petition is the notification publishing the Rules made by the Government in exercise of its powers under S. 14(1) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, hereinafter described as the Act 37 of 1984. The petitioner claims himself to be an academican, who have been espousing the cause of the students and alleges that he espouses the cause of students who cannot raise their voice of their own for want of funds or for lack of proper counselling and information. The petitioner has filed this petition as per allegations in para-2, as public interest litigation. Para-2 of the writ petition reads as under :--

"This is a public interest writ petition which is being filed with the noble objective

of putting the erring Government on the right tract through the judicial orders of this Hon''ble Court, which alone can check the irregularities and the acts of omission and commission of the Government."

3. The petitioner's case is that the Apex Court has pronounced judgment to put an end to the commercialisation of education and thereby discretionary power of management of professional colleges to admit the less meritorious students at the cost of more meritorious ones is taken away. The petitioner has further alleged that the Apex Court has held that the respective State Governments must be the sole machinery for processing the admissions based on merit for the first 50 per cent seats and then on the basis of merit-cum-means for the remaining 50 per cent of seats. According to the petitioner the first respondent issued notification on 10-3-1993, publishing the Admission Rules to Engineering, Medical, Dental, Pharmacy and Nursing Courses. The petitioner has annexed the xerox copy of the notification Annexure-A. The petitioner's further case is that according to the petitioner, Annexure-A shows that the first respondent has virtually circumvented the judgment of the Supreme Court on several counts and there are flaws and lacunae in it. So the petitioner has filed this petition, challenging the rules contained in Annexure-A to the writ petition.

4. The grounds of challenge to the rules are contained in paragraphs 7 to 19 of the writ petition. It has been alleged in the writ petition that under Rule 11(c) it is provided that candidates sponsored by the State of Tamil Nadu and State of Kerala on reciprocal basis shall not exceed five in number for each State. Petitioner's case is that this Rule enables the Government to send five students from State of Karnataka to Tamil Nadu and Kerala each as well. But the basis of selection of 10 students to be sent to Tamil Nadu and Kerala has not been made known and left to the free hand of the State Government which may in exercise of power choose less meritorious students, for political and other extraneous consideration. The petitioner further alleged that the stipulation under Rule 3(1) (b) to the effect that only those candidates who have cleared the qualifying examination during the period not exceeding two years prior to the year in which the application is made can appear for the entrance test. This stipulation according to the petitioner is not reasonable and the petitioner has asserted in the writ petition that the Government is not justified in closing the doors of professional education to those students who have passed their P.U.C., 3 years earlier and who might not have sought admission to professional courses for compelling reasons, like illness, financial inability etc. The further grievance of the petitioner in the writ petition is that Rule 3(c) does not contain the method of working out of equivalence among the Diplomas of different States. It has been asserted that the test of eligibility fixed by Rule 3(ii)(b) of the Admission Rules is arbitrary. The petitioner has further alleged in the writ petition that Rule 10(6) of the Rules which provide that any vacancy of seat that may arise in any of the courses in institutions due to any cause whatsoever shall be filled by the Director from among the candidates in the eligibility list. The petitioner's contention is that this rule runs contrary to the direction of the Apex Court, which according to

the petitioner read -- "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. The petitioner has also challenged Rule 12 as arbitrary on the ground that it does not satisfy the quantum of seats reserved in the free seats category. By not specifying the number of seats reserved, the Government has conferred on itself unfettered and unguided discretion in the matter of selecting the candidates from various categories of reservation referred to in Rule 12. The petitioner has alleged that this provision, which confers blanket discretion is arbitrary and is against Art. 14 of the Constitution. The petitioner has further alleged that reservation of seats for "Horanadu and Gadinadu" Kannadigas as per Rules 12(v) and 12(vi) is unconstitutional and impermissible. It has further been asserted in the writ petition that setting apart reservation of seats for students who have studied in educational institutions situated in places in Karnataka having a population below 20,000 as per 1991 Census is bad and it is asserted by the petitioner in the writ petition that it is impermissible to create special category of candidates based only on the area in which the educational institutions in which they have studied are situated. The petitioner has further asserted in para-17 of the writ petition that Admission Rules, though they purported to have been framed under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, do violate the parent Act itself in so far as the Act seeks to put an end to the payment category and the Rules provided for the payment seats. The petitioner has further challenged the reservation of seats for the candidates from Anglo Indian and Parsi Community, to be unconstitutional, as according to the petitioner these two communities are neither socially nor educationally backward in the State of Karnataka and as such they do not come within the four corners of Art. 15(4) of the Constitution and the rule making authority had no authority to make reservation for them.

5. I have heard Sri Ashok Hinchigiri, counsel for the petitioner and Smt. Premavathi L. Y., learned Government Counsel for the respondent.

6. The petition having been taken up for hearing, the learned Government Counsel Smt. Premavathi initially challenged the maintainability of the writ petition itself at the instance of the present petitioner. Learned Government Counsel submitted that the petitioner has got no cause of action nor right to file the petition and the petition at the petitioner's instance would not be maintainable. Elaborating her arguments Smt. Premavathi submitted that no person is entitled to challenge the vires or otherwise of Act unless and until he proves or asserts and shows two things -- (1) that any of the rights fundamental or other legal rights of the petitioner is abridged or (2) there is an apprehension of the petitioner's right fundamental or otherwise being abridged by the provisions of law which he alleges and challenges to be unconstitutional. The learned Government Counsel also submitted that this petition is misconceived as the petitioner has nowhere shown or asserted that any of his rights -- constitutional, fundamental or legal rights, has in any way being abridged.

Further the Government Counsel contended that this is not a fit case for being entertained as a declaratory suit to declare certain rules ultra vires when petitioner is not at all affected by those rules. She further submitted that the petitioner is also not entitled to bring this case under the head of Public Interest Litigation. The persons affected if at all would be said to be students and the students if they are aggrieved and they do not file any writ petition, petitioner cannot be permitted to file writ petition on their behalf by simply alleging that students are not raising the voice because either lacking proper counselling or information or because of want of funds. Learned Government Counsel submitted that there may be students also who can and who could have filed the petition and would not have been suffering from want of funds. Learned Government Counsel submitted that this is not a fit case in which this Court should go into the question of vires or otherwise of the Admission Rules, relating to admission to Engineering, Medical, Dental, Pharmacy or Nursing Courses. This contention of the Government Counsel has been very hotly contested by Shri Ashok Hinchigiri, the petitioner's counsel. It had been contended that the petitioner is a public interested person. He has been an academician and he has always been espousing the cause of students and he has been trying to safeguard their interests. He submitted that there are students who lack proper advice and counselling and on account of the lack of that they might not have come to the Court to file petitions and therefore, even though the petitioner has no direct personal cause nor he is in any way aggrieved by the rules in the sense that no right of the petitioner has been infringed, yet as a publicly interested person the petitioner could file this petition and challenge the vires of the rules. Learned counsel for the petitioner further attempted to urge before me that the rules are ultra vires and illegal and they run counter to the provisions of the parent Act and also it was attempted to be submitted that they are hit by provisions of Art. 14 of the Constitution and that reservations are not covered by Art. 14 as mentioned earlier.

7. In support of his contention that the present writ petition is maintainable as public interest litigation and that the petition should not be dismissed on the ground of locus standi, the learned counsel for the petitioner made reference to the decisions of this Court in the case of V. Gokulkrishna Vs. M.C. Nanaiah, , Krishnegowda Vs. Karnataka State Co-operative Apex Bank Ltd., and to the decision of this Court in the case of Nagendrappa Vs. State of Karnataka, .

8. I have applied my mind to the contentions raised by the learned counsel for the parties. The first question to be considered is whether the present writ petition is maintainable at the instance of the petitioner, if the answer is affirmative, then there would be no need to go into the merits of the writ petition. It has been well settled by their Lordships of the Supreme Court beginning from the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , that in order to make out a case for proceeding under writ jurisdiction, either under Art. 32 of the Constitution of the Supreme Court or under Art. 226 before the High Court, it is incumbent on the petitioner to

establish that not merely that the law complained of has been beyond the competence of the Legislature or that the provisions of the Act and the Rules framed thereunder are in conflict with the principal Act or that the law in question runs contrary to the scheme of the provisions of the Constitution. But he has also to establish and make out that the law that he challenges to be ultra vires law that is either the statement or rules framed under the statute adversely affect or invades the rights of the Bar -- legal rights or constitutional. Until that person shows that his rights are adversely affected or that breach is likely to be committed, the person is not entitled to file the petition.

9. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, Hon"ble Fazl Ali J., laid it down (para 7):--

"It has been held in a number of cases in the United States of America that no one except those whose rights are directly affected by a law can raise the question of the constitutionality of that law. This principle has been very clearly stated by Hughes J. in *Mc Cabe v. Atchison* (1914) 235 US 151, in these words :--

"It is an elementary principle that in order to justify the granting of this extraordinary relief, the complainant's need of it and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the same race or occupation. It is the fact, clearly established, of injury to the complainant -- not to others -- which justifies judicial interference".

On this statement of the law, with which I entirely agree, the scope of the discussion on this petition is greatly restricted.....

10. Hon"ble Mukherjea J., in that very judgment, vide paragraph 44, with reference to Art. 32 of the Constitution, has been pleased to observe as under :--

"The application before us under Art. 32 of the Constitution is on behalf of an individual share-holder of the company. Article 32, as its provisions show, is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at, is the enforcing of fundamental rights guaranteed by the Constitution, no matter whether the necessity for such enforcement arises out of an action of the executive or of the Legislature. To make out a case under this Article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular Legislature as not being covered by any of the items in the legislative lists, but that it affects or invades His fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under Art. 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the Court for relief. This being the position, the proper subject of our investigation would be what rights if any, of the petitioner as a share-holder of the company have been violated by the impugned legislation."

11. Hon"ble Mr. Justice Mukherjea, further observed.--

"A proceeding under this Article cannot really have any affinity to what is known as a declaratory suit. The first prayer made in the petition seeks relief in the shape of a declaration that the Act is invalid and is apparently inappropriate to an application Under Art. 32."

12. Justice S. R. Das, as one of the members of the Bench in the very same case have been pleased to observe.--

"It is therefore, clear that the constitutional validity of a law can be challenged only by a person whose interest is directly affected by the law."

Justice Das, further observes at page-65 of the report as under:--

"The proceedings for a writ in the nature of a writ of habeas corpus appear to be somewhat different for the rules governing those proceedings" permit, besides the person imprisoned, any person, provided he is not an utter stranger, but is at least a friend or relation of the imprisoned person, to apply, for that particular writ. But that special rule does not appear to be applicable to the other writs. which require a direct and tangible Interest in the applicant to support his application. This must also be the case where the applicant seeks to raise the question of the constitutionality of a law under Arts. 14, 19 and 31."

13. In the case of S.P. Gupta Vs. President of India and Others, , which is the leading case. Their Lordships of the Supreme Court laid it down as per para 14, as under:--

"The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born.

14. In paragraph 17 it has been further observed by Hon"ble Bhagwati, J., as under:--

"It may therefore now be taken as well established that there a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically dis-advanced position, unable to approach

the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such a person or determinate class of persons"

15. His Lordship further observed.....

"But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities.

16. His Lordship further laid great emphasis with reference to the weaker and downtrodden, socially or economically disadvantaged persons, and observed that,--

"The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as writ petitions"

17. His Lordship further observed as under:--

"We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong Or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases."

18. A reading of these observations will per se indicate that legal redress and writ jurisdiction can be had by a person directly involved and is primarily meant to provide the remedy to those determinate class of persons who suffer on account of poverty and who are in socially or economically disadvantageous position and who on account of poverty and disadvantageous position are not able to approach the Court.

19. In Paragraph 24, His Lordship further observed.--

"Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action

challenging if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

20. If the students community or class, according to the petitioner has suffered and is injured, but does not wish to challenge this provision, in my opinion the petition at the instance of the present petitioner, who has no interest in the matter, in the sense that he is no way injured nor any of his rights is adversely affected by the rules, in my opinion, need not be permitted to challenge or claim a relief like declaratory decree as it would tantamount to forcing the relief on the persons, who according to the petitioner are primarily injured, but who do not want to claim it.

21. In the case of Mahinder Kumar Gupta and Others Vs. Union of India (UOI), Ministry of Petroleum and Natural Gas, . Their Lordships of the Supreme Court have been pleased to observe, as one of the grounds for dismissing that writ petition under Art. 32 of the Constitution that petitioner has no fundamental right which can be said to be violated and so the petition at the instance of the petitioner under Art. 32 not maintainable, wherein the petitioner has tried to challenge the imposition of eligibility restrictions and the guidelines prescribed therein.

22. In the case of Dalpat Raj Bhandari, Advocate Vs. Union of India (UOI) and Others, , Their Lordships laid down that a writ petition challenging the transfer of a Judge, filed by a person other than the Judge himself, was not maintainable. Their Lordships quoted Three Judges' Bench observation as under:--

"We consider it sufficient to observe that the limited area of justiciability in this sphere being clearly declared in the, Judges' case II and also herein while making it clear that no one other than the transferred Judge himself can question the validity of a transfer"

23. Their Lordships further quoted from that very Judgment as under:--

"It is time that the men at the apex level of the Indian judiciary are permitted to manage the affairs of the judicial family and look after its welfare and interest instead of permitting repeated intrusions by some in the guise of "public interest." thereby rendering the Judges vulnerable to avoidable controversy involving them".

24. Thus considered in my opinion the present petition is not maintainable at the instance of the petitioner. The cases which have been cited on behalf of the petitioner are distinguishable. The case of Krishnegowda Vs. Karnataka State Co-operative Apex Bank Ltd., , is a case where the writ petition had been dismissed

on the ground of availability of alternative remedy. But the Division Bench of this Court considered the matter and held that on the ground of alternative remedy, the petition could be dismissed at the initial stage, but after a long gap of time, dismissing of petition on the ground of alternative remedy, could compel the person to have recourse to the alternative remedy, would not have been just and proper. The rule of alternative remedy does not by itself bar the writ petition, but in such cases the Court may refuse to exercise jurisdiction, if the circumstances justify. The Division Bench which decided the appeal followed the earlier Supreme Court decision in the case of Miss Raj Soni Vs. Air Officer in Charge Administration and another, , in which the Supreme Court observed that because the petition has been pending since 1981, the petitioner's claim is Must and there will be traversity of justice to send her to any other forum at that stage. That case is not applicable to the present case, as here the question has not been of alternative remedy, but the question is whether the petitioner has locus standi to challenge the vires and the legality of any provision of law. If he has no locus standi, then this petition at his instance should not be entertained and is liable to be dismissed.

25. In the case of Nagendrappa Vs. State of Karnataka, , it has been observed that a writ petition cannot be thrown out at the threshold, when, from the affidavit filed in support of the writ petition and the documents filed, petitioner is able to show that he is entitled to the relief sought for. This case shows that normal rule is that, Rule Nisi, is to be issued when a prima facie case is made out and in exceptional circumstances notice regarding rule is to be issued. But as to locus standi of the petitioners or maintainability of writ petition in the absence of cause or the like, and expressing this view, the learned Judge does not appear to express the view that the petition cannot be thrown out at the threshold or at subsequent stage if it was not maintainable for want of cause of action or absence of locus standi. A reading of this decision does not appear to laydown that at the stage of final hearing question of locus standi cannot be raised by the respondent and Court cannot go into that question. As this case does not lay down such proposition of law, as alleged by the petitioner, this case is of no help to the petitioner. The case of V. Gokulkrishna Vs. M.C. Nanaiah, is a together different on facts and is not applicable to the present case, as per observations:--

"The impugned action of the Government is alleged to be the result of non-consideration of the relevant factors and failure to observe appropriate procedure resulting in payment of a huge sum of over Rs. 1.58 crores to the appellant without any security."

26. In such a case public tax payers money no doubt is involved and that such a case may stand on a different footing and in this case as well no challenge of vires was made.

27. Having thus considered, in my opinion, the present petition is liable to be dismissed as not maintainable as the petition has no locus standi on one hand and present petition cannot be considered to be maintainable as public interest

litigation. That as the petition is held to be not maintainable, I have not considered it fit and proper to go into the merits of the question, raised in the writ petition.

28. The writ petition as such is hereby dismissed.

29. Petition dismissed.