

(2006) 04 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 52983-86 and 54054 of 2003

Dr. G. Jayakumar

APPELLANT

Vs

State of Karnataka and Others
 Sri Devaraj Urs Medical
College and Others Vs State of Karnataka and Others

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 20
Karnataka Conduct of Entrance Test for Admission to Post Graduate Medical and Dental
Degree and Diploma Courses Rules, 2003 — Rule 18, 7 (5)

Citation : (2006) 6 KarLJ 277

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : M.V. Vedachala, in WP No. 54054 of 2003 and Madhusudan R. Naik, in WP No. 52983-86 of 2003, for the Appellant; Ramesh B. Aneppanvar, HCGA for R1 and 2, N.K. Ramesh and K. Krishna for R3, M.R. Naik, for R4 and N. Khetty, for R5 in W.P. No. 54054 of 2003 and Ramesh B. Aneppanvar, HCGA for R1 and 2, N.K. Ramesh, for R3, M.V. Vedachala, for R4 and N. Khetty, for R5 in W.P. No. 52983-86 of 2003, for the Respondent

Judgement

R. Gururajan, J.—Petitioner - Dr. Jayakumar is before this Court seeking for a mandamus directing the fourth respondent to admit him for MD Pharmacology course for the academic year 2003-04 on the following facts.

2. Petitioner obtained 1073 rank in the post graduation entrance examination conducted by the Rajiv Gandhi University of Health Sciences (for short "the university") and the petitioner had opted for the seat in MD Pharmacology at the fourth respondent college. He was allotted the same vide allotment letter dated 24-11-2003 in the casual round vacancy held by the 2nd respondent. Despite an allotment and despite a direction subsequently by the university, the college refused admission to the petitioner. Petitioner in these circumstances is before me seeking for various directions.

3. On receipt of notice, the fifth respondent has filed their short reply affidavit on

behalf of the Medical Council of India. It would refer to Section 10-A and various case laws in support of its submission.

WP No. 52983-86/2003.

4. This petition is filed by Sri Devraj Urs Educational Trust and three other students. They seek for a mandamus directing the second respondent not to enforce and withdraw the communication dated 9-12-2003 in so far as the petitioners are concerned. A direction is also sought for directing the second respondent to approve the admission of the student-petitioners in terms of the prayer. However, at the time of the arguments the prayer was confined only to petitioner No. 3. It is stated in the petition that the first petitioner-institution is an establishment established to serve the cause of backward classes in various fields and to start various educational institutions in faculties including medicine, dental, pharmacy and engineering. The petitioner institution did not receive any kind of aid from the University or the State Government or from the Central Government and it is run by the Trust. The college has been set up mainly in the nature of self-financing institution to provide medical education for those who cannot be accommodated in the Government owned or managed institutions, or the institutions aided by the Government. The first petitioner administers the medical college and its attached hospital. It had 15 seats in take in its post graduate courses. The post graduate courses are not strictly professional courses, in as much as it involves rendering service in the hospital, while going through their course of study. First petitioner states that selections are made by the Governmental agencies to 50% of the seats and by the management to the balance 50% of the seats under the arrangement so worked out as above. For the current academic year the university had notified a calendar of events by a notification dated 26-4-2003 under which the last date for admission was 15-7-2003 and with late fee as 31-7-2003. The course is to commence from 1-8-2003. The entire course schedule is thus worked out, including the examination at the end of 3 years of study. It is in consideration of the direction of the Supreme Court in Madhu Singh's case, that the time schedule had been drawn and directions had been issued to strictly adhere to the calendar of events of the academic year. It completed its admission process and commenced the course of study from 1-8-2003. Thereafter the second respondent issued a modified calendar of events dated 27-8-2003 re-notifying the calendar under which the last date for admission is 30-9-2003 and with penal fee it is 31-10-2003 and the term is to commence from 1-10-2003. There was no reason to delay the admission. The Government conducted the counselling only in October 2003 directing the students to join the course on or before 31-10-2003. After such admission process, the Government failed to fill up one seat each in MD Pharmacology, MD Physiology and DLO (ENT) in the first petitioner college. Since the seats had remained unfilled and they were being wasted, the first petitioner college filled them up, out of its merit list, giving preference to two of its in service candidates, namely petitioners 2 and 4 herein by the last date of admission, and after completion of admission process sent the list on

15-11-2003 for approval of its admissions made. The courses have commenced from 1-8-2003, (reschedule on account of modified calendar to 1-10-2003) and the students admitted are undergoing necessary training in the petitioner college. Petitioners 2 to 4 were thus admitted against "unfilled seats" from out of wait list and are prosecuting their studies. This being the position, though there is no scope for any further admissions, despite the knowledge of the University calendar and of the fact that petitioner college had already made admissions to unfilled seats, the first respondent notified in the newspapers the casual vacancy round on 25-11-2003. On learning of the same, since there were no vacancies, in the college, it made a representation by its communication dated 21-11-2003 informing of the closure of admission process to the authorities. Despite such communication, the first respondent appears to have admitted Sr Jayakumar to the course of MD Pharmacology, who on reporting to the college was informed that there are no vacancies. Considering the action of college as refusal to admit, the Government issued a communication dated 29-11-2003 informing the college to admit the fourth respondent immediately. There were correspondence between the college, university and MCI in terms of the writ averments. Ultimately, the college would say that the petitioners 2 to 4 having been admitted on the last date in terms of the calendar of events of the university and having been continued their course of study cannot be denied approval of their admission as sought to be done in the letter dated 9-12-2003. They say that the Government has no power to direct the University to extend the time frame and alter the calendar of events. With these facts and grounds petitioners are before me seeking for an appropriate order at the hands of this Court.

5. State Government has filed a counter affidavit stating that the petitioners are not entitled for the relief and there is no infirmity or irregularity in the order dated 9-12-2003 issued by the respondent. In terms of the seat matrix dated 10-10-2003, the first respondent conducted counselling for allotment of Post Graduate seats on 20th and 21st of October 2003 for the Doctors who are working in Health and Family Welfare Department, ESI, Mahanagara Palike, Board and Corporation, Autonomous Institution and Medical Education Department. Counselling was conducted from 28-10-2003 to 31-10-2003. At the end of counselling 53 degree and 64 diploma seats remained un-allotted. Since the last date for admission as per calendar events of Rajiv Gandhi University of health Science, Bangalore for academic year 2003-04 was 31-10-2003, proposal was sent in those circumstances to the Government for permission to conduct casual vacancy round for the above said un-allotted government seats. In response to the request made by the first respondent, State Government by its order dated 17-11-2003 extended the last date for admission. In pursuance of that, allotment has been made to the deserving candidates on the basis of the merit. Government justifies its action.

5. Both the petitions were heard together and a common order is passed.

6. Sri Naik, learned Counsel appearing for the petitioner in WP No.

52983-86/2003 would essentially argue that extension after the last date of admission is without authority of law and contrary to the rulings of the Supreme Court. He would take me through the material on record to say that the subsequent allotment to Dr. Jayakumar in the connected writ petition is beyond the last date and hence the college is justified in refusing to admit him. He would conclude by saying that no explanation is permissible or acceptable in terms of the law declared by the Supreme Court. Learned Counsel for the University would support the University's stand in terms of the objection filed in this Court. Learned Counsel for the MCI would say that the MCI as a matter of fact has not approved any such extension and he would further say that no admission is permissible or possible beyond the last date in terms of the notification. Parties rely on several judgments in support of their submissions.

7. After hearing, I have carefully perused the material on record.

8. Annexure-A is the notification dated 30-4-2003. In terms of the said notification, last date for admission in 15-7-2003, last date for admission with a fine is 31-7-2003, commencement of the term 1-8-2003. Last date to submit the list of candidates is 15-8-2003. Last date for submission of admission statement, its floppy with the required original documents to the University is the last working day of October, 2003 etc., The said notification is modified in terms of the subsequent notification dated 27-8-2003 annexure-B. It is stated therein that the last date for admission is last working day of September, 2003, last date for admission with a fine is last working day of October, 2003, commencement of the term first working day of October, 2003. Last date to submit the list of candidates is 15th November, 2003. Last date for submission of admission statement, its floppy with the required original documents to the University is 15th December, 2003 etc, Annexure-C is a letter issued by the University stating that admissions made beyond 31-10-2003 will not be approved by the University. There is a reference letter dated 11-2-2003 issued by the MCI in terms of annexure-C. The college has sent the admission list as early as 14-11-2003. The Government issued a notification on 19-11-2003 in the matter of counselling for casual vacancy. In terms of the said notification Dr. Jayakumar, was considered to be eligible and thereafter he was allotted to Devraj Urs Medical College. The college despite admission order by the University and the Government, refused to consider the same. However Dr. Jayakumar, is pursuing his studies in terms of the interim order granted by this Court. Let me see as to whether the admission of Dr. Jayakumar, is proper and legal.

9. The last date in terms of annexure-A was 31-10-2003 which was extended by the Government up to 30-11-2003 in terms of annexure-B, thereafter annexure-E was issued by the Government in the matter of counselling for casual vacancy round. In fact the Government has extended the last date to 30-11-2003 to only who were selected in the casual vacancy round. Dr. Jayakumar admittedly is to seek the support of annexure-K since his admission is beyond 31-3-2003. Let me see as to whether annexure-K is sustainable or not in the light of the argument

advanced by Sri Naik. Annexure-K deals with calendar of events for Post Graduate Medical and Dental Degree and Diploma Courses for the year 2003-04. It refers to a notification at annexure-A and a subsequent notification annexure-B. It also refers to the notification dtd 17-11-2003. The university has chosen to issue this order in the light of the Government Order dtd 17-11-2003, with regard to conducting the casual vacancy round beyond 30-11-2003. The University has admittedly extended the date in the light of the Government Order as referred to in annexure-K. The power of the Government is challenged by Sri Naik, by relying upon the case laws and the Rules as applicable to the case on hand. When a specific query was put by this Court to the learned Counsel for the respondent, learned Counsel for the respondent and the learned Counsel for the Government would rely on Karnataka Conduct of Entrance Test for Admission to Post Graduate Medical and Dental Degree and Diploma Courses Rules, 2003 for the purpose of power available to the respondents. They strongly rely on Rule 18 of the Rules. Let me see as to whether Rule 18 provides for any power in the case on hand. Rule 18 of the Rules provides for reconciliation meeting and it reads as under;

18. Reconciliation Meeting: After the closing date for allotment as fixed by the Government is over, a reconciliation meeting regarding the number of unfilled and unallotted seats, shall be held between the Director of Medical Education and the respective private colleges. After identifying the vacant seats, notification shall be issued regarding such vacant seats by the Director. Such seats, if any, thereafter shall be filled by the respective colleges, within the date stipulated by the Director. Such reconciliation meeting shall be held at least seven days before the last date of admission fixed by the University.

10. Rule 7(5) of the Rules provides for allotment of seats, It reads as under;

7 (5) The seats classified as managements seats shall be filled by the managements of Private Medical Colleges and Dental Colleges. The management may also fill all such Government seats as are remaining unallotted or unfilled by the Committee after reconciliation meeting and within the last date prescribed by the University for admission.

11. A careful reading of Rule-18 would show that the power to issue a notification is available regarding vacancy seats and the vacancy seats are to be filled up by respective college within the dates stipulated by the Director. Such reconciliation meeting is to be held at least 7 days before the last date for admission by the University. Rule 18 does not provide for any power to respondents Admittedly in the case on hand, the last date fixed by the University is found at annexure-B i.e., 30-10-2003. In these circumstances, I am of the view that there exists no power for the Government to extend the date as has been done in the case on hand. The University, unfortunately, without noticing the want of power to Government has chosen to blindly accept the Government Order and extend the last date in terms of annexure-K. In fact the Supreme Court has ruled in several cases that the last date is not to be diluted in the

larger interest of the students. Therefore what is clear to me is that allotment made to Dr. Jayakumar in terms of annexure-K has no sanction of law in the light of no power being available to respondents for extension in terms of Rule 18 of the Rules. Therefore the argument of Mr. Naik requires to be accepted and I do so in the case on hand.

12. At this stage, I must also notice the argument of the University that the MCI has considered the admission of students to Post Graduate Dental Degree and Diploma Courses for the year 2003-04 in terms of annexure-C. There is a reference to the University's calendar of events dtd 27-8-2003 and there is also a reference to a letter dated 11-2-2003. The said letter was made available to me at the time of hearing and it is seen that the said letter is not a letter of extension as sought to be argued by the parties. In fact that was only a communication in the light of the judgment of the Supreme Court in Madhusingh's case. Therefore nobody can seek any assistance in terms of the letter of approval said to have been granted by the MCI in terms of the letter dated 11-2-2003.

13. In the connected writ petition, Dr. Sahana was admitted in the absence of any candidate having been sent by the Government before 31-10-2003. Even if the Government did not send anybody, the college cannot admit any students in respect of the unfilled seats, which are not available to it on the ground that the Government did not send its candidates. The reason of government not sending any students before 31-10-2003 cannot be a ground for admission and such a reason cannot be accepted in the absence of any right being available to the college with regard to filling up of the vacant seats meant for the Government Quota.

14. Law is fairly well settled in terms of the case laws that no admission can be made beyond the last date in terms of the declaration of law by the Supreme Court. In fact the MCI has chosen to provide a schedule - annexure-P, in the light of the direction of the Supreme Court in Madhu Singh's case. However the said schedule is not available for the relevant year and the same is admitted by the parties. Mr. Naik, learned Counsel could not derive any support in terms of annexure-P since it is not available for the year in question.

15. Supreme Court has considered "beyond the last date" in terms of the notification in several cases. In Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, , this Court has referred to the earlier judgments and ruled in para 35 that it shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule is laid down in the Regulations and non-compliance would make them liable for requisite penal consequences and it has further ruled that if any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota the management quota for the next academic year shall stand reduced so as to set off the effect of excess

admission in the management quota in the previous academic year.

16. Learned Counsel for the MCI would say that if for any reason this Court accepts the argument of the college then this Court has to reduce its quota for the next year. This argument no doubt is attractive, but the said adjustment may not be possible as on today in the light of subsequent development of Inamdar's case AIR 2005 SCW 3923 of the Supreme Court.

In State of Punjab and others Vs. Renuka Singla and others, Supreme Court has ruled that the High Courts or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.

17. The next question that arise for consideration of this Court is with regard to the relief that could be granted in a matter like this.

18. Material on record would show that on account of extension without there being any power, the college, university and the Government have caused embarrassment to the petitioner Dr. Jayakumar. Further the College has also provided a seat in its college to Dr. Sahana in terms of the pleadings. Dr. Jayakumar, by virtue of the interim order is continuing his studies. Dr. Sahana is also continuing her studies without interruption in the absence of any objection by the University or the MCI. Except providing a seat Dr. Jayakumar, there is no specific order from the authorities with regard to discontinuance of the education of Dr. Jayakumar or Dr. Sahana. Both these students are at the fag end of their career of completion of their course. Recently, a Division Bench of this Court in WP. No. 14160/2005 and other connected writ petitions DD 10-11-2005 has considered similar circumstance that arose on account of the admission made by the medical colleges. This Court after referring to the above cases as ruled as under;

62. We shall therefore, sum up that in view of the latest pronouncement of the decision by the Apex Court in Inamdar's case reported in AIR 2005 SCW 3923, we need not to go into the several contentions urged on behalf of the parties. Suffice it to say that the scheme evolved by the Apex court in Islamic Academy of Education case allowing the State to fix quota for seat sharing between the management and the State, having been overruled by the Apex Court, in its recent pronouncement in Inamdar's case reported in AIR 2005 SCW 3923, the petitioner institution cannot be forced to submit to seat sharing and reservation policy of the State Government. In this view of the matter, the writ petitions filed by the petitioner institution will have to be disposed of in terms of the decision rendered by the Hon'ble Supreme Court in Indamdar's case in AIR 2005 SCW 3923 holding that the institution in question namely, St. John's Medical College, Bangalore cannot be forced to submit to seat sharing and reservation policy of the State Government as forcing such quota would be violative of Articles 20 and 19(1)(g) of the Constitution. But the law laid down by the apex Court having been given effect to from the next academic year, the students, who have

already been admitted and pursuing courses in the petitioner college, for these two academic years, shall be allowed to continue their courses and their admissions cannot be disturbed at this stage. Therefore, the writ petitions filed by the students will have to be disposed of with the observations that their admissions to the petitioner college at this stage cannot be disturbed and they must be allowed to pursue and complete their courses in the petitioner college. We have already elaborately dealt with the question whether the admissions made could be regularised to enable the students to complete the course? Undisputedly, all these admissions were made for the academic years 2004-05 and 2005-06. All these students, whether admitted by the management or under the Government quota seats are all merited and they have already been admitted and pursuing their courses in the petitioner college. In the circumstances, therefore, it would be highly unjust and harsh to decline approval to their admissions at this stage. It is equally not in dispute that all these students admitted either by the Management or by the State Government under the Government quota seats, have been admitted after following transparent selection process and they were found to be merited students. At any rate it is not the case of the petitioner institution or of the State Government that these admissions were made by them without following any transparent selection process and they are all admitted to the college. Of course some of the students have been selected by the management and some have been selected by the State Government under its Government quota seats and have been admitted to the college pursuant to the interim order made by this Court. Therefore when they have been validly admitted into the course, it would not be proper at this stage to disturb their admissions, in the light of the observations made by the Apex Court in *Inamdar*'s case.

19. In the light of the above referred Division Bench judgment, these writ petitions are disposed of in the following terms;

1. The allotment of seat to Dr. Jayakumar by the Government and the allotment in favour of Dr. Sahana by the College are held to be unsustainable in law.
2. On the peculiar facts and circumstances of this case and in the light of the (sic) Division Bench judgment, notwithstanding the (SIC) acts of respondents, I deem it proper to issue direction to the respondents namely, College, University and the MCI that admission of these two petitioners are not be disturbed at this stage and they are permitted to complete their course. They would be entitled to all such benefits to which they are entitled to in law while pursuing the Post Graduate Course in the respective colleges.
3. These directions in this case, is issued on the peculiar facts of this case and it is not be treated as a precedent in other cases.

20. Ordered accordingly. No costs.