

(1995) 07 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No's. 31854 of 1984 etc.

Dr. M.V. Shetty Memorial Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g)
Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 14 (1)

Citation : (1995) ILR (Kar) 2188 : (1995) 6 KarLJ 37

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

Bench : Single Bench

Advocate : K. Sachindra Karanth, Ravivarma Kumar, B. Veerabhadrappe, M.R. Shailendra and Amaresh A. Angadi, for the Appellant; Chandrasekharaiah, Government Advocate, M.N. Seshadri, N.K. Patil and S.S. Kote for Universities, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—Petitioners in this batch of Writ Petitions are either registered Trusts or Societies who are running various Professional Colleges imparting courses in Bachelor of Nursing and/or Pharmacy (hereinafter referred to as "the said courses"). All such Colleges are affiliated to one or the other Universities established under the provisions of the Karnataka State Universities Act, 1976 (hereinafter referred to as "the University Act").

2. Though in these Writ Petitions various reliefs have been claimed but the only one which now survives for consideration is Whether the students who had been admitted to the said courses for the academic year 1994-95 by the petitioners during the period 22.6.1994 to 2.8.1994 are eligible and entitled to take their examinations of the said courses held by the respective Universities?

3. The State Legislature with an avowed object of eradicating various malpractices which had crept in the matter of admission to Professional Colleges

and to regulate the right of admission of students to such Colleges so far enjoyed by the Management enacted the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (Karnataka Act No. 37 of 1984) (hereinafter referred to as the Educational Institutions Act), the provisions whereof were enjoyed retrospectively with effect from 11th July 1983.

4. In the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., which was disposed of on 4.2.1993, the Supreme Court has directed the respective State Governments, Universities and other recognizing and affiliating authorities to impose and implement the scheme formulated by it in the said Judgment in order to eliminate the discretion in the Management altogether in the matter of admission to such Professional Colleges. Accordingly the State Government in prompt compliance to the said directions, by invoking its powers u/s 14(1) of the Educational Institutions Act framed new rules called "The Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993" ("the Selection Rules", for short). Under these Rules elaborate provisions were made for selection of candidates to various professional courses including that for Bachelor of Nursing and Bachelor of Pharmacy through a Common Entrance Test to be conducted by the Committee constituted by the Government.

5. According to the petitioner, since the Government had miserably failed to fill up all seats available in various Institutions imparting courses in Nursing and Pharmacy through a Common Entrance Test held for the academic year 1993-94, it excluded these courses from the purview of the Selection Rules through an amending Notification bearing No. 102 TGL 94 dated 22.6.1994. According to them, subsequent to this amendment, since there was no other statutory restriction in selection of students to the courses against the Management quota, they proceeded to select the intending candidates to the courses according to merit and admitted them within the permissible intake before 3.8.1994, the date on which the Government came out with an order dated 22.6.1994 reserving the said right of admission to the courses in favour of the respondent -Director of Medical Education. Subsequent to the issue of this Government Order the respondent-Director in his letter dated 5.8.1994 communicated to the respective Universities and the Principals of the Professional Colleges that the admissions made by the Management are not legal and the list of candidates so admitted will not be approved by the Director as also the Universities concerned.

6. Aggrieved by the said actions of the Government and the respondent No. 2, petitioners filed these Writ Petitions, wherein while issuing Rule Nisi, this Court by an interim order restrained the Director from compelling the petitioners to admit the students selected by them as per the Government Order dated 22.6.1994.

7. Keeping in view the aforesaid facts - Judicial mandate, statutory provisions and the Government Order dated 22.6.1994, it needs to be ascertained as to whether the selection and admission of candidates to the professional courses in

question by the petitioners between the period 22.6.1994 and 3.8.1994, being the dates when the said courses were excluded from the purview of the statutory Selection Rules and the new Governmental order providing for a new pattern of selection, can be said to be valid? and if so, whether the affiliating Universities are bound to permit their students to appear at the respective Examinations held by it?

8. Learned Counsel for the petitioners have submitted that in the absence of statutory provisions regulating the admission to educational courses, the Management of the Institutions have unfettered vested right to determine the pattern of admission and to select and admit the students to their respective Institutions by following the said pattern. According to them, during the period in question referred to above, because of exclusion of Nursing and Pharmacy courses from the purview of the Selection Rules, there was no regulation in any way impeding the right of Management to select the candidates and as such the students so admitted are as a matter of right entitled to appear at the University examinations.

9. Mr. Chandrasekharaiah, learned Government Advocate appearing for the respondents submitted that though there was no statutory law providing or regulating admission of candidates to the courses in question during the given period, but according to him, keeping in view the mandate of the Supreme Court in Unni Krishnan's case, (supra) the petitioners, even in the absence of any statutory provision, were not entitled to admit the students by adopting their own pattern of admission.

10. To resolve the controversy, it is necessary to refer to the Judgment of the Supreme Court in Unni Krishnan's case (supra) so as to ascertain whether the Apex Court has put any curb by itself on the right of admission on the Management of the respective Professional Colleges or it has merely directed the respective Governments and/or affiliating authorities to take measures in this regard in terms of the scheme evolved by it.

11. As is found from paragraph 13 of the Judgment in the above Case, one of the three questions which were framed by the Supreme Court for consideration was as "Whether a citizen of India has the fundamental right to establish and run an educational institution under Article 19(1)(g) or any other provision in the Constitution?" For the reasons set out in paragraphs 164 to 167 of its Judgment, the Supreme Court did not find it necessary to finally resolve the question noticed above, but in paragraph 168 it was held that:

"For the purpose of these cases, we shall proceed on the assumption that a person or body of persons has a right to establish an educational institution in this Country. But this right, we must make it clear, is not an absolute one. It is subject to such law as may be made by the State in the interest of general public."

After so holding, to have an effective control over the right of admissions by the

Managements, it formulated a scheme which is contained in paragraph No. 170 of the Judgment

12. With regard to the said scheme, towards the end of paragraph 169, it has been observed by the Supreme Court that:

"The idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission. It is the discretion in the matter of admission that is at the root of the several ills complained of. It is the discretion that has mainly led to the commercialisation of education.... It would be highly desirable if this scheme is given a statutory shape by incorporating it in the Rules that may be framed under these enactments."

One of the enactments taken note of by the Supreme Court is the aforesaid Educational Institutions Act. The preamble of the Scheme as contained in the opening paragraph No. 170 reads thus:

"The scheme evolved herewith is in the nature of guidelines which the appropriate Governments and recognising and affiliating authorities shall impose and implement in addition to such other conditions and stipulations as they think appropriate as conditions for grant of permission, grant of recognition or grant of affiliation, as the case may be."

13. As noticed above, it was keeping in view the observations, desire and direction of the Supreme Court that the State Government acted promptly and gave the scheme a statutory shape and concretised it by framing the Statutory Rules, namely the Selection Rules under the provisions of the Educational Institutions Act. But may be because of some difficulty, though those have not been spelt out in the counter affidavit, in implementation of the Rules with regard to the courses in question, it was thought fit or more appropriate to exclude these courses from the rigours of regulation contained in the Rules. Therefore immediately on such exclusion, the discretion of the Management to admit the students in their Institutions became free from any clog of statutory regulation. In that view of the matter, the process of admission adopted by the petitioners cannot be said to offending any statutory provision.

At this very stage, I may hasten to state that if the State Government at all earnestly intended to abide by the directions of the Supreme Court, it could have easily obviated the said situation by either simultaneously framing Statutory Rules befitting the selection of candidates to the Nursing and Pharmacy courses, as was subsequently done, or it could have restrained the Management from making admissions till such Rules are framed. But this was not done leaving it wide open to the Management to exercise their discretion at the peak of the admission season. The reasons have remained undisclosed. Therefore, if any one is to be blamed for violating the Judicial mandate, then, it is primarily and solely the State Government. The State Government by its act of deleting the Nursing and Pharmacy courses from the purview of Common Entrance Test and by not coming out simultaneously with any other restrictive mode of controlling the

Management's discretion regarding admissions, clearly conveyed to the public at large that Government does not intend to regulate the process of admission to the courses in question, thus inspiring the desiring candidates to approach the Management directly for taking admissions in the respective Colleges. It was only after taking place of the said events that the Government awoke to the situation and started wielding the subsequent Government Order dated 3.8.1994 referred to above, at the great detriment of students who had already taken admission even before the coming into force of the said order. The Governmental action treating the said admissions as illegal is clearly inequitable and unwarranted being unsupported with any law operating during the material period.

It may be noticed here that in terms of the observation and direction of the Supreme Court, the affiliating Universities have not imposed the said scheme as one of the conditions of affiliation.

14. In the above view of the matter, the only other aspect which needs to be clarified is as to whether the Supreme Court of its own through Judicial process had put any curb on the right of Management to admit the students as per their own pattern evolved for the same. In this regard, though the learned Government Advocate has taken me through virtually the entire text of the Judgment but he could not lay his fingers on any particular paragraph/passage which contains any prohibition in any way fettering the discretion of the Management in the form of any prerogative Writ or direction directed against the Managements. As I have noticed and quoted above various passages from the Judgment, and as I could gather from its entire tenor, to my reading, the Supreme Court had desired, and it should be taken as mandatory on the part of the appropriate Governments or recognising and affiliating authorities to see to it, that the scheme formulated by the Supreme Court is effectively carried out either by giving it a statutory shape or making it a condition of affiliation. Therefore, in my opinion, unless the scheme is effectuated in the manner directed and desired by the Supreme Court, the Management of the Institutions cannot be held to be bound to act thereunder.

However, now the Government has come out with a Statutory Rule under the Notification dated 23rd November 1994, which has been framed under the provisions of the Educational Institutions Act for appropriately regulating the selection of candidates for admission to the courses of Bachelor in Nursing and Pharmacy.

15. In the case of THE AHMEDABAD ST, XAVIERS COLLEGE SOCIETY AND ANR. ETC v. STATE OF GUJARAT AND ANR. 2. AIR 1974 SC 138 : Para 1 59, the Supreme Court has held that:

"the right to admit a student to an educational institution is admittedly comprised in the right to administer it".

Again in the case of St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., it has been reiterated that:

"The right to select the students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation."

16. Therefore, I find it inescapable to hold that the petitioners have not violated any regulatory provision/mandate either statutory or Judicial by admitting the students to the courses in question in their respective Colleges by following the pattern of admission evolved by them, provided it is otherwise in conformity with the provisions of the Educational Institutions Act and the Rules, Notifications and orders issued thereunder which were in force at the material time when the admissions of the candidates in question were effected.

17. Keeping in view the foregoing discussion, it is held that the students, who have been admitted to the courses in question to their respective Institutions during the period between 22.6.1994 and 2.8.1994 by the Managements of the respective Colleges against the Management quota, and if they are otherwise found to be eligible for admission to the courses as per the regulatory provisions of the Universities Act and the Rules and Regulations, framed thereunder, they will not be denied of their rights to appear at the respective examinations only for the reason that they had not been admitted pursuant to any selection/approval made by the respondent - Director. Writ Petitions are accordingly allowed in the terms stated above but without costs.