

(1996) 01 KAR CK 0010

In the Karnataka High Court

Case No : W.Ps. 31266/94 and 34041 to 34044/95

Gangadhara J.P. and Others

APPELLANT

Vs

The Director of Technical Education in Karnataka and Others

RESPONDENT

Date of Decision : 05-01-1996

Acts Referred:

Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 4

Citation : (1996) ILR (Kar) 2762 : (1996) 6 KarLJ 570

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Ravivarma Kumar and Kumar and Kumar, for the Appellant; A.V. Srinivasa Reddy, A.G.A. for R-1 and 2, P.D'Souza, for R-3 and M.N. Seshadri, for R-4, for the Respondent

Judgement

M.F. Saldanha, J.—These Writ Petitions which have been preferred by students who have obtained Diplomas in Mechanical Engineering, the first group having the subjects Automobile Engineering and the last one in Welding & Sheet Metal, a difficulty has arisen because the notification published by the Government under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 does not permit them to obtain admission to the B.E. Mechanical Part time Course. These petitioners contend that having regard to the number of marks obtained by them, that they were straight away qualified for admission to these courses because the relevant regulations framed by the University would permit them to do so but that they have been disqualified only because of the notification in question. They have accordingly filed these petitions contending that the relevant provisions of the notification whereunder they have sought to be disqualified by abridging the eligibility criteria should be struck down. The additional argument is that the notification issued to the extent that it is inconsistent with the regulations framed by the University is ultra vires the powers conferred even by the parent Act and that therefore it is liable to be quashed.

2. I have heard the petitioners learned advocates as also the learned advocates who represent the University and the learned Government advocates. The first head of challenge is with regard to the source of power that is vested in the Government and the Manner in which the power has been exercised. Petitioners learned advocates contend that by virtue of Section 4 of the Act the power to regulate admission to educational institutions has been specified. It is necessary to reproduce Section 4 as also the first part of the proviso:-

"REGULATION OF ADMISSION TO EDUCATIONAL INSTITUTIONS ETC.: Subject to such rules or general or special orders, as may be made by the Government in this behalf and any other law for the time being in force

(1)(a): the minimum qualification for admission to any course of study in an educational institution shall be specified by

(i) the University, in the case of any course of study, in an educational institution maintained by or affiliated to such University;

Provided that the Government may, in the interest of excellence of education, fix any higher minimum qualification for any course of study;

Whereas the petitioners' learned advocate has submitted that a dear reading of those provisions would indicate that the power to prescribe the qualifications for admission to various courses vests wholly and completely with the University and that the only power that has been conferred on the State is with regard to adding to these qualifications such as for instance by providing a minimum percentage of marks as an eligibility criteria. On the other hand, the learned Government Advocate submits that Section 4 vests the power in the State Government to regulate the admissions and these powers must be read to be wide enough to permit the Government to take a decision on its own which in a given case may be at variance with what is prescribed by the University. As far as this aspect of the matter is concerned, the aforesaid provisions are abundantly clear that the power to prescribe the qualifications leading on to higher courses for which admission is sought is vested in the University and no other authority not even the Government. This is for good reason because it is the University which is the specialised institution as far as the education field is concerned and therefore the legislature has reiterated that the decision making power as far as this aspect of the matter is concerned will be circumscribed to that authority. The limit of the power vested in the State as far as regulating admission is concerned has been clearly specified in so far as it permits some upward revisions of the already prescribed qualifications as enunciated by the University and nothing else. Having regard to this position, the contention adopted on behalf of the State that the power to frame a notification that is at variance with the University regulations is permissible u/s 4 will have to be rejected. Consequently, the challenge of the petitioners to the extent that the notification in so far as it is at variance with the University Regulation is bad in law is also upheld and it will have to be held that the regulations framed by the University are the ones that

shall prevail for all purposes relating to these admissions.

3. A subsidiary, challenge that was canvassed was that the notification in so far as it seeks to prescribe qualifications on its own is ultra vires the powers conferred by the Act. As far as this aspect of the matter is concerned, the respondents have relied on the same contention namely that if the authority to regulate is vested in them, that they have the power to frame regulations, rules or notifications and that this power is not limited or circumscribed. To my mind, this is a dear misreading of the provisions of Section 4 of the Act which in no uncertain terms limits the powers to be exercised by the State only to the extent of an upward revision. There is therefore no authority to frame independent requirements or qualifications or guidelines in relation to the admissions and to this extent therefore the exercise of power in promulgating the notification to the extent that it is at variance or conflict with the University Regulations is ultra vires and that part of the notification is consequently rendered non est.

4. The petitioners in the first four Writ Petitions have moved this Court pointing out that the part time B.E. Mechanical Course to which they had sought admission is available to them within the framework of the University Regulations that they have been wrongly deprived of admission. This Court directed the college authorities to set aside four seats under the interim order and therefore, since the petitioners have wrongly been deprived of admission to the courses in question, it is directed that they shall be admitted to the course forthwith on completing all the necessary formalities such as payment of fees etc. Learned Government Advocate draws my attention to the fact that the interim order prescribed that the four seats are to be kept vacant if they are not already filled up. The direction to admit them forthwith will therefore hold good provided the four seats were vacant and if the same have been kept vacant thereafter. If this is not the position, then the petitioners will have to be considered for the subsequent batch. As far as the last petition W.P. 31266/95 is concerned, it is true that no such interim order has been passed but the learned advocate points out to me that there was a direction to the effect that his application was to be accepted. It is his submission that there is every possibility that a seat would be available. If this is the position, having regard to the finding of this Court, the respondents are directed to admit him to the course forthwith on his completing the requisite formalities.

5. Petitioner's learned advocate points out one other fact which is of some consequence namely that his client had secured 69.6% and that he is very high above the cut off point which means that but for the impediment which was placed in his way and which necessitated the filing of this petition, on merits this petitioner would have normally been admitted to the course in question. The petitioner having been successful, he cannot be left merely with a paper relief and under these circumstances even if no seat is available, there is no option for this Court except to direct the respondents to create a supernumerary seat and to accommodate this petitioner for the course. The -Learned Government

Advocate stated that the Government does not have any power to create additional seats above the prescribed quota and that therefore, it is not possible for the respondents to admit the last petitioner if a seat is not available. It is true, that the Government does not have the power to alter the quota once it has been prescribed but it is within the inherent powers of this Court to issue the sort of direction which has been issued and the respondents shall comply with it, The petitions accordingly succeed and stand disposed of. No order as to costs.