

(2006) 03 KAR CK 0104
In the Karnataka High Court
Case No : Writ Petition No. 25652 of 2005

Global Academy of Technology and Others	APPELLANT
Vs	
All India Council for Technical Education and Others	RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Karnataka Selection of Candidates for Admission to Master of Business Administration and Master of Computer Application Courses Rules, 2005 — Rule 5 (10)

Citation : (2006) 03 KAR CK 0104

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Giridhar and Company, for the Appellant; N.B. Bhat, for Respondents-1 and 2, B. Manohar, A.G.A. for Respondent-3 and Basava Prabhu S. Patil, for Respondent-4, for the Respondent

Judgement

N.K. Patil, J.—The petitioners herein questioning the correctness of the impugned communication dated 20th October, 2005 bearing No. VTU/ACA/2005-06/A1/818 issued by the fourth respondent vide Annexure-L, have presented the instant writ petition. Further, petitioners have sought for a direction, directing the fourth respondent to issue the Eligibility Certificate in respect of all the 43 students admitted to MBA course under the Management quota in the first petitioner-Institution for the academic year 2005-06. Further, petitioners have assailed the communication dated 24th October, 2005 bearing No. ED. 185/TEC/2005 vide Annexure-N issued by the third respondent and also to direct the third respondent to issue a corrigendum to the effect that, the approved intake of the first petitioner-Institution in respect of the MBA course is 60 and not 30.

2. The petitioner 1 herein claims to be a Public and Charitable Trust by name Global Academy of Technology represented by its Trustee and Secretary, which imparts education in the field of Engineering in subjects like information Science and Engineering Computer Science and Engineering Electronics and Computer Engineering, Electrical Engineering, Electronic Engineering, Mechanical Engineering and Civil Engineering in addition to imparting education in the field

of Master of Business Administration (MBA). Petitioners 2 to 44 herein claim to be the students of the said first petitioner-Institution.

3. The grievance of petitioners 2 to 44 in the instant writ petition is that, in the Engineering College run by first petitioner, petitioners 2 to 44 herein have taken admission to the MBA course for the academic year 2005-06 and they are prosecuting their studies. After petitioners 2 to 44 are admitted in first petitioner-Institution, the said institution has forwarded the statement of admission of the said petitioners for approval to the fourth respondent-Vishweshwaraiah Technological University (for short, "University"). But, the University has not approved the admission of the said petitioners 2 to 44, who are admitted under the management quota on the ground that, the approved intake fixed in respect of first petitioner-Institution for the academic year 2005-06 as per the Government seat matrix received by University was "30". Therefore, the University has sent a communication dated 20th October, 2005 to send the list of 15 students instead of 40 students admitted through management quota. Further, the case of petitioners is that, the intake in respect of MBA course fixed for first petitioner-Institution for the academic year 2004-05 was 60 and the same was reduced to 30 for the academic year 2005-06 by a communication of the second respondent-All India Council for Technical Education (hereinafter called "AICTE" for short), dated 8th June, 2005 vide Annexure-B. Subsequently, the AICTE itself has sent a communication dated 22nd July, 2005, vide Annexure-C, by restoring the intake on the basis of the appeal filed by the first petitioner-Institution dated 27th June, 2005 to 15th July, 2005, requesting for approval of intake for the academic year 2005-06, and revised the approved intake by first petitioner-Institution in respect of MBA course from 30 to 60 for the academic year 2005-06. The same has been communicated to the Secretary of the Education Department, Government of Karnataka, Bangalore, with copies to the Principal of the first petitioner-Institution, the Director, Directorate of Technical Education, Government of Karnataka, Palace Road, Bangalore and the Registrar, Vishweshwaraiah Technological University, Santibastawad Road, Machhe, Belgaum. Immediately thereafter, the Principal of the first petitioner-Institution also sent a communication dated 22nd August, 2005 vide Annexure-D stating that, the intake in respect of MBA course has been restored by the AICTE to 60 for the academic year 2005-06 and the Government has not taken the cognizance of the same nor has issued any corrigendum in respect of the revised seat matrix issued earlier on 8th June, 2005 nor have they issued any amended seat matrix in accordance with the communication of the restoration of intake by the Apex body with regard to Engineering courses. In view of non-inclusion of the modified intake of the seat matrix by Government and non-communication of the same to the University, the University has not approved the intake of petitioners 2 to 44 herein and sent the impugned communication vide Annexure-L. Further, it is the case of petitioners that, the first petitioner-Institution has immediately communicated to the Principal Secretary, Government of Karnataka with a copy to the Director, Directorate of Technical Education and the Registrar

of the Vishweshwaraiah Technological University, Belgaum vide Annexure-D, requesting to give effect in respect of restoration of intake to 60, permitted by AICTE in favour of first petitioner-Institution. In response to the same, the Member-Secretary, CPAC and Registrar of the University has sent a communication dated 24th August, 2005 vide Annexure-E to the Principal of the first petitioner-Institution surrendering 15 seats to the Management to be filled as per Rules mentioned therein in respect of MBA course. Thereafter, the Principal of the Institution has sent a detailed communication dated 16th September, 2005 vide Annexure-K to the Principal Secretary to Government of Karnataka, Higher Education Department, stating that, the AICTE by their communication dated 22nd July, 2005 have restored the intake from 30 to 60 and also pointed out that, they have adequate proof of acknowledgement for having received the earlier communication by the authorities and also enclosed thereto a copy of the original letter as well as the acknowledgement in that regard. In response to the said communication, the Under Secretary of the Education Department has sent a communication dated 24th October, 2005 vide Annexure-N stating that, the admission process in respect of MBA course has already been closed on 16th August, 2005 and the classes for the said course have also begun. Since, there is no provision under the Karnataka Selection of Candidates for Admission to Master of Business Administration and Master of Computer Application Courses Rules, 2005 ("Rules" for short), for issuing the revised seat matrix, not to make any admission in respect of the revised intake and if any admission is made against it, the same will not be approved. Being aggrieved by the impugned communications vide Annexures-L and N, issued by the Registrar of the University and the Under Secretary to Government, Education Department respectively, and seeking other directions as referred above, petitioners have presented the instant writ petition.

4. I have heard learned Counsel appearing for petitioners and learned Counsel appearing for respondents for considerable length of time on 23rd March, 2006 and on 24th March, 2006. After careful evaluation of the entire material available on record, it is not in dispute that, on the basis of the appeal made by the first petitioner-Institution, seeking restoration of intake in respect of MBA course to 60, the AICTE has restored the intake and the said decision has been communicated on 22nd July, 2005 vide Annexure-C. Immediately thereafter, the first petitioner-Institution through its Principal, has also brought to the notice of the Principal Secretary of the Government of Karnataka, Higher Education Department, M.S. Building, of the said decision taken by the AICTE with a copy to the Director, Directorate of Technical Education and Registrar, Vishweshwaraiah Technological University, Belgaum vide Annexure-D, It is significant to note that, copy of the communication restoring the intake to 60 was sent by the AICTE itself on 22nd July, 2005 and the last reconciliation meeting was held on 20th August, 2005. Neither the Government nor the University has taken any decision for issuing the corrigendum or modified seat matrix in pursuance of the restoration of the intake accorded by the AICTE,

which is an Apex body. The decision taken by the said Apex body is binding on the University as well as the Government. The unequivocal stand taken by learned Additional Government Advocate appearing on behalf of Government and learned Counsel appearing for University in the statement of objections filed by them that, the communication, intimating the restoration of intake was not received by them and therefore they could not take any decision within time, cannot be accepted for more than one reason. From the records available on file, it is crystal clear that, the communication intimating the restoration of intake by the AICTE has been sent by the AICTE to the first petitioner-Institution with copies marked to the University and respondents including the Directorate of Technical Education vide Annexure-C and immediately thereafter, the first petitioner-Institution also has sent a communication to the Principal Secretary to Government, Higher Education Department with copy marked to the Registrar of the University. However, when the first petitioner-Institution did not receive any intimation regarding the restoration of intake or any corrigendum in that regard, and to their utter shock and surprise, when they came to that the communication regarding restoration of intake to 60 was not received by the authorities, again, they have sent one more communication explaining in detail on 16th September, 2005, vide Annexure-K and further stated that, they have enough proof/ acknowledgement from the said respondents for having received the said communication, intimating the restoration of intake. In spite of clarifying this fact, it is very unfortunate that, a cadre of the Under Secretary level has sworn to the affidavit filed along with the statement of objections and also issued a communication dated 24th October, 2005 vide Annexure-N stating that, due to efflux of time, the matter could not be considered. Thereafter, when the learned Additional Government was directed to verify regarding the same at least now, and to file an affidavit, today, instead of clarifying the position and filing an affidavit, he has proceeded to argue the matter taking the same stand that, they have not received the communication, intimating the restoration of intake, as has been taken in their statement of objections. This shows there is communication gap between the Under Secretary to Government, Education Department and the Member-Secretary, CPAC and Registrar, Vishweshwaraiah Technological University, Belgaum. The request of the first petitioner-Institution has not been considered till the last date for admission i.e., 29th August, 2005. It is relevant to note here itself that, the last conciliation meeting was held on 20th August, 2005 and in the instant case, the communication, intimating the restoration of intake by AICTE has been issued as early as on 22nd July, 2005 and that fact has also been immediately brought to notice of the authorities, again, by the first petitioner-Institution on 22nd August, 2005, In spite of that, the authorities have not taken any decision in that regard and there are lapses apparent on the part of Government in not issuing the modified seat matrix and not approving the restoration of intake to the first petitioner-Institution, as per the restoration of intake accorded by the AICTE. Now, in pursuance of the revised restoration, of intake, the first petitioner-Institution has admitted the students as per Rule 5(10) of the Rules, under which, the seats transferred to the managements of

private unaided institutions shall be filled with students who have taken one of the national level tests and the said process shall have to be completed before the last date of admission. It is the case of first petitioner-Institution that, the admissions of petitioners 2 to 44 except petitioner 3 are made within the cut off date i.e., 29th August, 2005. After careful and critical evaluation of the material available on record, particularly the relevant material referred above, it emerges that, the respondents ought to have taken a conscious decision well in time on the basis of the material available on record and they could have even directed the Registrar (Evaluation) of the University to submit the list of admissions forwarded by the Institution regarding consideration of the approval of admission. Instead of that, they have compelled these petitioners to approach this Court by presenting the instant petition.

5. Further, learned Counsel appearing for petitioners submitted that, the subject-matter involved in the instant case is directly covered by the decision of the Division Bench of this Court in CBCI Society for Medical Education v. State of Karnataka and Ors. W.P. No. 14160 of 2005, DD: 10-11-2005 (DB). The said Division Bench judgment has been rendered by following the ruling of the Apex Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, , wherein the law relating to the policy of the State Government for sharing of seats between the management of an unaided private educational institutions, and the principle laid down by Apex Court in Inamdar's case is settled. If the ratio of law laid down by the Apex Court and the Division Bench of this Court, referred above, are made applicable to the facts and circumstances of the case on hand, then the respondents 3 and 4 ought to have taken a conscious decision having regard to the paramount consideration of petitioners 2 to 44 who have been admitted by the institution and also ought to have taken a pragmatic decision. It is incumbent on each occupant of high office to be constantly aware of the power in the high office he holds that is meant to be exercised in the public interest and only for public good and it is not meant to be used for any other benefits, a high post should add glory to the post and not be symbolic figure oblivious of the duties and functions which, he has and is expected to carryout.

6. Having regard to the facts and circumstances of the present case, in my considered view, the concerned Competent Authorities have to redo the matter and take appropriate decision when the Apex body itself has restored the intake in respect of MBA course. The concerned Competent Authorities ought to have taken a conscious decision and prevented these petitioners from redressing their grievances before the Court invoking the extraordinary jurisdiction of this Court.

7. Taking into consideration the facts and circumstances of the case, as stated above, and having regard to the totality of the case on hand, following the ruling of the Apex Court in P.A. Inamdar's case and the decision of the Division Bench of this Court in CBCI Society for Medical Education's case, the instant writ petition filed by petitioners is disposed of with the following directions:

(i) The writ petition filed by petitioners is allowed;

(ii) The impugned communication issued by fourth respondent vide Annexure-L, dated 20th October, 2005 bearing No. VTU.ACA.2005-06/A1/818 vide Annexure-L and the communication dated 24th October, 2005 bearing No. ED. 185/TEC/2005 vide Annexure-N issued by the third respondent, are hereby set aside and the matter stands remitted back to the third and fourth respondents to reconsider the same and to take appropriate decision in accordance with law, after affording an opportunity to first petitioner-Institution and to dispose of the same, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this order;

(iii) The fourth respondent herein is directed to also announce the result of petitioners 2 to 44 who appeared for the examination in pursuance of the interim order granted by this Court, however, subject to fulfilling other eligibility conditions, and subject to the decision to be taken by respondents 3 and 4;

(iv) Further, it is hereby clarified that, petitioners 2 to 44 herein are not entitled to plead any equity in their favour on the basis of the interim order earlier granted by this Court or the observations made above regarding announcement of results, if the decision to be taken by respondents 3 and 4 goes against them;

(v) Further, respondents 3 and 4 are hereby directed to take appropriate action against the first petitioner-Institution in accordance with law, if it is found that, they have not followed the existing regulations of the University and the orders passed by Government from time to time,

8. For the foregoing reasons, the writ petition filed by petitioners stands disposed of.