

(2001) 10 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No's. 37139 of 2001, c/w. 35441, 38859-62 and 38864-66 of 2001

Harsha N.S.

APPELLANT

Vs

All India Council for Technical Education, New Delhi and Others

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2002 Kar 49 : (2002) ILR (Kar) 397

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : G.K.V. Murthy, P.E. Umesh, Balaraj A.C. and M. Madhusudan, for the Appellant; N.B. Bhat, B. Manohar and G.A. Rajagopal, for the Respondent

Judgement

Tirath S. Thakur, J.—The petitioners in all these petitions are students pursuing Degree Courses in different disciplines of Engineering in the State of Karnataka. They appear to have applied to their respective College for a change in the discipline/branch of Engineering to which they were admitted. That request has been rejected by the Colleges concerned on the basis of the guidelines issued by the All India Council for Technical Education, New Delhi, Aggrieved, the petitioners have filed the present Writ Petitions challenging the decision as also the guidelines in question. The relevant paragraphs of the guidelines issued by the AICTE may at this stage be extracted:--

"1. Branch change at the college level shall be carried out by the Director/ Principal of the college.

2. Facility of branch change at the II year (III Semester) level shall be available only to meritorious students and shall not be considered as a matter of right.

3. These guidelines shall be applicable to all institutions imparting Engineering education in the country including University, University Departments, RECS,

autonomous institutes, aided as well as unaided institutions.

4. Branch change is permitted at III Semester (II year) only.

5. For the purposes of branch change, the "prescribed intake" shall be the intake prescribed by AICTE for the previous academic session when the students were admitted at 1st semester level. Subsequent variations in intake shall have no bearings on the students eligible for branch change.

6. Branch change is permitted, if the strength in any Branch is not falling below 75% of the prescribed intake.

7. Branch change can be made only against clear vacancy in particular branch. Vacancy (V) being defined as:

$$V = I - (\text{Reg} + \text{Rep})$$

Where, I = The prescribed intake for the branch.

Reg = No. of regular students who become eligible to be promoted to III Semester.

Rep = No. of students from previous batches who become eligible to join III Semester (along with regular students)

Branch change shall not be permitted to any course where $(\text{Reg} + \text{Rep}) > I$. Under no circumstances, there shall be any exception to the above stipulation.

8. Branch change shall be strictly according to the Merit List prepared by the College on the basis of total marks obtained by a student in 1st year University Examination. Only those students who have passed in all the subjects shall be eligible to apply for change of branch.

9. Change of branch should be completed within 10 days of announcement of I and II semester (1st year) results."

2. Learned Counsel for the petitioners argued that para-6 of the guidelines issued by AICTE (supra) in so far as the same prescribes that no change shall be permitted if student strength in any Branch falls below 75% of the prescribed intake was clearly arbitrary, irrational and discriminatory. They urged that this Court had while examining a similar guidelines issued by the State Government in *Arun v. State of Karnataka* ILR 2001 Kar1864 : AIR 2001 Kant 940 held that the strength of students in a given course could not be made a basis for granting or refusing a change in Branch. This Court had considered the guidelines prescribing a minimum of 50% strength in the course also as arbitrary and irrational. The AICTE had, it was argued, in disregard of the observations made by this Court, raised the qualifying student strength from 50% to 75% making it so much more difficult for students to ask for a change in a number of discipline no matter vacancies in other disciplines were available and would go waste if such change was not permitted. It was also contended that para-8 of the guidelines in so far as the same stipulated that only students, who have passed

in all the 1st and 2nd semester subjects shall be eligible to apply for a change of Branch was irrational and arbitrary. If a student, who did not seek a change could under the Regulations governing the course go into the 3rd semester without clearing the subjects of 1st and 2nd semester, there was, according to the petitioners, no reason why he should be rendered ineligible to ask for a change in the Branch only because he had not cleared all the subjects in the 1st and the 2nd semesters.

3. On behalf of the respondent-AICTE, learned Advocate General made a two fold submission in support of the guidelines. He argued that the guidelines were aimed at ensuring a coordinated and planned growth of technical education in the country. If the choice for a change in Branch was left to the students alone, the object of establishing the AICTE would stand defeated. Alternatively, it was contended that any change in the Branch at the volition of the students would ignore the national interest and requirements of technical personnel in the concerned Branches. The Institutions may also suffer on account of infructuous expenditure on infrastructure. It was contended that if an expert body had made a value choice, this Court would be slow to interfere with the same.

4. In *Arun v. State of Karnataka* ILR 2001 Kant 1864 : AIR 2001 Kant 940 the petitioners had assailed the validity of a Government Order, issued to regulate the change in Branches of Engineering. The Government Order made a provision similar to the one made in the impugned guidelines of the AICTE. It provided thus :--

"Branch change is permitted if the strength in the branch is not failing to or below 50% of the intake as fixed by the AICTE/Government."

5. It was argued in that case that in more popular courses, where number of admissions made was higher, a candidate, who possessed lesser merit could succeed in getting a change while in courses, where the number of candidate admitted was lower, even a student with much better merit would not be able to do so. Individual merit of the candidates in such cases would become irrelevant and individuals with higher merit would lose the opportunity to change over to another Branch. Dealing with that submission this Court observed at Pages 943-944; of AIR Kant HCR :--

"Coming then to the question whether pending a decision from the AICTE to the contrary, the conditions subject to which the Government Order referred to above permits change of branch suffer from any arbitrariness or irrationality. The challenge to the norms was confined to Clause (2) extracted earlier according to which a Branch change is permitted only if the strength of students in the Branch from which the change is permitted does not fall below 50% of the intake fixed for the same by the AICTE/Government. It was contended that this requirement was wholly unfair and irrational and creates anomalous situations in which meritorious candidates are denied a change only because the branch from which they seek a transfer, has not attracted candidates equivalent to 50% or more of

the intake fixed by the AICTE. It was argued by Mr. Murthy, Counsel appearing for some of the petitioners that meritorious candidates admitted to say the Civil Engineering Branch which is not very popular may be denied a change while a less merited candidate admitted to a more popular branch like Electronics may succeed in getting a change only because in the former, the number of candidates available are below 50% of the intake while in the latter the number of such candidates is more than the 50% mark. A rigorous and pedantic application of the norms would therefore result in prejudice to such candidates for no fault of their and based on considerations that have nothing to do with the merit of the applicant seeking a transfer. That argument cannot be brushed aside lightly. The anomaly arising from the application of the norms is obvious for there are branches in which the colleges do not attract candidates up to even 50% of their intake capacity. Those admitted to such branches may be by reason of Clause 2 of the norms and in total disregard of their individual merit lose the opportunity to change over to another branch. Whereas others, even though muchless merited may easily switch over to another branch because the discipline to which they were admitted would be left with more than 50% of its strength even after transfer. An attempt was however made by learned Counsel for the University and the Government Advocate to justify Clause 2 of the norms, on the ground that since most of the Colleges are aided if transfers are permitted liberally and even in cases where the students strength falls below 50% of the intake, the staff strength in such Colleges may be rendered excess and the expenditure on the up-keep of the infrastructure, a national waste. There is however no material on record to support that contention. As to what is the position in regard to the Colleges with which we are concerned in the present cases has not been stated nor have the requisite facts been pleaded in the counter-affidavit by the Government or the University. In the absence of relevant material it is difficult to support Clause 2 of the norms, on the ground of economic viability or financial waste. It is noteworthy that no attempt was made, by the Respondents to justify the clause on the ground that a reduced strength in the class would render the class or the course academically unviable. Even if an effort was made the same would not carry conviction for while increase in the strength may affect academic standards a decrease in the number of candidates on account of transfer of some to other branches, cannot possibly affect the academic standards or the excellence of the instructions imparted to those who continue in the course. Clause (2) of the Norms prescribed by the Government Order in question shall therefore have to be struck down as irrational and discriminatory hence violative of Article 14 of the Constitution. Question No. 1 is answered accordingly."

6. The AICTE norms have adopted/similar pattern with the only difference that instead of 50% stipulated in the Government Order, the norms now prescribed stipulate 75% of the intake as the threshold for permitting transfers. The ratio of the decision in Arun Kumar's case would therefore be applicable with greater rigour to the AICTE guidelines for the same makes transfer so much more

difficult by prescribing that the transfer should not result in the fall of admissions made below 75% of the total intake in the course from where the transfer is being made. The justification advanced by the AICTE for prescribing the above norms is two fold. Firstly, it is said that the restriction on the change of courses is necessary for a planned and coordinated development of technical education and secondly because a liberal change in courses will cause prejudice to national interest and waste available infrastructure in the institutions. There is, in my opinion, no merit in either one of these contentions. It is open to the AICTE to prescribe that change from one discipline of the Engineering to the other is not permissible in the interest of the academic excellence of the courses. Any such view would deserve respect from the Courts, for they do not readily interfere with matters relating to academic which are better left to academicians. Once, however, the AICTE allows a change of branch and prescribes norms for the same, such norms have to be fair, reasonable and rational so that they operate uniformly without exposing students in any particular branch to a hostile or discriminatory treatment vis-a-vis other admitted to some other branch. The challenge in the present case accordingly is to the validity of the norms and not the competence of the AICTE to ensure a planned and coordinated development of technical education in the country. If the norms prescribed by AICTE are found to be discriminatory, it is difficult to see how the same can be upheld on the basis that the same are permissible for a coordinated or planned development of technical education. As a matter of fact, formulation of norms which operate in a manner that results in discrimination amongst students situated similarly may defeat the purpose of the Act and negate the role which AICTE is supposed to perform at the national level. The invalidity attached to a norm or guideline cannot therefore be justified on the ground that such a norm or guideline has to be suffered by all concerned in the interest of a planned or coordinated development of technical education. If the norm is good, it must be declared to be so. But, if it is bad it cannot be saved on the lofty considerations of coordinated or planned development of technical education.

7. The alternative submission that a free change of course will defeat national interest is equally untenable. The argument proceeds on an assumption that admissions made to different disciplines in Engineering are relatable to the requirement, of qualified engineers at the national level, That contention is not supported by any data or other material, it is true that after the AICTE Act and the establishment of All India Council for Technical Education, the duty of ensuring a planned and coordinated development of technical education in the country has fallen on the Council. But, there is nothing to show that the council has conducted any study at the national level to determine the technical manpower required by the country over a given period of time. The result is that even when the AICTE or the Government have permitted a certain number of seats in different disciplines of Engineering, all such seats are not filled up. There are courses where seats are in demand while there are others which do not attract even 50% of the sanctioned intake. If the intake fixed in a course signifies

the requirement of the country in terms of qualified engineers in that course, the AICTE or the State would have to devise ways and means to encourage admissions to such courses. No such efforts are made either at the AICTE or Government level. The result is that students seek admission to courses which according to their perception would secure their future.

8. The issue can be examined from yet another angle. Changes from one course to another can be made only if there is a clear vacancy for the same. It is not in dispute that clear vacancies exist in a large number of disciplines. According to the petitioners, more than 30 vacancies in different disciplines are available in Karnataka Regional Engineering College, Suratkal alone. Similar vacancies in different disciplines are available in other Colleges also. If a change from one branch to the other is permitted only when a vacancy exists, it is difficult to see how such a change would result in any wastage of either human resource or the infrastructure available in the Colleges. On the contrary, if a change is not permitted even when a vacancy exists, the College will be forcing an unwilling candidate to continue in a course, which is not his liking or which he does not find to be promising enough. At the same time, the vacancy which is existing in the course, where he wants to go remain unutilised and hence go waste. The available vacancy in the other course is as much a national resource as the vacancy that may be caused by the transfer of a candidate from his original course. The refusal of the College or the AICTE to permit the change cannot possibly save the wastage of the resource in the course to which the student wishes to get transferred. The argument that transfer of the student from one course to the other will result in a wastage of national resource therefore, does not stand closer scrutiny. So also the argument that the transfer of the student even when the strength falls below 75% will render the course unviable or results in infructuous expenditure does not commend itself to me. That is because there are several branches of engineering in which the Colleges do not attract admissions equivalent to even 50% of their total intake. One cannot, therefore, say that such course become unviable on that account or that the same may have to be closed down only because students seek transfer to other courses. Regulation 6 in so far as same provides that transfer cannot be allowed if the strength in the branch falls below 75% is therefore irrational and operates in a discriminatory manner vis-a-vis candidates admitted to courses which have attracted 75% or less of the total intake in that course.

9. What then should be the basis for granting or refusing transfers from one branch to the other? The total absence of any norm is no better than a norm or a criteria which is bad or otherwise, discriminatory. While, it is not necessary for this Court to take over the functions of AICTE in formulating proper guidelines since the norms already prescribed are not fair and non-discriminatory, it is necessary to examine whether the norms prescribed by AICTE can be read down till such time the AICTE gives a second look to the same.

10. In terms of para 6 of the AICTE guidelines, a branch change is permissible if

the strength in the branch does not fall below 75% of the prescribed intake. This means that if the intake in a given branch is fixed at 100 candidates per annum. 25 out of them can be transferred to any of the other branches. That is, if the intake capacity in that branch is fully utilised. Para-6 however does not justify transfer from a branch where the admissions made are themselves less than 75% of the total intake. For instance, if in a branch where the intake is 100 candidates only, 75 candidates have been admitted, no change is permissible as the same would result in the strength of the students falling below 75% of the prescribed intake. This is precisely where the students of less popular courses get exposed to discriminatory treatment. Just because other students have not Joined the course which they have Joined should not by itself disentitle them to seek a change. If 25% is the norm accepted by the AICTE, then instead of the said norm being applied to the total intake in a given course, it could be applied to the actual admissions made in such a course. For instance, if in a course with an intake of 100 candidates only 48 students have been admitted, 12 representing 25% of the admitted strength could seek transfer to other branches. That appears to me to be the only way by which Regulation 6 can be understood to avoid the regulation from being rendered unconstitutional and discriminatory. The Regulation could therefore be read down and understood to stipulate that branch change shall not be permitted if such a change takes the strength in any such branch below 75% of the "admitted strength" of the students and not the prescribed intake for the same.

11. So interpreted, Regulation 6 can in my opinion stay on the statute book till such time, the AICTE considers it necessary to alter the said norm.

12. The only question then is whether Regulation 8 of the regulations suffers from any illegality or arbitrariness inasmuch as the same prescribes that only those students who have passed in all the subjects shall be eligible to apply for a change. There is in my opinion, no illegality or infirmity in that requirement to warrant interference. Whether or not a student, who has failed in the first or the second semester subjects should also be made eligible to ask for a transfer is a matter which is purely academic in nature. AICTE having considered that aspect, it was within its powers to stipulate that the candidates must have passed all the subjects of first and second semester examinations before they can claim a change in the course. Just because the regulation permits first and second semester students to go to the third semester and carry forward some subjects does not necessarily mean that they must also be entitled to ask for a change in the branch. Changes should be permitted only on the basis of merit and to those who have cleared the first and second semester examinations in total.

13. In the result, these petitions are disposed of with the following directions:--

(1) The request made by the petitioners for change of branch shall be considered by the colleges concerned subject to the petitioners being found eligible in terms of guideline No. 8 of the Guidelines issued by the AICTE.

(2) While considering the request so made, the college shall not permit a change if such a change takes the strength in any such branch below 75% of the actual admissions made to that branch. It follows that transfer may be permitted to the extent of 1/4th of the total admissions made in any course subject to the candidates being found eligible and also subject to the availability of clear vacancies in the branches to which such transfers are sought.

(3) The university shall approve and recognise all such transfers if the same are made within two weeks from today.

No costs.