

(2005) 01 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 47599 of 2004

Islamiya Education Trust and Another	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Constitution of India, 1950 — Article 30
Karnataka Selection of Candidates for admission to Teachers Certificate Higher Course (T.C.H.) and Bachelor of Education Course (B.Ed.) Rule, 1999 — Rule 2J

Citation : (2005) ILR (Kar) 1859 : (2005) 2 KarLJ 198

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Madhusudhan R. Naik, for the Appellant; B. Manohar, High Court Government Advocate for Respondent-1 and A.N. Venugopal Gowda, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Petitioner is an Education Trust established in 1992. It provides educational facilities for the needy students in Hyderabad-Karnataka Area. Second petitioner is established by the first petitioner and is engaged in running an institution for B.Ed. Course. Petitioner refers to the famous T.M.A. Pai's case and that he says that it is a minority institution and hence it has to have the concessions granted to minority institutions in terms of Article 30 of the Constitution.

2. Petitioner was told that for the academic year 2003-04 the college is to make admission to 50 seats and 50 seats would be filled by the Government by the centralised agency. No steps were taken to fill the seats for the reasons best known to the authorities. Petitioner made repeated requests to the respondents in terms of Annexure-D series to fill the seats. In the absence of any response petitioner proceeded to make the admissions out of its wait listed candidates in respect of the unfilled Government quota. The University did not approve the

same. Petitioner corresponded with the Government and the Government granted approval of the admission in terms of its communication dated 4-9-2004 (Annexure-C) with a condition that such admissions will not be repeated in the future. Subsequently, petitioner received a communication dated 27-10-2004 (Annexure-E) stating that by an order dated 21-10-2004 (Annexure-D) the Government had directed regularisation of admission for the academic year 2003-04 considering the student's interest and that as merited students were deprived of admissions, for the academic year 2004-05, it was decided that all the 100 seats would be filled by the second respondent. A communication (Annexure-F) dated 3-11-2004 was followed with regard to no admission till the Government quota is fulfilled. A notification was issued in this regard in terms of Annexure-G. According to the petitioner, no management seat is available to them for the year 2004-05. Petitioner with these facts in before me seeking to quash Annexure-D and F.

3. Respondents have entered appearance and the State Government refers to the rules to say that the State Government has the right to fill up 50 seats in terms of the Rules as applicable to the facts of this case. Second respondent-institution according to respondents made a request to approve the admission to 2003-04. No seats were allotted by the Government in the previous year. The State Government taking into consideration the hardship faced by the institution issued an order dated 4-9-2004 directed the third respondent to approve the admission made by the second petitioner subject to certain condition. Another order was passed on 21-10-2004 stating therein that in the light of the earlier filling up of 100% by the petitioner, the petitioner is not entitled for 50 seats in the subsequent year and the subsequent 100% has to go to the Government quota. They want the petition to be dismissed.

4. Mr. Madhusudhan R. Naik, learned Counsel invites my attention the material facts to say that the petitioner has made several requests in the matter of providing 50% and in the absence of any positive response they have chosen to provide seats of its quota even with regard to the Government has approved the same in terms of Annexure-C. In Annexure-C they have not imposed any condition of entire 100% as Government Quota for the year 2004-05. Despite Annexure-C respondents have subsequently changed their stand and they have directed the petitioner not to admit any students. At this stage, I must see the Rules governing the allotment of seats. The Karnataka Selection of Candidates for Admission to Teachers Certificate Higher Course (TCH) and Bachelor of Education Course (B.Ed.) Rules, 1999, would provide a definition in terms of Rule 2(j) to the Government Seat. Government Seat according to Rules would mean and include all the seats in the institutions, established and/or administered by the State Government or University, 75% of seats in non-minority aided institutions; fifty per cent of seats in aided minority institutions; fifty per cent of seats in unaided institutions both minority and non-minority. Subsequently, the said rule is amended in terms of the amended Rules on 19-7-2000. This rule provides for eligibility and procedure in the matter of selection. From a reading of

this rule what is clear to this Court is that the Government can have only 50% of seats in respect of aided minority institution. That being so, it is not possible for this Court to accept the subsequent endorsement Annexure-D and E, which provides for 100% Government Seat. But, legally speaking, the Government cannot have 100% for the subsequent year. Any acceptance of 100% for the year 2004-05 would be running contrary to the Rules in question. Moreover, when Annexure-C was issued no such condition was imposed. It is only in terms of Annexure-D and E the condition of 100% is imposed. There is also no discretionary power available in terms of the Rules. In the given circumstances it is not possible for this Court to accept Annexure-D and E.

5. Before concluding, this Court observes that the Government may in its wisdom amend the rule or obtain an undertaking thereby binding itself with regard to a condition in that manner to avoid such exigencies in its own interest in the matter.

6. In the result, this petition is allowed. Annexure-D, E and F are set aside. The State Government is directed to confine the admission through its centralised agencies to the Government Quota of 50% of the intake as per the seat matrix in respect of the petitioner-institution. No costs.