
(1988) 07 KAR CK 0045
In the Karnataka High Court
Case No : W.P. Nos. 6352 to 6371/87, etc

Jayasree S and Others

APPELLANT

Vs

Bangalore University and Another

RESPONDENT

Date of Decision : 22-07-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 3 KarLJ 323

Hon'ble Judges : P. P. Bopanna, J

Judgement

Bopanna, J.-These petitions are disposed of by a common order as a common point arises for consideration in all these cases.

2. Writ Petitions Nos. 5597 of 1987, 10655 of 1987 and 10511 of 1988 are filed by the petitioner/Jawahar Bharathi Education Trust and Writ Petitions Nos. 6352 to 6371 of 1987 are filed by the students of the Teachers Training College established by that Trust. The college in question is known as Sanjay Gandhi College of Education. It was established in the year 1980-81. This Education Trust which had established the college of education in question in the year 1981 appears to be in the vortex of a serious controversy which this Court should take judicial notice of for exercising its extra-ordinary jurisdiction. This Trust had been invoking the extraordinary jurisdiction of this Court for the last 4-5 years with the specific object of regularising the admission of students admitted by it in excess of the intake prescribed by the Government every year. It is not in dispute that the Government has power to fix the intake under the Karnataka State Universities Act specifying the maximum number of students to be admitted in each course during the academic year in question. The college was permitted to admit not more than 100 students during the academic year in question. But, all the same it has been admitting students far in excess of the prescribed intake and approaching this Court just before the expiry of the academic year for interim orders with a view to regularise such admissions. It is seen from the earlier writ petition filed by the petitioner/Trust in Writ Petition No. 10912 of 1985 that it had. approached this Court for regularising the admission

made during the academic year 1985-86. In Writ Petitions Nos. 3735 to 3795 of 1988 this Court made an order dated 29-3-1988 referring the petitions of the petitioners to a Division Bench. The reference was made in view of the fact that the order made by this Court in Writ Petition No.2941 to 3044 of 1988 did not take into consideration the order made by the High Court and the Supreme Court in the Civil litigation between the parties in O.S.No. 3203 of 1987 which ultimately ended in M.F.A.No. 2267 of 1987 on the file of this Court. In the order of reference made by this Court there are some uncomplimentary remarks by the learned Judge who made the reference. The very same petitioner has approached this Court in Writ Petition No. 13826 of 1983 for regularising the admission made for the academic year 1982-83. In Writ Petition No. 12941 of 1984 to which I have made a reference earlier the petitioner/Trust had given an undertaking as follows:

"Petitioners in this writ petition submit that they will not admit students beyond the intake fixed by the authorities for the year 1985-86 onwards. However, petitioners will represent to the authorities to fix appropriate strength having regard to several factors including previous intake. Petitioners further submit that they reserve liberty to approach this Court if necessary, but without first admitting students." So, by this undertaking it is clear that the petitioner/Trust was not expected to admit students beyond the intake prescribed for the year 1985-86 and onwards. It is common ground that the intake prescribed for the year 1985-86 is 100 and, therefore, the petitioner/Trust could not have admitted more than 100 students for the academic year 1986-87 and, if at all they wanted to admit more students than the prescribed intake, they should approach this Court for necessary orders, but without first admitting students. Notwithstanding the undertaking given in that writ petition, the petitioner had admitted 20 students in excess of the prescribed intake in the year 1986-87 and the petitioner once again approached this Court in these writ petitions for regularising the excess intake. It is submitted by the learned counsel for the petitioner that this admission of 20 students in excess of the prescribed intake was made on a mistaken understanding of the undertaking given. I do not think that the undertaking given by the petitioner/ Trust in this Court in the aforesaid writ petition could be glossed over by trotting out the plea of incorrect understanding of the undertaking. The petitioner/Trust is managed by a Governing council consisting of persons who are interested in higher education and higher learning and, therefore, it is a very bald claim to make that they admitted 20 students in excess of the prescribed intake on a wrong understanding of the undertaking given by them. That is a sufficient ground to deny the petitioner/Trust the right to invoke the extra-ordinary jurisdiction conferred under Article 226. The principle of *ubi jus ibi remedium*, i.e., wherever there is a right there is a remedy as is understood in civil jurisdiction is not applicable to the proceedings under Article 226 of the Constitution. The remedy is always a discretionary remedy and not a remedy which is based on supposed violation of a legal right or a breach of legal duty. There is no doubt, there is a

running feud between the petitioner/Trust and the authorities of the Government not only on matters pertaining to education but also in matters pertaining to management of the petitioner/Trust. Unless the petitioner/ Trust steers clear of all this controversy centering round the existence of this institution and also the running of this institution, it is not for this Court to come to the aid to the institution by exercising the extraordinary jurisdiction under Article 226 of the Constitution.

3. In the circumstances, the petitioner/ Trust is not entitled to any relief. Even otherwise, its undertaking given in the earlier writ petition could not have been violated by it and the said violation amounts to contempt of this Court.

4. It may also be noted that Writ Petition No.4899 of 1987 filed by Noorie Educational Society from K.G.F. was rejected by this Court and the writ appeal in W.A.No. 491 of 1987 filed against the said order was dismissed. I do not find on facts that there is anything dissimilar to the facts in that writ petition and in the writ petitions of the petitioner/Trust.

5. However, the case of the students in the light of the interim order made by this Court in Writ Petition Nos. 6352 to 6371 of 1987 deserves some consideration. By virtue of the interim order made by this Court, they were permitted to take the examinations subject to the result of the writ petition. That means to say that they have already completed the one year course by taking the examination by virtue of the interim order made by this Court. The direction made by this Court in this connection in Writ Petition No. 10912 of 1985 should be kept in view for considering the case of the students. The direction of this Court is that the State Government should fix the intake of the college in question for the academic year 1985-86 on a rational basis and having due regard to the orders of this Court passed from time to time and on such reconsideration if the intake of the institution for the year 1985-86 is increased by 20 or more, the admissions made pursuant to the interim order of this Court should be approved by the Government and the University. Therefore, in the light of this direction made by this Court in Writ Petition No. 10912 of 1985 it may be possible to contend on behalf of the students that they expected the regularisation of the intake for the B.Ed., course upto 120. It was brought to my notice that under Annexure B, i.e., the letter to the Petitioner/Trust by the University dated 5-3-1987, it had been intimated that its intake of students in excess of 100 for the year 1986-87 is clearly illegal and therefore, admission of such students is invalid and they should not be permitted to take the examination conducted by the University. This letter of the University is one more point against the petitioner in Writ Petition No. 10655 of 1987. That is the reason this Court did not grant any interim order when the Petitioner/Trust approached this Court in the aforesaid writ petition. But the students having approached this Court subsequently after the letter of the University at Annexure B, they managed to take an interim order in their favour. But it is not possible to contend that the students were aware of the contents of Annexure B since the

same would not have been brought to the notice of the students by the Principal he having taken advantage of the admissions made irregularly earlier contrary to the Government order. Therefore, the students' case deserves some consideration at the hands of this Court.

6. One more factor in favour of the students is that after refusing permission to the college in question, the Government permitted admissions of more than 100 students on the basis of a series of Government Orders which have been produced at Annexures J, K, L and M. The Government had permitted increase in intake to a number of colleges. Under Annexure J the intake to Dr. Ambedkar College of Education was increased to 150. By Annexure K the intake to New Horizon College of Education was enhanced to 150. Likewise the Chikkaballapura K. Venkatappa college of Education was permitted to admit 150 students by increasing 50 seats under Annexure L. Under Annexure M the Government has permitted excess intake varying from 40 to 10 in different colleges, viz., for Kithoor Rani College of Education, Bailhongal, by 40; Chandbeebi Girls College by 10; S.R. Kanti College, Ilakal, by 20; Basana College of Education, Chikkodi, by 30; Karnataka Vidhyavardhaka Samsthe College, Gadag, by 20 and Karnataka Thigalara Vidyavardhak Sangha College, Bangalore, by 20. So, when these institutions had the benefit of admitting extra students for year 1987-88 and 1988-89, it can be said that the Government had no uniform policy in the matter of intake of students in this State. In the absence of such uniform policy, the Government's decision is arbitrary and the effect of that arbitrariness should not operate harshly against the students who have joined the institution in question with the expectation of going through the full fledged course of one year and they have taken the examination pursuant to the interim order and, therefore, whatever may be the reason for denying the relief to the petitioner/Trust, the students should not be made to suffer on account of the acts and omissions of the Trust in question. In the circumstances, with a view to ensure that the students should not lose one year of their study it is just and proper that this Court should validate their admission reserving liberty for the Government to fix the intake of the college in question by considering the subsequent decision taken by it under Annexures J, K, L and M. It is open to the petitioner/Trust in Writ Petition No.10655 of 1987 to approach the Government once again in this regard with a prayer to fix the proper intake for the institution in the light of Annexures J.K. L and M to which I have made a reference earlier. It is however made clear that this order will not confer any right to the petitioner/Trust to enhance the intake for the year 1988-89 without obtaining the express order of the Government.

7. In view of the fact that the admission of the students is validated by this Court, the University shall declare the results of the examinations taken by them forthwith.

8. For these reasons Writ Petitions Nos.5597 of 1987,10655 of 1987 and 10511 of 1988 are dismissed. Writ Petitions Nos. 6352 to 6371 of 1987 are partly

allowed.

Parties to bear their own costs.