

(2002) 09 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No's. 41213, 46867 and 46868 of 2001

K. Shivaraj

APPELLANT

Vs

Principal, Karnataka Regional Engineering College and Others

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Citation : AIR 2003 Kar 92 : (2002) ILR (Kar) 5012 : (2003) 1 KarLJ 455 : (2002) 4 KCCR 394 SN

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : A.C. Balaraj, in W.P. No. 41213 of 2001 and G.K.V. Murthy, in W.P. Nos. 46867 and 46868 of 2001, for the Appellant; P.S. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The petitioner in W.P. No. 41213 of 2001 is admitted to I year B.E. Course in K.R.E. College, Suratkal, in the branch of mining engineering. The first petitioner in W.P. Nos. 46867 and 46868 of 2001 is admitted to the very same college in the branch of Metallurgy and the second petitioner in the said writ petitions is admitted to the branch of civil engineering. All the three petitioners have completed their first year course. All India Council for Technical Education, New Delhi, has formulated guidelines for effecting change of course to students in an engineering college in the beginning of third semester (second year) course. Accordingly, all these three petitioners have applied for change of course. All the three of them want the branch of mechanical engineering. The college refused to consider their request on the ground that there is no vacancy available in the mechanical engineering course. Challenging the aforesaid decision of the college, the petitioners have filed these writ petitions.

2. Learned Counsel for the petitioner contend that in the mechanical engineering course the total intake is 88 and in addition to that two students could be admitted in pursuance of a Government of India circular by which students

belonging to SC/ST community could be admitted. Similarly, three students belonging to Foreign Nationals (INRA) could be admitted to the said course. Thus, in all, according to them 93 would be the total intake. They contend that out of the 88 normal intake for the previous academic year only 86 students were admitted, thus leaving two seats vacant. Out of the 86 students admitted two were ineligible and four other students in mechanical engineering had taken change and gone to other branches. Thus, only 80 seats were filled in the third semester. However, 5 repeaters have to be taken into consideration. Even thereafter there would be three vacancies and the petitioners could be accommodated in the said three vacancies. Therefore, they contend the college was in total error in refusing the request of the petitioners for change of course. Therefore, they have sought for an appropriate writ or direction directing the respondents to grant them the change of course sought for by them.

3. Per contra, learned Counsel appearing for the college, Sri P.S. Rajagopal, submits as per the guidelines issued by the AICTE branch change could be made only against clear vacancies in particular branch and branch change shall not be permitted to any course in excess of the intake and under no circumstances there shall be any exception to the above stipulation. He contends though out of 88 seats available only 86 seats were filled up, out of them two students became ineligible and four opted out of the course, thus leaving only 80 students in the third semester, five repeaters are to be added to the said class and there are three students who are studying in the supernumerary allotments. Thus, $80 + 5 + 3$ would make up 88, as such there is no vacancy to admit the petitioners to the said course. Hence, the request of the petitioners can not be considered.

4. In order to appreciate the rival contentions, it is necessary to look at the guidelines on which both the parties rely on. A perusal of the aforesaid guidelines make it clear that the facility of branch change at the third semester (second year) level shall be available only to meritorious students and shall not be considered as a matter of right and the said branch change is permitted at third semester/second year level only. The said guidelines make it clear that for the purpose of branch change, the prescribed intake shall be the intake prescribed by the AICTE for the previous academic session when students were admitted to first semester level. Subsequent variations in the intake shall have no bearing for the students for branch change. It also stipulates branch change is permitted if the strength in any branch is not falling below 75% of the prescribed intake. Guideline 7 provides a formula how these vacancies have to be worked out. It sets out that to calculate the prescribed intake for the branch what is to be taken note of is the number of regular students who become eligible to be promoted to the third semester and number of students from previous batches who become eligible to join third semester (along with regular students). If both of them are added it should be within the prescribed intake for the branch. Insofar as the mechanical engineering is concerned normal intake is 88 students which is fixed by the AICTE. In addition to the normal intake the Government of India has earmarked two seats for SC/ST and three seats for foreign nationals. These five

seats would be in addition to the normal intake. What the guidelines refer to is neither the normal intake nor the sanctioned intake. It refers to prescribed intake. Prescribed intake is the intake prescribed by the AICTE when the students were admitted for the first semester level. Thus, for the purpose of this calculation it is the prescribed intake, namely 88 fixed by the AICTE which is to be taken into consideration.

5. Applying the aforesaid formula we have to find out whether any vacancy is there in the third semester mechanical engineering branch which enables the petitioners to be accommodated under the scheme. The undisputed facts are that in the previous year as against the prescribed intake of 88 only 86 students were admitted. Out of the 86 students who took the examination two were found to be ineligible and four students who passed in the first year have opted for change of course. Thus in the beginning though 86 students were there, at the end of the first two semesters there were only 80 students in the mechanical engineering branch. As per Guideline 7 for the purpose of finding out the vacancy the number of regular students who become eligible to be promoted to the third semester is to be taken into consideration first. Accordingly, 80 persons out of the prescribed intake and three persons out of the supernumerary seats ($80 + 3 = 83$) are the persons who would be eligible to be promoted to the third semester. For this is to be added the number of students from previous batches who would be eligible to join third semester. They are five in number. Therefore, $83 + 5 = 88$ would be the total number of persons in the third semester course of mechanical engineering, that is the prescribed intake as defined under the rules. Therefore, no vacancy exists in the mechanical engineering branch in the third semester.

6. Learned Counsel for the petitioner contended that the Court should be liberal in interpreting these regulations so as to advance the cause of justice and give benefit to the students. In support of this contention he relies on the judgment of the Supreme Court in *C.W.S. (India) Limited Vs. Commissioner of Income Tax*, where the Supreme Court has quoted a passage from *Maxwell's Interpretation of Statutes* (12th edition) which reads as under:-

"1. Modification of the language to meet the intention.--Where the language of the statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the Legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and the intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskillfulness or ignorance of the law, except in a case of necessity,

or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: "the canons of construction are not so rigid as to prevent a realistic solution" .

7. Learned Counsel submits in a given case this prescribed limit of 88 may exceed when all the 88 students admitted in the previous year pass the first two semesters and five students who could be admitted under the category of supernumerary allotments, then the prescribed limit will exceed and thus no sanctity could be attached to these numbers. Under these circumstances, it is possible for this Court to consider the request of the petitioners and accommodate them, though in the aforesaid calculation it exceeds the prescribed limit. Secondly, he contends for the purpose of finding out the vacancies it is not appropriate to take the intake as 88, it has to be considered as $88 + 5 = 93$ or the persons who are admitted under the supernumerary seats should not be included in the original intake. In either event the petitioners would be eligible for admission to third semester course. A bare perusal of the aforesaid guidelines make it clear that no student could seek for change of course as a matter of right. The said benefit is extended as a concession only to meritorious students which is again dependent on the vacancies being available in any particular branch. Availability of a seat in a particular branch is a condition precedent for entertaining any application by an intended applicant for change of course. The guidelines specifically make it clear that under no circumstances there shall be an exception to the stipulation contained in Guideline 7. When by a formula how this vacancy is to be arrived at, how the said vacancies have to be filled up, have been clearly set out by a professional body like the AICTE it is not open for this Court under the guise of either a beneficial interpretation or so as to arrive at a realistic solution to give a go-by to the formula and direct the authorities to admit students contrary to the guidelines. Here it is not a question of interpreting a plain language. Here it is working out a formula which is meticulously worked out by a professional body. There cannot be two variations in working out a formula. Under these circumstances, I am of the opinion when a student gets admission to an engineering course in a particular branch, in the normal circumstances he is expected to complete the said course in the said branch. Only as an exception a provision is made for change of course in the midway. As is clear from the guidelines it is not a matter of right, it is a matter of pure concession and it is a matter of complying with the guidelines prescribed by the professional body. Under these circumstances when there is no vacancy it would not be appropriate for this Court to direct the college to admit the students in contravention of the guidelines. The guidelines specifically provide what is the prescribed intake and how the said intake has to be calculated. In fact it also categorically states subsequent variations in the intake shall have no bearing on the students eligible for branch change. It is only after the AICTE prescribed the intake as 88 seats, the Government by notification which is communicated to the college every year has made variations in the intake by adding five more seats

under the aforesaid category. Those guidelines also make it very clear that if those are unfilled they shall not be filled up or allocated to any other student belonging to the other category. In other words there is a total prohibition for allotting the supernumerary seats to other persons. Under these circumstances, I do not find any merit in the contentions raised by the learned Counsels for the petitioners. Accordingly, the petitions are dismissed.

8. Learned Counsel for the petitioner in W.P. No. 41213 of 2001 submits the petitioner had the benefit of an interim order throughout the pendency of the writ petition and as he intends to challenge the order passed just now, he states that the order passed may be stayed for a period of four weeks. The order passed in W.P. No. 41213 of 2001 is stayed for a period of four weeks.