
(2010) 02 KAR CK 0045
In the Karnataka High Court
Case No : W.A. No. 1086 of 2008

Krishnendu Halder and Sri M. Visvesvaraya Institute of Technology

APPELLANT

Vs

Visweswaraiah Technological University, Sir M. Visweswaraiah Institute of Technology and State of Karnataka

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 14

Citation : (2010) ILR (Kar) 1735 : (2010) 5 KarLJ 675

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Naik and Naik Law Firm, for the Appellant; B.B. Patil and Assts. for R1 and R2, K.S. Mahadevan, for R3 and T.K. Vedamurthy, HCGP for R4, for the Respondent

Judgement

B.V. Nagarathna, J.—This appeal is filed by a student who is the petitioner in the writ petition by challenging the order dated 24.6.2008 passed by the learned Single Judge, in W.P. No. 83/2008. The appellant is a student who is presently studying in the I semester of Bachelor of Engineering (B.E.) in Information Science and Engineering in the 3rd respondent-College. He was admitted in the said course during the academic year 2007-08. According to the appellant, he belongs to the scheduled caste community of "MALO" in the State of West Bengal. He passed his plus-two examination of the West Bengal Council of Higher Secondary Examination in 2007 securing in all 132 marks out of 300 marks in the elective subjects and secured an overall 44% marks in the optional subjects. The petitioner's admission in the 3rd respondent-College, had to be approved by the 1st respondent-University which however, by its communications dated 27.12.2007 and 07.12.2007, which are at Annexures M and K, informed that admission of petitioner could not be approved as the marks obtained by him in the optional subjects were less than what had been prescribed by the University.

According to the University, the appellant had not fulfilled the eligibility criteria as per the State Government order in force as well as the criteria fixed by the University. The said communications were challenged by the appellant in the writ petition by seeking a declaration that since he belonged to scheduled caste category, he was entitled to the reduced eligibility criteria which had been extended to the scheduled caste category students of the State of Karnataka, Further, he sought a declaration that the regulations of the AICTE as per Annexure-D would govern his admission.

2. In response to the said writ petition, the University filed its statement of objection, inter-alia, contending that u/s 14 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, the State Government had issued a notification dated 28.2.2006 framing the Rules for Selection of Candidates for Admission to Government seats in Professional/Educational institutions Rules and the said Rules had statutory force and were binding on the University; that as per Rule 3 of the said Rules with regard to SC, ST and OBC candidates 45% to 40% were applicable with regard to the candidates belonging to the State of Karnataka and the same did not apply to the said category from outside the State of Karnataka and that the non-Karnataka students were not entitled to the benefit prescribed for SC, ST and OBC candidates of the Karnataka State, Placing reliance on the decision of the Apex Court in the context of the right of non-Karnataka students to claim reservation in the State of Karnataka, it was contended that since the petitioner/appellant had failed to meet the eligibility criteria as per Rule 3, the University was justified in issuing the said communications and that the eligibility criteria were prescribed considering the needs to maintain minimum standards of professional education which is a mandatory requirement and which could not be relaxed. Accordingly, the University sought dismissal of the said writ petition.

3. The learned Single Judge on hearing the arguments on -both sides concluded that a candidate belonging to the scheduled caste in the State of West Bengal i.e. a non-Karnataka scheduled caste candidate was not entitled to the benefit of reservation or other privileges in the State of Karnataka and for the very same reason that the learned Single Judge stated that the reduced eligibility criteria prescribed for candidates belonging to scheduled caste and scheduled tribe of other states cannot be extended in the State of Karnataka and that the Principal of the College had without looking these aspects of the matter had admitted the petitioner and therefore, the said admission could not be regularised. Accordingly, he dismissed the writ petition by holding that the petitioner was not entitled to the reduced eligibility criteria as fixed by the 2006 Rules framed by the State Government. Being aggrieved by the said order of dismissal, the petitioner has preferred this appeal.

4. We have heard Sri Madhusudan Naik, learned Senior counsel for M/s. Naik and Naik Law Firm, for the appellant and M/s, B.K. Patil Associates for respondents 1 and 2 -University and Sri Vadamurthy, learned Government Pleader for

respondent No. 4-State and Sri K.S. Mahadevan, learned Counsel, for respondent No. 3-College.

5. It is contended on behalf of the appellant that the appellant is entitled to reservation in the State of Karnataka with lower eligibility criteria and the privileges which are available to a scheduled caste category candidate of the State must be given to the appellant even though he is outside the State of Karnataka, he must be given similar benefit when he seeks admission in this State. That the University in para 2.2. of the regulations dealing with eligibility criteria fixed for the scheduled caste categories did not make a distinction between those belonging to the State of Karnataka and those who are outside the State and therefore, the University was not justified in declining to regularise the admission of the appellant. As an alternative and last submission, it was contended by the learned Senior Counsel that, in view of the large vacancies of seats for that particular academic year, taking into consideration the directions and reliefs granted in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , the appellant is entitled to regularisation of his admission and therefore, the learned Single Judge was not right in declining to grant the reliefs to the appellant on the ground that he did not belong to a scheduled caste category within the State of Karnataka and that the directions given in Adhiyaman's case, did not apply to him. He therefore, requests this Court to grant the reliefs sought by the appellant and thereby regularised his admission in the University.

6. Per contra, it is contended on behalf of the University that it is the University which can prescribe the eligibility criteria for admission of students to a professional college and that the said eligibility criteria must be such which would maintain and enhance the standard of professional education. Considering the fact that the AICTE has consistently reduced the eligibility criteria particularly for scheduled caste and scheduled tribe category students, the University thought it fit that since such students and other similarly placed students were not upto the mark after joining the professional course and to maintain the standards of professional education it prescribed the eligibility criteria as 40% for scheduled caste and scheduled tribe students and 45% for general merit students as per Annexure-R3 and since the appellant did not comply with the eligibility criteria fixed for general merit candidate, his admission was not entitled to be approved by the University. He has also submitted that the students coming from outside Karnataka and belongs to scheduled caste and scheduled tribe category cannot claim reservations and benefits which are available to scheduled and scheduled tribe of the State of Karnataka and that such a student can be regularised as general merit category student and since in the present case, the appellant did not comply with the prescribed minimum eligibility criteria fixed by the University, the University was justified in issuing the communication and that there is no merit in this appeal. He has relied upon the decision in the case of State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, in support of his submission.

7. The learned Government Pleader for the State adopted the arguments of the learned Counsel for the University while the learned Counsel for the College supported the submissions made by the learned Counsel for the appellant.

8. In reply, learned Senior Counsel Sri Naik has drawn our attention to the pronouncement made in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, to contend that it is the Central authorities which have the paramount power to determine the eligibility criteria and that in the instant case when once the appellant has complied with the said criteria, it is the minimum criteria to be complied with by every student to be entitled to have his admission regularised even if the appellant is not considered as a Scheduled Caste candidate within the State of Karnataka.

9. Having heard the learned Counsel on both sides and on perusal of the material on record the only point that arises for our consideration is:

Whether the appellant is entitled to be regularised in the first year B.E, Course in the 3rd respondent College in view of his complying with the minimum eligibility criteria fixed by the AICTE for the general category students?

10. Before answering this question, it is necessary to take into consideration the undisputed facts of the case, namely that the appellant is a student who hails from the State of West Bengal and he belongs to the Scheduled caste community of "MALO" which is recognised as scheduled caste within the State of West Bengal. It is also not in dispute that his over all percentage is 44% which is lower than the percentage fixed by the University with regard to the general merit category students fixed by the University which is at 45%. It is also been brought to our notice during the course of arguments that for the particular academic year in question i.e., 2007-08, there were about 5000 Engineering seats which fell vacant on account of there being no admission made to the said seats. It is also brought to our notice that even the seats which were earmarked for the Government quota were not filled and such seats were surrendered to the respective Managements for the purpose of being filled up in accordance with law.

11. However, it is necessary to state the position of law with regard to the maintenance and co-ordination of standards with regard to professional or higher education as enunciated in a catena of cases by the Hon'ble Supreme Court and also re-iterated in Adhiyaman's case, While dealing with Entry 66 of List I, Entry 11 of List II and Entry 25 of List III of the Seventh Schedule of the Constitution the Supreme Court held that the subject "Co-ordination and determination of standards of institutions for higher education or research and scientific and technical Institutions" has always remained the special preserve of the Parliament This was so even before the Forty Second Amendment, since Entry 11 of List II even then was subject among others, to Entry 66 of List I. After the said Amendment, the Constitutional position on that score has not undergone any change and all that has happened is that Entry 11 was taken on from List II and amalgamated with Entry 25 of List III. However, it has to borne in mind that

new Entry 25 of List III, is subject to the provisions among others of Entry 66 of List I. Therefore, it cannot be in doubt that the legislation with regard to co-ordination and determination of standards in Institutions for higher education or research or scientific or technical Institutions has always been the preserve of Parliament, Nevertheless, after the amendment, it is relevant to note that entry 25 of List III is in the concurrent list which enables the State Government also to prescribe the standards of education particularly with regard to eligibility criteria for admission to professional colleges. It is noticed in this context that a number of decisions have been rendered by various High Courts and Supreme Court while interpreting the powers with regard to enunciation of eligibility standards for admission in the matter of professional education.

12. The next contention which has to be taken up at this stage itself is that the appellant herein is not seeking reservation in the Karnataka State, but that the benefits or privileges which are eligible to the scheduled caste and scheduled tribe candidates in Karnataka must be made applicable to scheduled caste/schedule tribe student who comes from outside Karnataka by way of migration to Karnataka State.

13. In so far as this contention is concerned the same would not detain us long since the Supreme Court in the case of Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, and Action committee on issue of Caste Certificate to Scheduled castes and Schedule Tribes in the state of Maharashtra and Anr. v. union of India and Anr. reported in 1994 AIR SCW 3305, has categorically held that a student who comes from a particular state claiming scheduled caste and scheduled tribe status, cannot migrate to other State and disturb when it comes to reservation as such. The view of the Supreme Court has been that the status of scheduled caste or Scheduled tribe is restricted to the State which issues such a certificate as per the Presidential order. The relevant portion, of the judgment in Marri Chandra Shekar Rao's case is quoted below:

It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberat atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other arms should also ensure that they make way for the disadvantaged and disabled of that part of the

community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities, But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic: approach to the problem.

14. The very same view has been followed in Action Committee on Issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in The State of Maharashtra and Anr. reported in 1994 AIR SCW 3305. In view of these decisions we cannot accept the contention of the learned Senior Counsel for the appellant that even If a schedule caste and schedule tribe category students outside the State of Karnataka does not claim reservation within the State of Karnataka, he can still be given other benefits which are prescribed to students belonging to the State of Karnataka, The scheduled caste and scheduled tribe or other backward class students from outside the State of Karnataka can only be considered in the general merit category within the state of Karnataka, All Government Orders and Regulations made for such candidates belonging to Karnataka State cannot be made applicable to the non-Karnataka candidates of the same category. Under the circumstances, the benefit of a lower eligibility criteria prescribed by the State for the scheduled caste and schedule tribe category with regard to admissions prescribed by the University cannot be made applicable to the appellant herein. He has to meet the requirement as prescribed for a general merit category.

15. Having said this, it is now to be seen as to whether the appellant has requisite merit requisite vis-a-vis the eligibility criteria prescribed for a general merit category student. As seen from Annexure R3, what has been prescribed by the University is 45% for general merit candidate and in the instant case, the appellant has secured overall percentage of 44% only. Therefore, he was not eligible to be admitted as per the norms fixed by the University for general merit candidate. Then, the question that now arises is, as to whether the prescription made by the University should have an overriding effect as opposed to the prescription made by the AICTE with regard to the admission to the B.E. course. In this context, it would be relevant to note that the AICTE has fixed 40% for general merit category and 35% for SC and ST category. Since in the instant case, the appellant has to be considered as one belonging to the general merit category, the only question is, as to whether he has to qualify by meeting the minimum eligibility requirement as fixed by the AICTE i.e. 40%.

16. In this context, the Supreme Court has considered a situation where a person does not qualify as per the norms fixed by the State of Karnataka, but qualifies the eligibility criteria fixed by the AICTE and in the said context as to how the relief can be given to such persons. It would be of relevance to extract Sub para 5 and 6 of Para 41 of Adhiyaman's case which reads as follows:

Para No. 41 (v) When there are more applicants than the available situations/

seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Center or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

17. Taking into consideration the directions given in the said paragraphs, we have to consider as to whether the appellant is entitled to the relief in the instant case. However, before doing that it is necessary at this stage to answer the contention of the learned Counsel for the University with regard to the problem of following standards in the University or professional education on account of lowering of standards with regard to the eligibility criteria fixed by the Central Authority viz. the AICTE. He has drawn our attention to certain observations made by the Supreme Court in *Bratheep's Case* AIR 2004 Supreme Court 1861. In the said case, the facts were that, in addition to the norms fixed by the AICTE for admission, the State of Tamilnadu had prescribed qualifying in an entrance test by students who intended to join the professional course. In the said decision after making reference to *Adhlyaman's case* as well as *Preethi Srivetsave's case*, it is stated that, the mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education and therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by the AICTE they should be admitted even if they fall short of the criteria prescribed by the State. It is also observed that the scope of the relative entries in the Seventh Schedule to the constitution have to be understood in the manner as stated in *Preethi Srivatsava's case*.

18. In the case of *Dr. Pmethi Srivatsava's case* it has been held that, "Norma of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I, This would be consistent with promoting higher standards for admission to the higher education courses, But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education.

Though the State Government has the power to prescribe the norms for admission, the same must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in exercise of its powers under Entry 66, List I. "Eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central Statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case, the minimum standard as laid down by the central statute or under it, have to be complied with by the State while making admissions. It may, in addition lay down other additional norms for admission or regulate admissions in exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

19. In the instant case what we have to take judicial notice of the fact that about five thousand seats fell vacant not on account of the higher standards fixed by the State, but there being lesser number of students opting for engineering course. This is a trend which is noticed since the last few years particularly in the State of Karnataka when high intake of students have been permitted by the AICTE in the various colleges. Keeping in view the fact that the large number of vacancies is not on account of eligible students not being available, but the demand being lesser than the supply as such, we need not go into the question as to whether the prescription of standards by the University in the instant case has resulted in the seats being vacant.

20. It is also brought to our notice during the course of arguments that for the academic year 2008-09 nearly 12,000 seats remained vacant

21. In *Bretheep*'s case itself reference has been made to *Adityaman*'s case and *Prmthi Srivatsava*'s case wherein it has been stated that the standards fixed must be realistic which are attainable and within the reach of the candidates. The said observations are not contradictory. The observations made by the Supreme Court in *Adityaman*'s case are that it is true in practice, it may happen in institutions with higher resources and students and teachers with higher marks and qualifications, respectively, than are prescribed apply and compete for the places, seats or vacancies as the case may be. However, It is equally true that when the vacancies are available for institutions or students or teachers as the case may be, the applicants cannot be denied the same on the ground that they do not fulfill the higher requirements laid down under the State Act, if they are qualified under the Central Act. Similarly, the institutions cannot be recognised or disaffiliated on the ground that they do not fulfil the higher requirements under the State Act although they fulfill the requirements under the Central Act. It has also been observed that once it is accepted that the whole object of the Central Act is to determine and co-ordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standards in such education, it will have to be held that such norms, standards and requirements etc, will have to be uniform throughout the country. Uniformity

for the purposes of co-ordinated and integrated development of technical education in the country necessarily implies a set of minimum standards, the fulfillment of which should entitle an institution and its alumni, titles, degrees and certificate to recognition any where in the country. It is true that the higher than the minimum standard implies compliance with the minimum standard.

22. With regard to the basis of the directions given in sub paras 4 and 5 of para 41 of the said decision, it has been stated in the very same case that the "norms and standards" have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the co-ordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel.

23. Thus, keeping in mind the large number of vacant seats in technical education, the directions at sub paras (v) and (vi) at para 41 given in *Adiyamman's* case, the learned Single Judge should have taken into consideration the fact situation which pertained to the relevant academic year in question and as to whether the appellant herein, even if considered in the general merit category could be granted the relief in terms of the directions of the Supreme Court

24. It is seen that the Supreme Court has nowhere stated that the minimum standards as fixed by the Central Authority such as the AICTE will have to be violated or the power of the State Government to fix higher standards in professional education is curtailed but, at the same time took into consideration the interest of the students particularly the interest of rural, backward, socially and economically backward students in the country and in order to ensure that seats in professional colleges do not go waste have adopted a via media to accommodate students who apply with the minimum eligibility criteria to have the benefit of professional education in various institutions. In the instant case, since the relevant academic year has already come to an end and since there were about five thousand seats remaining vacant in the said year and keeping in view the fact that, the appellant in the instant case comes within the general

merit category and fulfils the minimum criteria fixed by the AICTE, in our considered view, would be entitled to the benefit of directions given in Adiyemmsn's case. Therefore, the respondent-University was not justified in declining to approve his admission based on the standards which have been prescribed by the University,

25. It is necessary that in every academic year, the University would have to take into consideration the standards it has fixed for that particular year and the standard fixed by the Central Authority viz. the AICTE in the context of eligibility criteria and keep in mind the number of vacancies that arise every year and accordingly give benefit to students who fulfill the conditions mentioned in para 41 sub paras (v) and (vi) on its own without constraining such students to approach the courts for getting reliefs under the said decision. Since the Adhiyaman's case holds the field, students who are similarly situated as the appellant in the instant cast, must be given approval of their admission keeping in view the law as it stands now and thereby prevent such litigants in the beginning of the professional education of such students particularly when they belong to the backward, SC/ST or backward classes.

26. In the circumstances, we modify that portion of the order of the learned Single Judge by holding that the appellant is entitled to the directions given at sub-paras (v) and (vi) of para 41 of Adhiyaman's case and since he has complied with the eligibility criteria fixed by the AICTE for general merit category accordingly, the University is directed to approve his admission and grant all consequential benefits.

For the aforesaid reasons, this appeal is allowed in part.