

(2014) 04 KAR CK 0072

In the Karnataka High Court

Case No : Writ Petition Nos. 22038-22039 of 2013 (EDN-AD)

K.S. Thara and H.S. Manjunath

APPELLANT

Vs

State of Karnataka, Mysore University, Bharathi College of
Education and Vatsalya College of Education

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Constitution of India, 1950 — Article 246(2), 254, 309

Citation : (2014) 2 AKR 712 : (2014) ILR 2602 : (2014) 3 KCCR 1871

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Puttige R. Ramesh, Advocate for the Appellant; B. Veerappa, Additional Government Advocate for Respondent No. 1 and Shri Rajendra Kumar Sungay, Advocate for Respondent No. 2, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. It is the case of the petitioners that they are graduates and admitted to the B.Ed. course in the third and fourth respondent College. Both the colleges are affiliated to the Mysore University. The first petitioner had passed B.Sc. with Mathematics, Electronics and Computer Science as electives while the second petitioner had passed B.A. with Psychology, English and Journalism as electives. The National Council for Teacher Education (NCTE), is the supreme body in the matter of prescribing conditions for Teacher Training. As per the guidelines of NCTE, an applicant to the B.Ed., course must have secured 50% marks at the Degree level. It is stated that both the petitioners satisfied the eligibility criteria.

3. The first respondent had prescribed rules of admission to the B.Ed., course according to which a student ought to have passed the degree and ought to have studied at least two of the prescribed electives. Both the petitioners did not satisfy this requirement, as they had studied only one of the prescribed electives at the degree level. The second respondent - University has been following the

rules prescribed by the first respondent - State. Further an Expert Committee of the University had also suggested as per Annexure-"A", that the admission rules be modified so as to bring the same in line with the NCTE Guidelines. The State has not passed any order either rejecting or granting the proposal of the Mysore University, though similar proposals submitted by the Bangalore and Kuvempu Universities are said to have been accepted. The learned counsel for the petitioner would state that the short question is, that in the event of a conflict between the Rules of admission prescribed by the NCTE on the one side and the University or the State on the other, which is the rule that should prevail. Reliance is placed on the case of *Sujatha Babu Nakaman Vs. Special Officer, Centralised Admission Cell and Others*, wherein it is laid down that when there is a conflict between the Rules of the State and the University, then the one prescribed by the University prevails.

4. Further, the Apex Court in the case of *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others*, has discussed this aspect of the matter at length and has settled the legal position. Therefore, it is claimed that the petitioners satisfy the eligibility criteria prescribed by the NCTE and they are deemed to be properly admitted to the B.Ed., course notwithstanding the fact that they do not fulfill the criteria prescribed by the State, and seeks that the petition may be allowed.

5. The petition is opposed by the learned Government Pleader who seeks to canvass an argument that the legal position sought to be advanced would be relevant if there was repugnancy in the prescription of eligibility as indicated by the NCTE and the State Government.

Since the State Government only prescribes a higher qualification, it cannot be said that there arises any repugnancy and the learned Government Pleader seeks to place reliance on certain observations in the very decision in *Maa Vishno Devi Mahila Mahavidyalaya* (supra).

The discussion on the legal principle on this particular aspect is to be found from Paragraph 55 onwards, where the Apex Court has discussed the controversy with reference to examples of decided cases and the same is extracted verbatim for ready reference:

55. Now, we may examine some of the judgments of this Court which have dealt with these aspects. In *State of Tamil Nadu v. Adhiyaman Educational Research Institute*, the Supreme Court while discussing various aspects in regard to constitutional validity of Tamil Nadu Private College Regulation Act, 1976 and the provisions of the All India Council for Technical Education Act clearly spelled out the preferential role of the Council as under: (SCC pp. 118-20, Para. 22)

22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of

such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country.... It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well...

56. Further, this Court, while noticing the inconsistency between the Central and State statutes or the State authorities acting contrary to the Central statute, held as under: (Adhiyaman Educational Case, SCC p. 135, paras. 41 & 43)

41....(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 derecognize 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.

* * *

43. As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the derecognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

57. Still, in another case of *Jaya Gokul Educational Trust v. Commissioner &*

Secretary to Government Higher Education Deptt., this Court reiterating the above principle, held as under: (SCC pp. 243-44, para. 22)

22. As held in T.N. case the Central Act of 1987 and in particular, Section 10(K) occupied the field relating the "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterized as requiring the "approval" of the State Government. If, needed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(K) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. case, it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.

58. This view of the Supreme Court was reiterated with approval by a larger Bench of the Supreme Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya and Others, . While discussing in detail the various legal issues in relation to grant of affiliation/recognition to the institution and permission to start a new college, the Court held as under: (SCC pp. 29, 32 & 37, paras. 53-54, 64 & 74)

53. The Court then considered the argument put forward on behalf of the State that while it would be open for the Council to lay down minimum standards and requirements, it did not preclude the State from prescribing higher standards and requirements.

54. Negating the contention, the Court quoted with approval the following observations of B.N. Rau, J. in G.P. Stewart v. Brojendra Kishore Roy Choudhury (AIR pp. 632-33):

It is sometimes said that two laws cannot be said to be properly repugnant unless there is direct conflict between them, as when one says "do" and the other don't, there is no true repugnancy, according to this view, if it is possible

to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say don't but in different ways. For example, one law may say "no person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "no person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time. Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely, the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified.

(emphasis supplied)

6. Per contra, the learned Government Pleader would seek to place reliance on the following observations in relation to the principle of repugnancy, and would refer to the following paragraph of the very same judgment, which read thus:

The principle of repugnancy and its effects were discussed by this Court in the case of *S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others*, , wherein it held as under:

7. It is thus settled law that Parliament has exclusive power to make law with respect to any of the matters enumerated in List I or concurrent power with the State Legislature in List III of the VIIth Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the entries in List III. If the said law is inconsistent with or incompatible to occupy the same field, to that extent the State law stands superseded or becomes void. It is settled law that when Parliament and the Legislature derive that power under Article 246(2) and the entry in the Concurrent List, whether prior or later to the law made by the State Legislature, Article 246(2) gives power, to legislate upon any subject enumerated in the Concurrent List, the law made by Parliament gets paramountcy over the law made by the State Legislature unless the State law is reserved for consideration of the President and receives his assent. Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and court would endeavour to give harmonious construction. The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the

law. The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Government and the Central Government in working the provisions of the Act. It is the State Government that operates the provisions of the Act through its officers. Therefore, sub-section (1) of Section 213 gives power to the State Government to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. By necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Government to man the Motor Vehicles Department. What was done by the Central Government was only the prescription of minimum qualifications, leaving the field open to the State Government concerned to prescribe if it finds necessary, higher qualifications. The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State. Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act. In the latter event, i.e., prescribing lesser qualifications, both the rules cannot operate without colliding with each other. When the rules made by the Central Government u/s 213(4) and the statutory rules made under proviso to Article 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers of the State Government vis-a-vis the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act.

7. A plain reading of the views expressed by the Supreme Court would make it clear that insofar as the present controversy is concerned, it is with reference to the eligibility criteria prescribed by the NCTE vis-?-vis the eligibility criteria prescribed by the State Government and it has been directly addressed in the above paragraphs 55 to 58, whereas the observations which are sought to be relied upon by the learned Government Pleader are in a different context and therefore, are not relevant.

Following the dictum of the Supreme Court insofar as it refers to Paragraphs 55 to 58 which would squarely cover the point in issue, the writ petition stands allowed. The State Government in the present context, cannot depart from the Guidelines prescribed by the NCTE in the matter of fixing guidelines for admission and curriculum which are already in place.

Accordingly, the respondents are directed to approve the admission of the petitioners to the course and announce the results of the petitioners who are said to have taken their examinations pursuant to an interim order passed by this court, during the pendency of this petition. The petition is allowed in terms as above.