

(1982) 02 KAR CK 0032
In the Karnataka High Court
Case No : WP 22812/81

Laxmi Narayana K. Swamy

APPELLANT

Vs

Selection Committee for I Mbbs and Another

RESPONDENT

Date of Decision : 08-02-1982

Acts Referred:

Constitution of India, 1950 — Article 162
Karnataka Medical Colleges (Selection for Admission) Rules, 1981 — Rule 2(1)(A)
Karnataka State Universities Act, 1976 — Section 27 (2) (C)

Citation : (1982) 2 KarLJ 64

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioner is a native of Bangalore. He studied at Burdwan the 1st standard and studied 2nd standard to 6th standard at Bangalore. Similarly, 9th and 10th standards were completed at Bangalore after doing 7th and 8th standards at Burdwan. After he passed his 10th standard, he went to United States and studied at Washtenaw Community College, Michigan, for two years to pass the Associate Degree of that college with Physics, Chemistry and Biology among other subjects. It is useful to notice that the petitioner passed his 10th standard examination at Bangalore in the year 1973 while he obtained the Associate Degree from the aforementioned college in the United States of America in the year 1980, thus leaving a gap of five years. As to what he was doing or what he was studying in those five years is not stated by him which is not of much relevance either.

2. The petitioner asserts that he studied three subjects namely Physics, Chemistry and Biology in the 12th standard and that he has secured 86.2% in the I year and 73.1% in the II year having an average of 80% in the two years. After returning to India the petitioner applied for admission to I year MBBS for the academic year 1981-82 in Karnataka State for one of the seats available to the State Government in the colleges run by it or seats available to it in colleges run by private management, admission to which are all regulated by the Karnataka Medical Colleges (Selection for Admission Rules, 1981) (hereinafter

referred to as "the Rules"). The petitioner had made two applications; one for a seat in the Government Medical Colleges and the other for a seat in the seats available to the Government in private medical colleges. He was not called for interview by the Selection Committee constituted under the Rules. Therefore, the petitioner approached this Court and presented a petition under Art. 226 of the Constitution seeking a Mandamus to the Selection Committee to consider his case.

3. When W.P. No. 16596/81 was disposed of by me after perusing the original records, I held therein that the rejection of the application by the Selection Committee was justified having regard to the fact that there was not enough material produced by the applicant to satisfy the requirement of eligibility by domicile as prescribed by R. 3 (1) of the Rules. That application related to a seat in any of the Government Medical Colleges. The present petition is filed because the petitioner was confident that he had presented all the necessary papers to satisfy the requirement of domicile along with the application for one of the seats available to the Government in private medical colleges. He was not called for interview even in respect of this application. Therefore, the present petition seeking an order or direction in the nature of a Writ of Mandamus to the respondent to interview and consider the application of the petitioner for one of the seats available to the Government in private medical colleges.

4. On notice, the respondent-Selection Committee has entered appearance and filed its statement of objections. The stand taken by the Selection Committee is that the petitioner does not satisfy the requirement of R. 2 (1) (a) of the Rules prescribing academic eligibility. The petitioner not being a student who has passed the II PUC examination held by the Pre-University Board of Karnataka, should have passed an equivalent examination wherein he has studied Physics, Chemistry and Biology as optional subjects in the 12th standard or class and further R. 2 (1) (a) is in conformity with the prescription of standards by the Indian Medical Council. It is therefore contended that since the petitioner lacked the initial academic eligibility, he was not called for interview.

5. Therefore, the questions that fall for determination are:

Whether the student can be held to be eligible under R. 2(1)(a) of the Rules and if so whether his application should be considered by the respondent-Selection Committee?

6. The Rules are made by the State Government in exercise of its executive power under Art. 162 of the Constitution of India. R. 2 (1) (a) of the Rules is as follows:

"2. Eligibility.-(1) No person shall be eligible for admission:

(a) If he has not passed the two year PUC Examination conducted by the Pre University Education Board of the State of Karnataka with Physics, Chemistry and Biology as optional subjects in the 12th standard or class."

It is seen that the only qualifying examination prescribed for the purpose of eligibility under sub-cl. (a) of sub rule (i) of R. 2 of the Rules is the PUC Examination conducted by the Pre-University Education Board of the State of Karnataka with Physics, Chemistry and Biology as optional subjects. In other words there is exclusion of all other Indian citizens who have passed their PUC examination from other States to which to jurisdiction of the Karnataka Pre-University Education Board does not extend. Similarly, it excludes all foreign examinations which may correspond to the aforementioned PUC examination of this State. The rule itself provides eligibility for those who have passed an equivalent examination in which the candidate has studied Physics, Chemistry and Biology as optional subjects in 12th standard or class. What really emanates from the second half of cl. (a) of Sub-rule (1) of R. 2 is that not only the students who have passed the PUC examination conducted by the Karnataka Pre-University Education Board but also those who have passed equivalent examination are also eligible subject to their having studied Physics, Chemistry and Biology in 12th standard or class as their optional subject. In other words 12 years schooling is a pre requisite apart from such examination on being held equivalent. It is in respect of this that the Indian Medical Council, in its Minimum Recommendation of Under Graduate Medical Examination or Education provided for Higher Secondary Indian School Leaving Certificate Examination which is equivalent to 10 plus 2 Higher Secondary Examination after a period of 2 years study, the last two years of study comprising Physics, Chemistry, Biology and Mathematics or any other elective subject with English at a level not less than the Core Course for English as prescribed by the National Council for Education Research and Training after the introduction of the 10 plus 2 plus 3 years educational structure as recommended by the National Committee of Education.

7. Mr. M.H. Motigi, learned counsel appearing for the respondent Selection Committee has not only stressed this aspect but point out that having regard to the strict language of the rule that all these subjects should have been studied by the students in the 12th year and not separately spread over earlier years of education as in the case of the petitioner as evidenced by the Annexure produced by the petitioner himself. He has drawn attention of the Court to Annexure B2, B3, B4 and B5. In Annexure B2 it is indicated that the petitioner studied the Concepts of Biology and General Chemistry in the Final Examination of 1979 in Spring and Summer. He studied Introduction to Physics in the Final Examination in the Fall of 1979. Human Biology and General Chemistry were studied by him in the Final years in the Winter of 1980 as evidenced by Annexures 3 and 4 respectively. He studied applied Physics from which he appeals to have withdrawn in the Spring of 1980. It is therefore made out by the learned Government Pleader that the petitioner having not studied all the three subjects Physics Chemistry and Biology in one year cannot be said to be qualified under cl. (a) of sub-rule (1) of R. 2 of the Rules.

8. This argument is not strictly in conformity with the recommendations made by the Indian Medical Council. The Indian Medical Council has prescribed two years

study of the relevant subjects Physics, Chemistry and Biology having regard to the approved scheme of education in this country spread over 15 years for a normal Degree Course, that is, 10 plus 2 plus 3, ten years in the Secondary stage, two years in the Pre-University stage and three years at the University Stage.

9. It is most unfortunate that the rule is very unhappily worded in the Rules. It is very difficult to make out the true intention in prescribing study of the three subjects in the 12th standard. The only way in which it can be understood so as to give an effective meaning is that in the 12th class or standard he should have studied all the three subjects. Such an interpretation must make the argument of the argument of the learned Government Pleader very attractive.

10. But unfortunately what is in the way of accepting that construction is the provision made in the Karnataka State Universities Act (hereinafter referred to as the Act). S. 27 of the Act speaks about the powers of the Academic Council. Sub-cl.(c) and (k) of sub-sec. (2) of S. 27 of the Act are as follows:

"(2) Without prejudice to the generality of the foregoing and subject to such conditions as may be prescribed by or under, the provisions of this Act, the Academic Council shall exercise the following powers, namely:

(a)

(c) to make Regulations regarding the Schemes of examinations and conditions on which the students shall be admitted to the examinations, degrees, diplomas, certificates or other academic distinctions;

(k) to make Regulations prescribing equivalence of examinations".

From the above it is clear that unless the University declares equivalence it is not open to the Selection Committee to reject the applications of candidates as not being in conformity with the rule. That is the view I took in *Bogesh Reddy v. Selection Committee*, (1981) 1 Kar. L.J. 335. No doubt, the Rule that came up for consideration in *Bogesh Reddy's case*, (1981) 1 Kar. L.J. 335, was slightly different in as much as the rule itself required the University to declare the equivalence. But change in the rule should not affect the real position in law.

11. The Karnataka State Universities Act is an Act of Legislature. Once a law occupies the field as in the case of prescribing the Academic standards for admission to any of the Courses offered by the Universities in Karnataka State by cl. (c) of sub-sec. (2) of S. 27 of the Act, it will not be open to the State Government, in exercise of its executive power under Art. 162 of the Constitution to prescribe in the same field by an executive order.

12. It is now well settled that the field occupied by law will not be available for the State to exercise its executive power (see *Chitralekha's case*, AIR 1963 SC 1823).

13. The result is that unless the concerned Universities in Karnataka in

conformity with the standards laid down by the Indian Medical Council for the First Year MBBS Course of the respective Universities prescribe the minimum Academic standards and its equivalent, it will not be open to the Government to prescribe the Academic qualifications much less its equivalent to the two years PUC examination held by the Karnataka State Pre-University Education Board. While the prescription of two years Course is precluded having regard to the Universities Act, it may have been done as the minimum standard required for admission to I Year MBBS Course with the approval of the Universities concerned. Prescription of the equivalent examination in cl. (a) of sub-rule (1) of R. 2 of the Rules appears to be incompetent of the power conferred under Art. 162 of the Constitution having regard to the provisions of the Act.

14. In this case, the petitioner has produced along with his application, as is seen from the records, a provisional Certificate issued by the Karnataka University, Dharwar declaring him provisionally eligible for admission to I Year MBBS Course of that University subject however to further scrutiny of the certificates to be produced by the candidate and suitable approval in due course. The Selection Committee should not have ignored that Certificate.

15. I have already pointed out that the rule in earlier years was somewhat different in so far as the candidates who had passed the two years PUC Course or equivalent examinations. The State Government ought to have taken sufficient care to provide for proper prescription of minimum academic eligibility to secure a seat for I Year MBBS Course. Apparently, the power enjoyed by the Universities in the State has been ignored while taking note of what the Indian Medical Council has recommended. Having regard to the fact that it is not possible for this Court nor proper for this Court to declare the equivalent, it is a matter for the Selection Committee to refer to the Universities in the State of Karnataka and get their views in accordance with S. 27 of the Act. If that is done these difficulties will not arise. In the earlier years students having passed their 12th standard from American Schools have been admitted. Therefore, there is no justifiable reason why the petitioner should not be called for interview after ascertaining from the Universities in the State whether the certificate produced by him is equivalent to two year PUC examination of the State.

17. Admissions to Academic year 1981-82 is already over. No useful purpose will be served in asking the Selection Committee to interview the petitioner at this late stage. All that can be done in the situation is that the petitioner may be interviewed for the Academic Year 1982-83 on the same application after the Selection Committee has satisfied itself with the Certificates produced by the petitioner as equivalent to the passing of PUC examination in the State in accordance with the observations made in the course of this order.

18. In the result, this petition is allowed. Rule will issue and be made absolute.

19. Sri M.H. Motigi, learned Government Pleader is permitted to file his memo of appearance in two weeks.