
(1996) 10 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 31874 of 1995

Lovely Joseph

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Dentists Act, 1948 — Section 10 A, 10 A (4), 10 B, 10 C

Citation : AIR 1997 Kar 269 : (1997) ILR (Kar) 424

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : V.A. Mohan Rangam, for the Appellant; A.V. Srinivasa Reddy, Addl. Govt. Advocate, L.M. Panduranga Swamy and M/s. Vagdevi Associates, for the Respondent

Judgement

1. The petitioner has approached this Court of commanding upon the 2nd respondent-University who approved the admission of the petitioner is to the BDS Course, which he had given in the 4th respondent-college during the academic year 1994-95 by the Director of Medical Education under B.Sc. quota.

2. According to the petitioner she had completed PUC with Physics, Chemistry and Biology and she also acquired the B.Sc. Degree.

3. The regulations framed under S. 20 of the Dentist Act, 1948, provides for the following eligibility criteria for admission to the BDS course:

" a) The candidate has completed the age of 17 years at the time of admission
traumatized will complete this age on 31st December of the year of his admission; provided that the candidates who are being admitted to the 5 year course, including 1 year for pre-Dental Course, should have completed the age of 16 years at the time of admission or will complete this age on 31st December of the year of his admission to the pre-Dental Courses;

b) has passed the two years intermediate or equivalent course thereof, with Science subjects, viz., Physics, Chemistry and Biology from a recognised Indian

University or pre-University/Intermediate Board;

c) B.Sc. (Part I) Examination of an Indian University as laid down by the University Grants Commission (UGC):

NOTE :

A student who has passed the B.Sc. Examination with one or more of the subjects mentioned at (b) above would be admitted to the Dental Course if he had passed the remaining subjects of the Medical group (Physics, Chemistry and Biology) in the Pre-University/Intermediate Examinations;

d) The candidate should have secured not less than 50% of marks on the aggregate of the above subjects in the qualifying or competitive examination conducted on similar lines as the qualifying examination conducted by a competitive body. For Scheduled Castes/ Scheduled Tribes, for minimum marks required for admission shall be 40% in lieu of 50% for general candidates.

4. The eligibility prescribed by the Directors of Medical Education for giving admission to the candidates equal to B.Sc. quota is placed on record is to the following effect :--

"ELIGIBILITY :

The applicant should-

a) be a citizen of India;

b) have been born on or before 31st December, 1975

c) have completed 3 years Degree Examination of any Indian University or equivalent examination, provided that he/she has passed B.Sc. examination with not less than two of the following subjects;

Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects;

Physics, Chemistry, Biology and English.

Provided that the candidate should have secured not less than 50% of the total marks in Physics, Chemistry, Biology subjects taken together at the qualifying examination or at a higher examination.

"Provided that in respect of candidates belonging to SC/ST the minimum marks required for admission shall be 40% and in case of Bangalore University 45% in lieu of 50% for General Merit Candidates. However, the admission is subject to approval of the University concerned. Candidates who have not studied physics either in PUC or B.Sc. should have passed Additional Physics."

5. Sri Pandugrangaswamy, learned counsel appearing for the 2nd respondent namely, the Bangalore University, has stated at the bar (See order dated 21-8-96 in the present case) that the question of eligibility of the petitioner to the

admission of BDS course is now covered in her favour by a Division Bench Judgment of this Court in the case of The Vice-Chancellor and another v. B. H. Maidur and others (W.A. No. 1237/95). In view of the statement made at the bar on behalf of the University, I need not examine the matter any further and it will be for the University to pronounce upon the eligibility of the petitioner, keeping in view the statutory regulations and pass appropriate orders which they should do within a week from today and immediately communicate to the petitioner through the 3rd respondent.

6. It may be noticed here that, as found by me in my order dated 1-10-1996 passed in W.P. No. 22316 of 1996 (Citizen of India v. State of Karnataka), Sri Venkateshwara Dental College, Bangalore, in which the petitioner has sought admission to BDS Course in question, has been disapproved by the Central Government in terms of Section 10C and 10A of the Dentist Act, 1948. The Central Government while disapproving the schemes has concluded that :

"In view of the position stated above this Ministry has come to the conclusion that Sri Venkateshwara Dental College and Hospital, Bangalore is not in a position to offer minimum standards of Dental Education as prescribed by Dental Council of India to its students. Hence, your scheme to open a new Dental College is disapproved in accordance with Sec. 10A(4) of the Dentist Act, 1948."

7. The disapproval of the scheme u/S. 10A(4) of the Dentist Act, amounts to refusal of granting permission for starting a new Dental College in terms of Section 10A of the Act. Therefore, in case of students like petitioner who have been admitted in the college without having the required statutory infrastructure for imparting Bachelor courses in Dental Sciences may have to face the consequences incorporated u/s 10B of the Dentist Act. Any how, for the present, I am not expressing any conclusive opinion in this regard. But, it is clarified that approval of admission of the petitioner by the University will be subject to the provisions of Section 10B of the Dentist Act as and when invoked in accordance with regulations framed thereunder.

8. Apart from the eligibility of the petitioner for admission to the BDS Course in question, equally important questions fallen for consideration are as follows:--

"(i) Whether, keeping in view the mandates under Articles 14 and 15 of the Constitution of India any reservation or quota can be created in favour of Science graduates for admission to professional courses like medical, dental or engineering; (ii) Even if it be so, whether keeping in view the Unnikrishnan Scheme which binds all the "Competent Authorities" as defined in para No. 70 of the said scheme allotments made by the Directorate of Medical and Technical Education without insisting on such science graduates to undertake the common entrance test."

9. The admissions to the medical, dental and engineering colleges are governed by the "Karnataka Selection of Candidates for Admission to Engineering and Medical and Dental Courses Rules, 1993," (hereinafter in short "the Admission

Rules"). These rules have been framed under the provisions of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (in short "the Act").

10. Section 4(1) -- REGULATION OF ADMISSION TO EDUCATIONAL INSTITUTIONS, ETC., which reads as under :--

"(a) the minimum qualification for admission to any course of study in an educational institution shall be such as may be specified by-

(i) the University, in the case of any course of study in an educational institution maintained by or affiliated to such University:

Provided that the Government may, in the interest of excellence of education, fix any higher minimum qualification for any course of study;

(ii) the Government, in the case of other courses of study in any other educational institution."

11. Clause (p) of Rule 2 of the Admission Rules defines "Qualifying examination", to mean the second year examination of the Pre-University course conducted by the Karnataka Pre-University Examination Board or the final year Diploma Examination of the Board of Technical Examination in Karnataka or any other qualification declared as equivalent as such by the Government.

12. Rule 3 of the Admission Rules as it stood originally provided that:--

"ELIGIBILITY:

(1) No person shall be eligible for admission to any of the full-time degree courses specified in Rule 1 unless he:--

(a) has passed the Second Year of Pre-University Course with Physics, Chemistry and Mathematics, in respect of admission to Engineering Courses and Physics, Chemistry and Biology in respect of Medical and Allied Courses, as Optional subjects and English as one of the languages and has obtained not less than fifty percent of aggregate marks in the optional subject :

(Provided that the minimum marks for the purpose of qualification specified for free seats shall not be less than forty percent in case of candidate belonging to Scheduled Castes/Scheduled Tribes and Category-I specified in the relevant Government Order for the purpose of reservation.)

(b) has appeared for the three subjects namely Physics, Chemistry and Mathematics or Physics, Chemistry and Biology, as the case may be, in the entrance test for Selection to the Courses specified under sub-rule (3) of Rule 1 and has passed the Second Year Pre-University Examination of Karnataka or any other examination declared as equivalent thereto by the concerned University in Karnataka.

(c) is a holder of Diploma in the appropriate branch of engineering specified in

the Schedule to these Rules, granted by the Board of Technical Examinations in Karnataka or equivalent qualification and has obtained not less than fifty percent of the total maximum marks in the final examination excluding internal assessment marks leading to the said Diploma.

Provided that the minimum marks for the purpose of qualification specified above shall not be less than thirty five percent in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and specified in the relevant Government Orders for the time being in force.

13. Similarly, Rule 6 of the Admission Rules which provides for determination of merit as it originally stood reads thus:--

"The merit shall be determined by taking the marks obtained in the Entrance Test and the Optional subjects in the qualifying examination in equal proportion; provided that in respect of Candidates Possessing diploma in the relevant branch of engineering specified in Column (2) of the schedule, the method of selection for admission to courses specified in column (3) of the schedule shall be on the basis of the marks obtained in the final examination leading to the diploma, excluding internal assessment marks."

14. _Rule_12 provides for Reservation of Scats under Free Seats. Under this rule reservations have been contemplated for NCC Candidates, Sons or daughters of freedom fighters, Defence Personnel, Ex-Servicemen, Physically Handicapped, Horanadu and Gadigadu Kannadigas.

15. Strangely the State Government under its Notification No. GSR 96 dated 22-6-1994 made special provisions to provide reservation in favour of candidates possessing B.Sc. Degree in Science. To effectuate its intention appropriate amendments were made in Rule 3, Rule 6 and Rule 12 of the Admission Rules. These amendments were to the following effect:--

(i) In Rule 3(1), cl. (d) was inserted, which reads thus:--

"(d) is a holder of a degree in Science with the subjects specified by the respective Universities established under the Karnataka State Universities Act, 1976 for admission to MBBS or BDS Course obtaining not less than fifty percent of the marks in the aggregate in the subjects specified for admission to above course :

Provided that the minimum marks for the purpose of qualification specified above shall not be less than forty percent in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and Category-I specified in the relevant Government Orders for the lime being in force."

(ii) In Rule 6 further proviso was added providing that:--

"Provided further in respect of candidates, possessing Bachelor Degree in Science selected for admission to MBBS/BDS Courses shall be on the basis of marks obtained in the final examination leading to a degree in Science, excluding

internal assessing marks, if any."

(iii) In Rule 12, sub-rule (a) was inserted, which reads thus :--

"(1A) Out of the seats available under free seats for admission to MBBS/BDS Courses, ninety five per cent of seats shall be reserved for candidates who have passed the qualifying examination referred to in clause (a) of sub-rule (1) of Rule 3 and five per cent of the seats shall be reserved for the candidates who have passed the qualifying examination referred to in clause (d) in sub-rule (1) of Rule 3."

16. From the above it is clear that by Notification No. GSR 96 Dated 22-6-1994, the State Government emended the candidates eligibility for admission to provisional courses like MBBS, BDS and Bachelor of Engineering, created a separate clause by setting out the special reservation in their favour to the extent of 5 per cent of seats, out of free seats by providing a different mode of determination of their merit. It is also important to note that allotment to such special B.Sc. quota is made under the authority of the Directors of Medical and Technical Education, instead of the general procedure for selection of candidates through the Selection Committee, contemplated under the Admission Rules. The question precisely is whether sub-rule 1(A) of Rule 12 providing for reservation in favour of Science graduates is constitutionally valid, keeping in view the constitutional mandate contained in Articles 14 and 16 of the Constitution of India, as also the law laid down by the Supreme Court.

17. The Special Officer, Common Entrance Test Cell, pursuant to the order dated 2-9-1996 passed in the present proceedings has categorically admitted that (i) the Science graduates are entitled to appear at the CET Test and (ii) there is no bar under the rules which disentitled such graduates simultaneously to avail both the process of admission, namely, through CET Test and by making application directly to the respective Directors of Medical and Technical Education under the quota reserved for them.

18. Therefore, now, whereas the candidates having lesser educational qualification like 10+2 can enter the professional courses on determining the better marks only through CET Test valid at the Admission Rules. The Science graduates having higher qualification have been provided with two channels to enter into the said courses namely both through the CET Test, thus competing with the 10 + 2 candidates, as also by directly approaching the respective Directors for being selected on the basis of marks obtained by them in qualifying examinations. Thus the Science graduates have been granted special privilege.

19. Articles Hand 15 of the Constitution of India, which is the constitutional command against the State and these instrumentalities provided to the following effect :--

"Article 14 :-- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

"Article 15 :--

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this Article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes."

20. In the scheme formulated in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , which has been directed that :--

"At least 50% of the seats in every professional colleges shall be filled by the Nominees of the Government, or University as the case may be hereinafter referred to as "free seats". These students shall be selected on the basis of merit determined on the basis of the common entrance examination, where it is held or in the absence of the entrance examination by such criteria as may be determined by the competent authority or the appropriate authority as the case may be."

21. From the above it is clear that for selecting the students for admission to the professional courses from amongst the eligible candidates the merit of the candidate could have been determined either on the basis of the Common Entrance Test or on the basis of the marks obtained by them in given qualifying examinations. But it was not competent on the part of the State Government to provide for a different (sic) for Science graduates by creating special reservation in their favour. This is clearly in violation of directions of the Supreme Court.

22. Apart from the above under clause (4) Article 15 of the Constitution the special provision could have been made only for advancement of socially and educationally backward class of students I wonder if the Science graduates can said to be socially or economically backward than the candidates who are having lower qualifications only of 10 + 2, PUC or equivalent, thus justifying the protection of discrimination created in favour of the Science graduates.

23. In the case of Dr. Jagadish Saran and Others Vs. Union of India (UOI), , which has been held that :--

"16. The Primary imperative of Articles 14 and 15 is equal opportunity for all across the nation to attain excellence and this has burning relevance to our times when the country is gradually being "broken up into fragments by narrow domestic walls" in politics, economics and education, undoing the founding faith of an undivided integrated India by surrender to lesser appeals and grosser passions. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personalities. Anyone anywhere, humble or high, agrestic or urban, man or woman, and whatever his religion or irreligion, shall be afforded equal chance for admission to any secular educational course or school for cultural growth, training facility, speciality or employment, "Each according to his ability", is of pervasive validity, and it is a latent, though radical fundamental that, given propitious environments, talent is more or less evenly distributed and everyone has a prospect of rising to the peak. Environmental inhibitions mostly "freeze the genial current of the soul" of many a humble human whose failure is "inflicted", not innate. Be it from the secular perspective of human equality or the spiritual insight of divinity in everyone, the inherent superiority cult with a her revoke tint, is contrary to our axiom of equality. That is why "equal protection of the laws" for full growth is guaranteed, apart from "equality before the law". Even so, in our imperfect society, some objective standards like common admission tests are prescribed to measure merit, without subjective manipulation or university wise invidiousness. In one sense, it is a false dilemma to think that there is rivalry between equality and excellence, although superficially they are competing value. In the long run, when every member of the society has equal opportunity, genetically and environmentally, to develop his potential, each will be able, in his own way, to manifest his faculty fully. The philosophy and pragmatism of universal excellence through universal equal opportunity is part of our culture and constitutional creed.

17. This norm of non-discrimination, however, admits of just exceptions geared to equality and does not forbid these basic measures needed to abolish the gaping realities of current inequality afflicting "socially and educationally backward classes" and "the scheduled castes and the scheduled tribes". Such measures are rightly being taken by the State and are perfectly constitutional as the State of Kerala and Another Vs. N.M. Thomas and Others, has explained. Equality and steps towards equalisation are not ideal incantation but actuality, not mere ideal but real life."

24. For the said reasons, the second proviso to Rule 6 and sub-rule (1A) of Rule 12 is declared as ultra vires, Articles 14 and 15 of the Constitution of India and as such no admission can be made henceforth pursuant to these provisions.

25. So far as the petitioner is concerned, since she had been admitted during academic year 1994-95, the admission to the course cannot be disturbed now,

provided she is found eligible for sitting at the examination of BDS course as per regulations of the University pertaining to attendance and other requirements.

26. The writ petition is accordingly allowed in part, but without costs.

27. Petition partly allowed.