
(2002) 06 AP CK 0118
In the Andhra Pradesh High Court
Case No : WA No. 2205 of 1998

M. Naveen

APPELLANT

Vs

Kakatiya University, Warangal and Another

RESPONDENT

Date of Decision : 24-06-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 5 ALD 82 : (2002) 4 ALT 407

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : K. Raghuveer Reddy, for the Appellant; Vinitha Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The unsuccessful writ petitioner has filed this writ appeal assailing the correctness of the judgment of the learned single Judge dated 30-11-1998 in Writ Petition No. 21659/2998.

2. In the above writ petition, the petitioner sought mandamus declaring the proceedings No.806/B3/KU/1998, dated 27-7-1998 of the Registrar of the Kakatiya University, Warangal as illegal and seeking a direction to the Kakatiya University to permit him to write the first year B. Tech. examination for the academic year 1997-98. The writ petition was heard on merits and the same has been dismissed by the order under appeal.

3. The facts leading to the filing of the writ petition be noted briefly and they are as follows: The petitioner after completing his studies in Intermediate course wrote Common Entrance Test for Engineering, Agricultural and Medical Sciences for the academic year 1997-98 and he obtained rank 9444 in the said test. Vazeer Sultan College of Engineering, the 2nd respondent herein, is a minority institution imparting education in engineering courses. As the petitioner did not come up for selection as per the relative ranking for allotment of a free seat,

according to him, he applied to the 2nd respondent college for payment seat in the management quota. As there was no sufficient number of candidates from minority Muslim Community to fill up the authorised quota of management, according to the petitioner, the candidature of the petitioner was considered and he was admitted to the 1st year of B. Tech Course in Computer Science. The 2nd respondent college is affiliated to the Kakatiya University, the 1st respondent herein. When the first year public examination to the B.Tech was about to be conducted, the 1st respondent issued proceedings in Lr. No. 806/B3/KU/ 1998, dated 27-7-1998 directing the College to cancel the admission of the petitioner on the ground that his name was not approved by the University as his admission itself was irregular and illegal. At that stage, the petitioner filed the above writ petition and obtained interim order and by virtue of the interim order, it appears, he wrote the examination.

4. Opposing the writ petition, the University has filed the counter-affidavit. In the counter-affidavit, it is stated that the Commissioner of Technical Education, Government of Andhra Pradesh, Hyderabad issued a Memo No. B2/4708/98, dated 28-2-1998 permitting the 2nd respondent College to fill up the vacant seats with the qualifying candidates of EAMCET, 1997, subject to the condition that 50% seats meant for minorities shall be filled with Muslim candidates only. The admission given to the writ petitioner was in derogation of the above memo issued by the Commissioner of Technical Education. It was also contended that the seat given to the writ petitioner was meant to the minority candidates and, therefore, his very admission was ex-facie irregular and illegal and is liable to be cancelled.

5. The learned single Judge having considered the rival contentions of the parties, recorded a factual finding that the writ petitioner was given admission in the college against a seat meant for minority students and such an action on the part of the 2nd respondent-college is totally against the objective of the reservation in favour of the minorities and such admission would undermine the very objective behind the policy. The learned Judge, therefore, thought it necessary not to interfere with the impugned action taken by the University. In the result, the learned Judge dismissed the writ petition. Hence, this writ appeal by the aggrieved petitioner.

6. We have heard Sri K. Raghuveer Reddy, learned Counsel for the appellant and Smt. C.V. Vinitha Reddy, learned Counsel for the University.

7. The constitutional Courts umpteen times held and reiterated that the admission to professional courses, particularly in the fields of Engineering and Medicine, should strictly be in accordance with merits, subject only to protective discrimination schemes framed by the State. There is a social objective in insisting that only the best among the students should be brought to the aforementioned disciplines in order to subserve the societal interest. If the Court finds any departure in the matter of admission of the students in applying the merit rule or reservation rule, it becomes the duty of the Court to nullify such

wrong admissions to the professional courses. Here is a case, where apparently the admission granted to the writ petitioner by the 2nd respondent-college was illegal and in total breach of the direction issued by the Commissioner of Technical Education, whose direction binds the management of the 2nd respondent-college in law. There is no controversy as regards this fact. Therefore, the admission of the writ petitioner to engineering course in the 2nd respondent-college is illegal and therefore, cannot be sustained. The learned Counsel who argued for the appellant did not advance any argument to contest the finding recorded by the learned Judge that the admission of the petitioner is illegal and in fact, he could not have reasons to do so.

8. The only submission made by the learned Counsel for the appellant is that by virtue of the interim orders granted by this Court in the writ petition and the writ appeal, the writ petitioner has already completed the engineering course and in view of this changed circumstance, if the Court were to nullify his admission, that would result in great hardship to the writ petitioner and such a course of action is not warranted in the facts and circumstances of the case.

9. Although, such plea was made to us with a charge of emotion and strong appeal, that could hardly persuade us to sustain the admission of the writ petitioner into the 2nd respondent college. In a line of decisions, the Supreme Court has opined that the Court cannot grant relief to a candidate who is illegally admitted to a professional course on humanitarian or compassionate grounds.

10. In *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*, , the Apex Court held that the Court cannot grant relief to a party on humanitarian grounds and contrary to law and if granted that will be destructive of the Rule of Law. In *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, , the Apex Court went to the extent of holding that the students in unauthorised institutions cannot be permitted to appear for examinations or accommodated in recognized institutions. So opining, it refused *Mandamus*. In *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, , the Supreme Court held that permitting ineligible students to pursue the course to which they are admitted is nothing but abuse of process of law and puts Rule of Law to a mockery and the High Courts should desist from passing such casual orders/directions, unless it justifies its action on principles and precepts. In *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, , the Apex Court refused to approve the admission of an ineligible candidate though it was brought to its notice that by the time the Apex Court was hearing the case, the candidate had already completed course and was awarded with the degree. In para-9 of the judgment, the Apex Court observed:

"What remains to be considered is whether the selection of respondent No. 6 should be quashed. We are afraid, unduly lenient view of the Courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in Courts of law. Courts do and

should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardize the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Courts into private benevolence. This tendency should be stopped. The selection of respondent No. 6 in the sports category was, on the material placed before us thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion is misuse of power. While we have sympathy for the predicament of respondent No. 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of respondent No. 6. We do so though, however, reluctantly."

11. In the instant case, the reservation made in favour of the minority students is traceable to the constitutional guarantees provided to the minorities and, therefore, it is trite that those benefits should reach the minority students only as per the constitutional intendment and that a management of a minority institution in the garb of filling the available seats meant for minority students cannot be permitted to violate Article 14 mandate as well as the rights of the minority students by granting admissions to the favoured few for extraneous considerations and sacrificing merit. This is not an isolated case. We may take judicial notice of the fact that in number of cases filed in this Court, the minority institutions have admitted non-minority students to the professional degree courses against the seats meant for minority students in breach of the law. If the minority students are not available and the seats meant for minority students could not be filled up, the 2nd respondent-College ought to have filled up those seats strictly in accordance with the directions issued by the Commissioner of Technical Education, which direction, according to us, is in perfect conformity with the mandates of Article 14. Since, admittedly, the 2nd respondent college admitted the writ petitioner to the Engineering course in violation of the instructions issued by the Government of A.P. through its Commissioner, and since that action offends Article 14, it is not permissible for the High Court to sustain such admission on the basis of subjective perception of compassion/sympathy of the Judges. Compassion and sympathy are always subjective and the decision to be taken by the Court cannot be grounded on any subjective considerations. In other words, in order to grant relief to a party, the Court should have factual as well as legal justification. It cannot act like a benevolent despot at the peril of public interest and public justice.

12. The strong appeal made by the learned Counsel for the appellant-petitioner

that since the appellant has already completed the course, there is no warrant to annul his admission into the 2nd respondent-college in Engineering course is also not acceptable to us. The mere fact that by virtue of interim orders granted by this Court in the writ petition and the writ appeal, the appellant-student has completed the course would never be a justification for the Court to sustain an apparently illegal admission. The question whether this Court was justified in granting interim orders enabling the appellant-students to pursue the Engineering course and appear for the examinations conducted by the University is another matter. It is not appropriate for a co-ordinate Bench of the High Court to comment upon it or say anything which has the effect of even remotely calling in question the wisdom or the discretion of the Court which has gone into the grant of interim reliefs by virtue of which the appellant -student completed the MBBS course. Suffice it to state that in *Managing Committee, Bhagwan Budh Primary Teachers Training College v. State of Bihar* 1990 SC 722, placing reliance on the judgment in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, , the Supreme Court deprecated the practice of the High Court granting interim orders permitting the ineligible students to appear in the examination on sympathetic grounds. Further in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, , the Supreme Court deprecated the practice of granting interim orders in education matters by the High Courts. This practice was further deprecated by the Apex Court in *Nikhil Gulati's case* (supra). In *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, , the Apex Court held that permitting ineligible students to appear for examination and then to compel the concerned authority or University to issue certificates would tantamount to subversion of law. A Division Bench of the Karnataka High Court, in *Soma Vs. State of Karnataka*, , wherein an order cancelling the admission secured by misrepresentation was assailed, held that the learned single Judge should not have granted the interim orders to enable such candidate to complete the course and the writ petition should have been heard and disposed of at the admission stage itself.

13. In the light of the above decisions, it is not appropriate for the Court to sustain an illegal admission of the writ petitioner into engineering course by the 2nd respondent-college merely because by virtue of interim orders, he has completed the course.

14. In the result, we do not find any merit in the writ appeal. The writ appeal is accordingly dismissed with no order as to costs.