

(2001) 12 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No's. 42728 to 42739, 43277 to 43283, 43507 and 44044 to 44048 of 2001

M.A. Muqtader Siddiqi and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Citation : (2002) 3 KarLJ 7 : (2002) 1 KCCR 677

Hon'ble Judges : K. Sreedhar Rao, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : B.V. Nagarathna, for the Appellant; N.K. Ramesh, Government Advocate, A.N. Venugopalagowda, S.A. Nazeer, L.M. Chidanandaiah, Mahesh R. Uppin, M.R. Naik, M. Arun Ponnappa and V.A. Mohanrangam, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners are the students. They had appeared for the entrance examination held by the Special Officer of the Common Entrance Test Cell (2nd respondent). Keeping in view their merit and rankings, the Special Officer, C.E.T., had allotted BDS seats in the respondents-col- respondents-colleges for the academic year 2001-02. Since the said colleges were not honouring the allotment made by the Special Officer, C.E.T., the present set of writ petitions have been preferred for directing the respondents-colleges to accept the fees and permit them to attend the classes.

2. Statement of objections has been filed by the Special Officer, C.E.T. and the 6th respondent-Dental College viz., HKDETs Dental College Hospital and Research Institute, Humnabad.

3. We have heard the learned Counsels appearing for the parties.

4. For the purpose of regulating admissions to professional courses like Engineering, Medical and Dental, the State Government under purported exercise of its powers u/s 14 of the Karnataka Educational Institutions (Prohibition of

Capitation Fee) Act, 1984 have framed the Rules called the "Karnataka Selection of Candidates for Admission to Engineering, Medical and Dental Courses Rules, 1997" (in short, the "State Rules"). Under the Rules, seats have been allocated on the basis of Karnataka and non-Karnataka quota. Further, as provided under Rules 17 and 18 of the State Rules, the allotment of seats to the candidates keeping in view their ranking in the entrance test and the options given by them subject to availability of seats in the courses, respective colleges has to be allotted by the Special Officer, C.E.T., who has been so appointed by the Government for the purpose as per Rule 2(2) of the Rules.

5. Admittedly, for all the seats which were earmarked for Karnataka quota could not be filled up for want of candidates. Therefore, the non-Karnataka candidates who were otherwise eligible for admission to the unfilled BDS seats approached this Court by way of Writ Petition Nos. 36929 to 36937 and 37236 of 2001 for accommodating them in the unfilled Karnataka quota seats. The learned Single Judge after hearing the contesting parties, allowed the prayer by directing the Special Officer, C.E.T., to allot the unfilled seats to non-Karnataka candidates on the basis of their inter se merit and eligibility.

6. Aggrieved by the order of the learned Single Judge some of the Dental Colleges filed special leave to Appeal (Civil).. CC No. 8698 of 2001 connected with SLP (C).CC Nos. 8905 to 8913 of 2001. In the above SLPs the Supreme Court has passed the following order on 29-11-2001:

"Permission is granted.

There shall be direction in terms of the order passed by this Court in SLP (C)... CC No. 5760 of 1999, dated 18th November, 1999".

In SLP No. (C).. CC No. 5760 of 1999, the Supreme Court had passed the following order on 18-11-1999:

"Permission to file special leave petitions is granted.

Issue Notice in the special leave petitions. In the meanwhile, it is directed that so far as the vacant seats are concerned, those shall be filled strictly in accordance with the scheme laid down in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., "

7. Sri Madhusudhan R. Naik, Counsel appearing for the 6th respondent-college contended before us that in view of the above interim order passed by the Supreme Court, allotment made by the Special Officer, C.E.T., cannot bind the college in view of Clause (9) of the scheme framed in Unni Krishnan's case, supra. Whereas, according to the petitioners-students and the Special Officer, C.E.T., even according to the above interim order passed by the Supreme Court, the respondents-colleges are bound by the allotment of seats made in the respondents-colleges and they have to permit the petitioners and other similarly situate students to pursue their courses in the said colleges.

8. In the statement of objections filed by the Special Officer, C.E.T. in State of Karnataka v. Ekta Tiwari and Ors.1, it has been stated that on the date of passing of the order (15-10-2001) by this Court in Writ Petition Nos. 26929 to 26937 of 2001 and connected cases, 161 dental seats of payment, Karnataka category, were still available as unfilled/unutilized seats. Accordingly, in compliance of the order passed by this Court on 15-10-2001, the said seats were allotted to eligible non-Karnataka candidates in the counselling which took place on 12-11-2001. The list showing the college-wise admission orders issued by the Special Officer, C.E.T. has been produced at Annexure-R2. The said 161 seats were allotted in 30 different colleges as per the details contained in Annexure-R1, The admission orders were issued on the date of selection itself i.e., on 12-11-2001. The last date prescribed for reporting to the respective colleges was before 1 p.m. on 15-11-2001. It is not in dispute that all the petitioners had reported within the time prescribed by the Special Officer, C.E.T. The Special Officer, C.E.T. has also placed on record that the Government in its order dated 6-11-2001 made under Rule 18(xiv) of the State Rules which fixed the following schedule:

"Sl. No.

Event

Date Fixed

1.

Last date for admission of C.E.T. allotted candidates to MBBS/BDS courses

15-11-2001 FN

2.

Medical/Dental Colleges reconciliation

15-11-2001 AN

3.

Last date for filling up of unfilled MBBS/BDS seats by the Managements

17-11-2001

4.

Last date for the managements of the colleges to submit the list of admitted candidates to the MBBS/BDS courses to DME

26-11-2001"

The above facts clearly establishes that the allotment of seats of the petitioners-students had been made strictly in accordance with the schedule fixed for the purpose.

9. The grievance raised by Mr. M.R. Naik, Counsel for the 6th respondent-HKDETs Dental College is that in view of Clause (9) of the Unni Krishnan's scheme, it was not, permissible for the Special Officer, C.E.T. to allot the students to their college.

10. We do not find any substance in the above objection. Going strictly by the Unni Krishnan's scheme it does not permit the candidates to be divided on regional basis. According to the scheme irrespective of the fact as to which State a candidate (student) belongs, he has a right of admission to the given course and the entitlement has to be adjudged strictly in accordance with his merit determined as per the results of the Entrance Examination, The scheme provides that 50% of the seats in every professional college referred to as free seats are to be allotted to the students on the basis of their merit determined on the basis of a common entrance test and the remaining 50% seats (payment seats) are to be filled up by the candidates who are prepared to pay the fee prescribed and again to be allotted seats on the basis of merit-cum-choice.

11. Clause (8) of the Unni Krishnan's scheme provides that:

"...The payment candidates shall be allotted to different professional colleges on the basis of merit-cum-choice. The allotment shall be made by the Competent Authority. A professional college shall be bound to admit the students so allotted. The casual vacancies or unfilled vacancies, if any, shall be filled in the same manner. The Management of a professional college shall not be permitted to admit any students other than the one allotted by the Competent Authority - whether against free seat or payment seat, as the case may be".

(emphasis supplied)

12. Clause (9) of the scheme on which Sri M.R. Naik, Counsel for the, Management of the 6th respondent-college, claims the right of the Management to refuse to honour the allotment of seats made by the Special Officer, C.E.T., reads as under:

"After making the allotments, the Competent Authority shall also prepare and publish a waiting list of the candidates along with the marks obtained by them in the relevant test/examinations. The said list shall be followed for filling up any casual vacancies or "drop-out" vacancies arising after the admissions are finalised. These vacancies shall be filled until such date as may be prescribed by the Competent Authority. Any vacancies still remaining after such date can be filled by the Management".

13. There is no dispute between the parties that within the meaning of the scheme, the Special Officer, C.E.T., is the Competent Authority for making allotments and all the vacancies in the BDS course which had occurred because of non-availability of Karnataka candidates had been filled up by him from amongst the merited non-Karnataka candidates. According to Unni Krishnan's scheme, it was very much within his competence to do so. Admittedly, neither the Special Officer, C.E.T., nor the Government had notified any vacancies to be

filled up by the Management. As already noticed by us, the scheme framed by the Supreme Court does not recognise any regional or State-wise reservation.

14. In the above view of the matter, we are of the considered view that the allotment of the petitioners made by the Special Officer, C.E.T., in the respondents-colleges is in absolute conformity with the above referred interim order passed by the Supreme Court. Therefore, as directed in Unni Krishnan's scheme, the respondents-colleges are bound to admit the students so allotted and permit them to pursue their courses. Writ petitions are accordingly allowed. Rule made absolute.

15. Before parting, in order to avoid any confusion in future, we make it clear that Purnima Sharma Vs. State of Karnataka and Others, , had been filed on behalf of two candidates but the facts pertaining to the first petitioner viz., Purnima Sharma being entirely different in nature, we have segregated her case, since a separate order has to be passed in respect of her writ petition being W.P. No. 43506 of 2001.