
(2015) 08 KAR CK 0191

In the Karnataka High Court

Case No : Writ Petition Nos. 22730, 23049-23050/2015 and 24247/2015 [EDN-RES]

Madala Venkata Akshay and Others

APPELLANT

Vs

Comedk Uget and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19(6), 51-A
Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fee) Act, 2006 — Section 2(1)(i), 3(6), 4, 5, 5(7)

Citation : (2016) 1 AKR 70 : (2015) 6 KarLJ 573

Hon'ble Judges : N. Kumar, J;G. Narendra, J

Bench : Division Bench

Advocate : S. Nagaraja, for the Appellant; Farah Fathima, Advocates for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J—As common question of law is involved in all these writ petitions, they are taken up for consideration together and disposed of by this common order.

2. For the purpose of convenience, we set-out herein the facts in W.P. No. 24247/2015.

The 1st respondent-COMEDK has issued a notification dated 02.12.2014 for conducting COMEDK UGET-2015 Entrance Examination on 10.05.2015 for admission to under graduate medical, dental and engineering courses in COMEDK member institutions. The petitioner has completed his 10 + 2 in Tamil Nadu and is qualified and eligible for MBBS course. He appeared for COMEDK UGET-2015 on 10.05.2015. As it is clear from the notification, the 1st respondent has prescribed English as one of the subjects to be tested along with Physics, Chemistry and Biology [PCB] during COMEDK UGET-2015. The candidates are required to secure 50% marks in English. But, the marks so secured will not be

added for determination of the rank which shall be decided exclusively based on the minimum required marks secured by the candidates in PCB subjects. Further, a candidate is not entitled for a rank if he/she fails to secure 50% or marks in English.

3. The petitioner submits that for Common Entrance Test [CET] 2015 conducted by the Karnataka Examination Authority [KEA], there is no requirement to appear for English language test. It is sufficient if the candidate passed in PCB subjects to secure a rank. Similarly in BLDEU-UGET-2015 conducted by the BLDE University, there is no requirement of appearing and passing in English language test for determination of rank for admissions to MBBS. Similarly in KLEU-AIET-2015 conducted by the KLE University, there is no requirement of appearing and passing in English language test for determination of rank for admission to MBBS. In the National Eligibility Entrance Examination [NEET] conducted by the Central Government/MCI also there is no requirement of appearing and passing in English language test for determination of rank for admission to MBBS. Therefore, in the entrance examination, conducted by various agencies for admission to MBBS., there is no requirement to appear and pass in English language test for determination of rank. The said requirement is prescribed only for COMEDK UGET by the 1st respondent.

4. The COMEDK announced the result on 01.06.2015. The petitioner has not secured the minimum of 50% marks in English language. Therefore, the 1st respondent has not allotted any rank to the petitioner. Therefore, the petitioner has approached this Court for declaration that Clause A(e) of the Notification dated 02.12.2014 at Annexure-"A" issued by the 1st respondent is arbitrary, discriminatory and illegal and for setting aside the same and for a writ of mandamus directing the 1st respondent to assign rank to the petitioner on the basis of the marks secured in the core subjects of Physics, Chemistry and Biology [PCB] in the COMEDK UGET-2015 conducted by the 1st respondent on 10.05.2015.

5. After service of notice, the respondents have entered appearance. They have filed the statement of objections. They do not dispute the facts set-out in the writ petitions. They contended that as per Clause A(e), the eligibility criteria for admission to Under Graduate Medical, Dental and Engineering Courses, a candidate should secure not less than 50% marks in English [40% marks in case of SC, ST and OBC candidates of Karnataka]. The marks secured in English language will not be added for determination of rank list as the rank list will be drawn-up exclusively based on the marks secured by the candidate in PCB. A candidate is not entitled for a rank if he/she fails to secure 50% or 40% [in case of SC, ST and OBC candidates of Karnataka State] of marks in English. The paper on English language will be normally of II PUC or 10 + 2 standard and will test the candidate's comprehension of the language, the structure of words, phrases, clauses and sentences. The medical course is a relatively higher professional level and therefore, English language is prescribed at the level of qualifying

examination and the entrance test and in furtherance of ensuring a better merit base selection. The admission procedure incorporated English as one of the paper to test the candidate for comprehension of the language. Referring to the Judgment of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 , it is stated that the COMEDK selection process ensures that the triple test criteria, viz., fair, transparent and non-exploitation of the merit based admission is fulfilled. The COMEDK provided a procedure ensuring students of the criteria of triple test in furtherance of ensuring a better merit base selection, which is permissible in law. The eligibility criteria stipulated by the respondents is in consonance with the prescription and requirement of minimum standards in providing for admission process.

6. They have filed additional statement today. After setting out the 11 names of testing agency, the test pattern, maximum marks and the test duration, it is stated that each testing agency follow its own distinct pattern. The Karnataka Professional Educational Institution [Regulation of admission and determination of CET] Act, 2006, Section 2(1)(i) defines the core subjects as those in private professional institution that may be notified by the State Government in accordance with the Consensual Agreement within the Colleges in the State. Once such percentage of the seat are handed over to the Government as they are the private institutions the Government will follow the provisions of Section 3(6) of the Act. It is not in the domain of private institutions to dictate to the State Government that the entrance test shall be conducted adopting a particular test pattern. Section 4 of the Act 8 of 2006 lays down the method of admission in unaided institutions. As per the said provision, a single common entrance test shall be conducted on all India basis at State level and followed by centralized counseling through a single window in accordance with such procedure as may be specified by the Admission Overseeing Committee appointed under Section 5 of the Act. The Admission Overseeing Committee is headed by a retired Hon''ble Judge of the High Court. The test pattern adopted by the respondent herein has not been objected by the Admission Overseeing Committee and on the contrary, it has been followed in the last 3 years without reservation. Section 5(7) of the Act refers to standards and procedure to be followed by the Association of Private Colleges while conducting the entrance test. The private professional institutions follow the law laid-down by the Hon''ble Supreme Court in the case of TMA Pai Foundation Vs. State of Karnataka. Therefore there will be three different sources from which the candidates seeking admission to professional courses in a single college. They are;

- (a) As from Government quota in the light of Section 3(6) of Act 8 of 2006;
- (b) As from COMEDK which determines the merit of the candidates, in the light of Section 4 r/w. Section 5(7) of the Act 8 of 2006; and
- (c) NRI quota without any entrance test as permitted by the Hon''ble High Court and Supreme Court.

7. Thus it can be seen that these three sources make available qualified candidates independent of each other and who seek admission to the institutions affiliated to the University. The admissions made through these sources have been approved by the affiliating University and other Regulatory Bodies. The aforesaid test stipulated by the respondents is for the betterment of the quality and standards of student being admitted to different professional courses. Therefore, from the year 2008 onwards, English has been introduced as mandatory subject as the standard of English from non-Karnataka students is very poor and this has resulted in their poor performance in the RGUHS examination. English is a language of instructions in all the professional colleges of KPCF Association. The medical course is relatively of higher professional standard calling for reasonable proficiency in English at the level of qualifying examination and the entrance test and in furtherance of ensuring a better, merit based selection, its admission procedure must incorporate English as one of the papers to test the quality and standard of students seeking admission to a medical college. Accordingly, in the COMEDK Under Graduate Medical Entrance Test 2015, apart from the papers on Physics, Chemistry and Biology subjects, there has been incorporated a paper in English language to test the candidate's comprehension of the language, the structure of words, phrases, clauses, and sentences.

8. A total number of candidates who have failed to qualify is due to lower marks in English. Out of the total number of 57,885 candidates who took examination 4,926 candidates have failed and they have not been given or assigned a rank. It is also contended that it is settled principle of law that an individual who was a candidate after participating in the examination cannot challenge any condition after realizing failure in the said examination. The principle of estoppel is squarely applicable in the above case. On this ground alone, the writ petition is liable to be dismissed and therefore they sought for dismissal of the writ petition.

9. Learned counsel for the petitioner Sri. Ajoy Kumar Patil, assailing the impugned action of the respondent contends that in order to give a rank based on merits, only the marks secured by the candidate in the test in PCB is taken into consideration and the marks secured in English is not added at all. Therefore, when admission to professional colleges is to be made purely on merit and if any marks secured in English is not taken into consideration to decide the merit, the prescription of 50% marks as a condition precedent in English for assigning a rank is arbitrary and therefore, it is liable to be struck down.

10. Secondly, he contended as it is clear from the statement of objections of the respondent-COMEDK they admit the students for Under Graduate Professional Course from three different sources viz., the student who has passed the CET examination, the students who have passed the COMEDK examination and the NRI quota without any entrance test. All these students are admitted into the course and study in the same class. The said requirement of 50% in English language is not insisted upon in respect of the other 2 streams. Therefore,

among them there is discrimination, which is impermissible in the light of Article 14 of the Constitution of India.

11. Thirdly, he contended that the examination in respect of optional subjects PCB is also held in English language. Unless a student is well proficient in English language, the question of securing good marks in the optional subjects would not arise. As all the energy is concentrated in scoring good marks in the optional subjects, which is the only criteria for giving rank, the students may not give much importance to English language. There is no object sought to be achieved by insisting upon 50% marks in English language in order to be eligible for assigning a rank. The action of the respondents in excluding the petitioner is illegal and requires to be set aside.

12. Per contra, Smt. Farah Fathima, learned counsel appearing for COMEDK contended that COMEDK and its constituents have a right to prescribe qualification for admission to these professional courses. The qualification prescribed by them would be higher than what is prescribed by the Government or other higher agency. When the number of seats available is less and number of applicants are more, it is settled law that the examination conducting authority for the professional course may prescribe higher qualification. In that view of the matter, the higher qualification prescribed by COMEDK cannot be found fault with.

13. Secondly, she contended that it was noticed that the students coming from out side Karnataka are very poor in English language. Consequently, it has poor effect in their performance even in optional subjects and therefore, it was found necessary having regard to the past experience, to insist on a minimum standard in English language to maintain standard in professional course. Therefore, this clause was inserted from the year 2008 and till today, there was no challenge. The said clause has been approved by all the regulatory bodies and therefore, it cannot be said to be illegal and arbitrary.

14. Lastly, she contended that, being fully aware of these stipulations, the petitioners have taken the examination. After being unable to secure the minimum marks in English language, they cannot turn round and challenge the said provision. They are estopped from doing so, as held by several judgments of the Apex Court. Therefore, she contends that there is no merit in these petitions and accordingly, it is liable to be dismissed.

15. In the light of the aforesaid facts and rival contentions, the point that arises for our consideration is;

Whether Clause A(e) of the Notification dated 02.12.2014 issued by the COMEDK UGET-2015, prescribing 50% or 40% in the English Language, as the case may be, as the eligibility criteria for admission to Under Graduate Medical, Dental and Engineering courses is arbitrary, discriminatory, illegal and is liable to be set aside?

16. The impugned clause in the notification reads as under:

"(A)(e) English is one of the subjects, as in the previous years, to be tested along with Physics, Chemistry and Biology during COMEDK UGET-2015. The General Merit candidates should secure not less than 50% marks in English (40% in the case of SC, ST and OBC candidates of Karnataka). However, the marks so secured in English will not be added for the determination of rank which shall be decided exclusively based on the minimum required marks secured by the candidates in PCB subjects. Further, a candidate is not entitled for a rank if he/she fails to secure 50% or 40% of the marks as the case may be in English. The paper on English language will be normally of second PUC or 10 + 2 standard and will test the candidate's comprehension of the language, the structure of words, phrases, clauses and sentences."

17. The notification dated 02.12.2014 issued for conducting COMEDK UGET-2015 for admission to Medical, Dental and Engineering courses explicitly state that the test is held keeping in view the triple test criteria of fair, transparent and non-exploitative process of selection and to ensure merit based admission through a single common entrance test followed by centralized counseling as envisaged by the Hon'ble Supreme Court of India in TMA Pai Foundation Vs. State of Karnataka, Islamic Academy of Education Vs. State of Karnataka and P.A. Inamdar and others Vs. State of Maharashtra. As could be seen from the notification, a candidate to be eligible for medical seat should secure not less than 50% marks (40% in the case of SC, ST and OBC candidates of Karnataka) in aggregate in PCB subjects in the COMEDK UG Entrance Test 2015. Clause (e) which is impugned makes it clear the marks secured in English language will not be added for determination of the rank, which shall be decided exclusively based on the minimum required marks secured by the candidates in PCB subjects. Therefore, for the purpose of determining the rank, in other words merit, the marks secured in Physics, Chemistry and Biology is the only criteria. The marks secured in English language has no bearing in deciding the merit of the candidate for admission to medical course. As set-out above, this test is prescribed in order to give effect to the Judgment of the Apex Court referred to above. Therefore, in order to appreciate the case of the parties in a proper perspective, it is necessary to look into the law laid-down by the Apex Court. In TMA Pai Foundation case, the Apex Court at para 58 and 59 has held as under:

"For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant to seek admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this Judgment in the context of admissions to unaided institutions.

Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by Government agencies.

18. Again in P.A. Inamdar's case, at para 107 it is held as under:

"Educational institutions imparting higher education i.e., graduate level and above and in particular specialized education such as technical or professional, constitute a separate class. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (h) and (j) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included. Education up to the undergraduate level on the one hand and education at the graduate and postgraduate levels and in professional and technical institutions on the other are to be treated on different levels inviting not identical considerations, is a proposition not open to any more debate after *Pai Foundation*. A number of legislations occupying the field of education whose constitutional validity has been tested and accepted suggest that while recognition or affiliation may not be a must for education up to undergraduate level or, even if required, may be granted as a matter of routine, recognition or affiliation is a must and subject to rigorous scrutiny when it comes to educational institutions awarding degrees, graduate or postgraduate, postgraduate diplomas and degrees in technical or professional disciplines. Some such legislations are found referred in paras 81 and 82 of S.B. Sinha, J.'s opinion in *Islamic Academy*."

19. From the aforesaid Judgments of the Apex Court, the law is now well settled. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Merit is usually determined by a common entrance test by the institution or in the case of professional colleges by the Government agencies. Educational institutions imparting higher education such as technical or professional education constitute a separate class. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate level study is a doorway to admission to

educational institutions imparting professional or technical or other higher education. Therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions, step in and become relevant. This is in the national interest and strengthening the national wealth. Education up to the undergraduate level on the one hand and education at the graduate and post-graduate levels and in professional and technical institutions on the other are to be treated on different levels inviting not identical considerations. A student in the undergraduate level studies all the subjects and has to score good percentage in order to pursue higher studies. However, if such a student wants to pursue any professional or technical course, the rules governing such admission insists upon the marks obtained which are relevant to the said professional course. Only marks in such optional subjects is taken into consideration for deciding the merits. It is only the marks taken in a particular subject in which the student wants to pursue a professional course decides his ranking, even without any entrance test being conducted by the institution or the Government. It is the marks obtained in those optional subjects which decides the ranking of the students and consequently, the merit. There is a nexus between the marks obtained in the optional subjects and the admission to professional course. That is the difference between the education that is imparted at the undergraduate level and at the graduate and post-graduate level. The criteria for a student seeking admission to a professional institution and become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious.

20. In the instant case, it is categorically stated that a student to be admitted for medical course, if he is claiming a seat in a general category, he has to secure 50% marks (40% marks in the case of SC, ST and OBC candidates of Karnataka) in aggregate in PCB subjects in the COMEDK UGET-2015. Therefore, the ranking after the examination is done based on the marks secured in PCB. To be eligible, the candidate must secure minimum 50% marks in the case of general merit and 40% marks in the case of others. Insofar as the merit is concerned, it is dependent upon the number of seats available, number of persons who have secured more than 50% marks. Therefore, a student to be eligible to secure a seat in medical course must secure a rank in PCB. The impugned clause makes it very clear that any marks secured by the student in English language will not be added for determination of the rank. It shall be decided exclusively based on the minimum required marks secured by the candidate in PCB subjects. In other words, in deciding the merits, rank, the marks secured in English language is not taken into consideration after the examination. It is only the marks secured in PCB subjects which are taken into consideration. This prescription is in accordance with the law declared by the Apex Court. However, in the impugned clause, an attempt is made to introduce one more prescription i.e., unless a student secured 50% marks in English in the general merit category (40% in the case of SC, ST and OBC candidates of Karnataka), the candidate is not eligible for admission to the medical course though he secured more than 50% of marks

in PCB subjects. The clause made it clear that if a student does not secure 50% marks or 40% marks as the case may be in English language, the student would not come under the zone of consideration at all for admission to a medical course. In other words, to be eligible for admission to a medical course, according to the said notification, every student must secure 50% or 40% marks in English as the case may be. It is only then the marks secured by them in the PCB subjects would be taken into for consideration. However, the marks secured in English language is excluded. Under the scheme of admission to the professional course and in the light of the pronouncement of the Apex Court in the aforesaid Judgments, when merit is the sole criteria for professional course and when the marks secured in English Language is not taken into consideration for deciding the merit/ranking, but is used for excluding the meritorious students, the said clause is unjust, arbitrary and discriminatory.

21. In fact, in the counter filed by the 1st respondent they have categorically stated that there will be three different sources from which the student seek admission to professional courses, it reads as under:

- (a) As from Government quota in the light of Section 3(6) of Act 8 of 2005;
- (b) As from COMEDK which determines the merit of the candidates, in the light of Section 4 r/w. Section 5(7) of the Act 8 of 2006; and
- (c) NRI quota without any entrance test as permitted by the Hon''ble High Court and Supreme Court.

22. It is not in dispute that stated insofar as clauses (a) and (b) are concerned, the quota is 40% and clause (c) is concerned it is 20%. It also includes institutional preference. Insofar as students who are admitted to the colleges under the Government quota, in the examination conducted by the Government, there is no prescription that they must obtain 50% or 40% marks in English language as the case may be. Similarly in the NRI quota, there is no entrance test at all. In fact, the facts set-out above says, each institution has its own Rules and Regulations. Many of them do not have any such prescription of securing 50% or 40% marks in English language. When the candidates are admitted to these colleges under three different sources, all the students study in the same class room. They are taught the same subjects. But, only the stream of the students who are admitted through the COMEDK examination are required to comply with prescription of 50% or 40% marks in English language, whereas the other students are not required to comply with the said prescription. Therefore, the discrimination is apparent on the face of the record. All the students, who study in the same class, who are admitted on the basis of the marks they secured in the optional subjects form a class by themselves. Among them, there cannot be any discrimination. More importantly, these students have studied the said subjects, i.e., PCB and written the entrance examination in respect of the said subjects in English language only. Without a good knowledge in English, it is not possible to secure good marks in these optional subjects. The students who

are anxious in getting into a professional course, concentrate their energy in these optional subjects as without scoring a good marks in these subjects, they cannot have an entry to these professional courses. In this process, they may not give much attention to the English language. They cannot be found fault with. When the students who are similarly placed and who take competitive examination at different forums are not expected to study English language and secure 50% or 40% marks as the case may be in the said subject and the marks scored in the optional subjects is the only criteria and even in the case of the students who have taken COMEDK exam for admission to medical course, marks secured in English language is not taken into consideration while deciding the merit, this insistence of securing 50% or 40% marks in English language as the case may be is unjust. There is no nexus between the minimum marks to be obtained in English language and the admission to medical course. This clause runs counter to the law declared by the Apex Court in the aforesaid two Judgments. This insistence of securing minimum marks in English language comes in the way of meritorious students being admitted to these professional courses, when these marks in English language are not taken into consideration while deciding the merits. Looked at from any angle, we do not find any justification for insisting on securing 50% or 40% marks by the students in English as a condition precedent for considering their case for being assigned ranks taking into consideration the marks secured in the optional subjects.

23. In so far as plea of estoppel is concerned, it is settled law that, if a candidate participates in an examination process and after he fails, he cannot turn round and find fault with any of the terms or stipulations contained in the notification or rules which govern the conduct of such examination. But it is not an invariable rule. In the instant case, the students have no say in the matter in so far as the prescription of 50% marks in English for general merit candidates and 40% marks for others. As we have said that prescription offends Article 14 and the equality clause is infringed which is a fundamental right, there cannot be any estoppel against a constitutional right guaranteed to the citizen of this country. In that view of the matter, we do not see any merit in the argument of estoppel pressed into service by the respondents.

24. Hence, we pass the following:

ORDER

(a) The writ petitions are allowed.

(b) The impugned clause A(e) of the notification dated 2.12.2014 issued by the COMEDK UGET-2015 prescribing 50% marks in English for general merit candidates and 40% in the case of SC, ST and OBC candidates of Karnataka is hereby quashed.

(c) The petitioners and students who are similarly placed shall be considered for admission to medical course purely on merits and on the basis of the marks secured by them in Physics, Chemistry and Biology.

No Costs.