
(2006) 02 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 22217 of 2005

Madhukeshwara S.S.

APPELLANT

Vs

University of Agricultural Sciences

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 16
Karnataka Universities of Agricultural Sciences Act, 1963 — Section 2 (3), 24 (1), 26, 26 (e), 39

Citation : (2006) 2 KarLJ 430

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : P.S. Manjunath, for the Appellant; D.N. Nanjunda Reddy, for Kesvy and Company, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who had aspired to be appointed for the post of Associate Professor in Plant Pathology and also for the post of Training Organizer, notified for being filled up by the University of Agricultural Sciences, Bangalore (for short, "the University") in terms of its Notification No. AO/RT/11/29/2004-05, dated 13th December, 2004, a copy of which is produced at Annexure-A to the writ petition.

2. The petitioner on noticing that he fulfills the qualifications prescribed for the posts in terms of the notification, applied for both the posts. The petitioner was not even called for the interview and when the petitioner was hoping either for a letter of interview or even a letter of appointment, was on the other hand provided with a copy of the caveat filed by the respondent-University before this Court.

3. The petitioner was taken by surprise by this course of events and obviously had to seek legal advice and where upon has come upto this Court with this writ petition.

4. Litigation, no doubt, is very prolific in our society and country and at the drop of a hat a person, whether really aggrieved and affected or otherwise, approaches Courts praying for relief. Courts are flooded with more number of frivolous matters than genuine causes and for relief not necessarily available before the Court. Many a time even by bona fide seekers with fond hope that the Courts are the last resort for mitigating their sufferings and grievances. While the tendency can only point to the faith and confidence the litigant public and the society repose in the judicial system of the country and a corresponding lack of faith in the other organs of the State, which, in fact, are really required to redress most of the grievances of the citizens who have to take care of the citizens, who have to protect them and are also required to take care of the needs and provide possible facilities but also that is not happening to the expected extent as of now, and therefore the increase in the volume of litigation. As though such state of affairs that exist in our society was not sufficient public bodies like the respondent add to the number unwittingly by their unnecessary enthusiasm of filing caveat petitions before the Courts as in this case,

5. The present case illustrates a situation where the petitioner perhaps who was in the twilight area would not have as much cared or bothered to test his chances before this Court is provoked to do so by the caveat petition filed by the respondent-University who being exposed to litigation before the Court, has become overactive in filing caveats before the Court being rather apprehensive, not confident of their acts and conduct and also being apprehensive about the outcome of the proceedings before this Court in their absence.

6. An applicant or aspirant to the posts advertised and who fulfills the qualifications if he is not even called for interview, definitely will feel aggrieved, can be said to have a legitimate grievance, if he does not find a satisfactory answer for his non-selection and can legitimately seek for relief before Courts, particularly in the light of the Constitutional guarantee available under Article 16 of the Constitution of India, that too when the post sought to be filled up being by the respondent-University, an organisation which is a State and is an institution coming within the meaning of the "State" under Article 12 of the Constitution of India.

7. Quite naturally in a situation of this nature, the petitioner can definitely plead and feel that he is kept in dark and would be rather interested in knowing what went wrong than for impugning the action of the respondent-University, but the caveat filed by the University has provoked the petitioner to do a little more homework and come up with this petition, questioning the legality of the action and the conduct as indicated in the caveat petition making it the subject-matter for examining by this Court.

8. The caveat petition, inter alia, revealed to the petitioner that the University had followed a procedure of subjecting the persons like the petitioner-applicants to the posts - to a scorecard operation, a copy of the so-called scorecard being produced by the petitioner at Annexure-C to the writ petition. To put it in simple

or in a layman's language, the scorecard is a procedure adopted for evaluating the merit of the applicants in the context of his/her qualifications and based on the previous attainments and experience, award of marks to different attainments upto an extent of 90 marks spread over the aspects of academic qualifications, higher training in PG diploma, medals, awards etc., obtained at various fields, experience, publications during the last 10 years, special attainments etc., and the balance 10 marks out of a total of 100 marks, ultimately kept aside for being awarded based on the performance of the applicant at the interview, if called for.

9. The mechanism of the scoreboard is that on evaluating the applicant for 90 marks mentioned on various aspects, if the candidate is able to secure not less than 54 marks, then only the candidate is called for interview, otherwise is eliminated. It is the version of the respondent that the petitioner was got eliminated in this process and therefore has not been called for interview.

10. This factual background is not much in dispute but the legality of following the procedure of scorecard, which put paid to the aspiration of the petitioner, that is sought to be scrutinized by this Court applying the touchstone of permissibility of following of such a procedure in the light of the prescribed procedure under the statute formulated by the University under the provisions of the statutes of University of Agricultural Sciences, Bangalore (for short, "the statutes").

11. The respondent-University is one created under the State Act known as the Karnataka Universities of Agricultural Sciences Act, 1963 (for short, "the Act"). Provisions of Section 39 of the Act provide for formulating statutes for the purpose of implementation and administrative affairs of the University. The actions of the University including the appointments sought to be made in terms of the notification at Annexure-A to the writ petition is therefore governed by the Act and the statutes. It is on the touchstone of this provision the petitioner has sought to contend that the action of the University particularly in eliminating the petitioner, is not in consonance with the same and therefore amounts to an illegal act and has sought for interference.

12. The University has filed its counter. The petitioner has also filed rejoinder. But bereft of what facts the controversy that arises is as to whether the procedure followed by the University for the purpose of selecting the candidates in response to the applications made by several persons including the petitioner for the notified posts is in consonance with or in any way at variance.

13. While it is contended by Sri P.S. Manjunath, learned Counsel for the petitioner that the procedure followed is definitely in contravention of the relevant statutes viz., Statute 30(4)(a) of the Statutes and therefore the elimination of the petitioner's candidature by the scorecard method is contrary and violative of the requirement under the statute, submission of Sri D.N. Nanjunda Reddy, learned Senior Counsel appearing for the respondent-University

is that it is definitely not at variance and if at all is supplementary, though does not expressly provided supplement to the extent of filling up the gap in the area not provided in the statute itself.

14. The administration of the respondent-University vests with the Board of Regents in terms of Section 26 of the Act, which is an authority indicated u/s 24(1) and defined in Section 2(3) of the Act. The functioning or power of the Board of Regents for the purpose of the present petition is attributable to Section 26(e), which is the power of appointment of officers, teachers and other employees of the University in the prescribed manner and to approve the appointment made by the Vice-Chancellor. The appointment being to the post of a teacher, it should be in the prescribed manner for which purpose is Statutes 14 and 30 of the Statutes.

15. While Statute 14 indicates prescription of qualifications for appointment, Statute 30 deals with the procedure for appointment of teachers. The act of prescription of the qualifications, which is again on the touchstone of the norms or stipulation by the UGC or ICAR, the Selection Committee for selecting persons to the posts also used to be as stipulated by UGC/ICAR from time to time in terms of Statute 30(4)(a).

16. It is in this background of statutory provisions, Sri Manjunath, learned Counsel for the petitioner, submits that the power of selection is vested in the Selection Committee as indicated or constituted under Statute 30(4)(a) and that it is not a function or business of any outside agency or an expert body as admitted even by the respondent-University to interfere with the process of selection, particularly for the purpose of eliminating some of the qualified applicants; that such an extra-statute expert body constituted for the purpose of the scorecard business is an act in contravention of the statutory provision; that no outside agency can be allowed to meddle with the process of selection; that it is an action in contravention of the prescribed procedure and becomes arbitrary and violative of the Article 16 of the Constitution; as an opportunity to the petitioner to compete for the post is curbed or denied by the procedure not approved by the statute and therefore the entire selection procedure adopted by the University is faulted and that should be declared so and a mandamus should be issued to the respondent to call the petitioner for interview and proceed further in the matter.

17. It is also the submission of Sri P.S. Manjunath, learned Counsel for the petitioner that though the respondent has sought to rely upon the notification dated 4-3-2003, a copy of which has been placed before the Court by Sri D.N, Nanjunda Reddy, learned Senior Counsel appearing for the respondent-University, indicating that the Selection Committee constituted in terms of Statute 30(3)(a) has been approved by the Board of Reagents and that the notification itself indicates that the Selection Committee is not one constituted in consonance with or as stipulated by the UGC/ICAR and therefore even the constitution of the Selection Committee is also defective in fulfilling the

requirement of Statute 30(4)(a) and therefore also the Selection procedure followed leading to the non-selection of the petitioner is not one as incorporated in the statute and the entire procedure calls to be declared as illegal.

18. Defending the action of the University, Sri D.N. Nanjunda Reddy, learned Senior Counsel appearing for the respondent-University, by drawing the attention of the Court to the very provisions, submits that it is primarily a power of the Board of Regents to make appointments and while appointing the statutes are to supplement the procedure for appointment provides for prescribing the qualifications and also for the constitution of the Selection Committee. By reading the very language of this provision, submission is that while the statute does indicate the qualifications to be prescribed and the norms for the same and also based on which are stipulated the norms on which the Selection Committee is to be constituted, the procedure to be followed for the process of selection is not expressly provided for; that the method to be adopted for selection is the area not touched upon by the statute and the University has devised the process to supplement these gaps in this area so that the recruitment procedure is streamlined and made easy, particularly for constitution of the Selection Committee.

19. Submission is that the University has adopted a uniform norm in having a prescribed the scorecard procedure; that it is a procedure which is adopted in general to all applicants; that it has been found to be very useful and practical from the University's angle in making suitable selection; that it has an effect of maintaining certain minimum standards by the University in selecting suitable persons to the posts and the procedure being applied to all applicants and all applicants having been given equal treatment to go through the scorecard procedure, there is no violation of any opportunity as understood in the context of Article 16 of the Constitution and a person like the petitioner does not make a grade that in itself is not a criterion to find fault with the procedure adopted by the University.

20. Learned Senior Counsel would also submit that the procedure adopted is relevant, a fair procedure, neither arbitrary nor selectively applied; that though the University had not expressly indicated to the applicants that such a procedure was being applied, it was very much known and though the scorecard procedure was not as much in circulation, the University has been applying this procedure uniformly from the year 2003 onwards and that it has also stood the test of time including the scrutiny of this Court in the decided case of Dr. G. Venkatesh Prasad and Another Vs. University of Agriculture Science and Another, and therefore cannot be found fault with.

21. What is submitted is that the Statute 30(4)(a) by itself does not prescribe the procedure for selection, but is confined to the aspect of constitution of a Selection Committee as stipulated by the UGC/ICAR which has been done.

22. It is also the submission of Sri D.N. Nanjunda Reddy that the selection

procedure starts from the very day the applications were called for and as part of such selection process and by applying the method of scorecard procedure, if certain candidates are eliminated and those candidates who are called for to the interviews for further selection are restricted, no fault can be found with such a method as it is a well-accepted principle or norm in service jurisprudence for short-listing the available candidates and at any rate submits that the scorecard procedure does serve the twin purpose of not only short-listing the applicants but also to keep in the zone of selection only such of those candidates who measure upto the requisite standards which the University expects from the applicants normally those who are able to acquire the minimum of 54 marks from out of the total 90 marks, as envisaged in the scorecard procedure.

23. Learned Counsel for the respondent also submits that earmarking of 10 marks for the interview stage of selection by the Selection Committee in fact is a more transparent and fair procedure, as it reduces the vagaries of the candidates being exposed to a subjective evaluation by the interview committee and restricting it to the minimum as the total marks for the interview before the Selection Committee is only 10 marks out of a total 100 marks.

24. In the light of such legal and factual background, learned Counsel for the respondent would urge that non-selection or even the aspect of not calling for interview the petitioner is not one either illegal or in any way can amount to contravention of any statutes and therefore the matter does not call for interference; that the University in terms of the interim order passed by this Court has kept one post without being filled up, which is required to be filled up expeditiously and prays for dismissal of the writ petition and for vacating the interim order.

25. Relevant provisions of the Act and the statutes referred to above read as under:

Section 2(3) of the Act:

2. Definitions.-

(3) "Board" means the Board of Regents of the University.

Section 24(1) of the Act:

24. Authorities of the University.-

(1) The Board of Regents;

(2) x x x

Section 26(e) of the Act:

26. Powers and duties of the Board.-

(e) to. appoint the officers, teachers and other employees of the University in the prescribed manner and to approve of appointments made by the Vice-Chancellor.

Statute 14 of the Statutes:

14. Prescribing qualifications for appointment.-The Academic Council shall, except in the case of Chancellor, Pro-chancellor and Vice-Chancellor and Officers other than Comptroller, Estate Officer, Administrative Officer, prepare a list of qualifications which should be possessed by the candidates for an office. If the Academic Council does not do so, the Vice-Chancellor shall prescribe the qualifications. As regards Comptroller, Estate Officer, Administrative Officer, a Special Committee shall be appointed by the Vice-Chancellor to advise in the matter.

In the case of teachers, the qualifications shall be as stipulated by the UGC/ICAR from time to time.

Statute 30(4)(a) of the Statutes:

30. Teachers, Grades, Qualifications, Selection, Duties, Salary.-(4)(a) The Selection Committee for these posts shall be as stipulated by the UGC/ICAR from time to time.

26. An examination of Section 26 of the Act read with Statutes 14 and 30 of the Statutes, indicates that while the Board of Regents is the Appointing Authority, the selection is to be in consonance with the requirement of Statutes 14 and 30. Specific statute for our purpose is Statute 30(4)(a).

27. There is no dispute on the aspect of fulfillment of requirement of Statute 14. So far as Statute 30(4)(a) is concerned, even on the face of it, it only says that the Selection Committee for this purpose shall be as stipulated by the UGC/ICAR from time to time. It is no doubt true that a Selection Committee is only for the purpose of selecting candidates and not for any other purpose that the question is does the Selection Committee alone should perform the duty at different stages or different aspects of selection. The Appointing Authority-Board of Regents of the University - if have approved a part of the selection procedure by approving the scorecard method, and that is applied uniformly in respect of all aspiring applicants, it cannot be said that the University has resorted to any arbitrary procedure or that it is an action which is not within its competence. While such action is well-within the powers of the Board of Regents, even in terms of Section 26 of the Act, further examination can be whether it is in any way in contravention or violative of the Statute 30(4)(a), which, on the face of it, provides that the Selection Committee shall be as stipulated by the UGC/ICAR from time to time. It does not prescribe a particular procedure in general or at any rate does not stipulate the precise procedure that is required to be followed. It is in this regard the submission of learned Senior Counsel appearing for the respondent that the scorecard procedure is one supplementing the selection procedure and not in contravention of or at variance with the Statute 30(4)(a), deserve acceptance.

28. The scorecard procedure having been approved by this Court on an earlier

occasion in the decision referred to earlier, it cannot be contended as arbitrary or whimsical in resorting to this procedure, which perhaps could have been made more transparent by notifying the same also to the applicants also, so that all aspiring applicants would have known about the procedure and could have been put on notice that they are being subjected to this procedure for the purpose of selection.

29. But not making it known by itself does not render the action of the University illegal. In fact what can be noticed is that the statutes prescribe a procedure and at the best a contravention becomes irregular, whereas the Act prescribes or governs the powers and the manner of exercise of such power, the contravention of which provision becomes not only illegal, but in a given case may amount to want of jurisdiction also.

30. While the action of the University can be said to be well-within its power u/s 26 and not derogatory or in contravention of the provisions of Statute 30(4)(a), the only thing that can be said to be lacking is want of publication or publicity, as if the procedure was one to supplement the provisions of Statute 30, it should have been made known. I say so because the statutes are to be and are made known to the public at large, whereas the procedure adopted i.e., the scorecard method, according to petitioner, had not been generally made known to the applicants and admitted to be so by the University. To compound this, the University embarked upon filing the caveat before this Court which virtually instigated the petitioner to come up with this writ petition. Undoubtedly to this extent, the respondent-University has caused considerable inconvenience and possible financial loss to the petitioner.

31. While the action of the University cannot be characterized as illegal, calling for interference by this Court to extend relief to the petitioner to direct the University to call him for interview, as this Court does not evaluate the merits of the method, the petitioner should be necessarily compensated for the inconvenience that he has been subjected to, which is quantified in terms of awarding cost of Rs. 5.000/-(Rupees five thousand only) in favour of the petitioner, though this writ petition is dismissed on merit. University to pay the cost to the petitioner within four weeks from today, failing which the Registry to issue a certificate to this effect in favour of petitioner.

32. Subject to the above, writ petition is dismissed.