

(2005) 06 KAR CK 0075
In the Karnataka High Court
Case No : Writ Petition No. 37387 of 2004

Mr. Manjunath Pol

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 14, 14 (1), 3, 4 (1) (a)
Karnataka Selection of Candidates for Admission to Professional Institutions Rules, 2004 — Rule 1 (3), 3 (1) (b) (iii)

Citation : (2005) ILR (Kar) 5490 : (2006) 3 KarLJ 276 : (2006) 1 KCCR 14 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : R.S. Ravi, for the Appellant; N. Devadas, CGSC for R-1, B. Manohar, AGA for R-2 and A.N. Venugopala Gowda, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—Petitioner has completed Pre-University Course (for short "PUC") during the academic year 2003-2004. In the said examination he has admittedly secured 53 marks in Physics, 88 marks in Chemistry, 39 marks in Biology and 30 marks in English. He is a scheduled caste candidate. He has appeared for common entrance test for selection of students to M.B.B.S., B.E., and B.D.S. Courses for the academic year 2004-2005. He has secured Rank No. 31280 (Medical). He was not considered for admission to B.D.S. Course because he had not secured 40% marks in English subject in PUC. Therefore, he had filed a Writ Petition in W.P. No. 26782/2004 for quashing condition No. 3 in the Application Form which stipulates the requirements of securing 40% marks by a Scheduled Caste/Scheduled Tribe and Category- I candidates in order to be eligible for admission to B.D.S. Course. That Writ Petition was dismissed by a Division Bench of this Court on 12.08.2004. Therefore, he has filed the present writ petition for a declaration that the 2nd proviso to Rule 3(1)(b)(iii) of the

Karnataka Selection of Candidates for Admission to Professional Institution Rules, 2004 as ultra-virus of the Constitution of India and for a further direction to the 3rd respondent to select him for the B.D.S. Course.

2. The respondent Nos. 2 and 3 have filed separate objections. It is stated that the State Government in exercise of its powers under Sub-section (1) of Section 14 of the Karnataka Educational Institutions (Prevention of Capitation Fee) Act, 1984 has framed the Rule called "Karnataka Selection of the Candidates for Admission to Professional Institution Rules, 2004". Rule 3(1)(b)(i) and the proviso contemplates the eligibility of the candidates for admission to the B.D.S. course. It states that for admission to a Dental Course, a candidate has to secure 50% marks in optional and English language subject and 40% in case of candidates belonging to Scheduled Castes and Scheduled Tribes and Category-II. The 2nd proviso contemplates that for Dental Course, the candidate must have secured 50% marks in English language and in case of candidates belonging to SC/ST and category-I, they must secure 40% in English. It is further contended that the State Government has power to fix higher qualification than what has been prescribed by the Dental Council of India. Since the petitioner has not secured 40% marks in English as prescribed by the Rules he is not eligible for admission to BDS Course.

3. I have heard the learned Counsel for the parties.

4. The BDS Course Regulations framed by the Dental Council of India and approved by the Central Government under the Dentist Act, 1948, provides the basic principles for maintenance of minimum educational standards for Degree of Bachelor of Dentistry. It prescribed the conditions for admission to Bachelor of Dental Surgery Course which reads as under:

"(a) The candidates has completed the age of 17 years at the time of admission or 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 course;

(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 (U.G.C.)

NOTE: A student who 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 & Biology) in the Pre- University/Intermediate examination;

(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, the minimum marks required for admission shall be 40% in lieu of 50% for general candidates".

A proviso has been added to the effect that a candidate for admission to Dental Course must have obtained not less than 50% of the total marks in English and Science subjects put together, it is as follows:

"Provided also that a candidate for admission to the Dental Course must have obtained not less than 50% of the total marks in English and Science subjects taken together (i) at the qualifying examination (or at a higher examination) in the case of dental colleges where the admissions are made on the basis of marks obtained at these examinations or (ii) 50% of the total marks in English and Science subjects taken together at the competitive entrance examination where such examinations are held for selection.

Provided further that in respect of candidates belonging to Scheduled Castes/Scheduled Tribes, the minimum marks required for admission shall be 40% in lieu of 50% for general candidates. Where the seats reserved for Scheduled Castes and Scheduled Tribes students in any State cannot be filled for want of requisite number of candidates fulfilling the minimum requirements prescribed from the State, then such vacant seats may be filled up on All India basis with Scheduled Castes and Scheduled Tribes candidates getting not less than the minimum prescribed pass percentage".

5. It is clear from the above Regulations of the Dental Council of India that a candidate for admission to Dental Course should obtain 50% marks in Science subjects (i.e. Physics, Chemistry, Biology) and English taken together at the qualifying examination. However, in case of Scheduled Caste/Scheduled Tribe candidates the minimum marks required for admission shall be 40% in lieu of 50% for general candidates.

6. Similar regulations have been framed by the Rajiv Gandhi University of Health Sciences for the academic year 2004-2005, which is an affiliating University.

7. Section 4 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (for short "the Act") provides for Regulations of Admission to Educational Institutions. It states that minimum qualification for admission to any Course of study in an Educational Institution shall be specified by the University in the case of any course of study in an Educational Institution maintained by or affiliated to such University. Proviso to said Section states that the Government may in the interest of excellence of Education fix any higher minimum qualification for any course of study.

8. In exercise of the powers conferred u/s 14(1) of the Act the State Government has framed "Karnataka Selection of Candidates for Admission to Professional

Institutions Rules 2004". The said Rules provide for academic eligibility for admission to various courses. Section 3 prescribes the eligibility criteria for admission to BDS Course amongst others. It states that:

"3. Academic Eligibility-(1) A candidate shall be eligible for admission to any of the full time degree courses specified in Sub rule (3) of Rule 1, if he,-

a) is a citizen of India; and

b) has passed the second year pre-University or XII standard or equivalent examination,-

i) with Physics, Chemistry and Biology as optional subjects and English as one of the languages for Medical, Dental, Indian Systems of Medicine and Homoeopathy and has secured not less than fifty percent of the aggregate marks in respect of Medical, Dental, Ayurveda, Naturopathy and Yoga, Unani and Homoeopathy courses in the optional subjects or as revised by the respective academic councils from time to time;

ii) ...

iii) ...

Provided that the minimum marks for the purpose of eligibility shall be forty percent of the aggregate in the optional subjects in case of candidates belonging to the Scheduled Castes, Scheduled Tribes and Category-I of other backward classes specified in the relevant Government Order for the purpose of reservation in respect of Medical, Dental, Indian Systems of Medicine, Homoeopathy and forty percent of the aggregate marks in all subjects in respect of Architecture course;

Provided further that, for Dental course the candidate must have secured fifty percent marks in English language and in case of the candidate belonging to the Scheduled Caste, Scheduled Tribe and Category-I of other backward classes, forty percent".

9. As noticed above, proviso to Sub-section 1 (a) of Section 4 of the Act empowers the Government, in the interest of excellence of education to fix any higher minimum qualification for any course of study. The State Government in exercise of such power has prescribed 50% marks to general merit candidates and in the case of SC/ST and Category-140% marks. Thus, the State Government has fixed higher minimum qualification for admission to the said course. The qualification prescribed by the State Government is neither at variance nor in conflict with the Regulations of the Dental Council of India or the University. The Act empowers the State Government to fix higher minimum qualification, in the interest of excellence of education. When the State Government in its wisdom has fixed higher minimum qualification in English subject-for BDS Course which is in the interest of excellence of education, by the impugned Rule, this Court cannot interfere with the same. The higher

qualification fixed by the State Government does not adversely affect the standard of education prescribed by the Dental Council of India Regulations. This will not lower the criteria laid down by the DCI Regulations and do not have an adverse effect on the standards of education.

10. It is well established that the State Government can fix additional eligibility qualification for admission to a particular course. In *Dr. Ambesh Kumar v. Lrm Medical College, Meerut and Ors.* AIR 1994 SC 400 the State Government laid down the eligibility criteria for admission to Post Graduate Degree in M.D., M.S., and Diploma Courses. It has prescribed 55% marks or 52% marks for being eligible for consideration for admission to the said Courses. The Apex Court has held that it does not contravene or encroach upon the power of the Central Legislature to make laws or the Central Government to make orders in regard to matters provided in entry 66 of List 1 of Seventh Schedule of the Constitution. The order of the State Government merely provides an additional illegality qualification.

11. In *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, a Constitution Bench of the Apex Court has held as under:

"State may, for admission to the Post-graduate Courses lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education ".

12. Again in *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, the Hon"ble Supreme Court has observed as follows:

"If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, it cannot be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it.

13. In the present case, the State Government has fixed 50% of marks in English separately and 40% marks in English to Scheduled Caste/ Scheduled Tribe and Category-I students. Prescription of separate marks does not lower the standard fixed by the Dental Council of India. It is not in conflict with the Regulations of the University. On the other hand, it enhances the standard fixed by the Dental Council of India and the University. Merely because, similar standard has not been fixed for M.B.B.S. Course, it cannot be said that the standard fixed for B.D.S. Course is arbitrary. The Government in its wisdom and in exercise of the statutory powers conferred under the Act has prescribed higher qualification. It is not discriminatory or violative Article 14 of the Constitution of India. It is perfectly in accordance with law laid down by the Apex Court in the aforesaid decision.

14. There is no merit in this writ petition and it is accordingly dismissed. No costs.