

(2003) 03 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No's. 7239 to 7247 of 2003 (Edn)

Nagarajappa G. and Others

APPELLANT

Vs

Centralized Admission Cell and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Constitution of India, 1950 — Article 30 (1)
Karnataka Selection of Candidates for admission to Teachers Certificate Higher Course (T.C.H.) and Bachelor of Education Course (B.Ed.) Rule, 1999 — Rule 2M, 20

Citation : (2003) ILR (Kar) 1912 : (2003) 3 KarLJ 271 : (2003) 3 KCCR 1601

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Ashok Harnahalli, for the Appellant; A.N. Venugopala Gowda, for Respondent-1, B. Manohar, Additional Government Advocate for Respondents-3 and 4 and C.R. Goulay, for Respondent-6, for the Respondent

Final Decision : Allowed

Judgement

H. Rangavittalachar, J.—The writ petitioners are students who have been selected by the Centralised Admission Cell (hereinafter referred to as "Admission Cell" for brevity) for admission to Bachelor of Education Course (B.Ed.) for the academic year 2002-03, The 1st respondent along with respondents 3 and 4 directed the 6th respondent-college to admit these students in its college under the Government quota. When the students approached the 6th respondent, it refused admission on the ground that the college had already filled up all the seats both under the management and Government quota. This refusal is questioned in these writ petitions and the petitioners have also sought for a writ of mandamus by directing 6th respondent to admit them to its college.

2. By an ex parte interim order of this Court the 6th respondent was directed to admit the students.

3. 6th respondent-college has filed detailed statement of objections. It has stated in the objections statement that it is a "religious and linguistic minority"

institution entitled to establish its own institution under Article 30(1) of the Constitution of India. That the college has started to impart education in the B.Ed. course from the present academic year by an order of the State Government dated 27-12-2002 with an intake capacity of 100 students out of which 50% of the seats has to be filled up by the college under what is known as the "management quota" and the rest of 50% seats to be filled up by the State Government under the State Government quota. As per the calendar published by University dated 24-1-2003, the first term course should commence from 26-12-2002, that the admission of the students should commence from 25-1-2003 and the last date for admission with fine was 31-1-2003. The 1st respondent had initially sent a list of 36 merited students for admission as against its quota of 50 students. The college in obedience to the said intimation admitted all the 36 students and since it did not receive any further communication regarding the admission of the remaining 14 students even though it had waited upto 25-1-2003, the college bona fide felt that it can admit 14 students meant to be filled up under the Government quota, on its own and accordingly admitted the remaining 14 students on 25-1-2003 and 27-1-2003. Thus the entire intake of 100 students came to be filled up by the college and there are no seats available. It is only on 8-2-2003 after the entire 100 seats were filled up, the first respondent sent a further list of 9 students i.e., the writ petitioners herein with a direction to admit them in their college by which time all the seats were filled up, the college was helpless. It is under these circumstances, the college refused admission.

4. The first respondent has made available the records instead of filing the statement of objections for want of time.

5. Heard arguments of Sri Ashok Harnahalli, learned Counsel for the petitioners, Sri Goulay, learned Counsel for 6th respondent, Sri Venu Venu gopala Gowda, , Advocate for respondent 1 and Sri Manohar, Additional Government Advocate for other respondents.

6. The contention of Sri Ashok Harnahalli, learned Counsel for the petitioners is that when the first respondent-Admission Cell which had selected the writ petitioners as the candidates entitled to be admitted as per their merits and had forwarded the list of these petitioners to the 6th respondent-college for admitting having regard to the Karnataka Selection of Candidates for Admission to Teachers Certificate Higher Course and Bachelor of Education Course Rules, 1999 (hereinafter referred to as the "rules" for brevity), the 6th respondent was obliged in law to have admitted the 9 students. By not doing so, the rights of the petitioners are being violated, therefore they are entitled for issuance of a writ of mandamus. Learned Counsel relied on the decision in Purnima Sharma Vs. State of Karnataka and Others, rendered by the Division Bench of this Court on 14-12-2001 in support of the said contention.

7. In answer to this Sri Goulay, learned Counsel appearing for the 6th respondent submitted:

Firstly, when the University had fixed the last date for admission of the students as 31-1-2003 and though the college repeatedly requested the Government, vide their letters, Annexures-R. 4, 7, 8 and 9 and since the State Government did not respond to it, it should be presumed that the Government had granted "deemed permission" for the college to admit remaining 14 students of its choice which it has rightly done.

Secondly, that the 6th respondent is run by a society which is a "religious minority" within the meaning of Article 30(1) of the Constitution of India i.e., "a religious minority institution". The status of the institution as a "Minority Institution" is already declared by judicial pronouncement of Supreme Court in *Anjuman-E-Islam Vs. The State of Karnataka and Another*, and also the decision of this Court in *Ms. Neelu Arora v. Union of India* AIR 2003 SCW 609.

Under Rule 2(b) of the "Rules" the institution is entitled to admit 75% of the sanctioned seats under the management quota and the State Government is only entitled to fill 25% of the seats. In this case, institution has already admitted 36 students as against the intake strength of 100, much more than what the Government was entitled.

Lastly, he submitted that the writ petition has to be dismissed on the ground of delay and laches inasmuch as though the last date was fixed as 31-1-2003, the writ petitions have been filed on 18-2-2003.

8. In answer to the said contentions, Sri Venugopala Gowda, learned Counsel for the first respondent submitted that unless the "State Government" specifically permits by an express order as per the rules, a private institution cannot arrogate to itself the right to admit the students reserved for admission under the Government quota. No such express permission has been granted to the 6th respondent by the State Government. Per contra, 6th respondent was specifically directed by a letter and telephonic communication that it should not admit any students reserved to be admitted under the Government quota. It was nextly submitted that by virtue of the order of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* 1997(7) SCALE 306 that whenever an educational institution claims minority status it is obliged in that regard to approach the State Government and that until the State Government issues an order declaring the institution to be a minority institution, it cannot claim any rights as a minority institution.

9. Learned Government Advocate Sri Manohar submitted by citing the decision of this Court in W.P. No. 23722 of 1997 and connected cases decided on 21-7-1997 that the respondent 6 cannot on the basis of the last date fixed by the University for admission contend that if for any reason the Government does not fill up its quota within the last date, 6th respondent will get a right to admit such students. The right of the Government to till up its seats does not depend upon the action of the University.

10. Having regard to the rival contentions raised in this writ petition, following

points arise for consideration:

(1) Whether the 6th respondent having regard to the "Rules" and facts of this case the petitioner was entitled to fill 14 seats which was reserved to be filled up under the Government quota and therefore was justified in rejecting the admissions of the petitioners?

(2) Whether 6th respondent can claim minority status to claim any benefit as per Rule 2(b) of the Rules?

(3) Whether petitioners are guilty of delay and laches?

11. Point No. (1).--The Government of Karnataka has framed rules called as the Karnataka TCH and B.Ed. Rules, 1999 for regulation of admission of students and other matters in exercise of powers under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984.

12. Rule 2(j) of the Rules categorizes the institutions on the basis of minority, non-minority and aided and non-aided institutions and for reservation of seats for being filled up by the private management and the State Government. In cases of non-minority aided institution, the Government has a right to admit 75% of seats, in all other cases, the Government is entitled to fill up 50% of the seats.

13. An "Institution" has been defined by Rule 2(m) as:

" "Institution" means-

(i) in respect of College of Education, any College affiliated to a University u/s 53 of the Karnataka State Universities Act, 1976, imparting teaching in education at degree level (B.Ed.) and recognised by N.C.T.E.;

(ii) in respect of T.T.I. any institution established or recognised by the Government and N.C.T.E. imparting pre-service Teachers Training leading to T.C.H. Certificate issued by the Karnataka Secondary Education Examination Board".

14. And a "Minority Institution" has been defined under Rule 2(o) to be an institution run by a "religious or linguistic minority", "management" and as recognised I declared as such by the Government.

(emphasis supplied)

15. Rule 6 of the Rules provides the manner of determining the merit of a student for admission to the B.Ed. course to be filled up under the Government quota, and under Rule 7(8) the cell is authorised to repeat the counselling as many times as is required for filling the vacant seats.

16. Rule 7(8) with the amendment dated 19-7-2000 provides the procedure for filling the seats under the Government quota. It reads as under:

"7(8): For the seats remaining vacant even after reallocation and counselling, further counselling shall be done by selecting the candidates from out of the waiting list by reducing the cut-off percentage under the category in which vacancies exist. This process shall be continued till all the vacant seats are filled up in all the categories under Government seats, until the list of eligible candidates is exhausted. Seats still remaining vacant shall be filled up by management only if the Government issues specific orders in this regard".

17. Thus by a conjoint reading of interpretation clauses of Rule 2(m) and 2(o) and Rule 7(8) what emerges is that the seats allotted to the Government under the Government quota has to be filled up on the basis of the merit and in pursuance of the directions of the State Government, if the State Government for any reason "is unable to fill up even after repeated counselling, it may by an order in writing - can permit a private management to fill up the unfilled seats. In other words, the private management's right to fill up the unfilled seats under the Government quota arises only when they are permitted to do so by a "Express Government Order".

18. The contention of the petitioner is that by the inaction of the State Government in not responding to the letters vide Annexures-R. 4, 7, 8 and 9, the 6th respondent after 31-1-2003 acquired a right to admit 14 students of its choice. In my view, it cannot claim any such right merely on the basis of its own letters and the inaction of the Government.

19. Factually in this case the first respondent had specifically prohibited the college from admitting any student earmarked under the Gov- eminent quota by its letter dated 28-1-2003 sent by a courier acknowledged by the Principal wherein the first respondent had specifically rejected the request of college to admit 14 students. It is not correct to state that the respondents did not react to the letters of the 6th respondent and hence was led to believe that the Government was not interested. Therefore, there is no merit in the first contention.

20. Point No. (1) is answered holding that without a specific order by the State Government in terms of Rule 7(8), no private educational institution is entitled to admit any seats meant to be filled up under Government quota. 6th respondent was not justified in refusing to admit the petitioners.

21. Point No. (2).--On the status of the 6th respondent-college as a minority institution, as already noted the entire admission of the students is regulated by the "TCH and B.Ed. Rules". The rules defines a "Minority institution" as one recognised or declared as such by the State Government. An institution gets a "Minority Status" entitled to the privileges under the rules only when it is declared as such by the State Government under Rule 2(o) and not otherwise.

22. The reliance placed by the learned Counsel in Anjuman-E-Islam's case, supra, is concerned, the appellant before the Supreme Court in the said case is the 6th respondent herein. The Supreme Court has not held that the 6th

respondent-college has to be declared as a minority institution entitled to exercise all the rights under the TCH and B.Ed. Rules nor even has stated that it is a minority institution.

23. Similarly, in *N. Ammad Vs. The Manager, Emjay High School and Others*, also does not support the contention. Para 12 of the said judgment is extracted herein which is relied on by the petitioner's Counsel:

"When the Government declared the school as a minority school it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only after the Government declared it as a minority school on 2-8-1994".

24. The said decision does not in any way spell out that the recognition of the Government is not required to claim the status of a minority institution. In fact, this decision instead of advancing the case of the 6th respondent, advances the contention put forward by petitioner and supporting respondents. No sustenance can be drawn.

25. In *T.M.A. Pai Foundation's* case, *supra*, referred to by Sri Venugopala Gowda, the Hon'ble Supreme Court has mandated that every educational institution which wants to claim minority status should approach the State Government. It has stated that:

"(ii) The educational institutions claiming minority status should approach the State Government and till the State Government issues an order declaring the institution to be a minority institution, it cannot operate as such".

26. It is clear by a reading of the extracted portion of the decision of the Supreme Court in the light of the discussions made above, an institution which wants to claim the status of a minority institution must necessarily obtain the recognition and declaration by the State Government in the absence of which it cannot claim any such status or claim benefit under the rules.

27. During arguments Sri Goulay produced 2 orders of the State Government dated 4-2-1997 to contend that the 6th respondent has been recognised as a minority Institution by the Government. The order dated 4-2-1997 reads as under:

28. A reading of this order indicates that the 2 colleges, Anjuman Girls Primary and Higher Primary Schools were recognised as minority institutions.

29. In my view, this Government Order cannot be regarded as an order within the meaning of Rule 2(o) read with Rule 2(m) of the Rules. The "minority institution" for taking the benefit under the rules must seek recognition from the State Government for doing so under the T.C.H. and B.Ed. Rules. Admittedly,

that has not been done. This Government Order produced now has no relevance. Therefore, there is no merit in this contention also and it fails accordingly.

30. Point No. (2) is answered holding that the 6th respondent is not a "Minority Institution" within the meaning of the rules.

31. Point No. (3).--It was lastly submitted that the petitioners are guilty of delay and laches. The records produced by the first respondent disclose that on 3-2-2003 counselling was done for the writ petitioners and when they were selected on 5-2-2003, a communication was made to the 6th respondent that the list of 9 students (petitioners herein) for admission, which has also been received by the institution and since the 6th respondent refused to admit, these writ petitions have been filed on 18-2-2003. By the narration of these events, it cannot be said by any stretch of imagination that the petitioners are guilty of delay and laches disentitling them for relief under Article 226 of the Constitution of India. Therefore, the 3rd point also fails.

32. In the result, these writ petitioners succeed and the writ petitions are allowed. 6th respondent is directed to admit the petitioners to its college immediately. As the students are complaining that in spite of the Government Order and the interim order of this Court, the 6th respondent is deliberately refusing to admit the students on account of which they are losing classes and attendance, besides suffering great hardship, this is a fit case where this Court should exercise its extraordinary powers to give effect to its orders. Accordingly, if the 6th respondent fails to admit the students, the Deputy Commissioner of Bijapur is directed to enforce this order by supervising the admission of students.

Petitions allowed.