

(1984) 11 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 13507 of 1984

Rita Bheemaiah

APPELLANT

Vs

Bangalore University

RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1986 Kar 214

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : C.N. Kamath, for the Appellant; N.B. Bhat, for the Respondent

Judgement

1. The petitioner who was a student of I year B.A. Degree Course at St. Joseph College, Bangalore, during the academic year 1983-84, has presented this petition praying for the issue of a writ of mandamus, directing the Bangalore University to permit the petitioner to keep term for the III year Degree Course during the academic year 1984-85. The petitioner has also questioned the constitutional validity of the Regulation on the basis of which the petitioner is not permitted to keep term for the III year B.A. Degree Course.

2. The facts of the case in brief are as follows :

The petitioner joined the St. Joseph College, Bangalore, for the B.A. Degree Course during the academic year 1982-83. She completed the I year Degree Course in that year and during the academic year 1983-84 she had put in the requisite attendance for the II year Degree Course. The petitioner suffered typhoid fever at the relevant point of time and therefore she did not submit her application to the II year Degree Examination. As she had put in the prescribed attendance during the II year Degree Course, she intended to attend the III year Degree Course during the academic year 1984-85 and in the meanwhile pass the II year Degree at the supplementary examination, having regard to the fact that carry forward system is in existence according to the Regulations of the

University. When she sought permission to continue the III year FLA. Degree Course during the current academic year, an endorsement dated 14-8-1984 was issued by the Registrar. It reads :

"With reference to the above, Miss. P. B. Rita, is hereby informed that as per regulation No. X(2) of B. A./B. Sc./B. Com. Degree courses of the Bangalore University, the candidates who have completed attendance in the II year degree shall be eligible to keep term in the III year provided they have submitted the applications for the examinations along with the required fees. As per her above application,, she has not paid the examination fees for II year Degree course and submitted the application for the said Examination. Hence she is not eligible to keep term in the III year B.A. Degree course during the academic year 1984-85."

According to the above endorsement, the petitioner was ineligible to keep term for the III year as she had for submitted the application for the examination during the II year Degree Course. It is in these circumstances, the petitioner has presented this petition.

3. The relevant Regulation on the basis of which the impugned endorsement was issued is X (2) of the Regulations for the B. A, B. Com. and B. Sc. Degree Courses. It reads:

"The candidates who have completed attendance in the II Year degree shall be eligible to keep term in the III Year provided, they have submitted the applications for the examinations along with the required fees."

4. According to the petitioner she had put in the requisite attendance during the II year Degree Course. She has been denied permission to join the III Year Degree Course during the current academic year. In view of the underlined portion of the Regulation, according to which a candidate becomes eligible to keep term in the III Year if only he had submitted his application for examination along with the required fees. The petitioner questions the constitutional validity of the underlined portion of the Regulation on the ground that it is violative of Art. 14 of the Constitution. The plea of the petitioner in this behalf is as follows: According to the first part of Regn. No. X(2) candidates who have completed attendance in the II year degree course become eligible to keep term in the III Year. The petitioner has completed the attendance in the II year. Between two candidates, who had put in attendance, one of whom had submitted the application for examination, but has not appeared for the examination, and another who had not submitted the application for examination and, therefore, had not appeared for the examination, there is no difference. They are similarly situated in that both of them had not appeared for the examination. Therefore there is no rational basis to subject them to different treatment. The mere circumstance that one of them had submitted the application to the examination and another had not, constitutes no basis for denying the opportunity of keeping term in the III Year to the latter while giving-the opportunity to the former.

5. As against the above plea, the stand taken by the University is as follows:

Regulation V(c) prescribes the condition regarding the fulfilment of the attendance. It reads:

"A student shall be considered to have completed an academic year if he/she has attended not less than 3/4 of the number of working periods comprising the course during the said academic year and if his/her conduct and progress have been satisfactory."

Regulation VII (I) regulates the appearance for the examination. It reads:

"A candidate shall apply for all the parts in each examination when he/she appears for the first time. A candidate shall be considered to have appeared for the examination only if he/she submitted the prescribed application for the examination along with the required fees."

(Underlining by me)

According to the first part of the "above Regulation a candidate is required to appear for all the subjects when he/she appears for the examination at the first attempt. Further, according to the underlined part of above Regulation if a candidate had submitted the prescribed application for the examination along with the required fee, he/she shall be considered to have appeared for the examination. Relying on the above Regulations at para. 6 of the statement of objections it is stated as follows:

"In the interest of maintenance of academic standards, requirement of attendance is prescribed by Regulation V of the Regulations and the requirement of appearance for examination is prescribed by Regulation VII of the Regulations. In order to be eligible to keep terms in the III Year, the requirement of attendance as well as the requirement of appearance for examination have to be satisfied; the requirement of attendance alone is not sufficient. The impugned proviso is meant to ensure the latter requirement".

There are two conditions which should be fulfilled by a candidate for keeping term for the next higher Class. They are:

- (1) fulfilment of attendance requirement.
- (2) appearance at the examination.

Unless these two conditions are fulfilled no candidate can claim to keep term for the next higher Class. Even on the basis that the petitioner had fulfilled the first requirement, she had not fulfilled the second requirement and the second requirement could not be considered as irrational and there is no substance in the contention of the petitioner that the second part of Regn. X of the Regulations is violative of Art. 14 of the Constitution.

6. Learned Counsel for the University relied on the judgment of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , in which the

Supreme Court has held that in academic matters the wisdom of the" academic body must prevail. Learned counsel also submitted that when the constitutional validity of a provision is questioned on the ground -that it was violative of Art. 14, the burden is on the petitioner to establish that there has been a violation of the right to equality as there is always a presumption in favour of constitutionality of the provision.

7. I shall now proceed to consider the validity of the rival submissions. In the aforesaid decision of the Supreme Court on which the learned counsel relied, the Supreme Court has held that in academic matters the wisdom of the academic body concerned must prevail unless the provision is ultra vires or is found to be violative of constitutional provisions. Therefore, if Regn. X(2) is violative of Art. 14 as contended for the petitioner, then the mere fact that the regulation deals with an academic matter is no ground to refuse to declare it invalid. As far as the plea of presumption is concerned, unless a valid basis is discernible, on the face of the law or surrounding circumstances brought to the notice of -the Court in support of the classification and its nexus to the object sought to be achieved, it cannot always be held that it must have some undisclosed valid basis (See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, It is well settled that in order to test the constitutional validity of a provision on the ground of violation of Art. 14 there are two cumulative tests to be applied - (i) whether the classification is reasonable, and (ii) even if the classification is reasonable, whether there is nexus to the object sought to be achieved. (See *Railway Board Vs. A. Pitchumani*,

8. According to Regn. X(2) the two conditions prescribed as a condition for eligibility for" keeping term for the III Year are: (1) the candidate must have completed attendance in the II year Degree Course, (2) he must have submitted the application for the examination along with the required fees. Now, as far as the first condition is concerned, there is no dispute that it constitutes a valid basis because a candidate who has put in attendance as prescribed under Regn. VII stands entirely on a different footing than a candidate who has not put in prescribed attendance. The question which, however, arises for consideration in this case is, which of the two persons, who have put in the requisite attendance as prescribed under Regn. VII there is any rational nexus to say that as one of them had submitted an application for examination but had not appeared for the examination, he is eligible to keep term for the next higher class and that another who had not submitted the application and not appeared for examination is not eligible, to do so.

9. The stand taken in the statement of objection is that there are two requirements insisted by the Regulations, viz.-

(i) putting in prescribed attendance, and

(ii) appearance at the examination.

If that was what the Regn. X(2) had provided, the classification would have on

the face of it disclosed the basis. But Regn. X(2) does not prescribe the second requirement at all. It simply speaks of the submission of the application for an examination and not appearance

10. In my opinion, there is no rational basis to distinguish between two students, who have put in the prescribed attendance, but "Who had not appeared for the II year examination, in the matter of giving an opportunity to keep term for the next higher class and to appear for the examination of the II year in the mean what, by providing that one of them who had submitted the application for examination alone would be entitled to such benefit and not the one who had not submitted such application for the position in the case of both of them is the same in that they have put in attendance and both of them have not appeared for the examination. The circumstance that one had submitted the application is a very slender basis to distinguish the two and give the privilege of keeping term in the next higher class in respect of one and denying the same to another.

11. Learned counsel for the University, however, submitted that the second part of Regn. X(2) which provides that a candidate, who had submitted the application for examination means he had appeared for the examination. In order to substantiate this point, he relies on first part of Regn. VII. The Regn. VII has been extracted earlier. According to the said Regulation a candidate who appears for the examination for the first time is bound to appear for all parts of the examination and fails he would get the change of appearing for only some of the subjects in the next examination. It is in this context a legal fiction is incorporated, according to which a candidate who had submitted the application for the examination once is deemed to have appeared for the examination. In other words, the effect of the deemed provision is that if a candidate had submitted his application for the University examination once even though he failed to appear for the examination his next attempt will be treated as the second attempt and he would have the option of appearing for some of the subjects. It is only for this limited purpose the legal fiction is created. In other words, if the second part of Regn. X(2) was not there and consequently it had allowed the petitioner to keep the term for the III year and she wanted to appear for the examination of the II year at a supplementary examination she would not have the benefit of the legal fiction incorporated in Regn. VII(2) and as a result her such attempt would have to be treated as the first attempt and therefore in view of the first part of the Regn. VII she would have to appear for all the parts. It is this limited purpose which the legal fiction created by Regn. VII serves. It is well settled that when a legal fiction is created it must be confined to the provisions in respect of which it is incorporated and cannot be carried into the other provisions of the statute. (See : Braithwaite and Co. (India) Ltd. Vs. The Employees" State Insurance Corporation,

12. The second part of Regn. X does not state that a candidate who had appeared for the examination in the Regri. VII has been extracted earlier. According second year alone would be allowed to keep term for the III year. If

the Regulation had provided that a to the said Regulation a candidate who appears candidate who had put in attendance and had also appeared for the examination, such candidate alone for the examination for the first time is bound 13 would be permitted to keep term for the next year, that might have constituted a rational basis. In fact such is the plea taken in the statement of objection. But, the plea does not accord with the contents of Regn. X(2) of the Regulations, as the Regulation does not impose any such condition.

13. The object sought to be achieved by Regn. X(2) Is obvious. The securing of academic instruction and training for a period not less than the prescribed period by putting attendance is a Condition incorporated from the point of view of academic standard and excellence. Therefore, the first part of Regn. X(2) insists on that condition as condition precedent to keep term for the next higher class. There is however no nexus between the object of the Regulation and the classification brought about by the second part of Regn. X. In the result, I hold that the latter part of Regn. X(2) is violative of Art. 14 of the Constitution.

14. Learned Counsel for the University submitted that the fact that a candidate had submitted the application for examination would show that he/she was serious about appearing for the examination and a candidate who had not submitted the application would show that he/she was not serious about appearing for the examination constitutes a rational basis. As pointed out earlier, the rational basis pleaded in para 6 of the statement of objection is the actual appearance in the examination by one candidate and non-appearance by another and not the intention of any candidate to appear or not to appear for the examination. Therefore, I find no substance in the submission.

15. In the result, I make the following

ORDER

(1) Writ petition is allowed,

(2) The words "provided they have submitted the applications for the examinations along with the required fees" in Regn. X(2) of the Regulations for the B.A., B.Com. and & B.Sc Degree Courses of the Bangalore University are declared invalid as offending Art. 14 of the Constitution.

(3) A writ of mandamus shall issue to the respondent to permit the petitioner to keep term for the III year Degree Course during the current academic year.

(4) No costs.

16. Petition allowed.