

**(2000) 11 KAR CK 0041**

**In the Karnataka High Court**

**Case No : Writ Petition No"s. 27325 to 27333 of 2000**

Saqlain Shivani and others

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

**Date of Decision : 09-11-2000**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 227

**Citation :** AIR 2001 Kar 206 : (2001) ILR (Kar) 654 : (2001) 4 KarLJ 42 :  
(2001) 1 KCCR 370

**Hon'ble Judges :** P. Vishwanatha Shetty, J

**Bench :** Single Bench

**Advocate :** Sri Mohammed Farooq, for the Appellant; Sri K. Vishwanath, A.G.A.,  
for the Respondent

## **Judgement**

1. The petitioners, in these petitions, claim that all of them have passed S.S.L.C. and they intend to appear for the II Year Pre-University Examination as external students. In these petitions, they have made four prayers. Firstly, they have prayed for a declaration that Clauses 2(a) and 3(a) of the Notification dated 21st of July, 1999, a copy of which has been produced as Annexure-A to the writ petitions, issued by the first respondent prescribing that such of those candidates who intend to appear for the II Year Pre-University Examination as external candidates, should have completed the age of 18 years as on 31st of March, 2000, are unconstitutional and void in law; secondly, they have prayed for a direction to the respondents to fix the qualification regarding age at 17 years, to appear for the II Year Pre-University Examination as external candidates or else with or without basic qualification; thirdly, they have prayed for a direction to the second respondent to conduct external examinations for the Pre-University Course in all optional subjects including Science subject; and fourthly, they have prayed for a direction to the first respondent to permit them to submit their applications to appear for the II Year Pre-University Examination as external candidates through private Educational Institutions which are imparting education for Pre-University Courses.

2. Sri Mohammed Farooq, learned Counsel appearing for the petitioners, in support of the prayer of the petitioners, made three submissions. Firstly, he submitted that Clause 2(a) of Circular Annexure-A issued by the first respondent to the extent it prescribes the minimum of 18 years of age as on 31st of March, 2000 for a candidate to appear for the II Year Pre-University Examination as an external candidate, is totally illegal and unconstitutional. According to the learned Counsel, the said restriction takes away the rights of the petitioners to pursue their education by appearing for the II Year Pre-University Examination. Elaborating this submission, Sri Farooq pointed out that the Directorate of Correspondence Courses and Distance Education, Bangalore University, prescribed the minimum of 18 years of age only as on 1st of July, 1999 for admission to Under-graduate Courses and 21 years of age as on that date for admission to Post-graduate Courses; and that being the position, there is absolutely no justification for the respondents to prescribe the minimum of 18 years of age for external candidates to appear for the II Year Pre-University Examination. Therefore, he submits that when the minimum age prescribed for Under-graduate Courses being only 18 years as on 1st of July, 1999, there is absolutely no justification to prescribe the minimum of 18 years of age as on 31st of March, 2000 for an external candidate to appear for the II Year Pre-University Examination. It is his further submission that insofar as the regular students are concerned, even assuming that a child is entitled to seek admission only after completing five years and ten months, such a student would be eligible to appear for the II Year Pre-University Examination immediately after 16 years and 10 months and not after 18 years which is insisted upon insofar as the external candidates are concerned. Therefore, he submits that Clause 2(a) of the Circular Annexure-A requires to be struck down as ultra vires. Secondly, he submitted that there is absolutely no basis or justification in restricting the rights of the external candidates to take up the II Year Pre-University Examination in Arts subjects only. According to him, the respondents should have made provisions to all such eligible candidates who have passed the S.S.L.C., to appear for Pre-University Examinations in all the subjects which are prescribed as subjects for study in two years Pre-University Course. Finally, he submitted that the provision made that all applications of external students who intend to appear for the II Year Pre-University Examination, should be routed only through the Government College, is also illegal, arbitrary and unreasonable. He pointed out that when the Pre-University Courses are being offered by large number of private Educational Institutions, there is absolutely no justification to insist upon such of those students who intend to take up the II Year Pre-University Examination as external candidates, to submit their applications only through the Government College.

3. However, Sri K. Vishwanath, learned Additional Government Advocate appearing for the respondents, strongly countered the argument of the learned Counsel appearing for the petitioners. Insofar as the first submission of Sri Farooq is concerned, it is the submission of the learned Government Advocate

that since admittedly all the regular students are required to complete 17 years and 10 months to appear for the II Year Pre-University Examination, the prescription of 18 years as minimum age qualification prescribed for the external students cannot be held to be either unreasonable, arbitrary or discriminatory in nature. According to him, students who appear for the Pre-University Examination as external candidates, stand on a footing different from that of the regular students. He submitted that the benefit of academic curriculum and extra-curricular activities available to regular students, not being available to the external candidates, if the authorities while introducing the Scheme in their wisdom, thought that such of the candidates who intend to take external examination, must have completed 18 years of age as on 31st of March, 2000 to take up the II Year Pre-University Examination for the year 2000, such prescription of age cannot be held to be either illegal or arbitrary so as to call for interference at the hands of this Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India. Drawing my attention to paragraph 2 of the statement of objections, the learned Government Advocate pointed out that if the minimum age of 18 years was not prescribed, the students who have failed in I Year Pre-University or the students who pass the S.S.L.C. in Supplementary Examination, would be in an advantageous situation than the regular students who appear for the II Year Pre-University Examination. Therefore, he pointed out that with a view to maintain uniformity in age to enable the students to appear for the II Year Pre-University Examination, 18 years of age is prescribed as the minimum age qualification. With regard to the second submission of the learned Counsel for the petitioners, the learned Government Advocate submitted that it is not permissible for the petitioners to insist upon the respondents to introduce any Scheme of Examination to the students who intend to take up II Year Pre-University Examination as external candidates; and it is for the State to decide on which subject of curriculum, the students should be permitted to appear for the Examination as external candidates. It is his submission that there is no statutory or constitutional right which enables the petitioners to compel the State to permit them to appear for the II Year Pre-University Examination as external candidates in all the subjects for which regular courses are permitted in the Colleges. He further pointed out that in respect of Science and other subjects, since serious study is required, it was felt that such subjects are required to be studied at the level of Pre-University only by attending Colleges as regular students; and any permission granted to the students to appear for the Examination in such subjects, would seriously affect the academic standard at the Pre-University level which would have serious consequences while pursuing studies at higher educational level. Therefore, he submits that the petitioners are not entitled to seek for a direction to the respondents to introduce a Scheme for external candidates to take up the Pre-University Examination in all subjects including the Science subject. Thirdly, he submitted that since the Scheme permitting the students who are not regular students, to take up the Pre-University Examination as external candidates, has been introduced by the authorities, it is for them to evolve a procedure as to how

the applications of external candidates who intend to appear for the Pre-University Examination, should be routed through and at which Centres, Examination will have to be conducted for such candidates. It is his submission that when a programme is introduced by the first respondent by way of concession to such of those students who are not regular students, with a view to enable them to have an opportunity to pass the II Year Pre-University as external candidates, it is not permissible for the petitioners to seek for a direction before this Court directing the respondents to modify the Scheme introduced by the respondents. Elaborating this submission, he pointed out that external candidates are insisted upon to submit their applications through Government Colleges with a view to maintain purity in academic standard and minimise malpractice in the matter of deciding the eligibility and other requisite qualifications of the candidates as well as in the matter of conducting the Examinations. Therefore, he submits that there is nothing wrong on the part of the respondents in insisting upon the candidates who intend to appear for the II Year Pre-University Examination as external candidates, to submit their applications only through Government Colleges. Therefore, he submits that for all these reasons, the writ petitions may be dismissed as having no merit.

4. Having elaborately considered the arguments effectively advanced by the learned Counsel appearing for the parties, while I find considerable force in the submission of the learned Government Advocate, I am unable to accede to the submission of Sri Mohammed Farooq, learned Counsel appearing for the petitioners.

5. It is not disputed by Sri Farooq that even regular students are required to complete 17 years and 10 months to appear for the II Year Pre-University Examination inasmuch as the minimum age prescribed for admission of a child to the I Standard is 5 years and 10 months. Therefore, in my view, the insistence of just two months more for external students as against the regular students, to take up the II Year Pre-University Examination can never be held to be either unreasonable, arbitrary or discriminatory in nature. It is necessary to point out that the Scheme permitting the candidates who are not regular students, to appear for the II Year Pre-University Examination as external candidates, is the one introduced by the respondents for such of those candidates who did not have the benefit of attending the classes of I and II Year Pre-University Course as regular students. When a Scheme is introduced by the respondents, unless the conditions of such Scheme are totally unreasonable, arbitrary or discriminatory in nature, the same cannot be lightly interfered with by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. It is also necessary to point out that the introduction of the Scheme, prescription of the qualifications and holding of Examinations are all matters connected with academic programme. These matters must, to a large extent, be left to the academicians and experts who have better experience and knowledge in the said matters. Candidates who intend to appear for the II Year Pre-University Examination, cannot be treated on par with regular students who attend classes for I and II

Year Pre-University Course. Participation of regular students in academic activities at Pre-University level is more serious and more academic oriented inasmuch as they are expected to have the constant advice, guidance and coaching by their Professors/Teachers, whereas the external students do not have such advantage. In that situation, if the Authorities of the State, as a matter of concession, have introduced a Scheme and provided an opportunity to such of those students who did not have the benefit of the regular course of study at the Pre-University level, to appear for the II Year Pre-University Examination as external candidates and while so introducing the Scheme, prescribed that the candidates who intend to take up the II Year Pre-University Examination as external candidates should have completed the minimum of 18 years of age, in my view, such prescription cannot be considered as either unreasonable, arbitrary or violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India. The students who appear for the II Year Pre-University Course as external candidates, can be classified as belonging to a distinct group of students from the one who regularly attend the classes and appear for the examination. The classification made for the purpose of prescribing the age qualification to appear for the II Year Pre-University Examination between the regular students and external students, in my considered view, is a reasonable classification. For these reasons, the first contention of Sri Farooq is liable to be rejected as one without any merit.

6. I am also of the view that the petitioners are not entitled for any direction to the respondents to permit them to appear for such of those subjects including the Science subjects which are being offered as core subjects in regular course of study at the Pre-University level. Learned Counsel for the petitioners is not able to point out either any statutory or constitutional right which casts an obligation on the respondents to permit the petitioners to appear for the II Year Pre-University Examination as external candidates in any subject. If the respondents had introduced a Scheme permitting such of those students who are not regular students, to appear for the II Year Pre-University Examination in Arts\\subjects only as external candidates, it is purely a matter of concession shown and a programme introduced by the State. There is no obligation on the part of the respondents to permit the petitioners to appear for the II Year Pre-University Examination in all the subjects in which regular students are allowed to study at the Pre-University level. It is for the academic bodies and the State as a matter of policy and programme, to decide in what subjects or curricular of study the students can be permitted to appear as external candidates without undergoing regular study in the College. It is a matter on which the Authorities will have to take a decision keeping in mind the contents of the subjects and the infrastructural facilities that is required for the study of the subject. This Court in exercise of its writ jurisdiction, cannot substitute its views in a matter like this, to the views of the Authorities who have better expertise and knowledge to take appropriate decision in the matter. Therefore, the second submission of the learned Counsel for the petitioners is also liable to be rejected as one devoid of

merit.

7. Now, the only other question that remains to be considered is, whether a direction is required to be given to the respondents to receive the application of external candidates who intend to take up the II Year Pre-University Examination, through private Educational Institutions which are imparting education in Pre-University Course? In my view, such a direction cannot be given. May be, as pointed out by Sri Farooq, at one stage, the applications of external candidates were allowed to be submitted through private Educational Institutions for the same being forwarded to the Authorities concerned. But, on the basis of the experience, if the Authorities have decided to discontinue such procedure and evolved a programme that the applications of external candidates should be routed through only the Government Colleges, in my view, such a condition cannot be said to be either unreasonable or arbitrary. It is for the Authorities who have introduced the Scheme, to decide as to how the applications of the external candidates should be processed. As noticed by me earlier, the Scheme permitting the students, who are not regular students, to appear for the II Year Pre-University Examination as external candidates, is a matter of concession. While extending such concession, if the Authorities have imposed certain conditions keeping in view the larger public interest, this Court, in exercise of its power under Article 226 of the Constitution of India, cannot interfere with the same unless, on the face of it, the conditions so imposed appear to be highly unreasonable, arbitrary or violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India. In my view, the requirement that the external candidates should submit their applications through Government Colleges, cannot be said to be either unreasonable or arbitrary. It cannot be seriously disputed that the Authorities/Officers of the State have better control and supervision over the Government Institutions than the private Educational Institutions. Therefore, they will have better control in the matter of scrutinising the applications and supervising the events relating to holding of examination for external candidates. Therefore, I am unable to accept the third submission of Sri Farooq.

8. In the light of the discussion made above, these petitions are liable to be rejected and accordingly, they are rejected.

9. However, no order is made as to costs.

10. Sri K. Vishwanath, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from today.