

(1997) 10 KAR CK 0020

In the Karnataka High Court

Case No : Writ Appeal No's. 6017, 6018, 6115 to 6253, 6021 to 6054, 6272 to 6367, 6368 to 6422, 6445 to 6521 and 6526 to 6703 of 1996

Shanti Vardhak Education Society's Rural Engineering
College, Bhalki, Bidar District

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Karnataka State Universities Act, 1976 — Section 4 (2)

Citation : AIR 1998 Kar 72 : (1998) 1 KarLJ 293

Hon'ble Judges : R.P. Sethi, C.J.; S.R. Bannurmath, J

Bench : Division Bench

Advocate : Sri B.L. Acharya, Sri G.V. Shantharaju, Sri B. Veerabhadrappe and Sri P. D'Souza, for the Appellant; Sri S. Vijaya Shankar, Advocate-General and Sri A.V. Srinivasa Reddy, A.G.A., Sri R.H. Chandangoudar, M/s. Patil and Patil, Sri M.N. Seshadri and Sri S.G. Bhagawan, for the Respondent

Judgement

S.R. Bannurmath, J.—These appeals project yet another instance and efforts of the management of the private educational institutions attempting to play with the career of the students with a sole object of filling up their coffer taking shelter under one or the other pretext, lacunae or loop holes in the laws governing educational system.

2. To overpower the evil of capitation fee and to regulate the process of admission to professional and technical courses, the State Legislature has enacted the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (hereinafter called the Act). Subsequently, under the powers conferred by the said Act the State has also framed the Karnataka Selection of Candidates for Admission of Engineering, Medical and Dental Courses Rules, 1993 (hereinafter called the Rules).

3. Since then, admissions to these courses are regulated as per the provisions of the Act and the Rules. As mentioned, the greed of the private educational

institutions and the apathy on the part of the State Government led to file several writ petitions in this Court as well as before the Hon"ble Supreme Court. Considering these aspects and the fact that ultimately the fight between the managements and the State would affect the students, the Hon"ble Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , by its order dated 4-2-1993, framed a scheme governing the admission to the professional colleges. The Hon"ble Supreme Court framed the scheme only with a view to eliminate further the evil of capitation fee and to stop the unguided discretion used by the privately managed professional institutions. The main object of the scheme was to ensure that merit prevails in the matter of admission both in respect of what are commonly known as "free seats" and "payment seats". Aggrieved by the judgment of the Hon"ble Supreme Court several institutions filed review petitions which were also disposed by the Constitution Bench on 14-5-1993, with certain clarifications. In one of the cases arisen from the State of Karnataka in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, etc., , by an order dated 11-8-1995, the Hon"ble Supreme Court passed the following interim order:

"So far as engineering and other colleges are concerned, the rules, regulations and orders made by the concerned Council, Government and this Court shall continue to govern for this academic year. There shall be no change in so far as these colleges are concerned. In short, the position obtaining in the Academic Year 1994-95 shall apply and continue for Academic Year 1995-96. The allotment of students to these colleges shall be completed by September 30, 1995. Any seats remaining unallotted -- or any seats remaining unfilled on or after 16th October, 1995, shall be allowed to be filled by the Management".

(emphasis supplied)

Thus the Hon"ble Supreme Court fixed the last date of allotment of seats of engineering students by the GET to 30-9-1995 and further permitted that any seat remained unallotted on or after 16-10-1995 to be filled by the Management.

4. For several reasons, as the CET Cell could not allot all the seats available for allotment, though large number of students were still in waiting list, the State Government decided to approach the Hon"ble Supreme Court seeking extension of time to complete the allotment. Accordingly, the Principal Secretary to Education Department sent a note to the Director of Technical Education (DTE) on 14-10-1995 directing him to give wide publicity in newspapers and over radio and television immediately directing the private engineering colleges in the State not to admit any student against the unallotted unfilled engineering seats till further directions.

5. In accordance with this direction, the DTE sent phonogram to all the private engineering colleges including the appellants before us on 15-10-1995 itself. This information of the State was also announced by the All India Radio and the Doordarshan in their broadcast on the very day. It is an admitted fact that this

information was also received by the Karnataka Private Colleges Association and the Association of Managements of Aided Engineering Colleges in Karnataka of which the appellants' institutions are members.

6. After taking all these precautions by way of intimation to the college managements and the Association by all possible means like phonograms, publicity in newspapers, announcements in radio and television, the State Government moved the Hon'ble Supreme Court by way of Interlocutory Application No. 33 of 1995. The prayer of the State in the said application was:-

"As per the order of this Court, the management are allowed to fill up the vacant seats in respect of Medical and Dental Courses only after 30-10-1995, In respect of engineering courses, the managements are allowed to fill up the vacant seats after 16-10-1995. That being the case, no harm or prejudice will be caused if time is extended to the CET Cell to allot seats from among the students available in the waiting list. The State Government, in view of the vacant seats and large number of deserving students in the waiting list in the above said courses, intimated all the private managements not to fill up the said vacant seats until an order is passed by this Hon'ble Court on this application. Therefore, it is prayed that this Hon'ble Court "be pleased to Extend the time by 3 weeks from the date of order that may be passed by this Hon'ble Court on this application for allotment of vacant seats in respect of Medical, Dental and Engineering Courses, in the interest of justice".

(emphasis supplied)

After hearing the Counsels for both parties, the Hon'ble Supreme Court by its order dated 20-10-1995 ordered thus:--

"Time as prayed for is granted. We make it clear no further extension shall be granted".

The effect of this order is that the Hon'ble Supreme Court extended the last date of completion of allotment of CET from 30-9-1995 to 10-11-1995 (by three weeks). Pursuant to this, the Special Officer, CET, published the Spot Counselling and Admission Notice on 23-10-1995 in all the leading newspapers. The counselling for the Karnataka students was fixed between 29-10-1995 and 1-11-1995 and for non-Karnataka students between 3-11-1995 to 7-11-1995. The students who are the petitioners in the writ petitions, except in Writ Petition No. 40975 of 1995 were accordingly allotted seats in various engineering colleges; but, the managements refused to admit them giving endorsements to that effect. One of such endorsements reads thus:

"ENDORSEMENT

As per the order of the Hon'ble Supreme Court of India dated 11-8-1995, we have already filled up the unallotted unfilled seats on 17th October, 1995. However if the Government is agreeable to increase the intake we have no objection for admitting this student Sri Subhransh Shekhar, S/o.....CET No.

A2963 Rank 4035".

7. As the students who were allotted seats by the CET were not admitted by these colleges they had to approach this Court in the present batch of writ petitions. In the writ petitions the management took the stand that as the Hon"ble Supreme Court itself had allowed them to fill the seats on or after 16-10-1995 vide the interim order in T.M.A. Pai Foundation's case, supra and, in the absence of any communication to them, they had filled the seats on 16th or 17th itself. It was further contended that the phonograms issued by the State Government were received by them on or after 17th October, 1995, in the evening by which time, the admissions were over; that they have neither heard the announcements in the radio or in the doordarshan nor seen the newspaper announcements and, hence, the Management sought to justify their filling the seats and refusal to admit the students allotted by the CET.

8. The learned Single Judge, after considering in detail all the arguments of both sides and also considering the records held that certain educational institutions were not justified in filling up the seats on 16th or 17th as the same was clearly contrary to the directions issued by the State Government on 15-10-1995 and in the result allowed the writ petitions directing the Management to permit the petitioners/students to continue their studies in the respective colleges.

9. Aggrieved by the common order dated 27-5-1996, passed by the learned Single Judge considering all the writ petitions, various managements have presented these writ appeals before us inter alia contending that the finding of the learned Single Judge that the managements had no authority to admit the students on or after 16-10-1995 and that the admissions so made were quite mala fide and illegal; that the learned Single Judge has not considered the aspect that in the absence of any knowledge of the intimation or direction of the State dated 15-10-1995, they should not have been forced to take the excess students allotted by the CET which would also be again contrary to the directions issued by the Hon"ble Supreme Court. It was further contended that the State Government had no authority to ask the appellants-managements not to admit the students on or after 16-10-1995, for the unallotted quota as, in fact, the Apex Court itself by its order dated 11-8-1995, had permitted the management to admit the students against the unallotted or unfilled seats.

10. On the other hand, learned Counsel appearing for the respondents-students and the learned Government Advocate have argued in support of the findings of the learned Single Judge.

11. After hearing the learned Senior Counsel Sri Acharya, Sri Shantharaju, Sri Veerabhadrappe and Sri D'Souza appearing for the managements and Sri Vijaya Shankar, learned Advocate-General, Sri Srinivasa Reddy, Additional Government Advocate, Sri Chandangoudar, Sri Bhagawan, and Sri Patil, learned Counsels for the respondents, the following questions arise for our consideration:

1. Whether the management or the institutions had the knowledge of the

Government direction dated 15-10-1995, directing them not to fill up the seats?

2. Whether these institutions have, in fact, made admission and allotted the seats to the students on 16/17-10-1995?

3. What is the effect of the direction issued by the Hon"ble Supreme Court on 20-10-1995 while considering LA. No. 33 of 1995 filed by the State in the T.M.A. Pai Foundation's case, supra, in Writ Petition No. 31719 of 1993?

12. On a perusal of the records, in our opinion, the learned Single Judge has rightly held that the hurried filling up of the seats by the institutions was illegal or wrong; that the management had the knowledge of the direction issued by the State Government dated 15-10-1995. Though these are the finding of facts considered in extenso by the learned Single Judge, as it affects the career of hundreds of students we have once again looked into every documents referred to by both sides and on going through the records we find that there is no justifiable ground for these institutions to say that they had not received the communication of the State Government dated 15-10-1995. As noted earlier, the State Government had taken all the precautions and measures to notify all the concerned institutions that they should not fill-up the unallotted seats after 16-10-1995, well in advance. The State had not only sent individual phonogram to all the institutions but also had given wide publicity of the directions through the media of newspapers, radio and doordarshan. The direction was also intimated on the very same day to the President of the Association of the colleges or the management to which all the appellants are admittedly members. One of the arguments addressed by the learned Senior Counsel Sri Acharya was that the appellants' colleges are situated at a far off places from Bangalore and as such they have not received any communication either on the 16th or in the evening of 17th. We can appreciate this argument if that was the only type of communication the State Government made. But, as we have noticed, the direction was communicated by various modes, like newspaper publication, announcements in radio and television. The Association representing these institutions was also informed of the same on the very same day and, hence, in our opinion it is too much to say on the part of the managements that they had not received any communication. It is also to be noted that the hurried steps taken by the appellants-managements to fill up the seats in a day or two leads to suspect their bona fides. In all these colleges more than hundreds of students were to be admitted and that is practically impossible to admit such a large number in each of the institutions within a few hours of one working day for the simple reason that each student had to be admitted, his name has to be registered in the required registers, individual large sum of fees has to be collected, receipts for the payments have to be issued and therefore a lot of time is required to admit such a large number of students.

13. Hence, concurring with the finding of the learned Single Judge we hold that in spite of the knowledge of the direction issued by the State Government dated 15-10-1995, the appellants/Institutions have filled up the seats in a hurried way

only to make illegal gain and hence the action of the managements in filling up the seats is mala fide.

14. This takes us to the next question as to the effect and interpretation of the order of the Hon'ble Supreme Court dated 20-10-1995, in T.M.A. Pai Foundation's case, supra, wherein the Hon'ble Supreme Court extended the time for the CET to fill up the seats by three weeks. In this regard our attention was drawn by the learned Additional Government Advocate to Section 4(2) of the Karnataka State Universities Act, 1976 (for short the Act). Under the said Act unless the State Government permits the institution or the management could not fill up the seats. No doubt, the Hon'ble Supreme Court by its earlier order dated 11-8-1995, had directed the CET to complete the allotment of seats to the students by September 30, 1995 and that unallotted or unfilled seats therefore were allowed to be filled up by the management on or after 16-10-1995. The significant weight has to be given to the words "any seat remaining unfilled or any seat remaining unfilled on or after 16-10-1995". So, it has to be noted that even by the order dated 11-8-1995, the Apex Court had permitted the appellants to fill up the seats which remained unallotted or unfilled on or after 16-10-1995. As we have already observed that it was impossible for the institution to admit all the students numbering more than 100 on 17th itself, we have to hold that by the later order dated 20-10-1995, the Hon'ble Supreme Court had extended the time limit by three weeks, i.e., CET to allot the seats till 10-11-1995 instead of 30-9-1995 and as such in pursuance of this direction dated 10-10-1995, the CET had allotted the students/original petitioners in the writ petitions to these institutions and hence there cannot be any fault either with the CET or the students for these allotments and hence we uphold the findings of the learned Single Judge in this regard.

15. This takes us to the next and most important problem as to what would happen to the students who were wrongly or illegally admitted by the managements and who have pursued their studies for the last 2 years. We are aware of the fact that for the mala fide action of the managements these students admitted by them have to make place for the students allotted by the CET.

16. Despite our sympathies we cannot help any such admittedly non-meritorious though innocent students, They are at liberty to claim damages from the managements who as already held had deceptively admitted them for ulterior motives of accumulating wealth by illegal means. They may also initiate criminal prosecution against such managements. Liberty is also given to the appellants-managements and the students to approach the University or other Competent Authorities for regularisation of the studies of such students if permissible under law, but without affecting the rights of the genuine and bona fide students directed to be admitted by allotment of seats by the CET. These observations would however not be construed as direction to any person or authority.

17. In the result, upholding the findings of the learned Single Judge we dismiss

these appeals with costs of Rs. 2,000/-.