

(1999) 11 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No's. 38695 to 38701 abd 38884 to 38888 of 1999

Smitha R. And Others

APPELLANT

Vs

The University of Agricultural Sciences, Bangalore And
Another

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 1 KarLJ 635 : (2000) 2 KCCR 16 SN

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri M.R. Shailendra, for the Appellant; Sri H.N. Sashidhar, for M/s. Kesvy and Company and Sri N.B. Vishwanath, for the Respondent

Judgement

1. Admissions to postgraduate courses offered by the respondent-University are governed by the regulations framed by it. Regulations 4.1.0 to 4.1.5 of the said Regulations prescribe the conditions of eligibility for admission to doctoral programmes, whereas Regulations 4.2.0 to 4.2.14 deal with Masters Course in different subjects. A reading of these regulations would show that all such candidates as possess the prescribed academic qualifications from a recognised University are eligible for admission. Neither the regulations nor any other provision contained elsewhere make a reservation in favour of candidates from the State of Karnataka either on the basis of their domicile in the State or on the ground of institutional preference. The prospectus issued by the University for admission to the Postgraduate Courses during the academic session 1999-2000 also does not make any provision for reservation of seats in favour of candidates from the State of Karnataka. It reiterates the provisions contained in the regulations and accepts the prescribed academic qualification from "any recognised agricultural University/ICAR deemed University" as sufficient to entitle the candidate to claim admission.

2. Applications for the session 1999-2000 were invited for various Postgraduate

Courses offered by the respondent-University in terms of a notification dated 21st of June, 1999. For the Doctoral and Masters Programme, the notification prescribed the eligibility for admission thus.-

"ELIGIBILITY FOR ADMISSION

A. Doctoral programme

A candidate for admission to Doctoral Degree programme should have completed masters degree from a recognised Agricultural/ICAR deemed University in the subject in which he/she seeks admission, with a CGPA of 2.75/4.00 or OGPA of 7.50/10.00 or its equivalent. For SC/ST and Category-I candidates a mere pass would be adequate.

B. Masters programme

A candidate for admission to Masters degree programme should possess eligible Bachelors degree in the concerned subject/related subject wherever applicable, from a recognised Agricultural/ICAR deemed University equivalent in terms of course duration with a minimum CGPA of 2.25/4.00 or OGPA of 6.50/10.00 or its equivalent. For SC/ST and Category-I candidates a mere pass would be sufficient".

3. The petitioners in these writ petitions also applied in response to the above and were permitted to appear in a written test conducted on 27th of September, 1999. The result of the test was published sometime later, on the basis whereof a select list was eventually prepared and notified on 13th of October, 1999. The petitioners' names did not figure in the said list even though candidates with merit were included in the same. Upon enquiry, they appear to have been informed that the available seats had been reserved only for candidates domiciled in the Karnataka and that those from outside will be considered for admission only if any seats remain unclaimed. Aggrieved, the petitioners have filed the present writ petitions, in which they have questioned their non-consideration and prayed for a mandamus directing the respondents to fill up the seats in accordance with merit and as per the marks obtained in the written examination.

4. In the objections filed on behalf of the University, it is inter alia pointed out that the respondent-University was established under University of Agricultural Sciences Act, 1963 by the State of Karnataka implying thereby that the students domiciled in Karnataka alone were eligible and entitled to the courses offered by it. It is pointed out that 25% out of the total seats available in the University are left to be filled up by the ICAR in accordance with the norms fixed by it for the purpose. The petitioners, it is stated, are from outside the State of Karnataka and were admitted to Undergraduate and Postgraduate Courses in ICAR's quota. Reliance is placed upon a decision taken by the Academic Council, according to which candidates from outside the State could be considered only if seats are available in the subjects after offering the same to those domiciled in Karnataka.

The guidelines given by the Council purport to be effective from the year 1999-2000. The fact that the petitioners had studied in the respondent-University is, according to the respondents, inconsequential and insufficient to entitle them to claim parity with candidates from Karnataka in the matter of admission to higher Courses.

5. Mr. Shailendra, Counsel appearing for the petitioners, made a twofold submission. He urged that the regulations, which were statutory in nature did not envisage reservation of seats on the basis of the domicile of the candidates. Any candidate, who possessed the prescribed academic qualification was eligible to apply regardless of the place of his residence or "domicile" as the said expression is sometimes loosely and inappropriately used. The prospectus issued by the University had also made no such provision nor even was any mention of the reservation made in the notification inviting the applications. It was therefore not possible for the University to introduce a domiciliary requirement on the basis of a mere resolution passed by the Academic Council. There is considerable merit in that submission. The regulations referred to earlier do not admittedly make any provision, according to which candidates from outside Karnataka could be said to be ineligible for consideration against the seats available in the University.

6. A fair and reasonable interpretation of the same can lead only to one conclusion namely that candidates possessing the prescribed qualifications from any recognised University are eligible to apply and seek admission. The significant expressions used in Regulations 4.1.0 and 4.2.0 is "The candidates for admission to Ph. D. Degree Programme in the University should possess eligible Masters Degree from a recognised Agricultural University". It is difficult to hold that those possessing the requisite qualification from any recognised University in the country, must in order to be eligible additionally establish that they are domiciled in Karnataka. As a matter of fact the regulations make a distinction between students from within the country and those from outside. If the intention of the rule making authority was to limit admissions to Karnataka students only, nothing prevented it from making that intention explicit. No such provisions having been made, it is difficult to understand Regulations 4.1.0 and 4.2.0 to be applicable to candidates domiciled in Karnataka only in the process excluding all those who are not, no matter they may have acquired the prescribed Degree from a University in or outside Karnataka. The prospectus issued by the University and even the notification inviting applications, did not make any such provision evidently because no such reservation was within the comprehension of the regulations to justify any such stipulation.

7. The question then is whether a reservation could be introduced in the form of guidelines issued pursuant to a decision taken by the Academic Council. The said decision it is obvious from a reading of the notification dated 12th of October, 1999, was taken in the meeting of the Academic Council held on 19th and 20th of August, 1999, by which time, even the notification inviting the applications

from eligible candidates had already been issued. Apart from the fact that a reservation in order to be valid ought to have been introduced and notified before the selection process started, any such reservation could be validly made only by an appropriate amendment in the regulations. A reservation de hors the statutory regulations which govern the entire gamut of selection and admission to courses would be unsustainable even when the same has the support of the highest academic body of the University. That is because the notification issued pursuant to the decision of the Academic Council has in substance the effect of rendering ineligible candidates who were otherwise eligible as per the regulations. To that extent, therefore, there is a conflict between what the Academic Council has stipulated in the guidelines on one hand and what the regulations provide for on the other. The latter was in any such situation bound to prevail over the former making the non-consideration of the petitioners discriminatory and offensive to Article 14 of the Constitution.

8. The infirmity in the method chosen by the respondent apart, reservation on the basis of domicile of the candidates even otherwise stands on a slippery ground. I say so for two precise reasons one relating to the vagueness of the provision and the other to the constitutionality thereof. The notification contains the following provision upon which the University has placed reliance in support of its decision to exclude the petitioners from consideration.

"Candidates appearing from outside Karnataka will be considered if seats are available. A separate merit list will be prepared for the purpose".

9. The critical expression in the above is "Candidates appearing from outside Karnataka". But who is a candidate from outside Karnataka has not been defined or explained. Whether a candidate who is ordinarily residing at any place outside Karnataka but who is pursuing a course in the respondent-University would qualify for consideration is therefore difficult to answer. If the intention is to confine the initial allotment only to those permanently residing in Karnataka, what would constitute any such permanent residence in terms of the number of years is also not indicated. It is also not clear whether a candidate has to be treated "from outside Karnataka" on the basis of his birth, mother tongue or the Institution from where he has acquired his qualifying degree. Suffice it to say, that in the absence of a clear provision in the notification, the expression "candidates from outside Karnataka", is incapable of an accurate application in the matter of implementing the reservation policy based on domicile in the State.

10. Coming then to the question of constitutionality of the provision the Supreme Court in D.P. Joshi Vs. The State of Madhya Bharat and Another, , was examining the validity of a rule which prescribed capitation fee for admission to Medical Colleges in the State of Madhya Bharat. The Rule stipulated that such of the students as were domiciled in Madhya Bharat, were not liable to pay the Capitation Fee while others were required to do so. Drawing a distinction between "residence" and "place of birth", the Court declared that there were two different concepts with two different connotations both in law and on facts. While

discrimination based on the "place of birth" was forbidden u/s 15(1) it did not mean that a difference in treatment based on residence was also forbidden. This view was subsequently reiterated in *N. Vasundara Vs. State of Mysore and Another*, . Then came *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , in which the Court examined once again the true import of the expression "domicile" in the context of certain statutes prescribing domicile requirement as a condition for eligibility for admission to educational institutions. The Court held that "domicile" was meant to identify the personal law by which an individual is governed and that the Constitution concerns of only one "domicile" namely the domicile in India. While doing so, the Court noticed emergence of an unfortunate trend with narrow parochial loyalties fostered by interested parties with a view to gaining advantage to themselves which was perceived by their Lordships as a serious threat to the unity and the integrity of the nation. The following passage from the decision is in this regard apposite.-

"But, unfortunately, we find that in the last few years, owing to the emergence of narrow parochial loyalties fostered by interested parties with a view to gaining advantage for themselves, a serious threat has developed to the unity and integrity of the nation and the very concept of India as a nation is in peril. The threat is obtrusive at some places while at others it is still silent and is masquerading under the guise of apparently innocuous and rather attractive clap-trap. The reason is that when the Constitution came into operation, we took the spirit of nationhood for granted and paid little attention to nourish it, unmindful of the fact that it was a hard won concept. We allowed "sons of the soil" demands to develop claiming special treatment on the basis of residence in the concerned State, because recognising and conceding such demands had a populist appeal. The result is that "sons of the soil" claims, though not altogether illegitimate if confined within reasonable bounds, are breaking as under the unity and integrity of the nation by fostering and strengthening narrow parochial loyalties based on language and residence within a State. Today unfortunately, a citizen who has his permanent residence in a State entertains the feeling that he must have a preferential claim to be appointed to an office or post in the State or to be admitted to an educational institution within the State vis-a-vis a citizen who has his permanent residence in another State, because the latter is an outsider and must yield place to a citizen who is a permanent resident of the State, irrespective of merit. This, in our opinion, is a dangerous feeling which, if allowed to grow, indiscriminately, might one day break up the country into fragments, though, as we shall presently point out, the principle of equality of opportunity for education and advancement itself may justify, within reasonable limits, a preferential policy based on residence".

11. The Court then went on to declare that the State could resort to compensatory State action and depart from the principle of selection based on merit where it was necessary to do so. A certain percentage of reservation on the basis of residence requirement was also held to be legitimate in order to equalise opportunities for medical admission on a broader basis and to bring about real

and not formal, actual and not merely legality equality. Reservation on account of the residence requirements and the institutional preference could however in no case exceed the outer limit of 70% of the total number of open merit seats after taking into account other kind of reservation already made. The subsequent decisions of the Apex Court in *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, , *Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others*, and *Anant Madaan and others Vs. State of Haryana and others*, , have reiterated and affirmed the above position in law.

12. Reservations for purposes of admission to professional colleges at the undergraduate stages based on residence and institutional preferences have thus been accepted as exceptions to the general rule of such admissions being made only on the basis of merit subject to an all important caveat that the validity of any such reservation can be examined on the touchstone of Article 14 and especially on the ground of being excessive.

13. Insofar as admission to the postgraduate courses are concerned, the Supreme Court in *Pradeep Jain's case*, *supra*, expressed itself against the making of any reservation based on residence requirement within the State or on institutional preference. Having regard however to the broader considerations of equality of opportunity and institutional continuity, a certain percentage of seats in postgraduate courses were allowed to be reserved on the basis of the institutional preference only. The Court declared that reservations made on the basis of institutional preference should not exceed 50% of the total number of open seats available for admission. In the case of super specialities, the Court totally disfavoured reservation of any kind. The Court observed.-

"So far as admissions to postgraduate courses, such as M.S., M.D., and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its importance and value, though residence requirement within the State shall not be a ground for reservation in admissions to postgraduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This must apply equally in relation to admission to M.D.S. course. However, even in regard to admissions to the postgraduate course, so far as super specialities such as neurosurgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis".

14. Now it is true that the Supreme Court was in the above case dealing with

reservation of seats at the postgraduate level of medical and dental courses, whereas the reservation with which we are concerned in the present writ petitions are for postgraduate courses in Agricultural Science. There is however no conceptual or qualitative difference between the permissibility of reservations on the basis of residence requirement insofar as the same apply to medical and dental courses on the one hand and other courses like Agricultural Science on the other. If reservation at the postgraduate level been favoured, it cannot be countenanced, on the same basis for any professional course including Ph.D and M.Sc., in Agriculture Sciences. All that is permissible is a reservation based on the institutional preference, which too must remain confined to 50% of the seats in the open category.

15. In the instant case, the rules do not provide for any reservation on the basis of institutional preference. Indeed, if such a reservation was made, the petitioners would have been entitled to compete as they have passed the qualifying examinations from the respondent-University itself. The reservation sought to be introduced is on the contrary based entirely on residence requirement although even that requirement is not accurately and precisely spelt out. Any such reservation must therefore be offensive to Article 14 of the Constitution, especially when the percentage of seats reserved is much higher than what would be permissible for purposes of institutional preference also.

16. It was argued on behalf of the University that 25% seats were being placed at the disposal of the ICAR for allotment to different categories and that the petitioners could compete against the said seats. Reservation based on residence requirement was according to the learned Counsel limited to 75% seats only. There are three reasons why that submission cannot be accepted. Firstly because, the 25% seats placed at the disposal of ICAR is as per the prospectus issued by the University available for certain restricted categories only. This is evident from the following paragraph from the prospectus which deals with reservation of seats.-

"Reservation of seats:

Reservation of seats in favour of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes will be ensured.

In case of in-service candidates of UAS, Bangalore a mere pass would be adequate to make them eligible to seek admission to Master's degree programme.

Twenty five per cent of seats are placed at the disposal of ICAR in postgraduate programme for allotment to different categories in accordance with ICAR Rules governing admissions. This quota is available for certain restricted categories only.

There is also a provision for admitting 5% of seats in all postgraduate programme to Foreign National/Non-Resident Indians (NRI's) irrespective of the

place where they had the previous education under the special quota, details of which can be obtained from the Registrar's Office, UAS, GKVK, Bangalore".

17. Secondly because, there is no material to show that seats placed at the disposal of ICAR cannot be claimed by students from Karnataka. Thirdly, the reservation of 75% seats (assuming that 25% has been left out for an all India Competitive Test), is in any case impermissible if the basis of the reservation is residence requirement in the State only. I may conclude by extracting the following passage from the decision of their Lordships in Pradeep Jain's case, *supra*, which, I may say with great respect, succinctly conveys the spirit of equality of opportunity to all citizens of this country regardless of their place of birth or residence as a founding faith of the framers of the Constitution.

"Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up".

18. In the result, these writ petitions succeed. The University shall consider the cases of the petitioners for admission to the courses for which they have applied on the basis of their merit without insisting upon residence in the State of Karnataka as a condition precedent for any such admission.

19. In the circumstances, however, there shall be no orders as to costs.