

(1997) 01 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 1468 - 1496, 1520/97 and 1521/ 1997

Sri Abhinav Sona N. and Others

APPELLANT

Vs

Special Officer, Common Entrance Test Cell

RESPONDENT

Date of Decision : 30-01-1997

Acts Referred:

Citation : (1997) ILR (Kar) 1368 : (1997) 3 KarLJ 153

Hon'ble Judges : T.S. Thakur, J

Bench : Single Bench

Advocate : H.N. Shashidhara, in WP 1520 and 1521/97, for the Appellant;

Judgement

T.S. Thakur, J.—The only question that falls for consideration in these Writ Petitions is whether or not the Respondents have set apart and fully utilised 15% of payment seats reserved for non-Karnataka Students for admission to various Engineering Colleges in the State. These admissions like those made to various Medical Colleges in the State are regulated by the Scheme framed by the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., as modified by subsequent orders passed by their Lordships. In UNNIKRISHNAN's case certain directions in the nature of guidelines were issued by the Apex Court for the authorities who were supposed to go into the question of formulating finer details and prepare a scheme consistent with the ground-realities. No such scheme however was drawn up by the Authorities with the result that the Court had to pass interim orders with respect to different academic years in modification of those passed in Unnikrishnan's judgment. Reference in this connection can be made to order dated 11th August 1995 passed by the Supreme Court in T.M.A. Pai Foundation and others Vs. State of Karnataka and others, etc., ; Nirmaljit Singh and others Vs. Harnam Singh (dead) by LR. and others, . applicable to admissions for the academic year 1995-96, where while passing further orders the Court, issued the following additional directions is so far as the State of Karnataka is concerned.

The restriction placed by the 1995 amendment to the Karnataka Selection of

Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993, viz., that only Karnataka students (as defined by the said Rules) shall be admitted against the payment seats shall not operate for the current academic year. Among the fifty per cent payment seats, we have allocated fifteen per cent to NRI/foreign students (direction (i)). Out of the balance thirty-five per cent seats, twenty percent shall be reserved for Karnataka students and remaining fifteen per cent for non-Karnataka students - as was done during the previous academic year, the admission of Karnataka students against the payment seats shall be made in accordance with the schema framed in Unni Krishnan out of the students who have appeared in the entrance test already held. If any of the seats in this twenty per cent remain vacant, they shall be added to the fifteen per cent quota of non-Karnataka students and shall be filled in accordance with Clause (b) below.

2. The above directions were by yet another order passed by their Lordships on 10th of May 1996, continued for academic year 1996-97 also. Interlocutory applications were thereafter filed by various Medical and Engineering Colleges seeking a variety of further directions. These directions were issued by the Court by its order reported in T.M.A, PAI FOUNDATION AND ORS. ETC. v. STATE OF KARNATAKA AND ORS. with the observation that the same shall be in addition to and in continuation and clarification of the earlier orders including the order dated 11th August 1995 as extended by order dated 10th of May 1996. For purposes of the present petitions direction given in para 4(v) of the said order alone is relevant which reads thus:-

(v) "There shall be no change in the fees for Engineering Colleges. The NRI quotes for them shall remain at five per cent."

3. From a reading of the two orders extracted above, it is apparent that while 50% of the seats were reserved for allotment to merit candidates also called "free seats" the remaining 50% were termed as "Payment Seats" out of which 15% were reserved for non-Karnataka Students 20% for Karnataka Students and the balance 15% for NRI/Foreign students in so far as Medical & Dental were concerned. As regards the Engineering Colleges, the NRI quota was in terms of the later order of the Supreme Court, dated 9th August reduced to 5%. The said order however does not make any mention as to the treatment to be given to the 10% seats that would become additionally available on account of the N.R.I. quota being reduced to 5%. Mr. Reddy, appearing for the Respondents and Mr. Jois, "Senior Counsel for the petitioners urged that the State Government has for the academic year 1995-96, and 1996-97 treated the N.R.I. quota in Engineering Colleges to be only 5% as against 15% transferring the balance 10% out of the same to Karnataka Payment seats category. The position as regards the extent of reservations made for each one of the above categories that emerges from the orders of the Supreme Court and the view taken by the authorities while implementing the same is as under:-

1) Free seats available only to Karnataka Students 50% 2) Payment Seats

available only to Karnataka Students 30% 3) Payment Seats reserved for non Karnataka Students 15% 4) Seats reserved for NRI and other candidates 5% 4. Mr. Jois, Learned Counsel appearing for the petitioners vehemently argued that 15% payment seats reserved for non-Karnataka Students and the payment seats that would remain unfilled out of 30% quota reserved for Karnataka Students have not been utilised fully with the result that as many as 624 seats in the payment category have remained unfilled. In order to verify the correctness of this submission the Respondents were directed to state on Affidavit the total number of seats available in Government, Aided and unaided Colleges in the State of Karnataka as also the admissions made against the said seats in different categories. An affidavit has accordingly been filed, from a perusal whereof the position that emerges may be summarised thus:

TOTAL NUMBER OF SEATS : 16165 1) Merit/Free Actually Due Excess Short Seat Category allotted 50% fall 9289 8083 1206 xxx 2) Payment seats 30% for Karnataka 3075 4849 xxx 1774 Students 3) Payment Seats 15% non-Karnataka 1971 2424 453 4) NRI Seats 755 808 53 Total actually allotted 15090

Unfilled Seats that should have been available = 16165-15090 = 1075. Unfilled Seats actually available - 624. The following features are noticeable from the above:-

a) An against a total of 16165 seats, the Affidavit filed by the Respondents Accounts for only 15090 seats which are allotted including NRI quota besides 624 seats that are still available thereby making a total of 15714 seats: No explanation is forthcoming as to the distribution of the remaining 451 seats. The disclosures made in the affidavit are not therefore wholly faithful leaving much to be desired:

b) As against a total of 2424 seats the Respondents have allotted only 1971 seats to non-Karnataka Students;

c) In the Karnataka Payment Seats category as against 4849 Seats the Respondents have allotted only 3075 seats.

5. In terms of the directions issued by the Supreme Court in its order dated 11th August 1995, extracted in the earlier part of this Judgment all such seats as would remain unfilled in the quota reserved for the Karnataka Students had to be added to the seats meant for Non-Karnataka Students. While issuing the said direction the quota reserved for Karnataka Students was mentioned to be 20% which on account of the Subsequent order passed by their Lordships on 9th August 1996, increased to 30% by corresponding reduction of 10% seats from the NRI quota of 15%. The substance of the direction however remained unaffected. Transfer of the seats from unutilised Karnataka Payment category shall have to be understood as a transfer from 30% seats reserved for the said category. Besides the transfer of the unutilised Karnataka Payment Seats to non-Karnataka Category, there is a short-fall of 453 seats in the 15% quota set apart from Non-Karnataka Students thereby entitling the Non-Karnataka Students to a

total of 453 + 1774 seats to be transferred from unutilised Karnataka quota = 2227 seats. All these seats are not obviously available because as against 50% in the free seats category which work out to 8083 seats out of a total of 16,165, the Respondents have allotted 9289 seats thereby utilizing an excess of 1206 seats. As against this, excess utilised, in free seats category, the Respondents have reserved only 755 seats in the NRI quota for the private colleges. This reservation does not bear the prescribed proportion of 5% to either the total number of seats in all the Engineering Colleges of the State or even the total number of seats available in the private colleges. If the total number of Engineering seats in the State are taken into consideration 5% quota reserved for NRI would work out to 808 seats thereby leaving a shortage of 53 seats in the seats reserved for the said category. This short-fall has therefore to be made up out of the available unfilled payment seats which would reduce the number of such unfilled seats to 571 only. That is so because it is not at this stage feasible to disturb those admitted in the free seats category in excess of the quota reserved for them. In the circumstances therefore put of the available 624 seats 53 shall have to be added to the NRI quota reserved for the private colleges thereby raising their entitlement to 808 seats in all which represents 5% of the total intake capacity of the colleges in the State. The balance 571 which represent the seat that have remained unutilised out of Karnataka Payment Category and the short-fall in the 15% quota for non-Karnataka payment category shall have to be utilised for admission of non-Karnataka payment candidates.

6. Learned Advocate General and Shri Srinivasa Reddy, Government Advocate, however strenuously urged that the allocation of seats to different categories was not to be by reference to the total number of seats available in the Engineering Colleges of the State but by reference to the total number of seats available in the private colleges only. They advanced a two-fold reason why that should be so. Firstly it was argued that the allocation of the seats during the previous year, had been made by the State Government on the basis of the seats available in the private colleges excluding in the process the seats that were available in Government and aided Colleges. Secondly, they urged that the seats that had remained unutilised had been converted to the Karnataka Payment Category from different unutilised categories like sports etc. Such seats it was contended were not meant to be transferred to non-Karnataka Categories and had to be filled up by the Managements on their own if they remained unutilised. I find no substance in either one of these submissions. The orders passed by the Supreme Court being unambiguous in nature, there is no reason why the allocation of seats made in violation of the said orders should be upheld or countenanced only because a similar violation had gone unnoticed or unquestioned during the previous year. Once it is pointed out that the Respondents have in the process of making allocations of the seats and admission of the candidates acted in defiance of the directions issued by the Apex Court, it becomes the duty of this Court to ensure that the position is set-right at the earliest and all those who are

responsible for such violations warned to be careful in future. Merely because a wrong has been committed in the previous academic sessions is therefore no reason why it should be permitted or perpetuated for the future also, I have therefore no hesitation in rejecting the first submission.

7. Equally untenable is the second submission also that since the seats that remain unutilised as on date are converted to "Payment Category" partly from other categories they should not be or are not liable to be converted to non-Karnataka category. As to how the vacancy arose or remained unutilised could assume some importance only if after conversion of the seats to payment category the Respondents proposed to revert the said converted seats back to the original category to be filled up by them from out of those who may not have earlier qualified on account of any higher eligibility prescribed for the same. For instance if the unfilled sports category seats converted into payment category have remained unfilled even after conversion, the Respondents do not propose to restore the seats to the original category so that a sports man with lesser achievements than what was originally prescribed can be considered against the same. The origin of the unfilled payment category seat therefore has no relevance whatsoever to its transfer to the non-Karnataka payment category. In order to test the argument advanced by the Learned Advocate General I specifically asked him whether the Respondents proposed to themselves utilise the unutilised seats by filling up the same out of any category whether reserved for sports men or otherwise. The answer was in the negative. The question therefore is why should the unutilised payment seats regardless of the reason the same remained unutilised be not transferred to the Non-Karnataka payment category as directed by the Supreme Court, particularly when the Respondents can suggest no better use for the said seats than to offer them on a platter to the management. By resisting transfer of these unutilised seats to non-Karnataka payment category the Respondents are actually espousing and pleading the cause of the Managements who would be entitled to fill up the seats if same are not converted to Non-Karnataka Payment Category and offered to non-Karnataka Candidates, recovering in the process from such candidates an exorbitant price for each seat.

8. Reliance was then placed by the learned Advocate General, on the order passed by the Supreme Court on the 9th August 1996 to point out that in terms of Rule 10(3-A) (g) of Karnataka Selection of Candidates for Admission to Engineering, Medical Dental, Pharmacy and Nursing Courses, Rules 1993 seats that remained unutilised after the closing date for admission fixed by the Government can after re-conciliation be filled up by Management of the private Engineering Colleges on their own and in their discretion. It was contended that the unfilled seats would therefore be liable to be filled up by the Colleges concerned after the re-conciliation in terms of the said Rule, There is no quarrel with this proposition. The Rule is clear and so is the observation made by the Supreme Court. But what is important is that the directions given by the Court in its 9th August 1996 order are in addition to, in continuation and clarification of

the earlier orders of the Court, including the order dated 11th August, 1995 as extended by order dated 10th May 1996. The observations relied upon by the learned Advocate General do not therefore substitute the earlier orders of the Court or affect their efficacy. Both the orders when read harmoniously only mean that if any seat in the Karnataka Payment category remains unutilised, even after the same has been transferred to the Non-Karnataka Payment Category, after the dosing date of admission fixed by the Government the same can be filled up by the private Colleges on their own. The obligation to transfer an unutilised Karnataka Payment Seat to non-Karnataka Payment Category, has not been diluted let alone substituted either by Rule 10(3-A)(g) or by the direction of the Court. That being so, the question of the private Managements filling up such unutilised seats would arise only if the unutilised Karnataka Seats are transferred to Non-Karnataka Category and the same remain unfilled even after such conversion. In the instant case since the conversion itself has not been ordered the question of the seats remaining unutilised or being filled up by private Managements under 10(3-A)(g) does not arise. In the totality of the above, circumstances therefore I pass the following order:-

i) Out of 624 unfilled Payment Seat presently available 53 seats shall set apart and added to the NRI quota of the private Managements to take the seats admissible to them to 808 representing 5% of the total number of Engineering Seats in the State;

ii) The remaining 571 or more Karnataka Payment seat that remain unfilled shall be transferred to the non-Karnataka Payment category and offered to the candidates in the said category in accordance with the scheme formulated by their Lordships of the Supreme Court:

iii) The process of counselling and consequent allotment of the aforesaid unutilised seats shall be completed by the Respondents expeditiously and as far as possible within a period of two weeks from today;

iv) The closing date for admissions as fixed by the State Government and expiring on 3rd February, 1997, shall be suitably extended by the State Government to enable the CET Cell to complete the process of Counselling and admission as directed above.

The Writ Petitions are allowed but only to the extent indicated above with costs assessed at Rs. 5,000/- recoverable from the State Government.