

**(2012) 08 KAR CK 0164**

**In the Karnataka High Court**

**Case No : Writ Petition No. 28629/ 2012 (Edn-Cet-Pil)**

Sri K Sreedhar

APPELLANT

Vs

Karnataka Examinations Authority

RESPONDENT

**Date of Decision : 22-08-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 141

**Citation : (2013) 1 AKR 261**

**Hon'ble Judges : Vikramajit Sen, C.J;Aravind Kumar, J**

**Bench : Division Bench**

**Advocate : K Sreedhar, Party in Person, for the Appellant; N.K. Ramesh, Advocate for R1 and Sri. Madhusudhan R. Naik for Sri. K. Shashikiran Shetty, Advocate for R2, for the Respondent**

## **Judgement**

1. In this Writ Petition a direction is sought to the first Respondent to conduct second round of casual vacancy seat selection process for Engineering Colleges under Commcm. Entrance Test quota as per the original schedule i.e., on 22.08.2012 without postponing the same. We have heard the learned Advocates appearing for the parties.

2. The first Respondent is the Authority which conducts the counselling to the students aspiring for seats to professional colleges. For the academic year 2012-13 notification came to be issued on 23.06.2012, 11.07.2012 and 23.07.2012 and thereafter on 01.08.2012 notifying that casual vacancy round online seat allotment would be conducted for the candidates who have exercised choice 2 and 3 after the Admission Round seat allotment and also candidates who have not exercised their options in the Admission Round or those who exercised options and did not get any seat allotted as per the schedule notified thereunder, which is extracted herein below for the sake of convenience. It was also notified that the opening seat matrix could be displayed on the K.E.A Website on 03.08.2012.

Stage-1. Category Casual Vacancy Round: Except GM alone candidates, all other

candidates including GMR and GMK have to enter their options in this round. The seats which remained unfilled under all the Rural and Kannada Medium Quota of the reserved categories will be converted to General of the respective reserved categories and will be considered for allotment. (SNQ and GM seats will not be considered for allotment in this round) Please read Instruction Manual-User Hand Book/ CET-2012 Brochure for details about conversion of seats.

Sl. No.

Particulars

Date

01

Display of College Wise vacancy position/ Seat Matrix for stage -1 of Casual Vacancy Round

03-08-2012 after 11.00am

02

Option entry by eligible candidates

03-08-2012 11.30 am to up to 7.00 pm on 05-08-2012

03

Announcement of Seat Allotment Results

08-08-2012 after 7.00pm

04

Confirmation of Allotment, entry of Choices, payment of

09-08-2012-1 to 25000 Ranks

fee and receiving of Admission Order from Help line Centres. (8

00 am to 7.00 pm)

10-08-2012 -25001 to 50000 Ranks 11-08-2012 50001 to Last Rank

05

Last date for reporting to the college allotted

13-08-2012

The Candidates who have been allotted seat under Special Categories like NCC, Sports, PH and J & K seats and those who may exercise Choice 1 in the Category Casual Vacancy Round are not eligible to participate in the next round.

Stage-2. Causal Vacarcy Round: General Merit and all candidates except those who may get seat allotment under Special Category quota allotted seat under

Special Categories like I:ICC, Sports, PH and J & K seats are eligible to participate. The seats that remain unfilled under various reserved General categories such as SCG, STG, 1G, 2AC-, 2BG, 3AG, 3BG, GMR and GMK, along with unfilled special category seats, if any, after the seat allotment in the Stage 1 will be converted to the General Merit category and offered to GM candidates along with all other reserved category candidates in the General Casual Vacancy Round. Please read instruction Manual-User Hand Book/ CET-2012 Brochure for details about conversion of seats.

Sl. No.

Particulars

Date

01

Display of College Wise vacancy position/ Seat Matrix for stage -2 of Casual Vacancy Round

16-08-2012 after 11.00am

02

Option entry by eligible candidates

From 16-08-2012 11.30 am to up to 6.00 pm on 18-08-

2012

03

Announcement of Seat Allotment Results

21-08-2012 after 5.00pm.

04

Confirmation of Allotment, entry of Choices, payment of fee and receiving of Admission Order from Help line Centres. (800 am to 7.00 pm)

22-08-2012-1 to 25000 Ranks 23-08-2012 - 25001 to 50000 Ranks  
24-03-201250001 to Last Rank

05

Last date for reporting to the college allotted

25-08-2012

IMPORTANT: The other instructions given in this office notification dated 93.06.2012, 11.07.2012 and 23.07.2012 remains -unchanged for all the purposes.

3. Accordingly, Stage I casual vacancy round has been completed and as per

Stage II vacancy position college wise vis-?-vis seat matrix seat matrix has been announced on 16.08.2012. The selection being online seat allotment the option to the eligible candidates was available from 16.08.2012 11.30 A.M up to 6 P.M. on 18.08.2012. The first Respondent Authority had to announce the seat allotment results on 21.08.2012 and by Notification dated 13.08.2012 same has been postponed to 25.08.2012.

4. At this juncture it would be appropriate to note the dicta laid down by the Hon'ble Apex Court in the case of Priya Gupta Vs State of Chattisgarh reported in 2012 (5) SCALE 328, whereunder it has been held as follows:

26. What is of greater significance is that this Court has not so far considered or stated as a principle, what consequences should follow where the Central Government, or the State Government or Medical Council of India or the College itself, with impunity, violate the time schedule, regulations and order of merit to give admission to students in an arbitrary and nepotistic manner. Also, "re must consider what preventive steps can. be taken to avoid such repetitive and intentional defaults, as well as undue exploitation of the class of students. Admissions based on favouritism necessarily breach the rule of merit on the one hand, while on the other, they create frustration in the minds of the students who have attained higher rank in the competitive entrance examinations, but have not been admitted. We propose to specifically address this concern in this judgment. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.

27. Now, let us examine the adverse consequences of non-adherence to the prescribed schedules. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations. Inter alia, the disadvantages are:-

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious

students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of Muskan Dogra & Ors. v. State of Punjab & Ors. [(2005) 9 SCC 186].

(2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses etc., encourage lowering of the standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit.

28. The Medical and Dental Councils of India, the Governments and the Universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time frame declared by this Court and the regulations. It has come to the notice of this Court that despite warnings having been issued by this Court and despite the observations made by this Court, that default and non-adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court. In the case of Arvind Kumar Kankane. Vs. State of U.P. and Others, the Court observed that the process of counseling cannot go on continuously for a long period and the resultant chain reaction should be checked. Some seats may have to be left vacant per compulsion, but, the process of admission should stand the

test of rationality. There should be exceptional and fortuitous circumstances to justify late admission. In the case of Chhavi Mehrotra (Miss) Vs. Director General Health Services, the Court was even compelled to issue notice of contempt to the Director General of Health Services as to why proceedings under the Contempt of Courts Act, 1971 be not taken for non-compliance with the scheme framed by the Court for consideration of applications for transfer of students between colleges and they be not punished accordingly. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the concerned authorities, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

Thus, keeping the contours laid down by the Apex Court when the facts on hand are examined we notice that the first Respondent Authority is required to adhere to the Time Schedule already notified as otherwise, those students who have been allotted seats by way of allotment through COMED-1. would have no option but to retain the said seat so allotted to them and they would not be in a position to surrender the COMED-K seat in the event of a candidate securing seat through KEA in a college of his or her choice in Stage-2 Casual Vacancy Round. In other words if the KEA does conduct Stage-2 Casual Vacancy Round before the Cut-off date fixed by COMED-K for surrendering the seat, such an aspiring candidate would know his or her position and would be able to surrender the seat secured by COMED-K allotment. In the event of Stage-2 Casual Vacancy Round is held after the Cut off date fixed by COMED-K for surrendering the seat, then such a candidate will not have option to select a seat in a college of her/his choice inasmuch as, by the time it is conducted they would have already surrendered the seat to COMED-K or retained it without option. On account of a miniscule number of students not surrendering their allotted seats made by KEA if any would not be a good ground to deprive the larger section of students who would be waiting in the wings to opt for a college/subject of their choice in the second casual vacancy round. In view of the same, we are of the considered view that a direction is required to be issued to the first Respondent to proceed with Stage-2 Casual Vacancy Round by announcement of the "Seat Allotment Results" by 11 A.M on 23.03.2012. We make it clear that notification dated 13.08.2012 issued by first respondent is not disturbed except to the extent observed by us hereinabove and they are at liberty to proceed accordingly. Ordered accordingly.