

(1997) 09 KAR CK 0088

In the Karnataka High Court

Case No : Writ Petition No. 1717 of 1996

State of Karnataka and Another

APPELLANT

Vs

Venkatesha Education Soccity (Registered), Bangalore and
Another

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental,
Pharmacy and Nursing Courses Rules, 1993 — Rule 10 (3A) (c)

Citation : (1999) 4 KarLJ 381

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

Bench : Division Bench

**Advocate : Sri A. Srinivasa Reddy, Additional Government Advocate, for the
Appellant; Sri Mohandas N. Hegde and Sri Nyayamitra, for the Respondent**

Judgement

1. Aggrieved by the order of the learned Single Judge, directing the appellants to refund an amount of Rs. 5,28,710/- to the respondents herein, this appeal has been filed on the grounds that the directions were unwarranted, contrary to law and the result of wrong conclusions of facts presumed by the learned Single Judge. It is submitted that without ascertaining the alleged actual loss suffered by the appellants, the learned Single Judge issued directions for the payment of aforesaid amount with the result that the appellants were subjected to the payment of the said amount twice, i.e., to the Institutions where the students who left the Institution of the respondents joined and secondly to the respondents herein despite the fact that they had not rendered any education to the aforesaid students. It is further contended that there existed no rule providing that if the students decide to opt for another course or to other Institute they were liable to pay the fresh fee or that the fee earlier paid by them was forfeited.

2. The facts giving rise to filing of the present appeal are that the respondent-1 has established an Engineering College, the admission to which is governed by

the Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993, framed under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (hereinafter called the "Rules" and "Act", respectively). The Common Entrance Test for the Academic Year 1994-95 was held by the respondent-2. Keeping in view the intake capacity of the college, and provisions of the rules and the Act, the appellants filled-up 99 free seats and 42 payment seats in all the faculties of the respondents-College. Section 5 of the Act empowers the Government to regulate fees. Section 5(2) contemplates that no Educational Institution shall collect any fee or amount or accept deposits in excess of the amount notified under Sub-section (1). However, the rules contemplated each candidate to pay the fee prescribed for the first year through crossed demand draft made payable to the Special Officer (Examinations) at Bangalore and produce all original documents for verification vide Rule 10(3-A)(c) of the Rules. The respondents-College claimed to have admitted all the selected and allotted candidates by the CET Cell. It was submitted that in respect of all the aforesaid 141 candidates, the CET Cell had collected Rs. 16,58,190/- towards fee to be remitted to the college. The Principal of the college, vide his letter dated 25-2-1995 requested the Special Officer, CET Cell to release the tuition fees and other fees paid by the candidates as allegedly all the candidates allotted by GET Cell had been admitted. An amount of Rs. 11,29,480/- was paid to the respondents herein on 14-3-1995. Upon enquiries made the respondents herein are stated to have been informed that an amount of Rs. 5,28,710/ had been deducted because all the students directed to be admitted were actually found to be not continuing the studies in the college, as they were alleged to have either abandoned the college or shifted to other Institutions. It was contended that the CET Cell was estopped from withholding any amount in respect of candidates allotted and admitted by the college for the Academic Year 1994-95 on any count much less than the ground of alleged due from the college to the Director of Technical Education. The action of the respondents was stated to be hit by the doctrine of promissory estoppel. The college was entitled for the entire tuition fees notwithstanding the actual admission and continuation of studies by the students or otherwise.

3. In the objection statement filed on behalf of the appellants it was submitted that the candidates selected for admission to professional colleges are required to pay the fee by way of demand draft in favour of Director of Technical Education which in turn is paid to the colleges according to the actual admission made. During the year 1993-94 the respondent-Institution was stated to have admitted only 81 candidate under the payment seat quota for which an amount of Rs. 21,53,790/ was payable to the respondent-Institution. The respondents, however, claimed a sum of Rs. 26,82,500/- being the amount of the tuition fee of 113 candidates which was paid by the DTE for the year 1993-94. In this way the respondents herein were paid excess amount of Rs. 5,28,710/-. Vide letter dated 12-7-1994 the DTE requested the respondents herein to refund the said amount which was not done. With the result that the DTE vide letters dated 6-8-1994,

1/5-9-1994 and 20-10-1994, again requested the respondents-Institution to refund the aforesaid amount which they had received from the DTE. There was no justification for the respondents to have kept the amount to which they were not entitled. It was brought to the notice of the respondents that the payment fee collected by the Government was to be returned to the concerned colleges as per the final admission. In view of the inaction of the respondents, the DTE served a notice on 2-12-1994 demanding the payment of the amount within 7 days failing which the department intimated to initiate action for recovery of the excess amount. Vide its letters dated 20-12-1994 and 26-12-1994 the DTE informed the respondents that their contention to the effect that CET Cell had nothing to do with the settlement or otherwise of the accounts relating to admissions of the academic year 1993-94 was without any basis as DTE and CET Cell were claimed to be the wings of the State Government. As the respondents did not care to refund the amount, the Principal Secretary, Education Department, Government of Karnataka, vide letter dated 4-1-1995 instructed the Special Secretary, CET to withhold the amount due to DTE by the respondents out of the amount payable to them. Consequently, the CET Cell withheld the amount of Rs. 5,28,710/- payable to the respondents out of the total amount of Rs. 16,58,1907- for the academic year 1994-95. The act of the CET Cell was claimed to be legal, valid and according to law. It was further submitted that various other colleges which had claimed excess amount had returned the same without any objection. It was only the respondents who had taken the adamant attitude in not returning-the amount allegedly, illegally withheld by them.

4. It is not disputed that the amount claimed by the respondents was on account of the tuition fee with respect to the 113 students who were originally selected and allotted to the appellants but ultimately only 81 students were left with them. It is also not disputed that the tuition fee for all the 81 students admitted by the respondents had been paid. The dispute raised was with respect to 32 candidates who had admittedly left the respondent-Institution and got admission in other colleges and Institutions. The claim is not with respect to the admission fee but with respect to the tuition fee. It is also admitted that the amount claimed was the tuition fee for the whole year and the aforesaid students had admittedly not taken any tuition in the respondents-Institution. The amount was claimed allegedly on the ground of the respondents having suffered the loss on account of the non-filling of the 32 seats. However, the record reveals that the respondents neither pleaded nor argued or produced any document to show as to whether the 32 seats were actually left vacant and not filled-up in accordance with the rules and the Act. Rule 11(f) provided that in case of any casual or drop-out vacancies, the educational institutions were entitled to fill the seats under the Management quota. Whether the respondents had filled-up those 32 seats in the Management quota or not is not made known. In the absence of actual loss allegedly suffered by the respondents, there was no justification for issuance of direction for payment of refund of the amount as has been done by the learned Single Judge. On the contrary appellants herein have produced various

documents to show that the aforesaid amount of Rs. 5,28,710/- was demanded from respondents for the purpose of payment to the Institutions where the aforesaid students were stated to have sought and got the admission. Ignoring the disputed questions of fact the learned Single Judge issued the directions in exercise of the powers under Article 226 of the Constitution which was unwarranted.

5. While allowing the writ petition, the learned Single Judge appears to have been persuaded himself to issue impugned directions on assuming that there existed certain rules which made provision for the students deciding to opt for any course or Institution, to pay the fee again as the fee earlier paid by them was deemed to be forfeited. The learned Judge observed:

"I am informed that the rules provide that if the students decide to opt for another course or to some other Institute, that it is a fresh admission to that Institution for which once again they have got to pay the fees. The fees that have been earlier paid by them are forfeited. This procedure is adopted for good reason, because once the admission is accepted, there is no guarantee that the seat will thereafter to be filled if the student discontinues and therefore the rules make for these provisions".

6. The learned Counsel appearing for the respondents has been very fair to concede that no such specific rule existed as was presumed by the learned Single Judge. He, however, submitted that the observations were made by the learned Single Judge on the basis of usage and practise prevalent in various Institutions. This submission cannot be accepted in view of the categoric and unambiguous observations of the learned Single Judge which apparently appears to have persuaded him to allow the writ petition. After going through the record and perusing various letters exchanged between the parties we are satisfied that the respondents were not entitled to claim amount of Rs. 5,28,710/- inasmuch as they had not referred to any statutory rule or Regulation in support of their submissions. They had also failed to establish the actual loss suffered by them. The plea of equitable estoppel was far-fetched and not applicable in the case. The order of the learned Single Judge is based upon assumptions, conjectures and surmises. The disputed questions of facts raised by the parties could not have been adjudicated in exercise of the writ jurisdiction.

7. The order of the learned Single Judge is therefore not sustainable and is liable to be set aside.

8. Under the circumstances the appeal is allowed by setting aside the order of the learned Single Judge.

9. Rule issued is discharged.

10. No costs.