

(1988) 09 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 8046 to 8048 of 1988

Sudhir Kumar Sinha and Others

APPELLANT

Vs

Bangalore University and Another

RESPONDENT

Date of Decision : 28-09-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1989 Kar 274 : (1988) 1 KarLJ 462

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Advocate : V.A. Mohanaragam, for the Appellant; M. Madan Gopal and Shivaraj Patil, for the Respondent

Judgement

1. These petitions are disposed of by a common order since a common point arises for consideration in all these petitions.

2. The petitioners are students who had taken the 1 Year B.E. Degree Examination conducted by the Bangalore University-1st respondent they are the students of M. V. J. College of Engineering, near White Field, Bangalore. They appear to have sought for admission to the I Year B. E. Degree Course in the aforesaid College, though they had not obtained the minimum qualifying marks: of 50% on the ground that they belonged to Backward Tribes and Backward Classes and these Backward Tribes/Classes are entitled to take the benefit of the Government Order relaxing the minimum percentage of marks required for B. E. Course from 50% to 35%. In support of the plea that they belonged to Backward Tribes/Backward Classes, the petitioners produced certain certificates obtained by them from the authorities in their home State, All these petitioners hail from Bihar State. The 2nd respondent College admitted them and permitted them to take the I Year B. E. Degree Examination for the academic year 1986-87. It should be noticed at this stage that the very same petitioners had approached this Court in W.P.Nos. 18595, 18757 and 18954 of 1987 challenging the non approval of their admissions to they Year B.E. Degree Course for the academic

year 1986-87 and this Court allowed the writ petitions and directed respondent 1 to give an opportunity to the petitioners and take a decision in accordance with law. In terms of this direction made by this Court, 1st respondent-University by its order which is produced as Annexure A in the writ petition declined to grant approval for the admission of the petitioners to the I Year B. E. Degree Course on the ground that they were not entitled to take the benefit of the Government Order which extended the concession granted to the SC/ST/BT students who belong to the Backward Tribes/Classes. The 1st respondent at page 6 of the order observed as follows:

"The Government of Karnataka in their order No SML/ 12/TES/77 dt. 22-2-1977 as amended in G. O. No. SWL/ 123/BCA/79, dt. 1-5-1979 have specified the various categories of other backward classes. This order also refers to backward tribes in Karnataka. Every State issues separate order of this type specifying the backward classes/tribes based on the social and educational backwardness of each of the community in their respective States. This Government Order for all practical purposes is meant only for the people residing in Karnataka. This order does not apply to similar castes/ communities in any other States. Hence, it should be concluded that the concession is available only to the backward tribes domiciled in Karnataka."

It is this order of the 1st respondent that is challenged by the petitioners in these writ petitions.

3. Mr. V.A. Mohanarangam, learned Counsel for the petitioners has relied on the guidelines (Annexure C) produced with the additional affidavit the relevant portion of which reads as under:

a) Admission to the B. E. Degree Course is open to the students who have passed the two year P. U. C. Examination from the Board of Pre-University Education, Karnataka State or any other examination considered as equivalent thereto by the Bangalore University with Physics, Chemistry and Mathematics as combination and with 50% of the marks in the aggregate of Physics, Chemistry and Mathematics. In the case of SC/ST/BT candidates, the minimum percentage of marks shall be 35% in the aggregate of Physics, Chemistry and Mathematics."

Relying on this guideline given by the 1st respondent for admission to the B. E. Degree Course, he contended that the 1st respondent was in error in taking the view that the benefit of this guideline is not applicable to the students belonging to the Backward Tribes or Backward Classes from other States. He submitted that the first part of this guideline relating to admission to the B.E. Course is that it is open to all the students who had passed the two years P.U.C. Examination either in the P.U.C Course in this State or any other examination equivalent thereto from other States. Though the guideline gives some credence to the contention put forth by the learned Counsel for the petitioners, the guideline is only a guideline and cannot run against the relevant Government Notification made in this regard. The matter is also no more res integra in the light of the

decision of this Court on a similar point rendered in W.P. Nos. 7365 to 7383 of 1986 disposed of on 1-12-1986 (reported in (1987) 13 Reports 289). In Para 5 of the judgment of this Court what this Court observed is:

"As far as the claim of the petitioners that they belonged to Backward Class is concerned it should be pointed out that the claim is based on the ground that such of the petitioners who claim to belong to Backward Special Group, their parents income was Rs.4,800.00 or less per annum and as far as other petitioners who claim to belong to other backward classes are concerned, they belonged to such of the cases and communities declared by the State Government as belonging to other backward classes. But the difficulty in accepting the claim of the petitioners is that none of them belonged to any of the castes or classes which are identified as backward classes by this State. The question, whether persons belonging to backward caste or community or class in the States other than Karnataka could claim the status of backward class in this State was the subject-matter for consideration before this Court in the case of Asgar Hussain v. University of Bangalore (1984) 1 Kar L.J 579. In the said case persons belonging to backward castes and communities in Tamilnadu, Andhra Pradesh and Uttar Pradesh claimed that they belonged to Backward Class in this State by identifying themselves with the corresponding casts or communities of this State. After analysing the Government Order including the terms of reference to the Havanur Commission, this Court pointed out that the socio-economic survey undertaken by the Havanur Commission and the Government Order only related to classes castes and communities of this State and therefore persons belonging to similar classes, castes or communities of other States cannot claim the status of backward class in this State. By this it is clear that none of the petitioners belonged to Backward Class of this State because everyone of the petitioners is not an ordinary resident of this State and therefore cannot claim that he belongs to Backward Class within the meaning of that expression used in the Government Order of this State."

So, the first contention of the learned Counsel for the petitioners that the impugned Government Order is contrary to the guidelines issued as Annexure C dt. 30-6-1986 fails,

4. The, next contention of the learned Counsel is that in the impugned order (Annexure-A the 1st respondent has taken a decision in favour of a candidate by name Deepak Koushik. He hails from Punjab and he has secured 45% of marks which is 5% less than the prescribed minimum for admission to the B.E. Degree Course. All the same he gained admission to the I Y ear Degree Course by producing a caste certificate issued by the Tahasildar, Bangalore North Taluk stating that he belonged to Kanjori Community and he had also produced a domicile certificate issued by the Tahsildar, Bangalore North Taluk stating that he was domiciled in Karnataka State since five years. There is no dispute that his father was working in Mahendra and Mahendra Company since 8 to 10 years and resided at Rothak, Haryana State. The 1st respondent had accepted these

certificates as genuine and on the basis of the same he approved the admission of this candidate on the ground that he belonged to Backward Tribe and fulfilled the requirement of the Rule and therefore, he was eligible for admission to the Engineering Course.

5. Mr. Mohanarangam contended that this order of the 1st respondent regarding this candidate is patently illegal since the, 1st respondent could not have acted upon the certificates issued by the Tahsildar in favour of this candidate whose father was admittedly living in Rothak at the relevant time and who was also studying at the relevant time at Kurukshetra University, which is indisputably situate in Haryana State. There is no doubt that this candidate was the recipient of favourable treatment by the 1st respondent. But I do not think that a palpable error committed by the University in regard to one candidate either willfully or inadvertently would attract the constitutional guarantee of Art. 14 of the Constitution.

6. Mr. Mohanarangam relied on the decision of the Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, . That was the judgment of the Supreme Court rendered in the appeal preferred by some of the candidates who had obtained admission to the Karnataka University. Their writ petitions and the connected writ appeals were dismissed by this Court and the appeal by special leave to the Supreme Court was also dismissed. The Supreme Court observed as follows (at Pp 1454-55 of AIR):

"We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their mission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission, must be more, upon the Engineering, Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Education of the Secondary Education Board, Rajasthan nor the first year B.Sc.examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B. Sc. Examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of

these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore, notwithstanding the view taken by us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring Engineering Colleges the Karnataka University should take appropriate action because the managements of these Engineering Colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the Engineering Degree Course."

7. Mr. Mohanaragam submitted that the Supreme Court had endorsed the directions given by this Court in the penultimate paragraph of its judgment with a view to prevent admission of ineligible students and therefore the 1st respondent should have followed the same directions made by this Court in para 24 of its judgment. He maintained that the 1st respondent having failed to comply with those directions it should not be permitted to cancel the examination taken by the petitioners just a week before the commencement of the examination. In my view, the facts in Rajendra Mathur case will have to be distinguished from the facts of this case. The Supreme Court had come to the conclusion on the facts of that case that the students who hailed from Rajasthan were made the scapegoats because the college in question in that case had accepted their admission with a view to enrich themselves by taking huge amounts by way, of capitation fee. What Supreme Court observed is already reproduced in para 6 above.

8. Though the Supreme Court dismissed the appeals of the students it made a direction on the facts and circumstances of that case permitting the students to continue their Engineering Course in the colleges in question. But a larger Bench of the Supreme Court in A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, has observed as under (at p. 1497):

"We do not think that we can possibly accede to the request made by Sri Venugopal on behalf of the students. Any direction of the nature sought by Sri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws. The case of the medical college started by the Daru-Salam Trust appears to stand on a different footing as we find from the record placed before us that permission had been granted by the State Government to the Trust to start the medical college and on that account, the University had granted provisional affiliation. We also find that the Medical Council of India took strong and serious exception to the grant of provisional affiliation whereupon the University withdrew the affiliation granted to

the college. We are unable to treat what the University did in the case of the Daru-Salam Medical College as a precedent in the present case to direct the University to do something which it is forbidden from doing by the University Act and the regulations of the University. We regret that the students who have been admitted into the college have not only lost The money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought/obtained admission in the college despite the warnings issued by the University from time to time. We are happy to note that the University acted watchfully and wakefully, issuing timely warnings to those seeking admission to the

Institution. We are sure many must have taken heed of the warnings to those seeking admission to the institution. We are sure many must have taken heed of the warnings issued by the University and refrained from seeking admission to the institution. If some did not heed the warnings issued by the university, they are themselves to blame. Even so if they can be compensated in some manner, there is no reason why that may not be done. We are told that the assets of the institutions, which have sprung out of the funds collected from the students have frozen. It is up to the State Government to devise suitable ways, legislative and administrative, to compensate the students at least monetarily."

The fact that the University had not taken proper action when the petitioners appeared to the 1 Year B.E. Degree Course by itself would not be a ground for this Court to invoke the jurisdiction under Art. 226 of the Constitution. Respondent 1 did take action at the earliest stage but that was held to be bad in law by this Court. That apart, the distinguishing feature in this case is that at the threshold itself the petitioners had suffered a disqualification which they ought to have known. It is not for the University to explain to them the regulations in force for their admission to the Colleges in question. If they had sought for admission and perhaps they were lured by the easy chances of getting admission by producing certificates which are not valid and which did not come within the submit of the relevant regulations framed by the University, the University should not be blamed. If at all the petitioners suffered, they suffered at the hands of the college and not at the hands of the University and the college must be answerable for having lured them to gain"-admission by receiving the capitation fee. Therefore, this is not fit case wherein this court should adopt the observation in Rajendra Mathur case. On the facts of this case, the observation of the larger Bench of the Supreme Court in A.P.C.M.E. Society case would be apposite.

9. Accordingly, there is no merit in these petitions, and they are dismissed.

10. However, the plea of the petitioners that the candidate by name Deepak Koushik had been singled out for favourable treatment requires to be noticed. It is for the University to re-examine this matter and take such action as is permissible under law.

11. No Costs.

12. Petitions dismissed.