

(2005) 06 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition No. 50922 of 2004

Sujatha Babu Nakaman

APPELLANT

Vs

Special Officer, Centralised Admission Cell and Others

RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 14 (1), 2 (f), 4, 42 (1), 44

Citation : (2006) ILR (Kar) 741 : (2005) 5 KarLJ 228 : (2005) 3 KCCR 200 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : A.V. Gangadharappa, for the Appellant; A.N. Venugopala Gowda, for Respondent-1 and V.B. Ganachari, for Respondent-2, for the Respondent

Judgement

S. Abdul Nazeer, J.—Petitioner had appeared in Common Entrance Test conducted by the first respondent for admission to B.Ed. Course for the Academic year 2004-05. She was selected by the first respondent under the Government quota, in general merit group. She was allotted to the 3rd respondent-College. The petitioner has deposited the admission fee of Rs. 9,985/- on 29-11-2004. Petitioner joined the 3rd respondent-College on 4-12-2004. She has paid Rs. 2,062/- towards fees to the said college at the time of her admission.

2. It is the case of the petitioner that the 3rd respondent-College has sent a telegram on 16-12-2004 informing her that the classes have commenced and that she is not eligible for admission to the said course. On 17-12-2004, she went to the College and met the Principal of the College who informed her that the College has received communication from the first respondent-University stating that the petitioner is not eligible for admission to the said course. She was directed to approach the Registrar of the second respondent-University to obtain eligibility certificate. Accordingly, she met the Registrar of the University who gave her a letter dated 20-12-2004 addressed to the Special Officer of Centralised Admission Cell, Bangalore, the first respondent herein, narrating the

examinations conducted by the University of Mumbai and the subjects in which the petitioner has appeared in B.A. I, B.A. II and B.A. III examinations. The second respondent requested the first respondent to inform him whether the petitioner is eligible for admission to B.Ed. Course. Thereafter, the first respondent has passed the order as per Annexure-H, dated 29-12-2004 holding that the petitioner is not eligible for admission to the said course. The said order is under challenge in this petition.

3. I have heard Sri A.V. Gangadharappa, learned Counsel appearing for the petitioner, Sri A.N. Venugopala Gowda, learned Counsel appearing for the first respondent and Sri V.B. Ganachari, learned Counsel appearing for the second respondent.

4. Learned Counsel Sri A.V. Gangadharappa submits that the petitioner has obtained B.A. Degree from the University of Mumbai, and that as per the eligibility criteria fixed by the Regulations of the Kamataka University, she is eligible for admission to B.Ed. Course. He further submits that the eligibility criteria for admission as per the Government Order at Annexure-F is not applicable for admission to B.Ed. Course and that the Regulations of the University are binding insofar as eligibility is concerned. It is argued that having admitted the petitioner to the said course, the respondents are estopped from contending that the petitioner is not eligible for admission to the course in question at this stage.

5. Sri A.N. Venugopala Gowda, learned Counsel appearing for the first respondent submits that the petitioner has secured B.A. Degree from Smt. Chandibai Himathmal Mansukhani College, Ulhasnagar, Maharashtra. The examinations are conducted at the College level. The college is affiliated to the University of Mumbai. The petitioner does not possess requisite eligibility as per the Rules of admission made by the State Government for admission to B.Ed. Course. He argues that the selection of candidates to B.Ed. Course are regulated by the Karnataka Selection of Candidates for Admission to Teachers Certificate Higher Course (TCH) and Bachelor of Exsiccation Course (B.Ed.) Rules, 1999 as amended from time to time. He has taken me through the said Rules and points out that in case the candidates have obtained the B.A./B.Sc. Degree from the Universities situated outside the State of Karnataka, they should have studied in addition to a language, at least two elective subjects in their three years course of study in B.A./B.Sc. by appearing in one subject in the University Examinations for at least two years and in the principal subject for at least three years and if there is any change of subject during the course of study of three years, such candidates are not be eligible for admission to B.Ed. Course. He further contends that there can be no estoppel against statute. He concludes by submitting that the admission of an ineligible candidate cannot be approved by the University concerned.

6. Sri V.B. Ganachari, learned Counsel appearing for the 2nd respondent-University submits that admission to B.Ed. Course is regulated by the

Regulations of the University known as "Integrated B.Ed. Regulations and Syllabus on the Common Pattern, 1994". It is further submitted that if the petitioner has requisite qualification in terms of the said regulations, she can be admitted to the said course by the University. It is further submitted that even if the petitioner has appeared for her examination in I and II year B.A. in the college, that cannot be a bar for her to join B.Ed. Course as per the University Regulations.

7. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

8. In exercise of the powers conferred by Sub-section (1) of Section 14, the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, the State Government has made Rules called "Karnataka Selection of Candidates for Admission to Teachers Certificate Higher Course (TCH) and Bachelor of Education Course (B.Ed.) Rules, 1999" (for short, "the Rules"). The Rules apply to Selection of Candidates for admission to TCH and B.Ed. Course. Rule 3 provides for eligibility for admission to B.Ed. Course is as follows.--

"Rule 3.--(2) In respect of admission to Bachelor of Education Course unless.--

(a) the candidate has obtained a degree in Bachelor of Arts or Bachelor of Science with at least one language among English, Kannada, Hindi, Urdu, Sanskrit, Marathi and at least two subjects out of three electives among History, Political Science, Sociology, Geography, Economics, Physics, Chemistry, Botany, Zoology, Mathematics, Biology, English, Kannada, Hindi, Urdu, Marathi and Sanskrit (the subjects taught in the High School and on which the Methodology of teaching is based) as electives studied during all the three years of the course of study:

Provided that the candidates who have obtained a Bachelor of Arts or Bachelor of Science Degree from the Universities situated outside the Karnataka State should have studied at least two electives specified in Clause (a) of Sub-rule (2) in their three years course of study by appearing in one subject in the University Examinations for at least two years and in the principal subject for at least three years only and if there is any change of subject during the course of study of three years, such candidates shall not be eligible for admission to Bachelor of Exsiccation (B.Ed.) Course:

Provided further that the minimum marks for the purpose of qualification specified above shall be.--

(i) forty-five percent of marks in the aggregate of three years of study in the case of candidates belonging to Scheduled Caste, Scheduled Tribe, Category I of other Backward Classes as specified in the relevant orders issued by the State Government from time to time and Physically handicapped candidates;

(ii) fifty per cent in respect of other candidates.

(b) has appeared for the Common Entrance Examination specified in Sub-rule (3)".

9. The first respondent has issued a Brochure as per Annexure-F for the Academic year 2004-05. In the Brochure, the eligibility criteria for admission to B.Ed. Course is as follows.--

"2. Candidates must be graduates with B.A. or B.Sc. and shall have studied any one of the language and two of the three electives specified below. Candidate should have studied two of the three electives for all the three years at degree or graduation level.

Language.--English, Kannada, Hindi, Marathi, Urdu, Sanskrit. Electives.--Physics, Chemistry, Botany, Zoology, Mathematics; History, Political Science, Sociology, Geography, Economics; English, Kannada, Hindi, Marathi, Urdu, Sanskrit.

Candidates with a degree in B.A./B.Sc. from the Universities situated out side the Karnataka State shall have studied in addition to a language subject mentioned above and at least two (2) elective subjects mentioned above in Serial No. 2 in their three years course of study in B.A./B.Sc., by appearing in one subject in the University Examinations for at least two years and in the Principal subject for all the three years and if there is any change of subject during the course of study of three years, such candidates, shall not be eligible for admission to B.Ed. Course".

10. It is not in dispute that the petitioner has produced the original documents at the time of her admission before the first respondent and she was selected for admission to the said course by the first respondent and she was allotted to the 3rd respondent-College. The 3rd respondent-College is admittedly affiliated to second respondent-University. The University has framed the Regulations for admission to B.Ed. Course. The relevant Regulation are as follows.--

"3.1 A graduate in Arts or Science of Karnataka University or of any other University recognised by it as equivalent will be eligible to seek admission to the B.Ed. Course provided.

(i) He/She has secured mark not less than 45% (40% in the case SC/ST category applicants) in the aggregate taking into account marks obtained in all subjects and/papers studied in all years on attempts in which he or she has passed the papers comprising the course and considered for the award of the degree.

(ii) He/She has studied, for a maximum of at least 300 marks each any two of the following school subjects as optional/major/ minor/subsidiary/basic/ compulsory/equal or of equal importance during the course.

(i) Kannada; (ii) English; (iii) Sanskrit; (iv) Hindi; (v) Marathi; (vi) Urdu; (vii) History; (viii) Sociology; (ix) Political Science; (x) Geography; (xi) Economics; (xii) Physics; (xiii) Chemistry; (xiv) Botany; (xv) Zoology; (xvi) Mathematics;

(xvii) Geology.

(iii) He/She has secured 45% (40% in the case of SC/ST category candidates) in the aggregate in each of the two subjects specified above no matter which year or years are attempts the subject is studied or /relevant examinations are written and passed.

(iv.) The requirements of 45% (40% in the case of SC/ST applicants provided under Regulation 3.1 (i) may be relaxed to the extent that the required number of applicants are not available in the respective categories for which reservations are made in accordance with Government Orders. However, the extent of maximum relaxation shall be limited to 5% of the marks only.

(v.) The minimum percentage of marks (45%; or 40%; as is the case above) will not be insisted on for the in service primary school teachers who desire to join the B.Ed. Course while filling the additional quota of 10%; sanctioned by the Government for teachers having more than 5 years of service in Government schools. Further in case sufficient applications of eligible in service primary school teachers are not received under this quota of 10% untrained Government secondary school teacher's getting permission by the Government may be considered under the same quota".

11. The eligibility criteria fixed by the State Government and the University are not uniform. The stand of the University is that the eligibility criteria fixed by it prevails over the criteria fixed by the State Government as it is an expert body in the field of education. If we go by the eligibility criteria fixed by the State Government, the petitioner is not eligible for admission to the said Course. Though the petitioner has studied Hindi language, she has not studied one of the two electives for all the three years at Graduation level. Further, I and II years B.A. examinations are conducted by the College and not by the University. As per the University Regulations, a graduate in Arts or Science of Karnataka University or of any other University recognised by it as equivalent is eligible for admission to the said course subject to other conditions. The University has not decided as to whether the B.A. Degree held by the petitioner is equivalent to a degree in Arts or Science of Karnataka University. Therefore, the question for consideration is whether the eligibility criteria fixed by the University prevails over the one fixed by the State Government.

12. Section 2(f) of the University Grants Commission Act, 1956 ("UGC Act" for short) defines a University as under:

" "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act".

13. In Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, the Apex

Court has considered as to how a University is understood and what is its concept in U.K. and U. S.A. The report of the two committees constituted by the Government of India on 4-11-1948 and December 1961 has been reproduced in the decision. The relevant portion of the decision is as follows.--

"14. Shortly after independence on 4-11-1948 the Government of India constituted a Commission known as "University Education Commission" of which Dr. S. Radhakrishnan was the Chairman. Dr. Tara Chand, former Vice-Chancellor, Allahabad University, Dr. Zakir Hussain, Vice-Chancellor, Aligarh Muslim University, Dr. A. Lakshmanaswami Mudaliar, Vice-Chancellor, Madras University, Dr. Meghnad Saha, Dean, Faculty of Science, Calcutta University and 5 other eminent personalities in the field of education were its members. The Commission gave a very long and exhaustive report. Chapter II of the report deals with the aims of University education and para 2 of Part I is illustrative and the same is being reproduced below:

"2. Universities as the Organs of civilization - He indeed must be blind who does not see that, mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the Universities. Everything is being brought to the test of reason, venerable theologies, ancient political institutions, time-honored social arrangements, a thousand things which a generation ago looked as fixed as the hills. If India is to confront the confusion of our time, she must turn for guidance, not to those who are lost in the mere exigencies of the passing hour, but to her men of letters, and men of science, to her poets and artists, to her discoverers and inventors. These intellectual pioneers of civilization are to be found and trained in the Universities, which are the sanctuaries of the inner life of the nation".

In the introductory paragraph of Chapter IV dealing with standards of teaching, the Commission recorded its views in the following words:

The need for High Standards:

Introduction.--It is the primary duty of a University to maintain the highest standards of its teaching and examinations. A University is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a University is to be judged as much by the type of graduate it turns out as by the amount and quality of research contributed by its teachers and research students. It must be clearly recognised that there is no conflict involved between the two-fold function of a University to educate its members and to advance the frontiers of knowledge - the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterrupted only if there is a regular supply of graduates well-prepared by general education for specialized research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will

rapidly become stale. A degree must always be what a University makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our Universities are to be the makers of future leaders of thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates.

The Commission noted that many of the Universities did not compare favorably with the best of British and American Universities in respect of their teaching and examination standards. Unless highest standards of teaching in the Universities are ensured, the degree given by them will not command recognition and respect. The Commission observed:

"... Our Universities should maintain the academic character of their work on a level recognised as adequate by the Universities of other countries. Universities are our national institutions, and to keep up our national prestige, our degrees must be such as to command international recognition..."

15. The Government of India Constituted a Committee in December 1961 to consider broadly the organisational structure of the Universities in India and to prepare the outline of a "Model Act" suited to their role and functions of which Dr. D.S. Kothari, Chairman, UGC was the Chairman and several other persons who were either Vice-Chancellors of Universities or were connected with the field of education were members. In the concluding part of the First Chapter, the Committee noted as under:

"... The function of the University is not only to preserve, disseminate and advance knowledge but also to furnish intellectual leadership and moral tone to society. No less important is the role of Universities in promoting national integration and a common culture, and in bringing about the social transformation that is desired. Finally, Universities have also to provide trained personnel to advance the country's prosperity by making full use of modern knowledge. The organisational pattern must enable the Universities to achieve these objectives".

These reports prepared by most learned and eminent educationists in post independence era highlight the primary function of the Universities viz., teaching and research and to provide trained and qualified personnel for the progress of the nation".

14. Karnataka University, Dharwad, was established u/s 3 of the Karnataka State Universities Act, 1976 (for short, "Old Act"). After coming into force of the Karnataka State Universities Act, 2000 (for short, "New Act") all the Universities established under the old Act are deemed to be established as per Section 3 of the New Act of 2000. The Statutes, Regulations, Ordinances and Rules made under the old Act continue to hold the field under the New Act in accordance with and subject to the conditions mentioned in Section 83 of the New Act. Sub-section (2) of Section 2 defines a college as "an institution maintained by the University as such and includes an institution admitted to the privileges of the

University as an affiliated college of the University in accordance with the Act". Section 4 of the Act provides for the powers of the University. The relevant powers are as under:

"4. Powers of the University.--Subject to the provisions of this Act and such conditions as may be prescribed by the Statutes or Ordinances, the University shall have the following powers and perform the following duties, namely.--

(i) provide for instruction (including instruction by correspondence), teaching and training in such branches of learning and courses of study as it may think fit and make provisions for research and dissemination of knowledge;

(ii) hold examinations and grant and confer degrees, diplomas and other academic distinctions on persons who.--

(a) have pursued a course of study in the University or in any college, unless exempted therefrom in the manner prescribed by the Statutes, Ordinances or Regulations, and have passed the examinations prescribed by the University; or

(b) have carried on research under conditions prescribed by the Statutes or Ordinances".

15. Chapter V of the Act provides for making Statutes, Ordinances, Regulations and Rules. Section 42(1) of the Act deals with making ordinances by the Syndicate for admission of students to the University and their enrolment, courses of study for all degrees, diplomas and certificates of University, conduct of examination etc. Section 44 of the Act empowers the academic Council to make regulations for admission of students to the University, recognition of examinations and degrees of other Universities as equivalent to the examinations and degrees of the University etc. Section 68 of the Act lays down that no student shall be eligible to a course of study, a degree or diploma unless he possesses such qualification as may be prescribed by statutes from time to time.

16. Section 4 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, states that subject to such rules or general or special orders as may be made by the Government in this behalf and any other law for the time being in force, the minimum qualification for admission to any course of study in an educational institution shall be specified by the University in the case of any course of study in an educational institution maintained by or affiliated to such University. The proviso states that the Government may, in the interest of excellence of education, fix any higher minimum qualification for any course of study. The said provision is as follows.--

"4. Regulation of admission to educational institutions etc.--Subject to such rules or general or special orders as may be made by the Government in this behalf and any other law for the time being in force.--

(1)(a) the minimum qualification for admission to any course of study in an educational institution shall be such as may be specified by.--

(i) the University, in the case of any course of study, in an educational institution maintained by or affiliated to such University:

Provided that the Government may, in the interest of excellence of education, fix any higher minimum qualification for any course of study".

17. In *Gangadhara J.P. and Others Vs. The Director of Technical Education in Karnataka and Others*, this Court has held that the power to fix minimum higher qualification for admission to any course of study vests with the University and that no power is vested with the State to independently frame regulations or fix clarification for admission. The State has no power to alter the qualification fixed by the University.

18. The Apex Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, has held that it is for each University to decide the question of equivalence. It is further held that the University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held having regard to the course, the syllabus, the quality of teaching and the standard of examination.

19. Thus, the Karnataka State Universities Act, 2000 empowers the University to prescribe eligibility criteria for admission, conduct of examinations, grant or confer degrees, diplomas or other academic distinctions subject to the conditions as may be prescribed by the Statutes, Ordinances or Regulations made in accordance with the Act, subject to the minimum standards that may be prescribed under the National Council for Teacher's Education Act, 1993. The University is also empowered to make regulations for recognition of examinations and degrees of other Universities as equivalent to the examinations and degrees of the University. The authorities of the University responsible for framing Statutes, Ordinances and Rules governing admissions of students to the University are academicians and experts in the field of education. They know what is wise, prudent and proper in relation to academic matters. The regulations formulated by professional men possessing technical expertise and rich experience of day-to-day working of educational institutions should be preferred to the one framed by the State Government. It is not the case of the State that it has fixed higher qualification than the University. Therefore, State Government has to adopt the eligibility criteria fixed by the concerned University when admissions are made by it for a Degree or Diploma Courses. When the rules made by the State Government are at variance or conflict with the regulation of the University, the regulation of the University will prevail over the rules made by the State Government.

20. Now, let me consider the other contentions urged by the learned Counsels for the parties. Learned Counsel for the petitioner argues that the respondents are estopped from contending that petitioner was not eligible for admission having admitted her to the Course. The said argument is not acceptable because there is no estoppel against statute. The admissions are made in accordance with the

statutory provisions. A candidate who seeks admission to an academic course is deemed to be aware of the prescribed qualification and even if he is not aware, it may be said that either he ought to be aware of it or that he is presumed to be aware of it. (See. S. Harinatha Reddy Vs. Bangalore University,)

21. Learned Counsel for the first respondent argues that petitioner being ineligible for admission to the course in question, her admission cannot be approved by the University. In this connection, reliance is placed on the decision of this Court Asgar Hussain and Ors. v. University of Bangalore 1984 (1) Kar. L.J. 579". In this decision, this Court has held that there is a distinction between the eligible students admitted in preference to a better merited candidates and admission of ineligible candidates. The admission of ineligible candidates cannot be approved. However, in a case of eligible candidates who were admitted in preference to better merited candidates and if such selection remains undisturbed for considerable time, the Court could decline to set aside their selection. This decision is not applicable to the facts of the case because the question in this case is whether the petitioner has requisite eligibility as per University Regulations.

22. In the instant case, the petitioner does not fulfil the eligibility criteria fixed by the State Government. I have already taken a view that the criteria fixed by the University prevails over the criteria provided by the State Government in its admission rules. The University has not taken a decision whether the degree held by the petitioner is equivalent to the degree in Arts or Science of Kamataka University, in accordance with its Regulations. Therefore, at this stage, it cannot be said that petitioner was ineligible for admission to the B.Ed. Course. The University has to consider as to whether the degree held by the petitioner is equivalent to its degree in Arts or Science in accordance with its Regulations and whether the petitioner is eligible for admission to B.Ed. Course.

23. In the result, I pass the following order:

(i) The order at Annexure-N, dated 29-10-2004 passed by the first respondent is quashed;

(ii) I direct the second respondent-University to consider whether the degree held by the petitioner is equivalent to its degree in Arts or Science and whether the petitioner is eligible for admission to B.Ed. Course in accordance with its Regulations, within four weeks from the date of receipt of copy of this order.

Writ petition is disposed of accordingly. No costs.