

(2000) 11 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No's. 28039 and 33923 of 2000

V.N. Varaprasad Dendukuri

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226
Karnataka Selection of Candidates for Admission to Engineering, Medical and Dental
Courses Rules, 1997 — Rule 5 (4), 6

Citation : (2001) 1 KCCR 619

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : S.S. Padmaraj, in Writ Petition No. 28039 of 2000 and Ravi B. Naik, in Writ Petition No. 33923 of 2000, for the Appellant; K. Vishwanath, A.G.A. for Respondent 1 in Writ Petition Nos. 28039 and 33923 of 2000, P.S. Rajagopal, for Respondent 2 in Writ Petition No. 28039 of 2000 and for Respondents 2 and 3 in Writ Petition No. 33923 of 2000, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—Since the contentions raised in these Petitions are similar and identical, both the Petitions are heard together and disposed of by this common order.

2. The Petitioners in both the Petitions were applicants for Master of Computer Applications course (hereinafter referred to as "MCA course") in the 2nd Respondent-Karnataka Regional Engineering College (hereinafter referred to as "College").

3. In both the Petitions, the Petitioners have prayed for quashing the order dated 18th July, 2000, a copy of which has been produced as Annexure-D to Writ Petition No. 33923 of 2000, passed by the State Government, revising the quota for admission to MCA course in the college at the proportion of 80 per cent for Karnataka and 20 per cent for Non-Karnataka students. The Petitioners also have prayed for a further direction to admit them for study of MCA course.

4. It is useful to refer to few facts which are not in serious dispute which may be relevant for disposal of these Petitions:

Pursuant to the notification dated 24th of April, 2000 issued by the College inviting eligible candidates to submit their applications for admission for the study of MCA course, the Petitioners had submitted their applications. In the Prospectus issued by the College, it was stated that 50 per cent of seats were reserved for Karnataka and 50 per cent of seats for non-Karnataka students. However, while sending the communication to the students for Written Test, the students were informed that the quota fixed for admission between Karnataka and non-Karnataka students, is likely to be refixed at the proportion of 80 per cent for Karnataka and 20 per cent for non-Karnataka students. The Written Test was held on 9th of July, 2000. In the meanwhile, the Board of Governors of the college, by means of Resolution dated 16th of May, 2000, resolved to modify the quota fixed between the Karnataka and Non-Karnataka students from the existing 50 per cent each to 80 per cent and 20 per cent respectively. The said resolution of the Board was approved in the impugned order Annexure-D dated 18th of July 2000 by the State Government. Therefore, the selections were made for admission in the light of Government Order Annexure-D and were finalised on 10th of August 2000. The selected candidates were also informed of their selection on the same day. In view of the modification made re-fixing the quota among Karnataka and Non-Karnataka students, the Non-Karnataka students are entitled for 12 seats out of 60 seats; and out of said 12 seats, 9 seats are meant for General Category and 3 seats are meant for Scheduled Castes/Scheduled Tribes. The Petitioners in both the writ Petitions belong to General Category and the Petitioner in Writ Petition No. 33923 of 2000 and the Petitioner in Writ Petition No. 28039 of 2000 were respectively at Serial Nos. 13 and 19 in the merit list.

5. Sri Ravi B. Naik and Sri S.S. Padmaraj, learned Counsel appearing for the Petitioners, submitted that keeping in view that the College in question is a Regional Engineering College established by the joint venture of Government of India and the State Government and it is being funded by both the State and the fixed for Karnataka and Non-Karnataka students at 50 per cent each, there was absolutely no justification to modify the quota so fixed. They further submitted that since the selection process had already commenced, the Government order-Annexure-D dated 18th July, 2000, should be understood as prospective in operation and it cannot be made applicable for the selection made for the academic year 2000-2001. It is also their submission that since the Petitioners were informed in the Prospectus issued to them that the proportion of seats fixed between the Karnataka and Non-Karnataka students was at 50 per cent each, the Petitioners had a legitimate expectation that they would be selected for the study of MCA course. They further submitted that it is not permissible for the Board of Governors to make any recommendation to the State Government and since the impugned Government Order has been passed on the basis of the recommendation made by the Board of Governors, the Government order is

liable to be quashed as highly arbitrary and unreasonable.

6. However, Sri P.S. Rajagopal, learned Counsel appearing for the College and Sri K. Vishwanath, learned Additional Government Advocate appearing for the State strongly refuted the contentions of the learned Counsel appearing for the Petitioners. It is their submission that it is for the Board of Governors of the College to manage its affairs and decide as to on what basis the selections are required to be made in the College. According to the learned Counsel, so long as the decision of the Board of Governors of the College does not run counter to the policy of the Government and the mandate of the constitutional provisions it is for the Board of Governors of the College to take a policy decision, keeping in mind the larger public interest and decide as to what should be the proportion of seats among the Karnataka and Non-Karnataka students. They submitted that since the said policy decision of the Board of Governors has been approved by the State Government, the order impugned is not liable to be quashed. In support of the decision for modification of the proportion of seats earlier fixed among Karnataka and Non-Karnataka students, they pointed out that in all other Post-graduation courses in the College, 80 per cent of intake is fixed for Karnataka students; and since it is only for MCA course, there was some deviation earlier made, the impugned decision was taken to bring about uniformity in the matter of study of Post-Graduation courses in the College. They further submitted that since the recommendation of the Board of Governors of the College was considered by the Government and an appropriate decision was taken, the said decision of the Government which has emanated in the form of an order impugned, is not liable to be interfered with by this Court in exercise of its writ jurisdiction as the decision taken is in the nature of a policy decision. They pointed out that the order impugned is neither arbitrary, capricious, unreasonable nor violative of rights guaranteed to the Petitioners, either under Article 14 or 15 of the Constitution of India. According to the learned Counsel for the Respondents, none of the rights of the Petitioners are affected on account of the impugned order. They also refuted the contention of the learned Counsel appearing for the Petitioners that the Petitioners had a legitimate expectation that they would be selected for the study of MCA course. It is their submission that the Communication sent along with the admission cards clearly informs the Petitioners that the proportion of seats fixed for Karnataka and Non-Karnataka students was likely to be modified at a later stage. They further submitted that if the intake earlier fixed had not been enhanced at a later stage to 60, the Petitioner in Writ Petition No. 33923 of 2000 has absolutely no chance of his case being considered as he was at Serial No. 19 and he belongs to General Category. It is their further case that the Board of Governors of the College consists of representatives of Government of India as well as the State Government and also of the A.I.C.T.E.; and the Minister for Higher Education of the State Government is the Chairman of the Board of Governors of the College. They also submitted that when the Board of Governors of the College, which consists of highly reputed persons holding important positions; who are well-versed in

academic matters and who represent both State and Central Government have taken a policy decision with regard to proportion of seats to be allotted between Karnataka and Non-Karnataka students, the said policy decision having been accepted by the State Government, should not be interfered with by this Court in exercise of its writ jurisdiction. They also submitted that the seats in all other private colleges in so far as MCA course is concerned, are fixed at 80 per cent for Karnataka students and 20 per cent for Non-Karnataka students. Therefore, they submit that the Petitioners cannot have any grievance against the impugned order. Relying upon Rule-6 of the Karnataka Selection of Candidates for Admission to Engineering, Medical and Dental Courses Rules, 1997, they submitted that even for admission to professional courses like Engineering, Dental and Medical, the percentage is fixed at 15 per cent for Non-Karnataka students. It is their further submission that since the selections in question were made subsequent to the passing of the impugned order fixing proportion of seats to be allotted to Karnataka and Non-Karnataka students, the selection made is proper and consistent with the quota prescribed. Therefore, they submitted that the College has not committed any illegality in applying the quota prescribed in respect of selections made for the academic year 2000-2001.

7. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the three questions that would arise for consideration in these Petitions are:

- i) Whether the impugned Government Order dated 18th July, 2000, a copy of which has been produced as Annexure-D in Writ Petition No. 33923 of 2000 is required to be quashed?
- ii) Whether the Petitioners are entitled for being admitted for the study of MCA course during the academic year 2000-2001 on the ground that the Government Order is prospective in operation
- iii) Whether the Petitioners had legitimate expectation that they would be admitted for study of MCA course during the academic year 2000-2001 on the basis that 50 per cent of the seats were fixed for non-Karnataka students?

8. Now let me consider the first question:

As noticed by me earlier, the Board of Governors of the College which consists of representatives of State Government and the Central Government and also A.I.C.T.E., chaired by the Higher Education Minister of Government of Karnataka in its meeting held on 16th May, 2000, took a decision to modify the percentage of seats to be allotted for MCA Course between Karnataka and Non-Karnataka students and re-fixed such percentage of seats at 80 per cent and 20 per cent respectively. The said resolution of the Board of Governors was considered by the Government and the Government by its order dated 18th July, 2000, approved recommendation and re-fixed the quota among Karnataka and Non-Karnataka students. No-doubt, the Regional Engineering College is funded by the State Government as well as by the Government of India. That alone cannot be the

basis to put-forward an argument that 50 per cent of the seats in the college for MCA course should be reserved for Non-Karnataka students. This argument overlooks the fact that the College is situated within the State and there are similar colleges outside Karnataka established in other regions of the country. It is also the case of the Respondents that in all other Post-graduation courses conducted in the College, seats are being allotted among Karnataka and Non-Karnataka students in the proportion of 80 per cent and 20 per cent respectively. If the Board of Governors of the College consisting of representatives of State Government, Government of India and A.I.C.T.E., have applied their mind as to what should be the percentage of allocation of seats between Karnataka and Non-Karnataka students and the said recommendation is considered by the State Government and the State Government has taken a decision accepting the recommendation and passed the impugned order, I am of the view, that the said decision of the Board of Governors of the college as well as the impugned order of the State Government is not liable to be interfered with by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. It is for the Board of Governors of the Institution which is primarily entrusted with the responsibility of managing the Institution and which is primarily concerned with the problems faced by them and the state in the matter of admission of students who are belonging to Karnataka and Non-Karnataka to decide as to what should be the percentage of seats to be allotted between Karnataka and Non-Karnataka students. This is a policy decision on which the authorities have taken a decision. The said policy decision taken, in my view, cannot be termed either as highly unreasonable, arbitrary or discriminatory in nature. As noticed by me earlier, it is for the Authorities who are entrusted with the management of the Institution to decide the policy and programme for admission to the Institution. It is the case of the Respondents that the impugned order only ensures uniformity in the proportion of seats allotted between Karnataka and non-Karnataka students in all disciplines of study in the College. Therefore, I am unable to accept the contention of the learned Counsel appearing for the Petitioners that the said decision would affect any of the rights of the Petitioners muchless the rights guaranteed to them under Articles 14 and 15 of the Constitution. I am also unable to accept the contention of Sri Naik that as per Sub-rule (4) of Rule 5 of the Rules, which has been adopted in the Government order, the non-Karnataka students are entitled for admission to the extent of 50 per cent of seats. The said Rules, in my view, are meant to govern the admission in the private medical colleges. Sub-rule (4) of Rule 5 of the Rules only provides that in case of new Institutions, they are not required to make any admission on merit in respect of seats to be allotted by the Government, but they are required to admit 50 per cent of total intake permitted among the Karnataka students. The said Government order has no application in so far as the College in question is concerned. The College in question is established by the Society and it is the instrumentality of the State which is totally funded by the State Government and Government of India. It is also not a new Institution. Therefore, I am of the view, that the impugned Government order Annexure-D of 18th July, 2000 is not liable

to be quashed.

9. In so far as the second question is concerned, I am also unable to accept the contention of the learned Counsel appearing for the Petitioners that the impugned Government order could not have been made applicable for the selection made during the academic year 2000-2001. As noticed by me earlier, the impugned order came to be passed on 18th July, 2000, i.e., long prior to the selection made. The selections were made only on 10th August, 2000. Further, the Board of Governors of the College had taken a decision to modify the intake fixed for Karnataka and Non-Karnataka students on 16th May, 2000. The students were also informed while they were asked to appear for the written examination that the intake fixed among the Karnataka and Non-Karnataka students is likely to be modified at the proportion of 80 per cent and 20 per cent respectively. When this is the situation; and when all the students seeking for admission for the study of MCA course in the college were informed well in advance that the proportion fixed among the Karnataka and Non-Karnataka students is likely to be modified at the ratio of 80 per cent and 20 per cent respectively, it is not possible for me to take a view that the College has erred in law in applying the impugned Government order in so far as the selection made for the academic year 2000-2001 is concerned. The decision of the Board of Governors of the College and also the Government Order does not state expressly that the said Government Order would not be made applicable in respect of the selections to be made for the academic year 2000-2001. Further, from the reading of the said Government Order, it is also not possible to infer that the said Government Order was not intended to be made applicable in respect of the admissions to be made for the academic year 2000- 2001. The timing of the decision of the Board of Governors taken to modify the decision and also to increase the intake fixed and the date of the Government Order would clearly show that it was intended to be made applicable even in respect of the admissions for the academic year 2000-2001. It is necessary to point out that in the same Government Order, the intake fixed was also enhanced to 60 as against 30 earlier fixed.

10. Now, the only question that remains to be considered is whether there is any merit in the contention of the learned Counsel appearing for the Petitioners that the Petitioners had legitimate expectation that they would be selected for the study of MCA Course, in view of the statement made in the Prospectus issued to the students that 50 per cent of the seats are fixed for Non-Karnataka students in MCA course. No-doubt, in the prospectus issued on 24th April, 2000, it was notified that 50 per cent of the seats were required to be filled among Non-Karnataka students. But, while the students were called upon to appear for the written examination, they were informed that the seats for Non-Karnataka students is likely to be reduced to 20 per cent. The Petitioners who were aware of the said Communication, but without challenging the said communication, wrote the examination. Thereafter, the impugned order came to be passed. The admission of the Petitioners or any other students for the study of MCA Course is

subject to several contingencies. It depends upon the comparative merit of the Petitioners and other students; and also increase and decrease in the intake fixed. The prospectus issued is only in the nature of an invitation to the eligible students to apply for admission so that their case may be considered on merits. No doubt, while considering their case, the educational Institution cannot act either arbitrarily or unreasonably or in a manner which would demonstrate that the action or decision taken is discriminatory in nature. It is not the case of the Petitioners that on account of the statement made in the prospectus, they were made to alter their position in any manner to their detriment. Therefore, I do not find any merit in this submission, of the learned Counsel appearing for the Petitioners.

11. In the light of the discussion made above, I do not find any merit in these Petitions. Therefore, these Petitions are liable to be rejected. Accordingly, they are rejected. However, no order is made as to costs.

12. Sri K. Vishwanath, learned Additional Government Advocate is given four weeks time to file his memo of appearance.