
(2002) 07 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6053 and 7207 of 2002

Ya Fatima Educational Society and Others

APPELLANT

Vs

Osmania University

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

All India Council for Technical Education Regulations — Regulation 8(10)

Citation : (2002) 5 ALD 229 : (2002) 6 ALT 8

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, in WP No. 6053 of 2002 and M.S. Prasad, in WP No. 7207 of 2002, for the Appellant; E. Manohar and K. Ramakanth Reddy, SC for Osmania University and Government Pleader for Higher Education in WP No. 6053 of 2002, E. Manohar and K. Ramakanth Reddy, SC for O.U. for Respondent Nos. 1 and 2 in WP No. 7207 of 2002 and S. Niranjan Reddy and Government Pleader for Higher Education for Respondent No. 3 in WP No. 7207 of 2002, for the Respondent

Final Decision : Allowed

Judgement

E. Dharma Rao, J.—WP No. 6053 of 2002 is filed by Ya Fatima Educational Society, the 1st petitioner represented by its Chairman and Correspondent Syed Askari Hassan praying for a mandamus declaring the action of the respondent University in issuing proceedings dated 22-3-2002 as illegal, arbitrary and unconstitutional and to set-aside the same, and for a consequential direction not to interfere with the functioning of New India Institute of Computer Science, the 2nd petitioner college.

2. WP No. 7207 of 2002 is filed by the students of New India Institute of Computer Science, seeking a writ of mandamus declaring the action of the Osmania University and the Controller of Examinations, Osmania University, respondents 1 and 2 in the writ petition in not issuing the Hall Tickets and not permitting them to appear for 1st semester examination for MCA Course as illegal, null and void and contrary to the judgments of the Supreme Court and for

a consequential direction to respondents 1 and 2 to permit them to complete 3 years MCA Course.

3. Since both the writ petitions are connected, they are clubbed together and are being disposed of by this common order.

4. The brief facts leading to the filing of these writ petitions at the outset may briefly set forth as under:

5. The 1st petitioner in WP No. 6053 of 2002 is a registered Society and its aims and objects are to promote education among the members of Muslim minority; community and to develop technical education amongst them, and that with that object it established the 2nd petitioner college for imparting training in MCA Course and that the 2nd petitioner college was granted approval by the All India Council for Technical Education (AICTE) by its proceedings dated 19-7-2001 and that the 2nd petitioner college has been granted permission by the State Government and has been recognized as a Minority institution.

6. It is stated that the 1st petitioner society issued an advertisement inviting applications from the students for admission into MCA Course and due to various reasons it did not invoke good response initially and only four minority students joined the 2nd petitioner college by 24-12-2001. While so, the respondent-University directed all the minority institutions to surrender the seats which remained unfilled by 24-12-2001 to the University to enable it to make centralized admissions and to allot general students in the last phase of counselling to be held on 29-12-2001. It is stated that though the respondent-University notified 29-12-2001 as the last date for counselling, due to confusion created with regard to the eligibility of the candidates among the students, there was no proper response from the students for admission into the 2nd petitioner college on the last phase of counselling on 29-12-2001 also.

7. While so, on coming to of the left over seats in the 2nd petitioner institution, various students approached the petitioner institution on 29-12-2001 and sought to register themselves for the said admissions and the petitioner institution registered such students and intimated to them that their admissions would be made after the respondent-University announces the results of the allotments at the final phase of counselling, and inasmuch as the classes for the course were also commenced by the petitioner institution by 31-12-2001 in accordance with the Almanac issued by the University and the students also started attending the classes from 31-12-2001.

8. It is further stated that on coming to know that only one student was allotted to the petitioner society in the fast phase of counselling on 29-12-2001, the petitioner institution addressed a letter to the respondent University on 9-1-2002 requesting it to accord permission to make admission of other students since the conduct of course with only 5 students would be impossible and that as the respondent University did not respond immediately, the petitioner institution in the light of the regulations made by the AICTE and the judgment of the Supreme

Court that educational institutions are free to make admissions after the last phase of admissions made by the University, the petitioner society formalized the admission of the students who already got themselves registered with it on 29-12-2001 and started attending classes from 31-12-2001 and the list of said students was also communicated to the concerned in accordance with the norms.

9. It is stated that while the things stood thus, the respondent-University all of a sudden issued a notice dated 22-3-2002 calling upon the petitioner to explain as to why the petitioner's affiliation should not be cancelled and to which the petitioner institution submitted its explanation on 1-4-2002. Challenging the said notice issued by the respondent-University, the present writ petition has been filed by the Management.

10. As aforesaid WP No. 7202 of 2002 is filed by the students of the petitioners' society assailing the action of the respondent-University in not issuing the Half Tickets and not permitting them to appear for 1st semester examination for MCA course from the petitioner institution.

11. The contention of Sri Niranjan Reddy, learned Counsel for the petitioners is that the action of the respondent university in issuing the impugned proceedings for initiating de-affiliation of the petitioners institute is illegal, irrational and the same is being done by ignoring the regulations of the AICTE and the judgment of the Supreme Court. It is further contended that, while the students have been attending the classes from 31-12-2001 and intimation to that effect was also made to the respondent-University in January, 2002, but without taking the said fact into consideration, the respondent-University issued the impugned proceedings dated 22-3-2002 obviously at this belated stage only to prevent the students of the petitioners institution from taking the 1st semester examination and the said proceedings clearly reveal the predetermined intent of the University in not permitting the students to appear for the examinations. Therefore, he contends that the said action of the respondent-University is violative of Article 14 of the Constitution and the impugned notice is liable to be set-aside.

12. At this stage it is relevant to note the regulations framed by the All India Council for Technical Education (for short 'AICTE'). In exercise of its powers conferred by Clause (1) and (c) of Section 10 read with Section 23 of the All India Council for Technical Education Act, 1987 (52 of 1987), the Council made the regulations fixing the norms and guidelines for charging tuition fees, and other fees, and provided guidelines for admission of students to professional colleges.

13. Regulation-2 deals with applications. This regulation applies to professional colleges imparting diploma, degree or equivalent courses in Engineering, Technology, Architecture, Town planning Management, Pharmacy, Electronic, Computer Science, Applied Arts and Crafts and such other programmes or areas as the Central Government may, in consultation with the Counsel, by notification

in the Official Gazette declare, but shall not apply to Universities, University Departments or colleges, Government Colleges, Aided Colleges of the Central Government or State Government, Indian Institute of Technology, Indian Institutes of Management, Regional Engineering Colleges and such technical institutes which are fully funded by the Central Government and State Government, the Council or as the case may be, the University Grants Commission and any full or part-time Post-Graduate Courses or programmes in any discipline other than Management.

14. Regulation 3(b) deals with the "competent authority". Competent authority means a Government or a University or any/other authority as may be designated by the Government of the University of by students for admissions to various colleges in a State or Union.

15. Regulation 3(g) deals with professional colleges. Professional colleges include any private unaided college imparting technical education and includes a private unaided technical institution.

16. Regulation -5 deals with admissions.

17. However, now we are concerned with Regulation-8 i.e., the procedure for allotment of seats. According to Regulation-8, no professional college shall call for applications for admissions separately or individually. All applications for admissions to all the seats available in such, colleges shall be called for by the competent authority. The application forms for admission shall contain column wherein an applicant shall indicate whether he or she wishes to be admitted against a free seat or a payment seat, or both and the order of preference upto three professional colleges. .

18. Sub-Regulation (7) of Regulation 8 deals with a common merit list. According to this regulation a common merit list, in accordance with the provisions of Sub-regulation (5) shall be prepared from amongst all the candidates provided that in States where no such entrance examination is presently being held, a common entrance examination shall be held for admissions to be made from the academic year 1995.

19. Sub-Regulation-10 of Regulation 8 deals with the last date for allotment of seats. According to this regulation a last date for allotment of seats shall be fixed by the competent authority while inviting applications for admissions and no allotment shall be made after the last date so fixed and after making the allotments of seats the waiting list shall be followed for filling up for any causal vacancies or drop-out vacancies arising after the allotments are finalized. The vacancies shall be filled until such a date as may be fixed by the competent authority. It shall be open to the competent authority to offer any professional college or seats to the candidates other than his options and as per his merit. Once the last date of allotment of seats is over, the vacancies still remaining may be filled by the Management out of the candidates included in the list under Sub-regulation (7)

20. Apart from the above regulations framed by the AICTE, the State Government also issued G.O.Ms. No. 119, Education, dated 28-4-1996 with regard to the mode of conduct of entrance examination by the Convenor and for preparation of the merit list.

21. Another document to be considered is the recommendation granted by the State Government through Memo No. 13111/E.C. 1/2001 dated 4-11-2001 granting Minority status to the 2nd petitioner college. Para-3 of the said Memo states that the above permission is subject to the condition that the educational institution which is now permitted to make admissions to minority education institution shall admit to the extent of its intake, the students belonging to the particular minority community for which it is established and any deviation in this regard will be viewed seriously and this permission shall be cancelled and the institution will not be entitled for the minority status certificate at any time in future. In cases there are unfilled seats, the institution has to report the same to the concerned Convenor Admissions, who will make admissions in accordance with the rules in this regard.

22. Another document which is to be looked into is the approval granted by the AICTE dated 19-7-2001. A perusal of the said document shows that admissions shall be made in accordance with Regulations notified by the AICTE Vide GSR 476(E) dated 20-5-1994 and basing on the Hon'ble Supreme Court judgment dated 4-2-1993 with regard to W.P.(c) No. 607 of 1992 in the case of Unni Krishnan JP and Ors. etc v. State Government, Andhra Pradesh and Ors. and later judgments. No Management/ Institute/Trust or Society shall announce admissions directly under any circumstances. Any action by the institute contrary to any provisions laid down by the Council and concerned State Governments shall make it liable for actions.

23. Thus from the above, it is clear that the petitioner institution has to make admissions in accordance with the regulations framed by the AICTE dated 20.5.1994. Here it is also necessary to refer the letter dated 4-7-2001 of the A.P. State Council of Higher Education under which it was informed to the Registrar of the respondent-University that in the meeting of the Vice-Chancellor held on 25-6-2001 it was resolved to appoint a single Convenor at the University level for admission into MBA and MCA Courses and that it was resolved that the decision on the appointment of single Convener in each region (Telangana, OU+KU, Andhra, Rayalaseema SVU+SRU) for admission into MBA and MCA Courses will be left to the convenience of the Universities" and it was requested to identify and appoint a Convenor of University level for conducting Common admissions into MBA and MCA Courses for the year 2001-2002. In response to the above, by a letter dated 25-7-2001 the Deputy Registrar of the University addressed a letter to the Secretary, A.P. State Council of Higher Education stating that the Standing Committee of the Academic Senate at its meeting held on 10.7.2001 has decided that the Osmania University will make its own admissions for MBA and MCA Courses for 2001-2002 through the Director, Admissions (Directorate of

Admissions) Osmania University. Accordingly the Osmania University has issued a notification-dated 11-10-2001 and fixed the cut-off date for admissions as 31-10-2001. Subsequently it was extended upto 24-11-2001 and finally it was extended upto 29-12-2001.

24. The University also issued its Alamnac dated 29-11-2001 stating the commencement of 1st semester classes from 3-12-2002, In view of the above facts, it is submitted by M/s. S. Niranjan Reddy and M.S. Prasad learned Counsel for the petitioners that as contemplated under Sub-regulation (10) of Regulation 8, after the cut-off date, if any seats are available, the petitioner institution is entitled to allot the same amongst the students whose names are included in the merit list prepared by the Convenor. His contention is that when once the last date of allotment is over, the vacancies still remaining can be filled-up by the Management from the merit list. As seen from the Alamnac of the Convenor, the petitioner society through its letter dated 24-12-2001 informed the list of the candidates admitted into the institution and the Convenor in turn allotted only one seat, as on the cut-off date i.e., 29-12-2001. Therefore, out of 30 seats only 5 seats were filled up by the cut-off date. Therefore, the petitioner is entitled to admit the students from the merit list. The vacancies still remaining can be filled up by the Management out of the candidates included in the merit list prepared by the Convenor. Accordingly the students were admitted on 9-1-2001 by the petitioner institution. The learned Counsel has further emphasized that while granting approval by the AICTE, it was specifically directed that the petitioner institution should make admission in accordance with Regulations notified by the AICTE dated 20-5-1994. Therefore, the still remaining unfilled vacancies are filled up by the Management as per the Regulation of the AICTE. Therefore, it cannot be held that the petitioner has committed any illegality or violation of the directions of the Convenor and therefore, issuance of the show-cause notice calling upon the explanation of the petitioner to cancel affiliation by the University is illegal and unreasonable.

25. On the other hand Sri E. Manohar, learned Standing Counsel for the respondent-University contended that the 1st respondent being a University, the Regulations issued by the AICTE in respect of admissions to the MBA and MCA course are not applicable. It is contended that the regulations are applicable only in respect to the Courses of Diploma or Decree and not to the Post Graduate Courses with which we are concerned at present. It is further contended that the admissions of the students who were admitted after the cut-off date by the petitioner institution are not legal and they are not entitled to appear for examination. He further contended that the cut-off date was fixed keeping in mind the condition of fulfilling 75% attendance to appear for the examination. It is also contended, that the Convenor is the competent authority to allot seats to the petitioner institution and accordingly after surrender of the unfilled vacancies to the Director of Admissions, one student was allotted to the petitioner institution. That is before cut-off date. Therefore, in view of the same, the petitioner is not entitled to fill-up the remaining unfilled seats according to his

own choice. Therefore, any admission made by the petitioner institution after the cut-off date is illegal and the petitioner institution has committed illegality and hence, the affiliation granted to it is liable to be cancelled and the students who were admitted by the petitioner institution are not eligible to continue the course or sit for the examination.

26. The learned Standing Counsel finally contended that when the show-cause notice is issued to the petitioner, the petitioner institution submitted its explanation and without waiting for the orders to be passed by the University, it has approached this Court and filed this writ petition and therefore, the writ petition is premature and it is liable to be dismissed as premature.

27. In support of his contention he relied on a judgment of the Supreme Court in State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., . In the said judgment the Supreme Court while dealing with admission to the Post-Graduate Medical Courses held that prescription of 50% marks to general candidates and 40% to SC and ST together with 65% weightage of total marks for admission to P.G. Courses is constitutional and valid. While dealing with the matter of filling up of vacancies, the Supreme Court held that to maintain excellence the P.G. Medical Courses in Medical Colleges have to be commenced on schedule and to be completed within the schedule, so that the students would have full opportunity to study full course to meet their excellence and come at par excellence. Admission in the midstream would disturb the courses and also works an handicap to the candidates themselves to achieve excellence. Therefore, the vacancies of the seats would not be taken as a ground to give admission and the direction by the High Court to admit the candidates into those vacant seats cannot be sustained.

28. In the above case, the respondents before the Supreme Court passed their M.B.B.S. Course and also completed internship and first two among the three respondents appeared for the Post-Graduate Medical Entrance Examination and they were denied seats in Post-Graduate Medical Entrance Examination and they were denied seats in post-graduate on the ground that they failed to secure minimum 50% qualifying marks in the Entrance Examinations. But in the present case, it is not the case of the respondent University that the petitioner institution admitted the students who failed to secure the qualifying marks in the Entrance Examination. Admittedly, the students admitted by the petitioner institution have qualified the Entrance Test conducted by the respondent-University and their names were included in the merit list prepared by the Convenor himself. Therefore, the facts of the above case are not applicable to the case on hand.

29. The learned Standing Counsel also places his reliance on a Division Bench judgment of this Court in Ch. Anitha and 11 Ors. v. State of Andhra Pradesh and Ors. 2001 (2) ALD 358, wherein a Division Bench of this Court while dealing with the students admitted illegally into educational institutions observed as under:

"When the educational authorities find the petitioners-students to be bogus

students for B.Ed. course and this Court finds that finding recorded by the educational authorities that the petitioners are not genuine students is not baseless, this Court on the basis of misplaced sympathy and humanitarian grounds cannot direct the respondents to permit the petitioners to complete the course and to appear for the examinations, and if the Court were to grant such relief, undoubtedly the Court would be overstepping its jurisdiction under Article 226 of the Constitution and violate sound self-imposed restraints and limitations on the power of judicial review.

30. That was a case of bogus students admitted into B.Ed. course. But in the instant case, there is no allegation that the petitioner institution has admitted the bogus students. Hence, the facts of the said case are also not applicable to this case.

31. Thus, from the facts and circumstances of the case, the points that arise for consideration are; whether the University is bound to follow the regulations framed by the AICTE for admission to the post graduate courses of MCA and MBA and whether the petitioners' institution is entitled to admit the still remaining unfilled seats as contemplated under Sub-regulation (10) of Regulation-8 of AICTE and whether the impugned action initiated by the University is illegal.

32. With regard to the 1st point, it is pertinent to note that the respondent-University has appointed the Convenor to conduct entrance test and preparation of the merit list of candidates as contemplated in G.O.Ms. No. 119, Education, dated 28.4.1996. That apart, the AICTE also while granting approval to the petitioners' institution has made it clear that the petitioner's institution shall make admissions as per the regulations made by the AICTE and while granting certificate of minority status to the petitioner's institution, the State Government also directed the petitioner to admit the students as per the rules framed therein. Accordingly the Convenor was appointed by the Government in consonance with the regulations issued by the AICTE. So, when the petitioner was directed by the Counsel to admit the students as per the regulations, it cannot be held that the Regulations issued by the Counsel with regard to admission into M.C.A. P.G. Courses is not applicable or not binding on the university. When once the Convenor was appointed under Regulation-2 as competent authority, the regulations are applicable to the admission into above MCA, MBA Courses of Osmania University. When once the competent authority was appointed by the Government, as per the regulations framed by the AICTE, the University now cannot go back and say that the regulations of the Council are not applicable to the University. Therefore, I do not find any, force in the said contention of the learned senior Counsel for the respondent-University that the regulations framed by the Council are not applicable to the admission of M.C.A. P.G. Courses in Osmania University, Hyderabad. Therefore I hold that the regulations issued by the AICTE in the year 1994 are applicable to the M.C.A. course which is a Technology Course under Regulation 2 of the Regulations to the Osmania University and the Osmania University is bound by those regulations as the

Convenor was appointed under Regulation 2(b) of the Regulations issued by AICTE.

33. With regard to the second point as to whether the admissions made by the petitioners' institution comes within Sub-regulation (10) of Regulation-8, it is once again necessary to refer Sub-regulation (10) of Regulation-8. Sub-regulation (10) contemplates that the last date for allotment of seats shall be fixed by the competent authority while inviting the applications for admissions and no allotment shall be made after the last date so fixed and after making the allotment of seats the waiting list shall be followed for filling up for any casual vacancies or drop-out vacancies arising after the allotments are finalised and the vacancies shall be filled until such, a date as may be fixed by the competent authority and it shall be open to the competent authority to offer any professional college or seats to the candidates other than his options and as per his merit and that once the last date of allotment of seats is over, the vacancies still remaining may be filled by the Management out of the candidates included in the list under Sub-regulation (7). Sub-regulation (7) deals with the preparation of merit list. So, Sub-regulation (10) empowers the Convenor, the competent authority to fix the last date for allotment of seats and he has no power to allot seats after the last date so fixed. However, he is empowered to allot the candidates from the waiting list when the merit list is exhausted and this exercise has to be made till finalisation of the vacancies. Only such date as the Convenor fixes is the cut-off date. The last limb of Sub-regulation (10) deals with the vacancies to be filled up. It says that once the last date of allotment of seats is over, the vacancies still remaining may be filled by the Management out of the candidates included in the list under Sub-regulation (7).

34. Admittedly according to the respondent-University the last date for allotment of seats 29-12-2001. So on that date, as per the provisions of Sub-regulation-(10) of Regulation-8, out of 30 seats which were to be allotted to the petitioner institution, only 5 seats were allotted and still there are 25 seats which remain unfilled. If true interpretation is given to the above Sub-regulation (10) of Regulation-8, is interpreted in its right perspective, it gives the meaning that after allotment of seats is over by the competent authority, if some vacancies are remaining unfilled, after the cut-off date, then the management of the institution is entitled to admit the students whose names are included in the merit list. Admittedly, in the instant case, the petitioner's institution has admitted four candidates of minority community in consonance with memo issued by the Government dated 4-11-2001 who were allotted to it by the competent authority. Thereafter requested the University to allot students for the remaining unfilled seats, and in turn the competent authority allotted one more candidate belonging to minority. Thus from the above, it can be seen that inspite of the request of the petitioner's institution to allot candidates to fill up the remaining unfilled seats by the competent authority, only one candidate was allotted to it. When once the competent authority has exercised its power under Sub-regulation (10) of Regulation-8 by allotting one candidate for the remaining unfilled 25 seats, by

the cut-off date the only course open to the petitioner institution was to admit the candidates after the cut-off date from the merit list as contemplated under Rule 10. Exactly the same thing was done by the petitioner's institution in this case. The Competent authority having exercised its authority under the regulations cannot contend that when once the vacancies were surrendered to the competent authority, the petitioner institution has no right to admit the students to the remaining unfilled vacancies. Nowhere it is mentioned in the Regulations framed by AICTE or in the rules framed in G.O.Ms.No. 119 Education dated 28.4.1996 that the petitioner's institution should surrender the seats to the competent authority and it has no right to fill up the unfilled-vacancies by other than minority students when students from minority are not available. It is only mentioned that the information regarding unfilled vacancies has to be given to the competent authority. Therefore, merely because the petitioner's institution informed to the competent authority about the unfilled vacancies, it cannot be said that those seats were surrendered by the petitioners' institution to the competent authority and it has no right to fill-up those vacancies. In that view of the matter, I hold that the admissions made by the petitioners' institution to the remaining unfilled vacancies after cut-off date i.e., 29-12-2001 are in accordance with Sub-regulation (10) of Regulation-8 of the AICTE and the action of the respondent University in issuing the notice calling upon the petitioner to submit its explanation is illegal and arbitrary and liable to be set aside and accordingly the impugned proceeding is hereby set aside. Consequently, the action of the respondent University in not permitting the students of the petitioners' institution to complete 3 years MCA Course is also held to be illegal.

35. In the result, the impugned proceedings dated 22-3-2002 issued by the respondent-University in W.P. No. 6053 of 2002 is hereby set-aside and the respondent-University is directed to permit the students of the petitioner's-institution who are petitioners in W.P.No. 7207 of 2002 to complete 3 year MCA Course in the petitioners' institution. In view of the undertaking given by the Convenor that in the event if the writ petition is allowed, the University will conduct Special Examinations to the students of the petitioner institution, there shall be a direction to the respondents to conduct the Special Examinations as assured to the Court within a reasonable time. Accordingly the above writ petitions are allowed in the circumstances no order as to costs.