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Court : Karnataka

Decided On : Feb-28-1962

Reported in : AIR1964Kant6; AIR1964Mys6; (1963)1MysLJ477

Judge : A. Narayana Pai and ;M. Ahmed Ali Khan, JJ.

Acts : Constitution of India - Articles 12, 13, 13(3), 14, 22, 29(2) and 226; Societies Registration Act, 1860 - Sections 44

Appeal No. : Writ Petn. Nos. 1012, 1013 and 1266 of 1961

Appellant : B.W. Devadas

Respondent : The Selection Committee for Admission of Students to the Karnatak Engineering College and ors.

Advocate for Def. : S.C. Jayali, ;G.R. Ethirajulu Naidu, ;O. Veerabasappa and ;S.C. Javali, Advs.

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, ;R.V. Jahagirdar and ;Jagannath Shetty, Advs.

Judgement :

Narayana Pai, J.

1. These three Writ Petitions are by three unsuccessful applicants for admission into the Karnataka Regional Engineering College, Surathkal, South Kanara viz., B.M. Devadas, B. Raghunath and H. Aruna Prakash praying for the issue of a writ of mandamus or other appropriate writ, direction or order requiring or directing the first two respondents in each of these petitions, viz., the Committee for selection ofstudents for admission into the College and the Principal of the College, to admit them into the said College for the five years integrated course of Engineering. Respondents 3 and 4 in Writ Petitions Nos. 1012 and 1013 of 1961 are H.K. Chandrasekharappa and B.C. Mallikarjuna who have been admitted into the College for the said course. Respondents 3 and 4 in Writ Petition No. 1266 of 1961 are two ether students, viz., Commonwealth Gomes and Eustace Pais, who have been similarly admitted into the College for the said course.

2. It is common ground that for the purpose of such admission into the College the marks obtained by the applicants in the subjects of Physics, Chemistry and Mathematics at the qualifying examination were particularly taken into account. The petitioner in Writ Petition No. 1012 of 1961 had secured 182 out of 300 marks in the said subjects, and the petitioner in Writ Petition No. 1013 of 1961, 175 out of 300 marks. Respondents 3 and 4 in those petitions had secured respectively 141 and 145 out of 300 marks in the said subjects. The petitioner in Writ Petition No. 1266 of 1961 had secured 168 out of 300 marks as against 146 and 150 respectively out of 300 marks secured by Respondents 3 and 4 therein.

3. The petitioners therefore claim that there has been an infringement of equality of opportunity guaranteed under Article 14 of the Constitution of India.

4. On behalf of contesting respondents 1 and 2, the affidavit of D.C. Pavate, the Chairman of the Selection Committee and the affidavit of A.S. Adke, Principal of the College, have been filed in Writ Petition No. 1012 of 1961 In answer to the contentions raised by the petitioner in that as well as in the con needed Writ Petition No. 1013 of 1961. In Writ Petition No. 1266 of 1961, the Principal alone has filed a counter-affidavit.

5. Apart from legal contentions raised in those affidavits which we shall consider at a later stage, the factual position stated therein is this. A total of 252 seats were

made available at the College to applicants for the academic year 1961-62. Those seats were allocated territory-wise, 50 per cent to the Mysore State, 10 per cent each to the States of Madras, Kerala and Andhra, and the remaining 20 per cent to the rest of India. Out of the seats allocated for Mysore, Madras, Kerala and Andhra, ten seats were reserved for being filled by the Chairman of the Selection Committee at his discretion in consultation with the Principal of the College and the rest were filled on the basis of the merit of applicants. The merit of the applicants is said to have been assessed by taking into account not only the marks secured by them in the subjects of Physics, Chemistry and Mathematics at the qualifying examination but also their performance at the interview by the Selection Committee.

It is stated that the third and the fourth respondents In these petitions were admitted by the Chairman of the Selection Committee at his discretion in consultation with the Principal. It is also admitted that they were not subjected to any interview. It is contended that the category in which respondents 3 and 4 were admitted is quite different from the category in which the petitioners competed and failed to secure admission and that therefore the petitioners cannot complain of any infringement of the principles of equality of opportunity in a competition with respondents 3 and 4. In the common counter-affidavits filed in Writ Petitions Nos. 1012 and 1013 of 1961, it is stated:

'in the interview the petitioner failed miserably and he could not secure a place in the order of priority within the number required, for filling the available seats.'

It is not clear whether this refers to one petitioner or both the petitioners, the term 'petitioner' having been used in the singular. In the counter-affidavit filed in Writ Petition No. 1266 of 1961, it is stated with reference to the petitioner therein:

'.....his performance in the interview is also not as much satisfactory as the petitioner has assumed about it. Taking all things into consideration, the petitioner was not able to secure admission as in the categories in which he competed for admission, on the basis of interview. There were others, who had a better performance than the petitioner and accordingly admitted in preference to the petitioner'. (Sic.)

6. On these allegations, the first contention raised on behalf of the contesting respondents was that the petitioners could not be said to be aggrieved persons at all and that therefore they are not entitled to come to this Court raising legal contentions which, even if accepted in their entirety, will not or may not bring the petitioners within the number of applicants admitted into the College. It is therefore stated that the petitions should be dismissed without any further consideration of the legal contentions raised on behalf of the petitioners.

7. This contention, in our opinion, cannot be accented in the circumstances of these cases for more reasons than one.

8. Firstly, the basic facts relied upon in support or that contention have not been placed before Court by way of affidavit or other acceptable documentary evidence. By merely stating that the petitioners have failed miserably at the interview, the respondents cannot be said to have discharged their responsibility of stating the relevant facts in the pleadings before this Court. The learned Advocate General appearing on behalf of the second respondent requested that if the Court felt the necessity of facts being stated on affidavit, his client may be given some time to produce further affidavits stating the relevant facts. We do not think that a party, who knew the facts and should have stated them in support of his case in the first instance, is entitled to the indulgence of being given at this stage another opportunity to state facts which become or appear to be necessary in support of a contention raised by his counsel during the course of his arguments.

A letter of instructions dated 8-12-1961 addressed by the Principal of the College to the Advocate-General with a copy to Mr. Javali, the learned counsel for the first respondent, along with a list signed by the Principal, giving the names of students admitted into the College from the Mysore University area together with the marks secured by them at the qualifying examination in the subjects of Physics, Chemistry, and Mathematics, reduced to a base of 100 and the marks obtained by them at the interview said to be out of a maximum of 20 allotted for the interview, was placed in our hands by the learned Advocate-General for our information.

We doubt whether we could with propriety make use of or rely upon the information contained in the said letter, especially in view of the fact that in the

counter-affidavits sworn to on 6-1-1962, nearly a month after the receipt of that letter, neither the respondents nor their learned counsel considered it necessary to incorporate or state the information which they now state is very relevant for this contention that the Court should dispose of the petitions without going into the merits.

9. Even if the said information is accepted as correct, we do not think that it is accurate to state that the petitioners cannot be said to be aggrieved persons. Property understood, their grievance is not so much in regard to the selection made on the basis of interviews at in respect of admissions made without any interviews and at the discretion of the Chairman of persons who have admittedly secured at the qualifying examination less number of marks than the petitioners. The alleged infringement of Article 14 of the Constitution consists according to the petitioners in having made certain admissions on considerations which are quite different from those which had been applied in respect of the rest of the admissions and upon what is described as pure discretion without any indication of any intelligible criterion reasonably related to the object of admissions on the basis of which such categorisation has been made.

10. We therefore proceed to consider the merits of the contention pressed en behalf of the petitioners that they are entitled to complain of an infringement of Article 14 of the Constitution.

10a. Article 14 reads as follows:

'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

11. The answer on behalf of the contesting respondents to this contention is that the Karnataka Regional Engineering College is owned and administered by a Society called the Karnataka Regional Engineering College Society registered under the provisions of the Societies Registration Act (Central Act 21 of 1860) and that the said Society is not a 'State' within the meaning of Article 12 nor can the rules and regulations of that Society governing the admission of students into the College be described as a law within the meaning of Article 13 of the Constitution.

12. It is not denied, nor can it be that Article 14 is directed against the State and that an infringement of that Article which can be complained of is only an infringement thereof by the State.

13. The principal point for consideration therefore is whether the Karnatak Regional Engineering College Society is a 'State' for the purpose of Part III of the Constitution.

14. Article 12, which is the first Article in Part III of the Constitution, reads as follows:

'In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.'

Article 13 renders void laws which are inconsistent with any of the provisions in Part III of the Constitution to the extent of such inconsistency. Clause 3 thereof states-

'In this Article, unless the context otherwise requires,--

(a) 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

(b) .....'.

15. Mr. S.K. Venkataranga lyengar, the learned counsel for the petitioners in Writ Petitions Nos. 1012 and 1013 of 1961, in the course of his arguments which Mr. Mohandas Hegde, the learned counsel for the petitioner in Writ Petition No. 1265 of 1961 adopts, concedes that the Society cannot be said to be a 'State' unless it could be brought within the term 'authority' occurring in Article 12. It is also not contended that it is a local authority. But, what is contended for is that it should be held to be onewell within the meaning of the expression 'ether authorities' either because the Society and the College are wholly state-maintained institutions or at any rate because under the constitution of the Society itself, the Government of

India exercises powers of control over it.

16. In the case reported in University of Madras v. Shantha Bai, : AIR1954 Mad67 , a Bench of the Madras High Court had to consider a similar question with reference to the University of Madras, an institution set up by any Act of the Madras Legislature. Rajamannar, C.J., who delivered the judgment of the Bench, after quoting Article 12 of the Constitution summarised his reasons for holding that the University is not a 'State', in the following terms:

'The question is whether the University can be held to be 'local or other authority' as defined in Article 12. Those words must be construed 'ejusdem generis' with Government or Legislature and so construed can only mean authorities exercising Governmental functions. They would not include persons natural or juristic who cannot be regarded as instrumentalities of the Government. The University of Madras is a body corporate created by Madras Act VII of 1923. It is not charged with the execution of any Governmental functions; its purpose is purely to promote education. Though Sec. 44 of the Act provides for financial contribution by the local Government, the University is authorised to raise its own funds or income front fees, endowments and the like. It is a State-aided institution, but it is not maintained by the State.'

Because Article 14 of our Constitution is modelled on the fourteenth amendment to the Constitution of the United States of America, His Lordship referred to several American decisions in which a distinction has been made between Universities which are fully State-maintained and those that merely receive State-aid, the former of which were held to be bound by the Fourteenth amendment and the latter not. His Lordship placed particular reliance on the following observations of Strong, J., in Ex Parte, Commonwealth of Virginia, (1880) 25 Law Ed. 676 at p. 679 :

'We have said the prohibitions of the 14th Amendment are addressed to the States..... They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision therefore must mean that no agency of the

State, or of the Officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State Government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power his act is that of the State.'

17. We are in respectful agreement with the principles stated above, and also take the view that those principles apply to the facts and circumstances of these cases.

18. It is beyond dispute that the prohibition contained in Article 14 is addressed only to the State. The term 'State' is an abstract political conception and as pointed out by Strong, J., a State could act only through agencies or instrumentalities through which it exerts its political power on those whom it governs or rules. Article 14 of our Constitution therefore necessarily seeks to control State action or the action of the Stale through its agencies or instrumentalities through which it exerts its power. Article 12 should therefore be read as enumerating thoseinstrumentalities of the State whose action or State action through whom is sought to be controlled by the Articlesin Part III of the Constitution like Article 14. The enumeration in the said Article 12 indicates that Fundamental Bights are sought to be protected against legislative and executive action of the State.

As observed by Chagla, C.J., in Ratilal v. State of Bombay, : AIR1953 Bom242 , the protection afforded by our Constitution to Fundamental Rights is against the legislative and executive interference, and the judiciary in the very nature of things adjudicates upon conflict of claims and declares rights and cannot by the operation of its own order seek to infringe Fundamental Rights which it is its duty to protect against such executive or legislative interference. To the same effect is the observation of S.R. Das, J., in The State of Punjab v. Ajaib Singh, : 1953 CriLJ180 where his Lordship states that there is indication in the language of Article 22 that it is designed to give protection against the act of the executive or other non-judicial authority.

The term 'authority' in the ordinary dictionary sense may comprise not merely a person or a group of persons exercising governmental power but also any person or group of persons who, by virtue of their position in relation to other person or persons, may be able to impose their will upon that other person or persons. But, there is an essential difference between a Political association of persons called the State giving rise to political power can-noted by the well known expression 'imperative law' and a non-political association of persons for other purposes by contract, consent or similar type of mutual understanding related to the common object of persons so associating themselves together giving rise to a power which operates not in the manner in which imperative law operates, but by virtue of its acceptance by such associating persons based upon contract, consent or mutual understanding.

The several matters enumerated in the inclusive definition of 'law' contained in Article 13(3)(a) are also those that have the force of law, that is to say, those that are in the nature of imperative law whose power arises by virtue of political association of persons forming themselves into a State and not by virtue of any contract, consent or mutual understanding. In this view, the term 'authorities' occurring in Article 12 could only mean a person or a group of persons who exercise the legislative or executive functions of a State or through whom or through the instrumentality of whom the State exercises its legislative or executive power.

It is not therefore possible to accept the argument ofMr. S.K. Venkataranga lyengar that the High Court ofMadras was wrong in stating that the expression 'authorities' occurring in Article 12 should be construed ejusdemgeneris with the words 'the Government and Parliamentof India and the Government and the Legislature of eachof the States' occurring in earlier portion of the saidArticle.

19. Now, the Society called the Karanataka Regional Engineering College Society does not exercise any governmental functions or any legislative or executive functions of the State. It is a Society formed for the promotion and encouragement of study and research in Engineering and other allied sciences, to impart Engineering education, to establish and carry on the administration and

management of a College called the Karnataka Regional Engineering College at Surathkal in South Kanara, with powers and duties necessary for the attainment of or conducive to the attainment of its principal objective which is purely educational, its power to make rules and bye-laws is also limited to the extent it is necessary for the conduct of the affairs of the Society.

Its members are those that constitute the Board of Governors, of whom the Chairman is appointed by the State Government of Mysore with the approval of the Central Government, two are representatives of the State Government, one from the Finance and the other from the Technical Education Department, 'one representative of the Central Government, two nominees of All India Council for Technical Education, a representative of the University to which the College is affiliated and four non-official members from each of the States of Mysore, Madras, Kerala and Andhra appointed by the State Governments concerned in consultation with the Central Government and the Principal of the College who is an ex-officio member and Secretary of the Board.

The bye-laws, rules, etc., framed by the Society are those that govern the affairs of the Society and those in regard to the admission of students into various courses of study, the conduct of study and examinations, etc. Their binding force is not the same as the force of imperative law. They bind those that are members of the Society and those that seek the benefit of the education which the Society seeks to impart.

20. Mr. Venkataranga lyengar, however, argues on the basis of a sentence in the prospectus of the College reading--'the College is a joint enterprise of the Central Government and the Mysore State Government' that it is an entirely State-maintained institution and therefore must be held to be an instrumentality or agency of the State bound by Article 14 of the Constitution.

Though it is conceded that both the Central and the Mysore State Governments have contributed large funds to the institution, item (p) in the Objects Clause No. 3 in the Memorandum of Association of the Society indicates that the fund which the Society is to maintain shall be credited with not only moneys provided by the Central and State Governments but also with all fees and other charges received

by the Society, all moneys received by it by way of grants, gifts, donations, benefactions, bequests or transfers and all moneys received by it in any other manner or from any other source.

Hence, it is not possible to hold that the institution is a purely State-maintained-institution. By virtue of contributions in money made by the Central Government and the State Government of Mysore, all that can be said is that the institution is one which receives State-aid. That is not sufficient to bring it within the purview of Article 14 though undoubtedly it will be bound by Article 29(2) in the matter of admission of students into the College. There is no complaint that there has been any contravention of Article 29(2).

21. It is no doubt true, as pointed out by Mr. Venkataranga lyengar, that the Central Government exercises certain control over the Society, for example, before it can acquire and hold property, the Society has to take the prior approval of the Central Government for the acquisition of immovable property, the annual statements of accounts; including the. Balance Sheet of the Society have to be in such form as may be prescribed by the Central Government in consultation with the Stale Government, the Society is required to forward to the State Government and the Central Government its accounts as certified by an auditor or other authority appointed by the Central Government, and the Central Government is empowered to appoint one or more persons to review the work and progress of the Society and on the report of such inspecting authority, the Central Government may take such action and issue such directions as it may consider necessary in respect of the matters dealt with in such report, which directions the Society is bound to comply with.

But, this control is not sufficient to convert the Society into an authority within the meaning of Article 12 of the Constitution. The last portion of Article 12 reading 'within the territory of India or under the control of the Government of India' which merely qualifies the term 'authorities' occurring immediately before it is not, in our opinion, sufficient to destroy or take away the essential meaning of the term 'authorities' which, as already stated, has to be ascertained ejusdem generis with the terms or expressions occurring in the earlier part of Article 12.

22. We hold therefore that the Karnataka Regional Engineering College Society is not an authority falling within the definition of the term 'State' occurring in Article 12 nor are its rules and regulations governing the admission of students into the College maintained and administered by it 'law' within the meaning of Article 13.

23. It is also not suggested that the omission by the Society to admit the petitioners or the admission by it of respondents 3 and 4 in these petitions was the consequence of any express directive issued either by the Central Government or by the State Government of Mysore or by any officer of person clothed with the executive power of either the Central Govt. or the State Govt. There is therefore no scope for the argument that at any rate, so far as the non-admission of the petitioners or the admission of respondents 3 and 4 is concerned, the Society can be said to be an instrumentality of the State through which the State has exerted its executive power.

24. It is pointed out that under para 7 of Clause 6 of the Memorandum of Association of the Society, the Society is required to take into consideration the suggestions, if any, made by the Central Government or the State Government while prescribing rules and regulations for the admission of students into the various courses of instructions at the College. But, there is no material placed before us indicating or making it possible to hold either that the Central Government or the State Government has made any specific suggestions in that regard or that either or both of them have utilised this power of making suggestions in such a way as to circumvent any Constitutional letters on the exercise of the State's power.

25. in the circumstances, therefore, the petitioners are not in a position to invoke the protection afforded by Article 14 of the Constitution.

26. Writ Petitions therefore fail and are hereby dismissed but without costs.

27. Petitions dismissed.

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