

KARNATAKA EDUCATIONAL INSTITUTIONS (PROHIBITION OF CAPITATION FEE) ACT, 1984

37 of 1984

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STATEMENT OF OBJECTS AND REASONS [KARNATAKA ACT No. 17 OF 1985] Karnataka Gazette, Extraordinary, dated 25-3-1985 The Karnataka Educational Institutions (Prohibition of Capitation Fee) Bill, 1984 as passed by both the Houses of Legislature was reserved by the Governor of Karnataka for consideration of the President under Article 200 of the Constitution of India. When the Bill was awaiting the assent of the President, Ordinance 14 of 1983, which it was intended to replace had lapsed and it became necessary to promulgate the Karnataka Educational Institutions (Prohibition of Capitation Fee) Ordinance, 1984 (Karnataka Ordinance 8 of 1984)

with substantially the same provisions as the Bill and effective from 11th July, 1983. It was promulgated on 9th July, 1984 to provide legal validity to the rules, orders and notifications issued or validated under Karnataka Ordinance 4 of 1983 and to the rules, orders and notifications on the subject issued or to be issued for the academic year 1984-85. Subsequently the assent of the President was received to the Bill and it was published as Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (Karnataka Act 37 of 1984) on 9th August, 1984. Hence the Karnataka Ordinance 8 of 1984 had to be repealed, saving action taken or validated by it. While conveying the assent of the President, Government of India also communicated directions that the Act may be amended to the effect that any contravention of the provisions of Act after the lapse of the Karnataka Ordinance 14 of 1983 but before the date of publication of the Act in the Official Gazette shall not be punishable under Section 7 or 8 of the Act, as offences cannot be created retrospectively. In order to repeal the Karnataka Ordinance 8 of 1984 and to amend the Act in accordance with the directions of the Government of India and to make certain consequential amendments to the Act including validation of action taken or validated by Karnataka Ordinance 8 of 1984, the Karnataka Educational Institutions (Prohibition of Capitation Fee) (Amendment) Ordinance, 1984 was promulgated on 9th August, 1984 as Karnataka Ordinance 10 of 1984. As the said Ordinance lapsed on the tenth day of January, 1985, the Karnataka Educational Institutions (Prohibition of Capitation Fee) (Amendment) Ordinance, 1985 (Karnataka Ordinance 2 of 1985) was promulgated. This Bill seeks to replace the said Ordinance. Hence the Bill.

1. Short title and commencement :-

(1) This Act may be called the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984.

¹ [(2) This section, clause (c) of Section 15 and sub-sections (2) and (4) of Section 16 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the Eleventh day of July, 1983.]

1. Sub-section (2) substituted by Act No. 17 of 1985 and shall be deemed to have come into force w.e.f. 9-8-1984.

2. Definitions :-

In this Act, unless the context otherwise requires,

(a) "Backward classes" means any socially and educationally backward classes of citizens recognised by the Government for purposes of clause (4) of Article 15 of the Constitution of India;

(b) "Capitation fee" means any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under Section 5, but does not include the deposit specified under the proviso to Section 3;

(c) "Educational Institution" means any institution by whatever name called, whether managed by Government, private body, local authority, trust, University or any other person carrying on the activity of imparting education in medicine or engineering leading to a degree conferred by a University established under the Karnataka

(d) "Government" means the Government of Karnataka;

(e) "Government seats" means such number of seats in such educational institution or class or classes of such institutions in the State as the Government may, from time to time, specify for being filled up by it in such manner as may be specified by it by general or special order on the basis of merit and reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and such other categories, as may be specified, by the Government from time to time, without the requirement of payment of capitation fee or cash deposit;

(f) "Management" means the managing committee or the governing body, by whatever name called, of an educational institution to which the affairs of the said institution are entrusted and where such affairs are entrusted to any person, whether called by the name of secretary, correspondent or by any other name includes also such person;

(g) "Minority educational institutions" means educational institutions established and administered by minorities as provided under Article 30 of the Constitution of India; and

(h) "Scheduled Castes" and "Scheduled Tribes" shall have the meaning respectively assigned to them in clause (24) and clause (25) of Article 366 of the Constitution of India.

3. Collection of capitation fee prohibited :-

Notwithstanding anything contained in any law for the time being in force, no capitation fee shall be collected by or on behalf of any educational institution or by any person who is in charge of or is responsible for the management of such institution:

Provided that subject to such rules as may be prescribed or such conditions as may be specified by general or special order, from time to time, the Government may, notwithstanding anything contained in this Act permit any educational institution established before the date of commencement of this Act and maintained or developed solely or substantially out of amounts collected as capitation fee or any class or classes of such institutions, to continue to receive such capitation fee or cash deposits in such manner, to such extent and for such period as the Government may, by order, specify, so however that such period shall not in any case extend beyond five years from such date.

4. Regulation of admission to educational institutions, etc.

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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;

(ii) the Government, in the case of other courses of study in any other educational institution;

(b) the maximum number of students that could be admitted to a course of study in an educational institution shall be such as may be fixed by the Government from time to time;

(2) in order to regulate the capitation fee charged or collected during the period specified under the proviso to Section 3, the Government may, from time to time, by general or special order,

specify in respect of each private educational institution or class or classes of such institutions

(a) the number of seats set apart as Government seats;

(b) the number of seats that may be filled up by the management of such institution

(i) from among Karnataka students on the basis of merit, on payment of such cash deposits refundable after such number of years, with or without interest as may be specified therein but without the payment of capitation fee; or

(ii) at its discretion:

Provided that such number of seats as may be specified by the Government but not less than fifty per cent of the total number of seats referred to in clauses (a) and (b) shall be filled from among Karnataka students.

Explanation. For the purpose of this section, Karnataka students means persons who have studied in such educational institutions in the State of Karnataka run or recognised by the Government and for such number of years as the Government may specify;

(3) an educational institution required to fill seats in accordance with item (i) erf sub-clause (b) of clause (2), shall form a committee to select candidates for such seats. A nominee each of the Government and the University to which such educational institution is affiliated shall be included as members in such committee.

5. Regulation of fees, etc. :-

(1) It shall be competent for the Government, by notification, to regulate the tuition fee or any other fee or deposit or other amount that may be received or collected by any educational institution or class of such institutions in respect of any or all class or classes of students.

(2) No educational institution shall collect any fees or amount or accept deposits in excess of the amounts notified under sub-section (1) or permitted under the proviso to Section 3.

(3) Every educational institution shall issue an official receipt for the fee or capitation fee or deposits or other amount collected by it.

(4) All moneys received by any educational institution by way of fee or capitation fee or deposits or other amount shall be deposited in the account of the institution, in any Scheduled Bank and shall be applied and expended for the improvement of the institution and the development of the educational facilities and for such other related purposes and to such extent and in such manner as may be specified by order by the Government.

(5) In order to carry out the purposes of sub-section (4), the Government may require any educational institution to submit their programmes or plans of improvement and development of the institution for the approval of the Government.

6. Regulation of expenditure and maintenance of accounts, etc. :-

(1) The Government may regulate the expenditure of educational institutions and the maintenance of accounts by them in such manner as may be prescribed.

(2) The Government may require such educational institutions to submit such returns or statements as it may deem necessary for carrying out the purposes of this Act.

7. Penalties :-

Whoever contravenes the provisions of this Act or the rules or orders made thereunder, shall, on conviction, be punishable with imprisonment for a term which shall not be less than three years but which shall not exceed seven years and with fine which may extend to five thousand rupees. Where the conviction is for an offence under Section 3 or Section 5, the institution or the person convicted thereunder shall refund the money so collected in excess to the party from whom it was collected.

8. Offence by companies :-

(1) Where an offence against any of the provisions of this Act or any rule made thereunder has been committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any

such person liable to any punishment if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything in sub-section (1) where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purpose of this section,

(a) "Company" means any body corporate and includes a trust, a firm, a society or other association of individuals, and

(b) "Director" in relation to

(i) a firm means a partner in the firm;

(ii) a society, a trust or other association of individuals, means the person who is entrusted under the rules of the society, trust or other association with management of the affairs of the society, trust or other association, as the case may be.

9. Power to enter and inspect :-

(1) Any officer not below the rank of a Group A senior scale officer authorised by the State Government in this behalf, may at any time during the normal working hours of any educational institution enter such institution or any premises thereof or any premises belonging to the management of such institution if he has reason to believe that there is or has been any contravention of the provisions of this Act and search and inspect any record, accounts register or other documents belonging to such institution or of the management, insofar as any such record, accounts, register or other document relates to such institution and seize any such record, accounts register or other documents for the purpose of ascertaining whether there is or has been any such contravention.

(2) In order to secure proper and effective utilisation of the finances or resources or other assets of any educational institution in existence at the commencement of this Act it shall be competent for the Government to invoke the provisions of sub-section (1) and

ascertain such finances, resources and assets of an institution and after such ascertainment to give such directions to the managements as they deem fit.

(3) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) relating to searches and seizure shall apply, so far as may be, to searches and seizures under sub-section (1).

10. Application of the Act to minority institutions :-

Nothing in this Act or the rules or orders made thereunder shall apply to any minority educational institution to the extent to which they are inconsistent with the rights guaranteed under Article 30 of the Constitution of India.

11. Cognizance of offences :-

No Court shall take cognizance of any offence under this Act except with the sanction of the Government or such officer as it may authorise in this behalf.

12. Act to override other laws :-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

13. Protection of act done in good faith :-

No suit, prosecution or other legal proceeding shall be instituted against the Government or any officer, authority or person empowered to exercise the powers or perform the functions by or under this Act for anything which is in good faith done or intended to be done under this Act or under the rules or orders made thereunder.

14. Power to make rules :-

(1) The Government may, by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this section shall immediately after it is made, be laid before each House of the State Legislature if it is in session and if it is not in session, in the session immediately following for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule

shall from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

15. Validation :-

Notwithstanding anything contained in this Act, any rule or order or notification made or issued,

(a) under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Ordinance, 1983 (Karnataka Ordinance No. 10 of 1983) or before the date of its commencement; and

¹ [(b) under the Karnataka Educational Institutions (Prohibition of Capitation Fee) (No. 2) Ordinance, 1983 (Karnataka Ordinance 14 of 1983) or before the date of promulgation of the said Ordinance but after the lapse of (Karnataka Ordinance 10 of 1983; and

(c) under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Ordinance, 1984 (Karnataka Ordinance 8 of 1984), or before the date of promulgation of the said Ordinance but after the lapse of Karnataka Ordinance 14 of 1983 in relation to any of the matters of furtherance of which this Act is enacted (including the Government Order No. HFW 44 MSF 83, dated 20th June, 1983, Government Order No. ED 37 TEC 83, dated 7th July, 1983, Government Order No. ED 37 TEC 83, dated 1st October, 1983, Government Order No. ED 23 TEC 84, dated 21st June, 1984, Government Order No. HFW 137 FTD 84, dated 25th July, 1984, Government Order No. ED 157 TPE 84, dated 31st July, 1984 and Government Order No. HFW 136 MSF 84, dated 1st August, 1983) and anything done or any action taken under such rule or order or notification shall be deemed to be as valid and effective as if they were made, or issued under this Act or as the case may be done or taken under any such rule or order or notification made or issued thereunder.]

1. Clauses (b) and (c) substituted for clause (b) by Act No. 17 of 1985 and shall be deemed to have come into force w.e.f. 9-8-1984.

16. Repeal and Savings, etc :-

¹(1) The Karnataka Educational Institutions (Prohibition of Capitation Fee) (No. 2) Ordinance, 1983 (Karnataka Ordinance No. 14 of 1983) is hereby repealed.

2 [(2) The Karnataka Educational Institutions (Prohibition of Capitation Fee) Ordinance, 1984 (Karnataka Ordinance 8 of 1984) is hereby repealed.

(3) Notwithstanding the repeal of Karnataka Ordinance 14 of 1983 and Karnataka Ordinance 8 of 1984 anything done or any action taken under the said Ordinances shall be deemed to have been done or taken under this Act.

(4) Notwithstanding anything contained in Sections 7 and 8 but subject to sub-section (3) no person or a company shall be convicted for anything done in contravention of the provisions of this Act after the lapse of Karnataka Ordinance 14 of 1983, but before the date of the publication of this Act in the Official Gazette.]

1. Substituted for the words "Repeal and Savings" by Act No. 17 of 1985 and shall be deemed to have come into force w.e.f. 9-8-1984.
2. Sub-sections (2) to (4) substituted for sub-section (2) by Act No. 17 of 1985 am deemed to have come into force w.e.f. 9-8-1984.