

Sobhana Kumar S. and Others Vs The Mangalore University and Others

Court: Karnataka High Court

Date of Decision: April 19, 1985

Acts Referred: Advocates Act, 1961 " Section 49, 49 (1) (af), 7 (1) (h)
Karnataka State Universities Act, 1976 " Section 27, 39, 57

Citation: AIR 1985 Kar 223

Hon'ble Judges: M. Rama jois, J

Bench: Single Bench

Advocate: S. Vijay Shankar, K. Bhaktavatsala and V. Gopala Gowda, for the Appellant; U.L.N. Rao, B.V. Acharya and N.B. Bhat, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. In these writ petition, in which the petitioners have questioned the legality of the decisions of the Bangalore and Mangalore Universities refusing

to approve their admission to the 1 year of the three years" Law Degree course, the following common question of law arises for consideration:

"Whether the conditions of eligibility for admission to the law degree course fixed by any of the Universities constituted under the Karnataka State

Universities Act ("the Act" for short) is unenforceable if it is higher than the minimum conditions of eligibility for admission to the Law Degree

course prescribed by The Bar Council of India under S. 49 of the Advocates Act?

2. The facts of the -case of each of the petitions in brief are as follows:

(i) Re. W. P. No. 68/1985: The petitioner in this writ petition passed the B. A. Degree examination of the Kerala University in the year 1981

securing 39.85% marks. In June 1984, he got himself admitted to the Udupi Law College, Udupi, which is a private law college affiliated to

Mangalore University. At the time of admission, the Principal of the college took an undertaking from the petitioner to the effect that if his

admission was not approved by the University, it would be cancelled. The above undertaking was taken obviously for the reason that, according to

the Regulations of the University, a candidate must have secured at least 40% marks in the degree examination. The University by its letter dated

15-11-1984 (Annexure-C) disapproved the admission of the petitioner on the ground that he had secured less than 40% marks in the qualifying

examination.

(ii) Re.W. P. No. 5100/1985 : The petitioner has completed his B. A. degree of Bangalore University securing 39.75% marks, He got himself

admitted to Vidyodaya Law College, Tumkur, affiliated to the Bangalore University for the first year of the Law Degree course during this

academic year. By communication dated 14-2-1985, he was informed that his admission has not been approved as he had secured less than 40%

marks.

(iii) Re. W. P, No. 5336/85 : The petitioner in this writ petition, is a Commerce Graduate of Sri Venkateshwara University, Andhra Pradesh. He

secured 39.88% marks in the qualifying degree examination. He sought admission to the Socio Legal Service and Research Centre, College of

Law, Bangalore, to the first year of the three years" law degree course during the current academic year. His admission was disapproved by the

Bangalore University on the ground that, according to the Regulations of the University, no candidate, who had secured less than 40% marks in the

aggregate in the qualifying examination was eligible for admission to the law degree course.

(iv) Re. W. P. Nos. 6135-6136/85: The first petitioner secured B.Sc. Degree with 39.56% marks and the second petitioner secured B. A. Degree

with 39.6% marks. Both of them got themselves admitted to the Vidyodaya Law College, Tumkur, for three years" law degree course during the

current academic year. Their admissions to the course has been disapproved by the Bangalore University.

Aggrieved by the said decisions of the Universities, disapproving their admission, the petitioners have presented these writ petitions.

3. The plea of the petitioners is as follows:

The minimum condition of eligibility prescribed by the Bangalore and Mangalore Universities is 40% marks in the degree course in all the subjects

of all the examinations. The same condition of eligibility was prescribed by the Bar Council of India also. However, the Bar Council of India had

passed a resolution that a candidate who had secured more than 39.5% marks, though less than 40% marks, is eligible for admission to the three

years" law degree course. The resolution No. 123/84 of the Bar Council, on which the petitioners rely, has been produced as Annexure-A in W.

P. Nos. 6135-36/85. It reads :

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Resolved that a Circular be sent to the Universities that students who have obtained more than 39.5% marks in their graduation examination may

be admitted to the three year law course and the students who have obtained more than 44.5% marks in their 10+2 examination may be admitted

to the five year law course.

In view of the above resolution, the petitioners contend that they were eligible for admission to the law degree course and that the said resolution

was binding on the Universities and therefore cancellation of their admission was unlawful.

4. (i) The plea of the two Universities is as follows : S. 57 of the Karnataka State Universities Act prescribes that no candidate shall be eligible for

admission to a course of study unless he possesses the qualification prescribed. S. 27 of the Act empowers the academic council to frame

regulations for maintenance of standards of instructions, education and examinations of the University. S. 39 of the Act prescribed the procedure

for framing the regulations. The academic council of both the universities have framed regulations laying down the conditions of eligibility in the

manner prescribed under S. 39 of the Act. There is no dispute that according to the regulations of both the Universities, a candidate to be eligible

for admission to the three years" law degree course must have secured at least 40% marks in the aggregate in the three examinations of the general

bachelor"s degree course. In view of the above regulation, no candidate who has secured less than 40% marks in the degree examination, is

eligible for admission. Therefore, the admission of the petitioners to the concerned law colleges was contrary to the regulations. The disapproval of

their admission is in conformity with the regulations.

(ii) The Bar Council of India is no doubt empowered to prescribe the minimum conditions of eligibility under S. 49(l)(af) read with S. 7(1)(h) of the

Advocates Act. S. 7 in particular provides that standards of legal education could be fixed by the Bar Council of India and the same should be

done in consultation with the Universities. The conditions of eligibility so prescribed by the Bar Council of India cannot be transgressed by the

University, in that the University cannot prescribe any lower or lesser conditions of eligibility for admission to the law degree course, but does not

in any way, prevent the University from prescribing higher conditions of eligibility, which does not conflict with the rules made by the Bar Council of

India. The .insistence of minimum of 40% marks in the general degree course as a condition of eligibility for admission to the law degree course

does not conflict with the rules framed by the Bar Council of India. In other words, if only the Universities decide to admit students who have

secured 39.5% or less in the degree examination, then only it would amount to violation of the regulations made by the Bar Council of India and in

such a case the Bar Council could refuse to recognise the law degree conferred by the University for purposes of enrolment as Advocate.

(iii) Alternatively, the resolution passed by the Bar Council cannot be taken as an amendment to the rules framed by it and further as the resolution

has been made without consulting the universities, it is not valid. Further, even in terms of the resolution, all that the Bar Council of India has said

was that if students who have secured more than 39.5%, but less than 40% marks are admitted by the universities, the Bar Council would not take

objection for such admission. Therefore there was no compulsion to admit students who secured less than 40% marks, but more than 39.5%

marks in the general degree course.

5. I shall now proceed to consider the rival contentions. Advocates Act enacted by the Parliament falls under Entry 26 of List III of the seventh

schedule to the Constitution which reads: "Legal, Medical and other professions." The relevant portions of Ss. 49 and 7 of the Advocates Act read

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49(l) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe -

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(g) the minimum qualifications required for admission to a course of degree in law in any recognised University.

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(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education

and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect

Universities.

A combined reading of these provisions shows that the Bar Council is invested with the responsibility of ensuring standards of legal education and it

is also empowered to prescribe the minimum conditions of eligibility for admission to the law course.

6. The Karnataka State Universities Act enacted by the State Legislature falls under Entry 25 of List III " of the 7th schedule to the Constitution. It

reads:

25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List 1,

vocational and technical training of labour.

The Universities established under the Act have been invested with the power to lay down the conditions of eligibility for admission to various

courses. S. 57 of the Act reads

57. Eligibility For Admission of Students:

No student shall be eligible for admission to a course of study for a degree or diploma unless he possesses such qualifications as may be

prescribed.

S. 27 of the Act empowers the academic council of each of the Universities to frame regulations inter alia laying down the conditions of eligibility

for admission to various courses. Once these conditions are laid down, in view of S. 57 no candidate who does not possess the said qualifications

would be eligible for admission (See: (1983) 2 Kant 175.) Therefore, it is clear that no college of university or an affiliated college can admit

students to any of the courses who do not fulfil the conditions of eligibility prescribed by the University. Consequently, there can be no doubt that

the admission of the petitioners to three years' law degree course made by the private law colleges, though they had secured less than 40% marks

was contrary to the regulations of the University.

7. But it is contended by the petitioners that in the event of there being difference between the regulations made by the University and the Rules

made by the Bar Council, the latter overrides the former and therefore the petitioners were eligible for admission. The question is, is it so?

8. As pointed out earlier, the power of the Bar Council is to prescribe minimum conditions of eligibility which is certainly binding on the University.

Therefore the Universities cannot prescribe any condition of eligibility for admission to the law degree course which is lower than the conditions of

eligibility prescribed by the Bar Council. If the University does so, the Bar Council could refuse to recognise the law degree conferred by such

University for the purpose of enrolment as an Advocate. But nothing prevents the University from prescribing a higher condition of eligibility. For

instance, a University could prescribe that no candidate who has secured less than 50% marks in the general degree course would be eligible for

admission to the law degree. It would be no contravention of the rules framed by the Bar Council. In the present cases the Universities have not

prescribed any lower condition of eligibility than the one prescribed by the Bar Council of India. They are, insisting that no candidate who has

secured less than 40% marks in the degree course is eligible. The minimum condition of eligibility of the Bar Council even of the basis that the

resolution of the Bar Council of India dated 29/30th Sept. 1984, on which the petitioners rely, can be regarded as an amendment to the rules, is

more than 39.5% marks. Thus, it may be seen, the Universities have not prescribed a condition of eligibility which, is lower than the condition

prescribed by the Bar Council. Therefore, the universities are within their powers in enforcing the regulations. In this behalf, the observations of the

Supreme Court in the case of R. Chitralekha and Another Vs. State of Mysore and Others, , though made in a different context, are apposite. In

the said case, the Universities of this State had prescribed the passing of the Pre-University examination as a condition of eligibility for admission to

the medical and engineering degree courses. The State Government prescribed additional conditions of eligibility for admission to the said courses.

The validity of the Government Order was challenged on the ground that when the minimum condition of eligibility had been fixed by the University,

it was not competent for the Government to prescribe any additional conditions of eligibility as by law the Universities were empowered to fix the

condition of eligibility for admission to any of the degree courses. The contention was negated by the Supreme Court. The relevant portion of the

judgment reads:

8. It is then said that the Mysore University Act conferred power to prescribe rules for admission to colleges on the University and the

Government cannot exercise that power. It is true that under S. 23 of the Mysore University Act, 1956, the Academic Council shall have the

power to prescribe the conditions for admission of students to the University and, in exercise of its power it has prescribed the percentage of

marks which a student shall obtain for getting admission in medical or engineering colleges. The orders of the Government do not contravene the

minimum qualifications prescribed by the University what the Government did was to appoint a selection committee, and prescribe rules for

selection of students who have the minimum qualifications prescribed by the University. The Government runs most of the medical and engineering

colleges. Excluding the state aided colleges for a moment, the position is as follows : The Colleges run by the Government, having regard to

financial commitments and other relevant considerations can only admit a specific number of students to the said colleges. They cannot obviously

admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable

basis. The aforesaid orders of the Government only prescribed criteria for making admissions to Colleges from among students who secured the

minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Govt. can run medical

and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a

power which every private owner of a College will have, and the Government which runs its own colleges cannot be denied that power.

(Underlined by me)

The ratio of the said decision is equally applicable to these cases. In the present cases, like the University in the aforesaid case, the Bar Council of

India has prescribed the minimum condition of eligibility in its rules, that is 40% marks in the degree examination, and by its subsequent resolution,

the Bar Council of India has said that candidates who have secured more than 39.5% marks, though less than 40%, may also be admitted to the

three years" law degree course. The regulations framed by the Universities, which provide that no candidate who has secured less than 40% marks

is eligible, do not contravene the regulations of the Bar Council. In view of the Regulations of the Bar Council. In view of the Regulations and S. 57

of the Act, no candidate" who has secured less than 40% marks could be admitted to the course. As pointed out by the Supreme Court in R.

Chitralekha and Another Vs. State of Mysore and Others, , just as it was open to the Government to prescribe a higher or additional condition of

eligibility for admission to its college, it was open to the University to prescribe conditions of eligibility which is higher than the one prescribed by

the Bar Council. Therefore, I am unable to agree that there is any conflict between the regulations of the Universities and the rule framed by the Bar

Council read with its resolution, extracted earlier. Moreover, the purport of the resolution is that if the Universities admit students who had secured

less than 40% marks, but more than 39.5% marks in the degree course, the Bar Council would raise no objection. Therefore, it was for the

Universities to decide as to whether the relaxation should be granted. But the Universities have on due deliberation refused to grant any such

relaxation (See: Annexure-E in WP 5336/85 and Annexure-B in W. P. 68/85).

9. For the reasons stated above, I answer the question set out first in the negative.

10. Learned counsel for the petitioners, however, submitted that they had spent considerable time and money and therefore the cancellation should

be set aside. I am unable to agree, for the reason that when ineligible candidates are admitted to a course and their admission is rightly disapproved

by the University, it is not open for this Court to strike down the disapproval which is made in conformity with the regulations of the Universities

(See : W. P. No. 29245/82 & connected cases. D * D. 5 10.83 (reported in (1984) 1 Kant LJ 579).

11. I may add that when admission to the degree courses is regulated by law, it is as much binding on the Universities as it is on the citizens. A

candidate seeking admission is therefore under a duty to know whether he is eligible for admission before seeking admission. An ineligible

candidate cannot get himself admitted to the course and later blame the authorities for cancellation. In fact, in these cases even the resolution of the

Bar Council is dated 29/30th Sept. 1984, i.e., after about three months after their admissions to the course. It was also not preceded by

consultation with the Universities which was mandatory in view of S. 7 of the Act.

12. Learned counsel for the petitioners made a fervent plea that even on the basis that the petitioners were also at fault, having regard to the facts

and circumstances of the case, namely that each of the petitioners had secured more than 39.5% marks, it could be rounded off to 40% and by

that process they could be considered eligible for admission. The question whether the marks secured by the candidates which are above 39.5%

should be rounded off to 40% and on that basis they should be regarded as eligible for admission, is a matter for consideration by the University.

All that I can say is that notwithstanding the dismissal of the writ petitions, the petitioners are at liberty to make representations before the

universities to take a sympathetic view of their cases, and if such representations are made, nothing prevents the University from considering their

request for approving their admission as a special case and by doing so the University would be acting within its powers and such an action also

has the approval of the Bar Council of India.

13. In the result, I make the following order:

(i) Rule discharged.

(ii) Petitions dismissed.

(iii) No Costs.

14. Petition dismissed.