
(1998) 12 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 738 of 1996

Abhilash Kumar and Others

APPELLANT

Vs

H.P. Krishi Vishvavidyalaya and Others

RESPONDENT

Date of Decision : 16-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 2 ShimLC 39

Hon'ble Judges : D. Raju, C.J.;Lokeshwar Singh Pantia, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; N.K. Thakur and Parmod Thakur, for the Respondent

Judgement

D. Raju, C.J.—The above writ petition has been filed by the Petitioners who were unable to get their selection for admission to the B.V.Sc. & AH Course in the 1st Respondent-Institution, seeking for the relief in the nature of writ of certiorari to quash the proceedings dated 7.9.1998 filed as Annexure PA insofar as it purports to give benefit of reservation to the wards of deceased employees in B.V.Sc. & AH course while making recommendation for admitting Respondents 2 to 5, by applying the principles of severalty. Similarly, the decision of the Board of Management of the Respondent-University dated 17.10.1998 ratifying the recommendations made as above in Annexure PA, also is sought to be set aside with a consequential direction to the 1st Respondent-University to extend the benefit of reservation of course to almost all the employees of the University. Consequently, the admission granted to Respondents 2 to 5 on 12.10.1998 in the first year B.V.Sc. & AH course is also sought to be set aside with a further direction to admit the Petitioners to the said course on the basis of the marks obtained by them in the Combined Entrance Test held on 14.6.1998. The case of the Petitioners is that the 1st Respondent issued a prospectus for B.V.Sc. & AH course for the academic session 1998-99 and Chapter-II of the Prospectus dealt with the programme Intake and Reservation. While para 2.2(b) provided that one seat in each programme shall be reserved for sons/daughters/spouses of the

employees of the H.P.K.V. provided they qualify the Entrance Test and the same candidate cannot be allowed the advantage of the admission granted more than once, in para 2.2 (e), it has been provided that a seat will be provided for admission to a son/daughter in lieu of the benefit of employment admissible to widow/son/daughter of the H.P.K.V. employee, who dies in service subject to fulfilment of minimum eligibility requirement as may be prescribed from time to time. Chapter-III, particularly para 3.1 of the Prospectus, stipulated that admissions to every programme shall normally be made at the commencement of first semester of each academic year and as per para 3.2 an objective type Combined Entrance Test should be held for admission to the courses in question and the basis of admission in the programme concerned shall be merit as determined by the performance in the competitive examination, subject to the Regulations framed in this behalf by the Academic Council from time to time. The minimum qualifications specified is prescribed in para 3.6 of the said Chapter.

2. The case of the Petitioners is that all the Petitioners except Petitioner No. 1 submitted their applications for their claims being considered against one seat reserved for son/daughter/spouse of the employee of the H.P.K.V. and Petitioner No. 1 submitted his application under S.T. category for which there is a 7-1/2% reservation. Apart from, submitting their applications, complete in all respects in time, the Petitioners also participated in the Combined Entrance Test held on 14.6.1998 and the Petitioners No. 1 to 5 secured 90, 120, 93, 85 and 101 marks, respectively, in the said combined test. While matter stood thus, it appears that widows of some of the deceased employees who have died in harness, made representations to the first Respondent to give admission to their wards on the analogy of one Ms. Anuradha Verma, daughter of late Sh. S.D. Verma who was said to have given admission in the year 1993 by the Board of Management on the recommendations of the Academic Council a seat in B.V.Sc. & AH course as a special case vide Item No. 7(16) of the 51st meeting held on 5.8.1993, and thereupon the request of the widows of the deceased employees appears to have been placed before the Academic Council which as per the resolution in respect of Item No. 12 in the meeting held on 8.9.1998 recommended for the admission to the wards of the deceased employees who are Respondents 2 to 5 and submitted the same to the Board of Management. It is stated therein their admissions would come into force after due approval by the Board. It is useful to refer to the resolution itself which shows that the Academic Council was unwittingly as also with reluctance has accorded such recommendation under some constraining influence. The resolution passed reads thus:

Item No. 12: To place before the Academic Council the matter regarding admission to Son/Daughter of HPKV employees who dies while in service.

The Academic Council perused the agenda item regarding giving admission to son/daughter of HPKV employee who died while in university service as per annexure to item No. 12 (at page No. 6(a)). The Academic Council also perused the existing provision to deal such cases which is reproduced as under:

A seat will be provided for admission son/daughter in lieu of the benefit of employment admissible to widow/son/daughter of the HPKV employee who dies in service, subject to fulfilment of minimum eligibility requirement as may be prescribed from time to time.

The Academic Council was apprised that the widows of the deceased University employee have been produced employment and are serving in the University (Annexure I).. The Academic Council was also apprised about the decision of the Board of Management which was notified vide Notification No. 2-9/85-HPKV (GA) Vol. II/10903-77 dated 22.2.1985 reproduced below:

The Board of Management on the recommendations of the Academic Council, vide resolution No. 13(4) of its meeting; held on 24.1.1985 has been pleased to decide to provide admission in the degree programmes of the University subject to the fulfilment of the minimum requirement, prescribed for the concerned programme to son/daughter of the University employee who dies while in service. The Board, however, resolved that this benefit shall be available in lieu the employment admissible to the widow/son/daughter of the H.P. Krishi Vishvavidyalaya employee who dies while in service as allowed vide this office Notification No. 2-9/79-HPKV (GA)/16468-514 dated 3.8.1979.

Widows of the deceased employees have represented their cases with the request to give admission to their wards on the analogy of Ms. Anuradha Verma, D/o later Dr. S.D. Verma. who was given admission by the Board of Management on the recommendations of the Academic Council in B.V.Sc. & A.H. course as a special case, vide item No. 7(16) of its 51st meeting held on 5.8.1993 (Annexure II).

The Academic Council after having detailed discussion on the issue recommended admission to the wards of the following deceased employees in B.V.Sc. & A.H. programme to the BOM.

Name of the deceased		Name of the employer		Sr.	No.
Sood Richa Sood		2. Dr. Ram Krishan Savita		3.	Dr. S.C.
Dr. Brij		Paul		Sh. Ramesh Chand	Neenu Devi
		Dwij		Paul	

The Academic Council further directed that their admissions would come into force after due approval by the Board of Management.

The Academic Council also appears to have directed that the admission of Respondents No. 2 to 5 would come into force after due approval of the Board of Management.

3. On the basis of the recommendations of the Academic Council, Respondents 2 to 5 who appear to have secured only 81, 91, 85 and 95 marks, respectively in the combined Entrance Test appear to have been accorded admission in B.V.Sc. &

A.H. Course on 12.10.1998 on provisional basis, apparently on the advice or directions of the Vice-Chancellor since the resolution as such does not permit any such provisional admission. At that stage, the fathers of Petitioners No. 1 to 3 and 5 and mother of Petitioner No. 5 made representations on 14.10.1996 to the Vice-Chancellor bringing out the fact that the fathers of the Petitioners are also employees of the H.P.K.V. University and having regard to the marks secured by them vis-a-vis marks obtained by Respondents 2 to 5 their claim should be preferentially considered they being the wards of presently serving employees. In the representations, it has also been highlighted that on account of the death in harness of the fathers of Respondents 2 to 5 the employment facilities have already been granted to and availed of by the wives of the deceased employees. But, nothing appears to have happened thereon and the only course of action adopted by the 1st Respondent appears to have been to place the recommendations of the Academic Council before the Board of Management of the University and as to how the Board viewed the matter and with what reservations and repulsiveness the Board felt obliged to approve it, knowing it to be an illegal thing is brought out even by the decision of the Board, as set out at page 4 of the reply of the 1st Respondent-University in the following terms:

The relevant extract of Board's meeting is reproduced below for perusal of Hon'ble Court:

Item No. 6: "The matter of provisional admission of 4 students on compassionate grounds being wards of the deceased came for discussion and the Board of Management examined the same in detail. After thoughtful deliberations, it has been inferred that the provision of employment/admission to the University has not been complied with correctly in the past. It came to notice that such admissions have been allowed by the Board of Management previously as special cases.

The BOM has come to the conclusion that the case of provisional admissions of 4 students namely Richa Sood, Savita, Neenu Devi and Dwij Paul on compassionate grounds is every complex at this juncture. The Vice-Chancellor clarified that by affording seats to these students, it will not affect the total number of seats open for admission on merit. Since these seats are over and above the specified quota as notified in the prospectus, the merit of any candidate is not affected. Keeping these facts in view and the question of admission of 4 students afforded admission provisionally, it has been unanimously decided that admission to these students may be continued, but in future the provision of the rules must strictly be adhered to and no special case shall be considered by the BOM. The rules now clearly stipulate that the benefit of admission to the wards shall be available in lieu of the employment admissible to the widows/sons/daughters of HPKV employees.

4. The Petitioners contend that the course adopted by the first Respondent including the Academic Council and Board of Management is illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India, in that

according to the Petitioners there was no justification to treat the wards of deceased employees more favourably than those who are serving and the differentiation made for discriminating treatment is without any reasonable basis or justification. Details have also been furnished by the Petitioners about the widows of those employees of HPKV University who died in harness having been given employment in the University for that reason and as a matter of fact, the said fact is beyond controversy and almost an admitted one. It is, therefore, contended that for the very same reason of death of their fathers in office, no further reservation or admission can be given on preferential basis on account of Respondents 2 to 5 being the wards of erstwhile employees who died in harness of the University. The classification sought to be made for conferring an undue benefit upon Respondents 2 to 5 on the so-called reason of compassion alone is said to be neither substantial nor having any nexus to the objects sought to be achieved. The admissions in question accorded to Respondents 2 to 5 are said to be opposed to law as also the judgment of courts including that of the apex Court and consequently, the relief as noticed earlier is sought for by the Petitioners.

5. After notice being issued, the first Respondent-University has filed a reply. It is stated therein that one Dr. S.D. Verma, father of Ms. Anuradha who was employed in the University died and though soon after his death, his wife, the mother of Ms. Anuradha was given employment in the University, in spite of the same, his daughter Anuradha Verma was also given admission in B.V. Sc & AH course in 1993 and it is relying upon the said instance, the mothers of the Respondents No. 2 to 5 made representations and since the Academic Council in its meeting held on 7.9.1998 resolved to recommend for the grant of admission to Respondents 2 to 5 subject to the approval of the Board of Management, the matter was also placed before the Board of Management which also in its turn approved the admissions and that, therefore, it is asserted for the first Respondent-University that the admissions accorded to Respondents 2 to 5 are in order and quite in accordance with law and that there is no discrimination involved in the same. It is also seen from the reply filed by this Respondent itself, extracted supra, that the Board of Management was not really in favour of the admissions in respect of Respondents 2 to 5 but since the provisional admissions have already been given on compassionate ground and the Vice-Chancellor clarified that by affording seats to these students it will not affect the total number of seats open for admission on merit and the seats proposed to be accorded over and above the specified quota as notified in the prospectus, the merits of any candidate is not effected. The Board of Management resolved to approve the recommendations and the provisional admission with a further declaration that in future provision of the rules must strictly be adhered to and no special case shall be covered by the Board of Management. It may be pointed out at this stage that events as disclosed to have happened in these matters at the level of Academic Council and Board of Management appear to have been greatly influenced, streamlined and stage-managed by the Vice-Chancellor, who

happens to be the ex officio Chairman of these bodies and principal executive and Academic Officer of the University. It is also admitted that the rules and regulations as also the prospectus clearly stipulated that the benefit of admission to one of the wards of those employees who died in harness shall be admissible to the son/daughter of HPKV employees only in lieu of the benefit of employment admissible to widow/son/daughter of such employee. In traversing the claim of the Petitioners projected as wards of the serving employees of the University, it is stated for the first Respondent-University that the Petitioners are not entitled to admission in four seats against which Respondents 2 to 5 have been admitted because these seats were created over and above the intake capacity of 35 seats vis-a-vis reserved for other categories in B.V. Sc. & AH programme and these four seats were meant to be and created on compassionate grounds because the fathers of Respondents 2 to 5 died while serving the University. It is necessary to point out even at this stage, that though their fathers died in harness, their mothers are presently employees of the University and that is where the grievance of the Petitioners arise as to how there could be differentiations fend discriminations between them and the Respondents. Even otherwise, there cannot be either reservations or creation of seats to accommodate the claims of as many wards of the deceased employees who have applied and secured mere pass or bare minimum eligibility overlooking the claims of more meritorious candidates. In other respects as we could see, even ignoring the factual details attempted to be furnished by the first Respondent itself for the sake of denial and disputing the allegations of illegality projected by the Petitioners, a blunt stand of denial has been adopted without trying to even point out the powers they possess to do such things. It is also stated that the Petitioners who failed to find place in the general merit list or vis-a-vis claim for a seat meant for the wards of University employees in B.V.Sc. & A.H., cannot be admitted or their claims countenanced in this writ petition.

6. Respondents 2 to 5 have also filed a common reply wherein broadly the line of stand adopted by the University in their reply is also found to be reiterated. Strong reliance is sought to be placed by these Respondents on the instance of such admission granted to the daughter of late Dr. S.D. Verma in the year 1993 and the grant of admission to Respondents 2 to 5 is said to be purely on compassionate grounds and is sought to be justified on the basis that the fathers of Respondents 2 to 5 died while serving in the University. It may be noticed at this stage that it is not the case of any of the Respondents, including the University that the cause of death of such employees was on account of any risks of job they undertook for the University and they had to lay down their lives for carrying out the tasks, of the University. Placing reliance upon the recommendations of the Academic Council which had the approval and acceptance of the Board of Management, it is contended by these Respondents that there is no illegality in the admissions granted to them and that there is no infringement of any right of the Petitioners too. It is also contended that merely giving employment to the widows of the employees who died in harness will not

deprive the rights of the wards of the deceased employees to seek admission on compassionate grounds in B.V.Sc. & AH Course though nothing has been said as to where from and under what law they derive or acquire such rights to be given admission out of normally and outside the proclaimed norms and guidelines for admission. Since according to these Respondents, the employment of widows was only to provide livelihood to them to carry on their life and save their family, the admissions granted to the Respondents cannot be assailed by the Petitioners. As in the case of the first Respondent-University, these Respondents also reiterated the fact that it was on the analogy of the admission granted to Ms. Anuradha Verma, the Respondents 2 to 5 were also given admissions. Respondents 2 to 5 are said to constitute a special class and it was this the Academic Council as also the Board of Management took note of to accord approval to the admissions granted on compassionate grounds and inasmuch as, the admissions granted in favour of Respondents 2 to 5 are not in general category on merits but purely on compassionate grounds no exception could be taken to the action of the first Respondent.

7. Heard Mr. Rajiv Sharma, learned Counsel for the Petitioners who reiterated the stand taken in the pleadings as noticed above. Likewise, Mr. N.K. Thakur, learned Counsel for the first Respondent-University and Mr. Parmod Thakur, learned Counsel for Respondents 2 to 5 reiterated the respective stand taken in their relevant pleadings, as summarised above and during the court of arguments they merely attempted to take shelter on the recommendations made by the Academic Council and approval accorded by the Board of Management of the University.

8. We have carefully considered the submissions of the learned Counsel appearing on either side. In our view, the first Respondent-HPKW does not seem to have been conscious of the fact they are also bound by the Rule of law and ever realised that they cannot be law unto themselves. The 1st Respondent appears to have acted on a thinking that they have the last word on what all they do and the Act, Statutes and Regulations in force or the prospectus they published proclaiming the norms for selection for admission, have no relevance or concern for them. The shockingly monstrous manner in which such an educational institution of the status of a University which is bound to otherwise set an example for inculcating high sense and degree of discipline and moral values, is found to have functioned, in our view, in a spirit of authoritarianism and with a non-challenging attitude, defying without remorse or regret even basic principles of law, fair play and justice does not add any credibility to the institution or its functioning. Concedingly, the first Respondent published a prospectus and all details have been given therein in respect of the programme intake and reservation and qualifications for admission. This is very much binding on all including the University, and they cannot alter it as they please at any time, in any manner they like or give a go-bye to them, and that too after conclusion of the selection process the Combined Entrance Test, in this case, in order to enable Respondents No. 2 to 5 to get admission to the detriment of

more meritorious and deserving candidates. Such tactics have been frowned upon by their Lordships of the apex Court in *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, It is by now well settled that stipulation contained in the prospectus is supposed to be the representation made to the participant candidates about the standard of selection proposed for admission to the courses in question. So far as the reservations are concerned, we find in para 2.2 one seat in each programme reserved for sons/daughters/spouses of the employees of the HPKV provided they qualify the Entrance Test and that too with a further stipulation that the same candidate shall not be allowed the advantage of grant more than once. Further, the reservation which is relevant for the purpose of the present case is in Clause (e) of para 2.2 wherein it is stipulated that a seat will be provided for admission to a son/daughter in lieu of the benefit of employment admissible to widow/son/daughter of the HPKV employees who died in service subject to fulfilment of minimum eligibility requirement as may be prescribed from time to time. Except in cases where the admission has to be in respect of any reserved category of seat subject to the condition stipulated pertaining to such reservation, the admissions for the course shall be only on the basis of merit as determined by the competitive examination, subject to regulation framed in this behalf by the Academic Council from time to time. Already there are such stipulation and those have been published in the prospectus. As a matter of fact, para 2.1 of Chapter II makes it clear that the number of students to be admitted each year to various programmes is to be fixed in advance by the Academic Council and the number so fixed is termed as the sanctioned seats for the said year and programme-wise seats have also been fixed and notified. Para 2.6 particularly, sub-para 2(h) of the statute of the HPKV, Palampur on which strong reliance is placed for Respondents 2 to 5, deals really with the Academic Council and its powers. Even at this stage, we may notice that the said provision will have no application to the case of admission of candidates to the course and at any rate, it cannot be relied upon to justify admissions granted out of turn and out of the scheme publically announced and notified, as in this case by making a new provisions after the selection process under the proclaimed prospectus is over.

9. The admissions granted to Respondents 2 to 5 in our view, suffer serious infirmities. First of all, the prospectus issued for the Session in question stipulated reservation in respect of wards of the employees of the HPKV subject to their being qualified in the Entrance Test and satisfying the other conditions and likewise a seat was reserved for admission to a son/daughter in lieu of benefit of employment admissible to widow/son/daughter of the HPKV employees who died in service subject to the fulfilment of the minimum eligibility requirement. Assuming without accepting the position taken that there is scope for creation of any seats in the course in addition to the one notified it, even as and when created, such seats have to be made available only to the common pool or category of selection/admission, which should be as per the order of merit performance. It is not given to any individual limb or body of the University

or the University itself to create after the conduct of the Combined Entrance Test, any seat to satisfy the particular needs of a few chosen candidate at the sweet will and pleasure of either the Academic Council or the Board distribute those seats according to their whims and fancies as mere acts of charity. In this case, even the materials disclosed in the reply filed by the University expose that the Vice-Chancellor appears to have played the dominating role to accord such admissions and apparently by virtue of the position and status he commanded in the institution and the deliberative bodies he was able to stage-manage and get his position and decision taken approved to confer undeserved benefit upon Respondents 2 to 5. Even if it is assumed that any such seat can be created or increased against one or the other of the reserved categories already made, it cannot be de hors or in derogation of the conditions already stipulated in the prospectus which itself appears to have been so incorporated on the basis of the approved regulations, in force. So far as the case on hand is concerned, a seat and that too one seat alone has been provided for reservation to a son/daughter of an employee who died in service which in turn is also subject to the condition that it will be in lieu of the benefit of employment to widow/son/daughter to the employee who died in service and while that be the position, it beyond comprehension as to how even the seats increased for the special category of the wards employees who died in harness which itself is impermissible in law, could have been allowed to be given in gross violation of the mandatory condition, when admittedly in this case after the death of the fathers of Respondents 2 to 5 their mothers-widows of the persons who died in harness, had already the benefit of employment and presently serving as employees of the University. Once such employment facility has been availed of thereafter, the wards of such employees who died in harness cease to fall within such category and in the present case by virtue of their mothers having secured the employment they can, if at all, be considered to be wards of serving employees like the Petitioners only. By merely overplaying the concept of compassion or mere sympathies only the Respondents, the first Respondent-University or Respondents 2 to 5 cannot give a go-bye or obliterate the regulations governing the admissions as also the conditions meticulously stipulated in the prospectus as governing and regulating the admissions to the course in question. The action of the 1st Respondent-University, in our view, smacks of legal malice and total lack of bona fides and it appears to be nothing but a case of gross and patent misuse and abuse of the powers and authority vested in the bodies of the University. Consequently, even assuming that the reservations made for the category in question is held to be permissible, the admissions accorded to Respondents 2 to 5 which is in gross violation of the conditions stipulated, by creating also subsequently seats specifically meant to be granted only to Respondents No. 2 to 5 and to satisfy their personal needs, cannot at all be either justified or countenanced in law. In substance, we find that the University and its constituent bodies/authorities acted as though they are distributing largesse out of a personal estate absolutely belonging to them which they can deal with and dispose as they like and not as responsible public bodies or institution which is run and maintained at the cost of

public funds who hold their powers in trust for being discharged in public interests and in accordance with law.

10. Even that apart, we are of the view that the reservations to the category of wards of erstwhile employees who died in harness itself cannot be justified, as in the case of those candidates who are wards of the employees presently in service of the institution, at any rate in such large numbers, as has been attempted in this case. In *Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das*, (1992) 3 SCC 543 the apex Court had an occasion to deal with a situation nearer to the one before us and the reservation of seats to the B.Tech. course in favour of the sons and wards of the employees of the University was held to be violative of the doctrine of equality enshrined in Article 14 of the Constitution of India. It was further held therein that there is no rationale for the reservation of seats in favour of the sons and wards of the University nor any such reservation could be said to have any reasonable nexus with the object that is sought to be achieved by the University. In *Thapar Institute of Engineering and Technology and Others Vs. State of Punjab and Another*, while following the earlier decision noticed above, the apex court reiterated and held that reservation of seats for wards of employees of such institution or of a company which founded such institution as violative of Article 14 of the Constitution of India, the claim that such reserved seats were in addition to the number of seats earmarked and created for admission based on the basis of mark obtained in the Entrance Examination was held by their Lordships to be not a justifying factor to sustain such impermissible reservation in this very decision, and it was observed as under:

Insofar as Civil Appeal No. 4101 of 1995 is concerned, the letter of the Respondent-University dated 15.1.1993 directing the TIT & S not to continue with the reservation of seats for wards of the staff of the TIT&S in B.Tech. course was taken in pursuance of the decision of this Court in *Unnikrishnan, J. P. and is in consonance with the law laid down in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das*, since the TIT&S is affiliated to the Respondent-University. It is no doubt true that the four additional seats for which reservation was made for the wards of the college and mill/school staff of the TIT & S are in addition to 90 seats and admission is made on the basis of marks obtained in the Entrance Examination conducted by the Respondent-University. But, for the purpose of admission to these four seats a separate merit list is drawn in respect of the candidates who are eligible for these seats and admission is not made according to merit as reflected in the common merit list. Such reservation in favour of wards of the college and mill/school staff of the TIT&S does not satisfy the test of admission being given strictly on the basis of merit as laid down by this Court and has been rightly held to be impermissible by the High Court. The said appeal is, therefore, liable to be dismissed.

11. In view of the above, not only the reservation made cannot be justified in law, they being unconstitutional and has been held to have no nexus whatsoever

to the objects sought to be achieved by the University but the manner in which it has been done in this case also cannot be approved by any Court of law. The action of the 1st Respondent in according provisional admission even before a formal creation of seats by the Board of Management and by the time it went to the Board, present the Board with a fait accompli by such perfunctory and illegal provisional admission, not only smacks of gross abuse of power but indicates unwarranted manipulation of matters undertaken to forestall an independent decision by the Board, in the matter. Consequently, the same has to be struck down as unconstitutional, arbitrary, capricious unjustified and opposed to law. The justification attempted by the Respondents on the basis of some irregular and illegal admission granted to one candidate in the year 1993 is no ground in the eye of law to perpetuate perennially such illegalities or to seek the approval of this Court also on the basis of an otherwise earlier illegal act.

For all the reasons stated above, we are of the view that the writ petition deserves to be partly allowed insofar as it relates to the quashing of the creation of four additional seats as also the admissions accorded to and in favour of Respondents 2 to 5. It is by now well settled that when admission to a particular course is to be according to merit, the matter is one of principle and does not depend upon as to who came before or moves this Court, and even if persons of higher merit has not come before the Court admissions have to be ordered to be made only in accordance with the merit which is the principle governing such admissions. In this case, since we have held that the very creation of the four seats itself is bad in law, there will be no seats available as against which the claim of the Petitioners or any one else could also be considered and, therefore, the consequential and mandatory part of the relief sought for in their favour, is not to be granted to the Petitioners and the same shall be rejected. We are also of the view that when the selection has been found to be bristling, from the manner and method of creation of seats as well as the manner it has been given to Respondents Nos. 2 to 5 with illegalities and repotism mere sympathy should not be allowed to be invoked or permitted to overshadow the ultimate decision to be taken. As observed by their Lordships of the apex Court in *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, in order to uphold the purity of academic processes, the selection and admission of Respondents Nos. 2 to 5 must be quashed. It is useful to extract the declaration of law made by their Lordships in paragraph 12 of the said decision, which reads as follows:

What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities has served to create an impression that even where an ad-vantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But, considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect

towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.

Consequently, there is no escape from the selections and admissions of Respondents No. 2 to 5 being set aside and we quash the same accordingly.

12. Before parting with this case, we cannot refrain from expressing our displeasure over the manner in which the 1st Respondent has functioned sacrificing public interest and adopting methods which cannot have the approval of any Court of law. We are also pained to notice the sorry state of affairs in which this institution is being administered, as if it is a personal estate of a private person, who carry vested interests. The counter-affidavit filed is of great significance and it appears from the averments therein itself that the various constituent bodies of the University have chosen to act in such an illegal manner only to please and oblige the Vice-Chancellor, who seems to have taken this particular course of action to favour Respondents 2 to 5 with admission for the course. This calls for serious action against all those concerned including the Vice-Chancellor. Since the Chancellor happens to be her Excellency the Governor of Himachal Pradesh, under the Act and the Chancellor. has ample powers under the Act to take such effective action against all those concerned, we consider it sufficient to commend for the Chancellor to take appropriate action against all those concerned in this case, irrespective of their status or position in the University in accordance with law. But, for this litigation such gross illegal acts and instances of misuse and abuse of powers would not have come to light at all and though the Petitioners have come to vindicate their rights virtually they have done great public service in exposing such misdeeds by a public body.

13. In view of the above, we allow Rs. 10,000/- costs in the writ petition to be paid to the Petitioners by the 1st Respondent. The Vice-Chancellor of the University in our view has to be made responsible to bear this liability from his personal funds without causing any loss to the finance of the University for the role he seems to have played as disclosed in the reply filed by the 1st Respondent itself This aspect also is one on which we would leave the discretion to decide, with the Chancellor of the University.

14. A copy of this order shall be forwarded to the Chancellor of the University

who happens to be Her Excellency Governor of Himachal Pradesh for taking appropriate action, as indicated in our order and as it may call for in the opinion of the Chancellor.