

(1998) 07 AHC CK 0078
In the Allahabad High Court

Case No : Special Appeal No. 308 of 1998 with C.M.W.P. No. 5936 of 1998

Allahabad University and another	Vs	APPELLANT
Km. Shruti Chaturvedi and others		RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 42

Citation : AIR 1999 All 54 : (1999) 1 AWC 57

Hon'ble Judges : D.P. Mohapatra, C.J;R.R.K. Trivedi, J

Bench : Division Bench

Advocate : R.G. Padia and P.S. Baghel, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Disposed Of

Judgement

D.P. Mohapatra, C.J.—The controversy raised in these two cases relates to admission of students in Post Graduate Courses of Allahabad University (the University for short) for the session 1997-98. Civil Misc. Writ Petition No. 6951 of 1998 has been filed by five students who graduated from Ewing Christian College, Allahabad (E.C.C. for short), which is an autonomous college affiliated to the University, while Civil Misc. Writ Petition No. 5936 of 1998 has been filed by the Management of E.C.C. against the University through its Vice-Chancellor and the Registrar of the University. The former case was disposed of by a learned single Judge of this Court by the judgment rendered on 23.3.1998 in which the writ petition was allowed. The operative portion of the judgment reads as follows :

"The writ petition succeeds and is allowed, the admissions made by the Admission Committee of Allahabad University for Post-Graduate classes for the session 1997-98 in all those subjects which the students who passed Bachelor of Arts or Bachelor of Science examination from Ewing Christian College, Allahabad in the year, 1997 is quashed and the Admission Committee of the Allahabad University is directed to admit the students on the basis of merit determined

according to marks obtained by them at the qualifying examination. It is also kept open for Allahabad University to hold entrance test for admission to Post-Graduate courses in such subjects, if it so desires, for the year 1997-98 instead of admitting on the basis of marks obtained as ordered above."

Feeling aggrieved by the said judgment the University through its Vice-Chancellor and the Registrar of the University have filed Special Appeal No. 308 of 1998. Since the case pleaded by the parties and the points of law arising therein are common, therefore, the Special Appeal and the writ petition have been heard together with the consent of learned counsel for parties and they are being disposed of by this judgment.

2. The relevant facts of the case, shorn of unnecessary details, may be stated thus : Ewing Christian College, Allahabad, which was previously an affiliated Degree College of Allahabad University, has been declared an autonomous College u/s 42 of the U. P. State Universities Act, 1973, since 1994. The said institution takes decisions regarding syllabus for the courses of studies, conducts examinations and declares the results : but the successful candidates are conferred degree by the Allahabad University which, in other words, means that the students, who successfully complete graduation courses from the institution, are accepted as graduates of the University. As expected, many such students seek admission to Post Graduate courses of the University. The University selects students for admission on the basis of their performance in the qualifying examination, that is, the three years degree course. While this arrangement was continuing, the Admission Committee of the University in the meeting held on 7th February, 1998, passed a resolution to the effect that from the session 1998-99 selection of students for admission to Post Graduate courses will be made on the basis of entrance examination and for the current session, 1997-98, the admission committee decided that students of E.C.C. will be considered for admission only to the extent of 10% of the total seats in the respective Post Graduate courses. Subjected to such restriction the petitioners of Writ Petition No. 6951 of 1998 failed to secure admission solely on the ground that they did not qualify for the seats within the prescribed limit of 10%. Their case is that though the percentage of marks secured by them is higher than other students who have been selected for admission, they have been denied the privilege solely on the basis of the arbitrary and irrational decision of the admission committee to limit the number of seats available for graduates of E.C.C. to 10% of the seats. The petitioners contend that by such decision of the University, merit has been made to suffer, which is not in the interest of the University or the student community.

3. The case of the University, on the other hand, is that the courses of studies and qualifying examination in which the petitioners participated were different from those of the University. Since the qualifying examinations of the two sections of students were different, therefore, the admission committee was justified in restricting the number of seats for graduates of E.C.C.

4. Considering the case pleaded by the parties, the learned single Judge formulated the following relevant questions for consideration :

"Was it within the scope of power of Allahabad University to limit the admission of students of E.C.C., an autonomous college of the University, to 10% for admission to Post-Graduate classes for the reason that the syllabus of the College for Bachelor of Arts and Bachelor of Science is different from that of University and its affiliated colleges as well as the examination held by the College was separate from that of University?

Can University be allowed to defend fixation of such seats for admission despite the fact that admission committee did not state such a ground in its resolution, the resolution being silent in respect of reasons and grounds as to why and how it was limiting the admission to 10% in respect of students of E.C.C.?

Can such fixation be treated as reasonable classification for fixing 10% quota for E.C.C. students as the college went on with teaching on the basis of syllabus other than what it is supposed to teach and declared the result after holding examination on the basis of such syllabus in a manner different from what University expected and can University treat it as a separate class despite knowing all this and still granting degrees?"

5. On a detailed examination of the questions formulated in the light of the relevant provisions of the University Grants Commission Act, the Revised Guidelines (1995) on the U.G.C. Scheme of "Autonomous Colleges", particularly the provisions contained in Clause (ii) under the heading "General Matters" which mandates that Universities should ensure that students of autonomous colleges are not denied or treated less favourably for admission in courses at higher levels in the Universities/Non-autonomous colleges and applying the principles laid down by the Supreme Court in the case of Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh and another, , the learned single Judge held that it is not open to the University to justify the action of the Admission Committee after conferring degrees on the ground that statute or ordinances were not followed during the course of studies and examinations in obtaining graduation degree by petitioners. From the discussion in the judgment, it appears that it was contended on behalf of the petitioners that the stand taken by the University is factually incorrect inasmuch as the syllabus and the examination were held by the E.C.C. with approval of the authorities of the University as provided in Section 42 of the Act. The said contention was also reiterated before us during the hearing of the case. The learned single Judge also considered the contention raised on behalf of the University that if the restriction on the number of seats available for E.C.C. students is not implemented, then it may result in unjust and unfair treatment to other students of the University inasmuch as in some of the faculties majority of the seats will go to graduates from E.C.C. on the basis of percentage of marks secured in the qualifying examination. Presumably on consideration of this contention, the learned single Judge gave option to the authorities of the University either to select students for admission on the basis

of performance in the qualifying examination or hold entrance examination for the session 1997-98 also.

6. The thrust of the submissions of Dr. R. G. Padia, learned counsel for the appellants (that is, University and its Registrar) is that since the students of E.C.C. appeared in a different qualifying examination from the rest of the graduates of the University, the decision of the admission committee to restrict the number of seats available for students of the former is justified. According to Dr. Padia, the criticism of arbitrariness and discrimination levelled against the decision of the admission committee is without any justifiable basis.

7. Sri Ajit Kumar, learned counsel for the respondents refuting the contentions raised by Dr. R. G. Padia contended that on the facts and circumstances of the case, college-wise discrimination is not permissible and, therefore, the learned single Judge was right in quashing the decision of the admission committee. Elucidating the point, Sri Ajit Kumar submitted that E.C.C., though an autonomous institution, is affiliated to the University : the selection of the syllabus for different courses of studies, the examinations and the declaration of the results are all done by the College under the supervision of the University and Allahabad University confers degrees to the successful students of E.C.C. In the circumstances, if the differentiation, as made by the admission committee, is allowed to stand it will mean discrimination between graduates of the same University solely on the basis that they studied in different colleges. Such college-wise preference, contended Sri Ajit Kumar, cannot be countenanced in law.

8. We have given our anxious consideration to the entire matter. We are conscious of the position that the decision affects the future of young graduates in the State. It is our considered view that the learned single Judge was right in his conclusion that in the facts and circumstances of the case, the decision of the admission committee of the University limiting the number of seats available for graduates from the E.C.C. is unsustainable in law. In support of our view, we may refer to the recent Supreme Court decision in the case of Mohan Bir Singh Chawla, (supra), in which the Apex Court after taking note of several earlier decisions of the Court like, Jagdish Saran (Dr.) v. Union of India. (1980) 2 SCC 786 ; Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ; Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, : State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, ; P.K. Goel and others Vs. U.P. Medical Council and others, ; Anant Madaan and others Vs. State of Haryana and others, ; Sanjay Ahlawat v. Maharishi Dayanand University (1995) 2 SCC 762 and Gujarat University Vs. Rajiv Gopinath Bhatt and Others, , summed up its conclusions in paragraph 15 of the judgment in the following words :

"(a) College-wise preference Is not permissible in any event.

(b) University-wise preference is permissible provided it is relevant and reasonable. Seventy to eighty per cent reservation has been sustained, even

where students from different Universities appear at a common entrance test. The trend, however, is towards reducing the reservations and providing greater weight to merit. The practice all over the country today, as a result of the decisions of this Court, is to make fifteen per cent of the seats in M.B.B.S. course and twenty-five per cent of the seats in postgraduate medical courses in all the Government Medical Colleges in the country (except Andhra Pradesh and Jammu and Kashmir) available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an all-India test conducted by the designated authority.

(c) The rule of preference on the basis of domicile/requirement of residence is not bad provided it is within reasonable limits. i.e., it does not result in reserving more than eighty-five per cent seats in graduate courses and more than seventy-five per cent seats in postgraduate courses. But district-wise reservations are an anathema.

(d) Where the students from different Universities appear at a common entrance test/examination (on the basis of which admissions are made) the rule of University-wise preference too must shed some of its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State Governments (which have established and maintained these institutions) to regulate the process of admission and their desire to provide for their own students should also be accorded due deference.

(e) The fair and proper rule is : the higher you go, in any discipline, lesser should be the reservations--of whatever kind. It is for this reason that it was said in Dr. Pradeep Jain that there should be no reservations in the matter of admission to super-specialities, though in the recent decision in Rajiv Gopinath Bhatt, a different view appears to have been taken while affirming the principle of merit, at the same time. In the larger interest of the nation, it is dangerous to depreciate merit and excellence in any field."

9. In view of the clear mandate of the Supreme Court that college-wise preference is not permissible in any event, the decision taken by the Admission Committee of the University restricting the number of seats available for the graduates who have passed the qualifying examination from E.C.C., though they are graduates of the same University, is impermissible. Viewed from another angle, we come to the same conclusion ; as a result of the decision of the admission committee the position that is manifest is that students securing lesser percentage of marks in the qualifying examination are offered seats to the exclusion of students securing higher percentage of marks solely on the basis of the institution (E.C.C.) which is an autonomous affiliated College of the same University. This is clearly an Instance of depreciation of merit for admission into Post Graduate courses which, as the Apex Court has ruled, should be avoided at all costs.

10. The learned single Judge has very fairly left the choice to the authorities of the University to select students for the current session either by uniformly applying the test of performance in the qualifying examination or by holding an entrance test for all the applicants. We fail to understand what was the difficulty on the part of the University to hold entrance examination for admission in the current session, 1997-98, and what was the reason which impelled it to postpone the same to the next session, 1998-99. No reason is stated in the resolution of the Admission Committee. Our attention has not been drawn to any material which was placed before the Admission Committee to enable it to take such a decision deviating from the established practice of testing all applicants applying an uniform standard of selection. We do not find any good ground to interfere with the judgment of the learned single Judge.

11. Dr. R. G. Padia raised a contention that by the time Writ Petition No. 6951 of 1998 was taken up for hearing some students had already been admitted in some of the departments like Psychology and Physics ; they have been pursuing their studies since then and it will not be just and proper to cancel their admission at this belated stage. It is relevant to mention here that Writ Petition No. 6951 of 1998 was filed on 21st February, 1998 and Writ Petition No. 5936 of 1998 was filed on 12th February, 1998. Considering the submission of Dr. Padia, we are persuaded to take the view that it will be fair and proper to direct that admission of students, who were admitted to any Post-graduate course of the University before the date of filing of Writ Petition No. 6951 of 1998, will not be disturbed in pursuance of the judgment of the learned single Judge, Sri Ajit Kumar also did not raise any objection to this modification in the impugned judgment.

12. Subject to the above modification, the Judgment/order of the learned single Judge in Writ Petition No. 6951 of 1998 is confirmed. Writ Petition No. 5936 of 1998 is disposed of on similar terms. The special appeal also stands disposed of on the terms aforesaid. Parties will bear their respective costs of these proceedings.