

(1992) 09 AHC CK 0093
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31985 of 1991 and 29184 of 1990, 4138, 27998, 28138, 30389, 31603, 31604, 31605, 31606, 31608, 31612, 31613, 31697, 31720, 31722, 31726, 31783, 31784, 31837, 31838, 31910, 31986, 33321, 33322, 33353, 33355, 33514, 335

Amir Hussain

APPELLANT

Vs

Allahabad Agriculture Institute

RESPONDENT

Date of Decision : 28-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 30(1)

Citation : (1992) 4 AWC 488 Supp

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Markanday Katju, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—In all these writ petitions common questions of law and facts have been raised and as such are being decided by one common judgment. With the consent of the learned Counsel for the parties, Writ Petition No. 31985 of 1991, Amir Husain v. Allahabad Agriculture Institute, Naini, Allahabad has been made the leading case.

2. Being aggrieved by refusal of admission to B. Tech. (Agricultural Engineering) and B. SC. (Agriculture) in the academic year 1990-91 and 1991-92 by Allahabad Agriculture Institute, Naini, Allahabad (hereinafter referred to as the Institute), Petitioners have filed these writ petitions for appropriate relief.

3. The Institute has filed counter affidavit and the Petitioners have filed rejoinder affidavits in reply thereto. I have heard the learned Counsel for the parties and these writ petitions are disposed of accordingly.

4. The Institute, which is a minority institution established by Christians Religious

Minority, imparts education in Agriculture Science. For the academic years 1990-91 and 1991-92 it published the admission policy laying down rules for admission to various courses including B. Tech. (Agricultural Engineering) and B Sc. (Agriculture) providing for entrance test for selecting candidates for admission. Although, in the rules there is no reservation of seats in favour of any person, certain classes of candidates are given weightage, which is liable to be added in the entrance test score. The relevant Rules are reproduced below :

(2) To qualify in Entrance Test (E T), a candidate must score at least 40 percent marks in the E.T. aggregate.

(3) There is no reservation of seats, however, following weightage will be added in the E.T. score.

(i) Old student 20 percent (ii) Staff Ward 20 percent (iii) Church sponsored 20 percent (iv) SC/ST 20 percent (v) Government sponsored 10 percent (vi) Girls Candidate 10 percent (vii) Alumni Ward 5 percent (4) A single merit list based on the performance in E.T. will be prepared.

(5) A candidate will be considered for only one weightage.

(6) Weightage as given above will be added to the E.T. score only when candidate has qualified in the Entrance Test.

(7) Candidates against whom disciplinary/Police action has been taken will not be considered for admission.

(8) No candidate shall be admitted if he/she has not qualified in the Entrance Test, however for admission in B. Sc. Ag. M. Sc. Ag. Staff Wards and old students are exempted from Entrance Test provided they have passed the qualifying examination in at least second Division. Also for admission in M. Sc. Ag. Engg. Old students and staff wards are exempted from E.T. provided they have passed the qualifying examination in at least first division for admission in Intermediate Agriculture Staff wards are exempted from Entrance Test provided they have passed High School Examination in at least second division.

(9) There is no reservation of seats, however, only those seats which are vacant after admitting old students, and staff wards, shall be made available to candidates of other categories.

(10) No candidate, other than staff ward and old students, shall be admitted in any course listed in D (1) if he/she has not qualified in the Entrance Test.

5. By these writ petitions Petitioners have challenged the admission policy/rules of the Institute so far as they provide for grant of weightage to certain persons In this connection learned Counsel for the Petitioners have made four submissions namely, (i) weightage has been given to non-Christians students on account of which admissions of non-Christian students have been made not on merit ; (ii) giving of weightage is arbitrary and discriminatory and as such is violative of Article 14 of the Constitution ; (iii) there is no criteria laid down for

sponsorship for selecting candidates from various groups in whose favour provision for weightage has been made ; and (iv) on account of the policy of weightage more than 50% admissions have been made on the basis of reservation.

6. Recently the Supreme Court in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, while dealing with the cases relating to admission In the Institute has laid down that this institute is a minority institution established by Christians Religious Minority and such institutions can prefer their community candidates to maintain the minority Character. It was further held that such institutions cannot reserve more than 50% of the annual admission for the members of the minority community. The position as summarised by the Supreme Court in paragraph 102 of the judgment in the above case of *St. Stephen College* is reproduced below :

In the light of these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent of the annual admission. The minority institutions shall make available at least fifty per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

It is, thus clear that the Institute can make reservation in favour of the Christian candidates only, as they belong to the religion which has established it. Although, it is mentioned in Rule 3 of the reservation policy, which has been reproduced hereinbefore, that there is no reservation of seat but weightage ranging from 5 to 20 per cent has been given to the students of various classes mentioned in that Rule. Due to the operation of the weightage clause, seats for all practical purposes have been reserved in favour of those candidates. In this connection it may be mentioned that the total marks for all subjects for the entrance test are 400, 20 percent of which will be 80. The students belonging to the four categories, namely, old students staff wards, Church sponsored and SC/ST will be given 80 extra marks, which will be added to their score of entrance test. Similarly, the candidates, who have been sponsored by the Government and the girls, who have been awarded weightage of 10% are entitled to 40 extra marks which are added to their grand total. The candidates belonging to alumni wards will however, have the weightage of .5% only. In the entrance test where the competition for admission to the technical courses like B. Tech. (Agricultural Engineering) and B. Sc. (Agriculture) is intense, giving of weightage to certain candidates results in partial reservation in their favour, with the result admission is denied to meritorious candidates. Addition of 40 & 80 marks to the marks

obtained by a candidate in the entrance test, which is of 400 marks only, almost ensures admission to such candidate. Illustrations have been given by the Petitioners in various writ petitions and it has also been demonstrated by the chart sub-mitted by them that although Petitioners, who have secured much more marks have been refused admission but those, who have less marks secured than them, have been granted admission due to the weightage given to them. Weightage is nothing but a form of reservations in favour of certain persons. When competition for admission is intense, addition of only few marks to the marks obtained by a candidate works wonder as it almost guarantees admission.

7. The reservation by the minority institutions can only be made in favour of the minority, which has established the institution. For admission to various courses in the institute, it was open to the Institute to make reservation in favour of Christian students only. Reservation in any form and to any extent in favour of non-Christian students by the Institute cannot be sustained, and is liable to be quashed. Reservation thus made by the Institute in the form of weightage to candidates other than Christians has to be set-aside.

8. Second and third submissions also have merit. Supreme Court in *State of Rajasthan v. Dr. Ashok Kumar Gupta* AIR 1989 SC 1777, has struck down the weightage of 5% marks for admission to the Post Graduate course in the Medical College on the ground of violation of Article 14 of the Constitution. Relevant passage from this decision of the Supreme Court is reproduced below :

Now it has to be realized that the aggregate of marks for all subjects put together is 2750. 5% of these marks would work out to 137.5 marks. In the result a candidate from the same college will have an advantage of 137.5 marks over candidates from other Colleges. In Medical course where there is intense competition and candidates run neck to neck so often with a difference of a mark or two, a difference of 137.5 marks by way of College Wise institutional preference would virtually make a mockery of the merit criteria.

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The fortunes of the candidates would thus undergo a sea change. Those who are more meritorious having secured more aggregate marks than others would not get admission to PG courses any where in Rajasthan, whereas those with lesser merits would get admission by reason of the 5% Collegewise preference.

This analysis exposes the extremely unfair and unjust impact of the impugned rule. This factor coupled with the four factors highlighted earlier leave no room for doubt that while on the face of it the impugned rule appears to extend or accord equal treatment of 5% weightage to the students of each of the five Medical Colleges, in actual operation it brings about oppressive and obnoxious inequality. Once the veil of "apparent" equality is pierced, the ugly inequality stares one in the eyes which are opened to the offensive "reality". Such being the position the constitutional validity of the impugned rule cannot be sustained. It has to be buried unceremoniously as unconstitutional being violative of Article

14 of the Constitution of India.

9. learned Counsel for the Institute has, on the other hand, relied upon the decision of the Supreme Court in the case of *Dr. Snehlata Patnaik v. State of Orissa*. 1992 ACJ 587, in which the Supreme Court recommended 5% weightage in favour of doctors, who have worked in rural areas for five years or more for admission to Post Graduate Course in Medical Colleges. This was found necessary by the Court so as to give incentives to the doctors to work in rural areas. As is clear from the perusal of the judgment itself observations of the Supreme Court have to be confined to the fact of that case cannot be taken to be the law laid down by it for general applicability for admission to technical courses in various institutions.

10. It is also true that no criteria has been laid down for selecting candidates from a particular group/class for giving of weightage. Even in those cases where sponsorship and giving of weightage can be justified on merit, there has to be fair and reasonable criteria laid down for selecting candidates from a particular class for giving of weightage. In the instant case no criteria has been laid down by the Institute and it has been left to the sweet will of the Government and the Institute to select any candidate irrespective of merit for giving of weightage. Such thing is not permissible under law being arbitrary. In *Sumang Gupta v. State of J. & K.* AIR SC 1235, Supreme Court has held that for selecting candidates for nominations to various seats reserved in Medical Colleges, it is incumbent on the State Government to lay down criteria on the basis of which it can exercise discretion for sponsoring a candidate for admission. Relevant extract from the said judgment is reproduced below :

In this age of reason, all law must measure up to that standard, and necessarily so also must all executive acts. Viewed in this contest, the claim of the State Government in these cases that the nature of the objective and the means adopted to serve it entitle it legitimately to vest in itself an absolute power in choosing candidates for nomination cannot be allowed to prevail, it is incumbent on the State Government to, adopt a criterion or restrict its power by reference to norms which while designed to achieve its object, nevertheless confine the flow of that power within constitutional limits.

We are not convinced that an adequate system of standards cannot be devised for that propose. Tested on the touch stone of our constitutional values, the content of the power assumed by it must, in our opinion, be declared invalid.

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Until a policy is so formulated and adopted and concrete criteria are embodied in the procedure to be selected, we direct that nominations be made by following the procedure of selecting candidates strictly on the basis of merit, the candidates nominated being those, in order of merit, immediately next below the candidates selected for admission to the Medical Colleges of the home State.

11. The giving of weightage to certain candidates results in discrimination and works unfairly against other candidates. It amounts to violation of Article 14 of the Constitution. That apart, the provision for weightage without laying down criteria for selecting candidates for giving of weightage from a particular class is absolutely arbitrary and is violative of Article 14 of the Constitution. The second and third submissions of the learned Counsel for the Petitioners are as such, liable to be accepted.

12. The last submission of the learned Counsel for the Petitioners has, however, got to be rejected. It is true that in the chart submitted by the Institute, it has been mentioned that out of the fifty admissions made to B. Tech. (Agricultural Engineering), 28 candidates have been admitted on the basis of weightage and only 22 candidates have been given admission on merit. As observed by the Supreme Court in the case of St Stephen College (supra) admission in minority institution up to at least 50% has to be on merit. Admitting 22 out of 50 students on merit is certainly less than 50% but no interference is called, for, because, as pointed out by the learned Counsel for the Institute, Institute has already admitted 19 more candidates on the basis of the interim orders passed by this Court. That apart, 4 students have also been admitted, who were within first fifty according to the merit list, though not given admission earlier. In this manner learned Counsel submitted that in fact the admissions which have been made are 73 and admission of 28 candidates on the basis of reservation/weightage is certainly less than 50%. In view of these circumstances, it is not fair to declare the admission of 28 candidates on the basis of weightage as unjustified and illegal.

13. learned Counsel for the Institute has raised an objection that the Petitioners have not impleaded as the parties to their writ petitions all those students, who have been admitted by the Institute, although they have secured lesser marks than the Petitioners. On this basis, it has been argued that these writ petitions are liable to be dismissed. It is not possible to agree with the learned Counsel. As the Petitioners have been refused admission under an invalid policy of weightage adopted by, the Institute, the Institute is bound to admit them even if more seats are required to be created for admitting the Petitioners and in that connection reference may be made to the decisions of the Supreme Court in the cases of Deepak Sibal Vs. Punjab University and Another, and Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, In the case of Deepak Sibal (supra), Supreme Court, without setting aside the admission of those, who were admitted under the rule, which was declared to be discriminatory, directed the institution to admit the Appellants against the seats, which are to be created in addition to the normal intake of students in the college. Para-graph 32 of the said judgment, being relevant is reproduced below :

For the reasons aforesaid, the judgment of the High Court is set aside and the impugned rule for admission in the evening classes is struck down as discriminatory and violative of Article 14 of the Constitution and accordingly

invalid. We, however, make it clear that the striking down of the impugned rule shall not, in any manner whatsoever, disturb the admissions already made for the session 1988-89. The Respondents are directed to admit both the Appellants in the second semester which has commenced from January, 1989 and shall allow them to complete the Three-Year LL B. Degree Course, if not otherwise ineligible on the ground of unsatisfactory academic performance. As was directed by this Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , the seats allocated to the Appellants will be in addition to the normal intake of students in the college.

Similarly in the case of *Punjab Engineering College (supra)*. Supreme Court directed that the admission to the 16 additional vacancies for the academic year 1983-84 shall be made in accordance with the merit on the basis of the lists which were prepared for the academic year 1982-83.

14. On 22-5-1992 Sri Lalji Sinha, Advocate, learned Counsel for the Institute gave an undertaking before this Court to the effect that in the event of success of the writ petitions, the Respondent Institute shall provide the Petitioners admission in the academic year 1992-93. This has been incorporated in the order dated 22-5-1992 in writ petition No. 755 of 1992 which is reproduced below :

Heard learned Counsel for the Petitioner and Sri Lalji Sinha, Advocate, representing the Respondent. Sri Lalji Sinha, Advocate states that this case and other connected writ petitions may be heard finally on 7-7-1992 He further gave an undertaking that in the event of success of the writ petitions, the Respondent shall provide the Petitioners admission in 1992-93 session and they will be accommodated in that session.

15. As the Petitioners have been refused admission on account of the impact of the impugned admission rule providing for weightage due to which those candidates, who have secured less marks than the Petitioners, have been granted admission by the Institute, and that rule providing for weightage has been held to be bad and illegal, those Petitioners, who have secured more marks than any of the non-Christian candidates, who has been admitted, are entitled to be admitted to the respective courses for which they have applied and in connection with which they have appeared in the entrance test, as per undertaking given by the learned Counsel for the Institute. Other Petitioners, who could not secure more marks than any of the non-Christian candidates, who has been admitted, are not entitled to admission

16. All the writ petitions are allowed. The impugned admission rule, so far as it provides for weightage, is quashed. The Institute is directed to admit, in the academic year 1992-93, those Petitioners, who have secured more marks than any of the non-Christian candidates who has been admitted, to their respective courses for which they have applied and in connection with which they have appeared in the entrance test.

17. It is also made clear that in those cases where the Petitioners have already been admitted by the Institute to various courses in pursuance of the interim orders passed by this Court they will be permitted to continue their studies in those courses in accordance with law and their provisional admission will be treated as regular admission in the academic years in which they were admitted in pursuance of the interim orders passed by this Court.