

(1992) 12 AHC CK 0046
In the Allahabad High Court
Case No : Special Appeal No. 446 of 1992

Anuj Mathur and Others

APPELLANT

Vs

Allahabad Agricultural Institute and Others

RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Citation : (1993) 1 AWC 467 : (1993) 1 UPLBEC 740

Hon'ble Judges : M.K. Mukherjee, C.J.;Sudhir Narain, J

Bench : Division Bench

Advocate : K. Ajit and Siddhartha Varma, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This special appeal is against the order of the learned Judge whereby the claim of the Appellants to be admitted in B.Sc., Agriculture and B. Tech. Engineering without entrance test was rejected.

2. The facts in brief are that Allahabad Agricultural Institute, Naini, Allahabad (hereinafter referred to as the Institute) is a Christian minority Educational Institution. It imparts education in Inter Agriculture, Inter Home-Science, Indian Dairy Diploma, B.Sc. in Agriculture, B.Sc. Home Economics, B. Tech. Agriculture Engineering. M.Sc. Agriculture and M.Sc. in Agriculture Engineering. Each year the Institute issues prospectus providing for the eligibility for admission to the students to various courses.

3. The Appellants applied for admission to Intermediate Agriculture in the academic year 1990-91. They appeared in the entrance test for admission in Intermediate Agriculture and having passed the test they were admitted to Intermediate Agriculture course of the Institute. The Appellants claim to have passed Intermediate Agriculture and sought admission to B.Sc. Agriculture without any entrance test for the year 1992-93. Their claim is based on the fact that at the time of their admission to Intermediate Agriculture course in the Institute, the admission to B.Sc. Agriculture was given to the students of the

Institute who had passed Intermediate Agriculture without any test. It is relevant to extract the relevant clauses of the prospectus relating to admission to B.Sc., Agriculture for the years 1990-91, 1991-92 and 1992-93.

Prospectus 1990-91

4. There was exemption from the entrance test to the told students seeking admission to B.Sc. Agriculture, It provided as follows:

Old students seeking admission to B.Sc. Agriculture are exempted from the entrance test provided disciplinary action has not been taken against them.

Prospectus 1991-92

In the prospectus for the year 1991-92, admission policy for admission in B.Sc. Agriculture was changed to the extent that old students were exempted from entrance test provided they had passed the qualifying examination in at least II division, Clause 8 of the admission policy provided as follows:

(8) No candidate shall be admitted if he/she has not qualified in the Entrance Test, however, for admission in B.Sc., Agriculture, M.Sc. Agriculture, Staff Wards and Old students are exempted from entrance test provided they have passed qualifying examination in at least second division.

Prospectus 1992-93

In the prospectus of the year 1992-93 the admission policy to the course of B.Sc. Agriculture, B. Tech. Agriculture Engineering were further changed. It provided that admission to these courses shall be only on the basis of Entrance Test. The relevant clause is reproduced below:

Admission to the Degree of Bachelor of Science in Agriculture shall be open to any candidate who has passed the Intermediate examination in Agriculture or Science (Physics, Chemistry and Mathematics/Biology) only of the Board of High School and Intermediate Education U.P. or any other equivalent examination recognised by the Allahabad University. All eligible candidates are required to take E.T. for admission.

5. It is important to note that in each of the prospectus a heading of "Important Informations" was given:

(1) You can apply before you sit in the qualifying examination and or before the result of the qualifying examination is announced.

(2) You will be considered for admission on the basis of entrance test merit.

Further notes No. 2 was added which is reproduced:

All rules given in the Prospectus are in force until withdrawn. The Institute authorities reserve the right to alter, amend or add to the rules given in this prospectus. New rules, as well as the old, will be binding on all students.

From the various clauses of the prospectuses quoted above, it is clear that the life of prospectus was only for one year and secondly rules given in the prospectus was to remain in force unless withdrawn.

6. The learned Counsel for the Appellants urged that when the Appellants were submitted to the course of Intermediate Agriculture in the institute, the relevant prospectus governing the rules for them was prospectus of the year 1990-91. It laid down the rules regarding admission to B.Sc. Agriculture and at that time all the Appellants had taken admission in the Intermediate Agriculture with a view that in case they pass Intermediate Agriculture in the Institute they will be entitled to be admitted without any entrance test "n B.Sc Agriculture. The rules which were prescribed in the prospectus of 1990-91 amounted to a promise to the Appellants and having changed the prospectus in the year 1992-93 according to which they can not be admitted in B.Sc Agriculture without entrance test, their rights have been affected. The Institute is bound to admit the Appellants on the principle of promissory estoppel. He placed reliance on *Suresh Pal and Others Vs. State of Haryana and Others*, . In this case certain students joined certificate course in physical education of an Institute recognised by the Government of Harvana. While students had received instructions the Haryana Government derecognised the certificate course with the result those students who had already joined the course and had obtained certificate, their certificates became useless for obtaining service as Physical Training Instructor in Haryana. The Supreme Court held that derecognition of the certificate course after the students had completed the course will be unjust as at the time of joining the Government had recognised such course. The facts of the present case are different. The Appellants had not joined the B.Sc. Agriculture in the year 1990-91. The prospectus of the year 1992-93 came into force with effect from April, 1992 before the Appellants had appeared in the Intermediate (Agriculture) examination.

7. The Appellants further placed reliance on *Union of India (UOI) Vs. J.K. Industries Ltd.*, . Wherein the Court took the view that the principles of promissory estoppel binds Government while exercising its powers conferred on it by a statute or under the powers of subordinate legislation and it cannot act contrary to the terms of representation it had earlier made. This principle of promissory estoppel is not applicable to the facts of the present case, because

(1) The prospectus was issued every year. The admission policy with regard to a particular course was relevant only for that year. A student of the Institute who had passed Intermediate Agriculture in the year 1990-91 was entitled to be admitted without entrance test to B.Sc. Agriculture of the Institute but the students who had been admitted for Intermediate course in the year 1990-91 could not claim the right to be admitted on the same prospectus after two years. The life of prospectus was only for one year. The prospectus made it very clear that all the rules given in that prospectus were to remain in force until withdrawn and authorities of Institute reserved the right to alter or amend or add to the

rules given in the prospectus, it is not the case of the Appellants that any change was made regarding the course of intermediate Agriculture in the year 1990-91 so as to effect their rights in pursuing their study in the Intermediate Agriculture.

(2) The concept of promissory estoppel involves a representation by a person that something will be done in future and on such representation being made the party alters his position relying on such promise. There is nothing in the prospectus of 1990-91 that those students who were to be admitted to Intermediate Agriculture in the year 1990-91 shall be admitted in B.Sc. Agriculture after they had passed Intermediate examination without entrance test. The prospectus only provided the eligibility for admission to the course in that particular year. The Institute was issuing prospectus every year and it reserved the right to alter or amend the rules given in the prospectus. Moreover in the year 1991-92 there was change in the admission policy in B.Sc. Agriculture. In as much as it restricted the right of admission to such old students who had secured second division marks in the Intermediate examination. The Appellants could have known that policy was being changed and that could be further changed in the next year i.e. 1992-93.

In *R.K. Khandelwal v. State of U.P.* 1981 U.P. LB Act 494, the Supreme Court held that certain practice for admission in particular course, if was being followed for over many years and thereafter such practice was changed that would not amount to any injury to legal rights.

(3) In the counter affidavit, it was stated that total number of seats in B.Sc. Agriculture Engineering were 80. Fifty per cent of these seats i.e. 40 seats were reserved for Christian students and only 40 seats were left for general candidates. According to the Appellants' case, 39 students have passed Intermediate Agriculture Examination from the Institute and are old students and as such they will be entitled to claim admission in B.Sc. Agriculture Engineering class without any entrance test. If this contention of the Appellants is accepted, there will be complete reservation in B.Sc. Agriculture Engineering class and only one seat will be left open for general candidate all over the country. Likewise in B. Tech. Agriculture Engineering Class, there will be reservation of 50% plus 25 per cent i.e. 75 per cent will be reserved and 12 seats are left open for general candidates all over the country.

8. The principle of estoppel is not applicable to enforce a promise which is unconstitutional or prohibited by law.

9. In *State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others*, , the Supreme Court held constitutional an ordinance providing for addition of 5 per cent of marks to the students of the college from where they had passed examination, on the ground that such weightage to the old students of college, in actual operation brought about oppressive and obnoxious inequality.

10. A Division Bench of this Court in *Dr. Rashmi Kant Misra Vs. G.S.V.M. Medical College, Kanpur and Others*, , held that the admission to the courses at medical

colleges should be on merits and the admission to the courses otherwise than on merits will be invalid.

11. The Institute is a Christian minority educational institution. It has a right to reserve certain seats for Christian students. The Supreme Court in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* , considering the claim of the minority institutions took the view that a balance should be struck between the individual right and the minority interest and held that the minority institutions should make available at least 50 per cent of seats of annual admission to the members of community other than minority community. It observed as follows:

The State may regulate intake in this category with due regard to the need of the community in the area which the Institution intended to serve but in no case such intake shall exceed fifty per cent of the annual admission. The minority institution shall make available at least fifty per cent of the annual admission to the members of the communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit

12. The Supreme Court in particular considered the case of this Institute and made the following observation:

St. Stephen's college and Allahabad Agricultural Institute are not entitled to claim any preferential right or reservation in favour of the students of Christian Community as they are getting grant-in-aid and as such it is not necessary to determine as to what will be the reasonable percentage for giving preference/reservation to minorities.

13. The learned Counsel appearing on behalf of the Institute submitted that in view of the Supreme Court decision, the prospectus for the year 1992-93 was changed and at present fifty per cent seats are reserved for Christian students and fifty percent seats are available to the general candidates and admission of such general candidates are done purely on the basis of merits. The prospectus issued by the Institute in the year 1992-93 is in the spirit of the decision of the Supreme Court. The doctrine of promissory estoppel has been held to be neither in the realm of contract nor in the realm of estoppel. Its object has been enumerated by the Supreme Court in *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, . as follows:

The Promissory estoppel can not be used compelling the government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public to make. The doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or the public authority, for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it.

The Court on satisfaction would not, in those circumstances raise the equity in favour of the person to whom a promise or representation is made and enforce the promise or representation against the Government or the public authority.

14. The Institute is justified in admitting the students to B.Sc. Agriculture and B. Tech. Agriculture Engineering course on the basis of entrance test. It can not be directed to adopt a procedure for admission which will be against law as well as inequitable.

15. Lastly it was urged that the Appellants received education in Intermediate (Agriculture) and were not equal to those who had passed Intermediate (Science) with the result they were unable to compete with those students in the Entrance Test. Their grievance is that they were taught elementary science in Intermediate (Agriculture) and those who had passed Intermediate (Science) in colleges recognised by U.P. Intermediate Examination Board, were taught advance Science. In the counter affidavit filed on behalf of the Institution this assertion of the Appellants has been denied. The entrance test has already taken place and some of the Appellants also appeared in entrance test and nothing was shown that question asked in the entrance test papers were not within their prescribed course Besides, such claim will not invalidate the entrance test which had already taken place.

16. In the result, the special appeal fails and is dismissed.

17. Parties shall, however, bear their own costs.