

(1989) 09 KAR CK 0052
In the Karnataka High Court
Case No : Writ Petition No. 5550 of 1987

Archana

APPELLANT

Vs

University of Mysore

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Karnataka Medical Colleges (Selection of Candidates for Admission to First MBBS)
Rules, 1987 — Rule 4 (2) (b), 9 (4)

Citation : (1990) ILR (Kar) 522

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : N. Santosh Hegde, for A.M. Farooq, for the Appellant; N. Devadas, for R-1, D.R. Rajasekharappa, for R-2 and R-3 and P.L. Kumara Swamy, for R-4, for the Respondent

Judgement

K.A. Swami, J.—On the previous date of hearing this Writ Petition was heard. However it came to be adjourned on the request of the learned Counsel for the petitioner to enable the petitioner to place on record the developments that have taken place subsequent to filing of the petition. Accordingly, further hearing of the petition was adjourned by the order dated 8-9-1989. Consequently, the petitioner has filed the additional statement bringing to the notice of the Court the hardship that would be caused to her in case her admission to the Government Medical College, Mysore is cancelled and she is transferred to other University. On the additional statement of facts filed by the petitioner the respondents are also heard.

2. The petitioner secured less than 50% marks in PUC in Physics subject. Therefore she continued her studies for B.Sc., she passed B.Sc., with C.B.Z. subjects securing 74.1% marks and scoring 50% in each of the subjects i.e., C.B.Z. Thereafter, she sought for admission to first M.B.B.S. course under the Karnataka Medical Colleges (Selection of Candidates for Admission to I M.B.B.S.) Rules, 1985 hereinafter referred to as the Rules. The Selection Committee selected her under the quota reserved for B.Sc., candidates and allotted her a

seat in Government Medical College, Mysore. The selection was made in August, 1986. Pursuant to that she joined the Government Medical College, Mysore in the month of September, 1986. Immediately nothing was told about her ineligibility for being admitted to one of the Medical Colleges under the University of Mysore. However, subsequently it was pointed out by the Registrar of the University that though the petitioner had secured 74.1% in B.Sc., but she had secured 37% of marks in Physics at P.U.C., hence she is not eligible for admission to I M.B.B.S. Course. This was communicated to the Principal of the College by the communication dated 2nd January 1987 (Annexure-D) by the Registrar of University of Mysore. Thereafter the Principal of the College by his communication dated 16th January 1987 intimated the Member Secretary, Selection Committee for Admission to I M.B.B.S. course that the Registrar of the University of Mysore in his letter (Annexure-D) has stated that the petitioner has secured 74.1% in B.Sc., but secured 37% of marks in Physics at PUC., therefore, she is not eligible for admission to I M.B.B.S. Course. Hence she requested the Member-Secretary to intimate him the action taken in this regard. A copy of the said letter was also sent to the petitioner. Therefore the petitioner addressed a letter to the Director, Selection Committee for admission to I M.B.B.S. course as per Annexure-F stating that her selection for admission was made only on the degree marks and still the University of Mysore is reluctant to issue eligibility certificate. This has caused great anxiety. The Member-Secretary, Selection Committee pursuant to the communication addressed by the Principal as per Annexure-E Intimated the petitioner and the Principal by the endorsement dated 3-4-1987, as per Annexure-G. The said communication reads thus:

ENDORSEMENT

Sub: Admission of Kum. M.C. Archana to I MBBS Course at Government Medical College, Mysore during 1986-87,

Ref: (1) Her representation dated 18-3-1987 to the Director of Medical Education, Bangalore.

(2) Government Order No. HFW 66 MSF 85, Bangalore, dated 22-8-1986.

With reference to her representation cited at reference (1) above Kum. M.C. Archana is hereby informed that she was selected by the Selection Committee as per Rule 9(4) which is as under:

"(4) In case of applicants applying for seats reserved under Clause (b) of Sub-rule (2) of Rule 4 (for B.Sc., Graduates), the percentage of marks secured in the qualifying optional subjects in the final year B.Sc., examination shall be taken into consideration to determine the merit. In case the marks secured by two or more candidates in the optional subjects are equal, the inter se merit among such applicants shall be determined by taking into consideration the marks secured by them in all the examinations of three years B.Sc. degree. However those selected and allotted to different colleges are to satisfy the regulations of the University concerned failing which the candidate automatically forfeits his

seat."

Thus, from the aforesaid endorsement, it is clear that the applicants applying for seats reserved under Clause (b) of Sub-rule (2) of Rule 4 (for B.Sc., graduates), the percentage of marks secured in the qualifying optional subjects in the final year B.Sc., examination shall be taken into consideration to determine the merit. However, those selected and allotted to different colleges are required to satisfy the regulations of the University concerned failing which the candidate automatically forfeits his seat. It is not in dispute that the regulation of the Mysore University requires that a candidate seeking admission after completing the B.Sc., under the seats reserved for B.Sc., is also required either to have studied Physics as one of the subjects in B.Sc., and secured 50% or should have secured 50% in Physics in the PUC examination. This Rule of the Mysore University came up for consideration before the Supreme Court in *A. Sudha Vs. University of Mysore and Another*, , the Supreme Court upheld the decision of this Court and held that a candidate who had not secured 50% of marks in Physics either at the PUC or at B.Sc., level was not eligible to seek admission to I year M.B.B.S. course under the Rules. Therefore, as per the decision of the Supreme Court in *Sudha's* case interpreting the very Rule in question, the decision of the Selection Committee cannot be held to suffer from any Illegality or infirmity.

3. But the next question for consideration is whether after a lapse of 3 years, is it just and appropriate to cancel the admission of the petitioner. The learned Counsel for the petitioner placed reliance on the very decision of the Supreme Court in *A. Sudha's* case and submitted that the Supreme Court even after holding that the admission was wrongly made never the less directed the University to continue the admission of the petitioner therein, having regard to the facts and circumstances of that case. Therefore in the instant case it is submitted that the petitioner having lost 3 years in the I year MBBS course and she having been permitted to appear for the Examination and she has already appeared for the 1 year MBBS and the results of the same are not, yet published and further she cannot also be transferred to Bangalore University and in that event, she will lose all the three years. Hence it is submitted that in the interest of justice and on taking into consideration the facts and circumstances of the case and number of years lost the petitioner may be permitted to continue in the Mysore University as has been done In the case of *A. Sudha* by the Supreme Court.

4. On the contrary, it is contended on behalf of the respondents that this Court in similar circumstances has refused to continue the admission that continuation of the admission of the petitioner in the Mysore University would be contrary to the Regulations of the Mysore University and such a thing should not be allowed to continue. The learned Counsel for the Mysore University also placed reliance on a decision of this Court in *KUM. S. VIJAYALAKSHMI v. UNIVERSITY OF MYSORE AND ANR.*, W.P.No.1270 of 1987 DD 4-11-1987 and submitted that in the light of

the decision In S. Vjyalakshmi's case the petitioner cannot at all be continued in the Mysore University. On the contrary, the learned Counsel for the petitioner placed reliance on another decision of this Court in W.P.No. 21567/1986 dated 3rd June 1987, C. Nandish v. University of Mysore wherein also same Rule was considered and following the decision of the Supreme Court in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, , the petitioner therein was declared to be eligible to continue the studies In M.B.B.S. Course.

5. The question as to whether in a given case the decision arrived at in the case should be given effect to depends upon the facts and circumstances of each case and the hardship that would be caused to the party affected by the order. There cannot be any strait-jacket formula or rule in this regard. In a given case, it may be possible for the Court to grant even after declaring that the admission does not accord to the Rules governing therein, but nevertheless on taking Into consideration of the hardship that would be caused to a student the Court may in exercise of its equity jurisdiction, direct the authorities to continue the student on the roll and not to cancel the admission. Therefore, there cannot be any precedent in such matters. But one thing is clear and it is well established that exercise of such discretion must be judicial and it should not be arbitrary. It all depends upon the facts and circumstances of each case.

6. In the case of A. Sudha the Supreme Court while upholding the decision of this Court observed thus:

17. This Court was, therefore, of the view that as the students were admitted to the Colleges for the sake of capitation fee in some cases, they should not be penalised and should be allowed to continue their studies in the respective Engineering Colleges in which they were granted admission.

18. The facts of the instant case are, more or less, similar to the Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, It has been already noticed that on the appellant's query, the Principal of the Institute by his letter dated February 26, 1986 informed her that she was eligible for admission in the First Year MBBS Course. It was, inter alia, stated in the letter that the candidate should have obtained 50% marks in the optional subjects in the B.Sc. Examination. There is no dispute that the appellant had obtained 54% marks in those subjects in the B.Sc. Examination. The appellant was, therefore, quite innocent and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS Course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS Course. Prima facie, it was the fault of the Principal of the Institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the MBBS Course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS Course for the academic year 1985-86, which to some extent suffer

from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur's case (supra) while we dismiss the appeal we direct that the appellant shall be allowed to prosecute her studies in MBBS Course, and that her result for the First Year MBBS Examination be declared within two weeks from date."

7. The case of A. Sudha and the case of the petitioner both stand on the same footing. In fact, at some stage of the arguments, it was brought to the notice of the Court that both the cases were being posted together for hearing before this Court and somehow subsequently the case of this petitioner came to be detached. Consequently it lagged behind. If only the case of the petitioner as it used to come up for hearing along with A. Sudha's case, had continued to be posted along with that case, it would have been heard along with the case of A. Sudha, and the same fate would have followed as ordered by the Supreme Court.

8. The Selection Committee was also required to be very careful in the matter while allotting the students to various Universities. They were required to find out as to whether under the Regulations of a particular University, the applicant allotted to that University was eligible. In the State of Karnataka, each University is having its own Regulations. Apart from the Rules framed by the State Government for selection to I MBBS Course, each University has framed its own Regulations for admission to First Year M.B.B.S. Therefore, the applicant admitted to a particular University is also required to satisfy the Regulations of that University. That being the position, the Selection Committee after selecting the Candidates under the Rules, while allotting them to each Colleges under different Universities is required to verify as to whether the candidate is eligible under the Regulations of that University. If only the Selection Committee had been careful and verified the Regulations of Mysore University governing admissions, to First Year MBBS, the situation of the nature which has arisen in the instant case, would not have arisen and the petitioner would not have been put to hardship. Under these circumstances, when it was the responsibility of the Selection Committee to allot the candidates, to such of the Universities the Regulations of which permitted admission of such candidates to 1st year MBBS. The candidate, who is selected for admission to 1st MBBS by the Selection Committee and it is the Selection Committee which allots him to a particular college, and pursuant to it, he joins that College, cannot be told after he/she has undergone studies for several months that he/she is eligible for continuing his/her studies in the University to which the College is affiliated. In addition to this, in the instant case 3 years have elapsed. The petitioner has been permitted to appear for the 1st year examination. She has also appeared for the 1st year MBBS the results of which are not yet announced. If at this stage, she is told that her allotment to the Mysore University is not in accordance with the Regulations of the Mysore University, and therefore, she has to be allotted to another University, it would cause great hardship to her and she would lose 3 years. Not only she loses 3 years, she will be required to undergo another 11/2 years to complete the I MBBS Course in another University. The petitioner is not

responsible for this situation. It is the Selection Committee, which failed "to verify these facts and allotted the petitioner to the University of Mysore without due verification of the Regulations of that University governing admission to I MBBS. Therefore, I am of the view that the observations made in Rajendra Prasad v. Karnataka University and also the Observations made in A. Sudha v. University of Mysore are attracted to this case also.

9. The contention of the learned Counsel for the University that the concession shown by the Supreme Court in A. Sudha's case and Rajendra Prasad's case cannot be held to be a binding precedent; therefore this Court cannot after declaring that the allotment is bad in law permit the petitioner to continue her studies under the University of Mysore. Just as the Supreme Court, this Court also in exercise of its jurisdiction under Article 226 of the Constitution can do equity. Therefore the decision of the Supreme Court in matters of equity if apply to the facts of a particular case, becomes a binding precedent. No doubt granting or refusing to grant relief on the grounds of equity depends upon the facts and circumstances of each case. But, if the facts are similar, the relief granted by the Supreme Court in a similar case shall be taken to govern the case and judicial discipline requires that it should be followed and applied. The petitioner has not taken undue advantage of the situation, she has not withheld necessary facts either from the Selection Committee or from the Court.

10. Hence on taking into consideration of the facts and circumstances of the case and the additional statement of facts filed by the petitioner, explaining the hardship that would be caused to her if admission is cancelled at this stage, I am of the view that even though the Selection Committee was not right in allotting a seat to the petitioner in the Government Medical College, Mysore, the petitioner is entitled to the reliefs sought for In the petition.

11. Accordingly, this Writ Petition is disposed of in the following terms:

Irrespective of the endorsement dated 3rd of April, 1987 bearing No. MCS/110/86-87, Annexure-G and also the letter dated 2nd January, 1987 bearing No. R8/700/ 86-87 of the Registrar of the University of Mysore produced as Annexure-D, the respondents are directed to continue the petitioner in the Government Medical College, Mysore and permit her to complete M.B.B.S. course. The respondents are also directed to announce the results of the examination of the First Year M.B.B.S. course pertaining to the petitioner within 4 weeks from the date of receipt of this order. In the meanwhile, the respondents are directed to permit the petitioner to attend the Second Year Classes subject to the result of her 1st year examination, which she has been permitted to write under the orders of this Court.

In the facts and circumstances of the case, there will be no order as to costs.