
(2000) 02 AHC CK 0150
In the Allahabad High Court
Case No : Special Appeal No. 1042 of 1998

Banaras Hindu University and another	APPELLANT
Vs	
Km. Rohini Singh	RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Banaras Hindu University Act, 1915 — Section 18(1), 18(3)
Constitution of India, 1950 — Article 14, 15

Citation : AIR 2000 All 265 : (2000) 2 AWC 1243 : (2000) 2 UPLBEC 1113

Hon'ble Judges : N.K. Mitra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : V.K. Upadhya, for the Appellant; A. Narayan, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Challenge in the Special Appeal on hand is to the correctness of the judgment dated 23.10.1998 of the learned single Judge whereby the Civil Misc. Writ Petition No. 194 of 1998 instituted by respondent Km. Rohini Singh culminated in being allowed post-fixed with the directions to the appellants to give her admission in the one-year M.Ed, course. The petitioner was also awarded cost quantified at Rs. 2.000.

2. The necessary facts as bear on the controversy Involved in this appeal are that the petitioner-respondent Km. Rohini Singh, took entrance test for admission to one-year M.Ed, course 1997-98, conducted by the appellants. The aforesaid course had seating allocation for 25 students including three supernumerary seats. 50% of the total seats were reserved for Banaras Hindu University students, that is to say, for students who have been admitted through University Entrance Test, B.H.U. and have passed the qualifying examination from the Institute/Faculty/Mahila Mahavidyalay, Banaras Hindu University in the year of the test or one year Immediately preceding the test.

3. Out of 22 regular seats available for admission in M.Ed, course 1997-98, six

fell to the quota of candidates belonging to reserved categories (SC/ST and orthopaedically handicapped) and eight for B.H.U. students. The remainder of the regular seats could be shared by B.H.U. or non-B.H.U. students on the basis of merit. The petitioner respondent admittedly applied for admission as a non-B.H.U. student. Later on however she applied for being treated as a B.H.U. student on the premise that she did her graduation and B.Ed, from an affiliated college--Arya Mahila Degree College, Varanasi. The result of the Entrance Test was declared and by letter dated 8.9.1997, the petitioner- respondent herein was called upon by the Faculty of Education, B.H.U. to present herself with certain documents for verification and confirmation of admission. On 12.9.1997, she presented the required documents on verification whereof she was required to deposit the admission fee of Rs. 223 the fee prescribed for admission of the B.H.U. students which she did. Consequent upon depositing the fee, the petitioner-respondent was accordingly admitted to M.Ed, course 1997-98 on 12.9.1997, in the post- admission stage, a communication dated 15.9.1997 was received on 4.10.1997 by the father of the petitioner the text of which was that the admission of the petitioner-respondent to M.Ed, course had been cancelled. The petitioner-respondent thereupon, made a representation to the Visitor of the University (The President of India, New Delhi) unfolding therein all the relevant facts and simultaneously, she also instituted writ petition No. 36997 of 1997 attended with the observation that the representation filed by her to the Visitor be disposed of expeditiously. The petitioner-respondent received no information as to the fate of the representation and she filed the writ petition from which arises the present special appeal.

4. During the pendency of the writ petition, the petitioner-respondent was intimated by letter dated 15.5.1998 that her representation had been rejected by the Visitor of the University. Then followed the appropriate amendment in the writ petition by which the petitioner respondent canvassed the correctness of the order dated 15.5.1998 rejecting her representation by the Visitor in addition to the validity of the order dated 15.9.1997 rescinding her admission. The petition was resisted by the appellant-University, inter alia, on the premises that the petitioner-respondent was a non-B.H.U. student and that she was wrongly treated and admitted under the quota of B.H.U. students and on detection of the mistake her admission was cancelled ; that since the admission of the petitioner-respondent was owing to inadvertent mistake, she was not entitled to be given an opportunity of hearing before cancellation of her admission.

5. The learned single Judge allowed the writ petition holding that the order of cancellation of petitioner's admission to B.H.U. in M.Ed, course, was vitiated due to the reasons that : firstly, the principles of natural justice were not only flagrantly violated but were thrown to the winds and the petitioner was treated in a most unjustified, arbitrary and capricious manner : secondly, assuming that the petitioner, on account of the mistake of the authorities of University was wrongly admitted to M.Ed, course, her admission could not be cancelled as she was not at fault in bringing about the situation; thirdly, the information Bulletin which

contained the definition of the expression "B.H.U. student", simply contained the parameters of admission not having any statutory sanctity being attributed to them: and lastly, the categorisation of students in B.H.U. and non-B.H.U. categories had been rendered "otiose" in the fact situation of the case.

6. We have had heard Sri V. B. Upadhaya, Senior Advocate, appearing for the appellants and Sri Aditya Narain for the respondents. We express ourselves concurring with the learned single Judge that the impugned order of cancellation of the petitioner's admission to M.Ed, course was vitiated by reason of non-observance of the principles of natural Justice. The view taken by the learned single Judge on this score receives reinforcement not only from the decision referred to in the Judgment under challenge but also from the latest decision of the Apex Court in Basudeo Tiwary Vs. Sido Kanhu University and Others, . Though the case related to public employment, the principle enunciated in it, would apply to the facts of the present case. The question whether the petitioner was admitted contrary to Ordinances and rules owing to any inadvertent mistake on the part of the University authorities or that she was admitted on consideration of her application given for being treated as a B.H.U. student was a question of fact and to arrive at a conclusion one way or the other, an enquiry ought to have been made in consonance with the rules of natural justice. Any conclusion arrived at sans any enquiry would be unjust unfair and unreasonable.

7. We also subscribe to the view of the learned single Judge that the petitioner respondent should not be made to suffer by proxy, i.e., due to the fault, if any, on the part of the appellant. The view taken by the learned single Judge finds support from the decisions of the Supreme Court in Ashok Chandra Singhvi v. University of Jodhpur 1989 (15) RLR 357 ; Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, and Sanatan Gowda v. Behrampur University and others 1993 (3) SC 23. The observations made by the Apex Court in the cases aforesaid support the conclusion arrived at by the learned single Judge that even if the petitioner-respondent was wrongly admitted on account of mistake. If any, on the part of the appellants, such mistake being not attributable to any fault on the part of the respondent herein, her admission could not be cancelled. True, respondent was not a B.H.U. student in the strict sense of the term in which the expression "B.H.U. student" has been defined in clause 16 of the Information Bulletin and the category once Indicated was not liable to be changed but if the appellants treated the respondent as B.H.U. student and admitted her as such, we are not inclined, in the fact situation of the present case, to interfere with the order passed by the learned single Judge even if the Information Bulletin is held to have the complexion of statutory character being an Ordinance framed by the Council in exercise of power u/s 10 read with Sections 18(1) fa) and (3) of the Banaras Hindu University Act. 1915 and Statute 18 (xii) of the Statutes.

8. We are also of the view that the reservation of seats as provided in clause 16 of the Information Bulletin is unconstitutional and violative of the principles laid

down by the Apex Court in Indira Sawhny's case that reservation should not exceed 50%. Clause 16 of the Information Bulletin which provides for reservation of seats is quoted below in so far as it is relevant:

"16 (a). 50% of the total seats shall be reserved for Banaras Hindu University students in each course except in MCA, MBA/MIBA and Ph.D. (Ag.). A B.H.U. student is one who has been admitted through University Entrance Test, B.H.U. and has passed the qualifying examination from the Institute/Faculty/Mahila Mahavidyalaya, Banaras Hindu University in the year of the test or one year immediately preceding the test. However, every such candidate shall be required to appear in the PET and also fulfill the minimum eligibility requirements for appearing in PET.

(b) Seats shall be reserved for Scheduled Castes (15%) and Scheduled Tribes (7.5%) in each course. Reservation of seats for SC/ST candidates will be applicable in case of reservation of 50% seats for B.H.U. students as well. In the event of seats remaining vacant under SC/ST quota for B.H.U. students the same would be filled up by SC/ST candidates from outside B.H.U. Similarly in the event of seats remaining vacant under general category for B.H.U. students as mentioned above they shall be filled up by the other candidates in order of merit.

(c) 10% supernumerary seats in each course except MCA, MBA/MIBA and Ph.D. (Ag.) shall be reserved for sons/daughters of permanent employees of the University in service during the academic session immediately preceding the one (session) for which the PET is held, provided the candidates fulfill the minimum eligibility requirements and appear in the PET.

(d) 3% seats are reserved for O . H . (Orthopaedically Handicapped) candidates, except in M.Sc. (Ag.) and M.P.E., provided they fulfil the minimum eligibility requirements and appear in the PET. Candidates who are O.H. shall be considered under this category only on an approval from the University Medical Board....."

9. In the instant case if reservation in favour of B.H.U. students and SC/ST/O.H. are clubbed together, more than 50% seats would work out to be within the domain of reserved categories irrespective of merits inasmuch as general category students are not entitled to be considered as against the seats allocated for reserved categories whereas the students belonging to the reserved categories are entitled to be considered against seats allocated for non-reserved category students, i.e., non-B.H.U. students. Even otherwise reservation in favour of the students of Banaras Hindu University after excluding those of affiliated colleges is hit by Article 14 of the Constitution in that the classification does not appear to be based on any intelligible differentia inasmuch as syllabus, standard of examination and even the examiners are the same in respect of B.H.U. students and students of affiliated colleges. In Greater Bombay Municipal Corporation v. Thukral Anjali AIR 1089 SC 1 194, classification by way of college-wise institutional preference as provided in Rule 4A of the Rules framed by

Bombay Municipal Corporation and Rule 5 as framed under the Maharashtra Government Resolution dated 18.6.1971 was held to be violative of Article 14 of the Constitution holding as under :

"There is no intelligible differentia for the classification by way of college-wise institutional preference as provided by the impugned rules distinguishing the preferred candidates in respect of each college from those excluded from such classification. By such classification or college-wise institutional preference, merit has been sacrificed, far less it has been preferred. When the University is the same for all the colleges, the syllabus the standard of examination and even the examiners are the same, any preference to candidates to the post-graduate degree course of the same University, except in order of merit, will exclude merit to a great extent affecting the standard of educational institutions."

10. The principle laid down therein, in our opinion, applies on all fours to the facts of the present case. True the appellant University is entitled to identify the sources from which students for admission to its post-graduate classes may be drawn, but it cannot be gainsaid that specification of such source must not violate Article 14 of the Constitution and for that purpose, it is essential that such classification must satisfy the test of reasonable classification and must also have a rational nexus to the object sought to be achieved. Any arbitrary and irrational classification of students for the purpose of admission to postgraduate classes would be hit by Article 14 of the Constitution irrespective of whether the classification has been made in exercise of statutory or non-statutory power ; See Deepak Sibal Vs. Punjab University and Another, , Clause 16 of the Information Bulletin, in our opinion, suffers from hostile discrimination and arbitrariness, both on the ground of excessive reservation and arbitrary discrimination of students of affiliated colleges in the matter of admission to post-graduate classes. Though according to a recent decision in Ahmedabad Municipal Corpn. Another Vs. Nilaybhai R. Thakore and Another, "any reservation whatsoever" is prohibited "with regard to post-graduate and super specialities", institutional preference or reservation, according to earlier decisions of the Supreme Court, is permissible if it is reasonably done within the Constitutional parameters. The scheme of reservation visualised by clause 16 of the Information Bulletin is hit by Article 15 of the Constitution as well. It is nobody's case that Banaras Hindu University draws students for admission to under graduate courses from backward regions so as to justify preferential treatment being given to Its students for post graduate admission in the University which is done on the basis of open entrance test "There must be substantial social justice as *raison d'etre* for a high percentage of reservation in favour of alumni students". In Dr. Jagadish Saran and Others Vs. Union of India (UOI), . Krishna Aiyar, J. speaking for himself and on behalf of O. Chinnappa Reddy, J. made the following observations :

"Equality and steps towards equalisation are not ideal incantation but in actuality, no mere ideal but real life. But can a University, acting within the constitutional

parameters creates a new kind of discrimination viz., reservation for students of a particular University? The literal terms of Article 14 do not tolerate it, the text of Article 15 does not sanction it. Can we carve out a fresh ground of preference? Delhi University students, as such, are not educationally backward and indeed Institution-wise segregation or reservation has no place in the scheme of Article 15, although social and educational destitution may be endemic in some parts of the country where a college or University may be started to remedy this glaring imbalance and reservation for those alumni for higher studies may be permissible.....unless there is vital nexus with equal opportunity broad validation of University based reservation cannot be built on the vague ground that all other Universities are practising it." (para 17).

And further-

"If equality of opportunity for every person in the country is the constitutional guarantee a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best according to this rule of equal chance for equal marks. This proposition has greater importance which we reach the higher level of education like the post graduate courses." (para 39).

And further more-

"We have no doubt that where the human region from which the alumni of an Institution are largely drawn, is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a higher ratio of reservation hardly militates against the equality mandate viewed in the perspective of social justice."

11. The learned Judge went on to observe that "we recognise that" institution-wise reservation is constitutionally circumscribed and may become ultra vires is recklessly resorted to." In *Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh* and another, , Supreme Court has held that college-wise preference is not permissible. It is true that in the present case, there is no college-wise preference but the students of the affiliated colleges have been discriminated without any legitimate basis and arbitrarily excluded from being considered as B.H.U. students. The definition of B.H.U. as contained in clause 7 of the Information Bulletin is violative of Article 14 of the Constitution. That apart in *Mohan Beer Singh Chawla*, (supra), the Supreme Court has held that University-wise preference is permissible, provided it is "relevant and reasonable". When the admission to post-graduate college is done on the basis of entrance test conducted by the appellant University, the preference to students of Banaras Hindu University irrespective of merit cannot be regarded to be reasonable. In the case aforesaid, the Supreme Court has very clearly ruled that where the students from different University appear at a common entrance test on the basis of which admissions are made, "the rule of University-wise preference too must shed some of its relevance". Candidates coming in the various reserved

categories have not been adjusted horizontally in the quota fixed for B.H.U. students or non-B.H.U. quota as the case may be, so as to bring the reserved quota within the permissible limit of 50% as held by the Supreme Court in *Indira Sawhney*'s case.

12. In *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, , the constitutional validity of region-wise reservation of seats in Medical Colleges was up for consideration before the Supreme Court. It was observed by Bhagwati C.J. (as he then was) that where the region from which students of a University are largely drawn is backward either from the point of view of opportunities for medical education or availability of competent and adequate medical services, it will be constitutionally permissible without violating the mandate of the equality clause to provide a high percentage of reservation or preference for students coming from that region because without reservation or preference students from such backward region will hardly be able to compete with those from advanced regions.

13. A perusal of the list of candidates admitted in M.Ed, course 1997-98 would be revealing of the fact that two students Dinesh Kumar Singh and Vijai Laxmi were admitted as B.H.U. students even though they secured 220 marks each as against 222 marks secured by the petitioner respondent and six out of seven students originally admitted under the quota prescribed for non-B.H.U. students were actually B.H.U. students. The candidate in the SC quota were admitted even though they could secure marks between 208 and 198. The candidates admitted against physically handicapped quota could secure 194 marks and the ST candidates admitted under the B.H.U. quota, could secure 182 marks as would be borne out from Annexure-9 to the writ petition. In the circumstances the learned single Judge was justified in holding that categorisation of the candidates in B.H.U. and non-B.H.U. categories was "otiose".

14. The only other question that survives for consideration is whether the learned single Judge was justified in granting the relief of the petitioner-respondent for admission even though the academic sessions 1997-98 had come to a close. To accept the contention would be tantamount to giving premium to the mistake indulged in by the appellants in illegally rescinding the admission of the petitioner-respondent. The principle well settled is that no one can be allowed to capitalise on his own fault. The petitioner respondent in the instant case was illegally prevented from prosecuting her studies as a result of the illegal order cancelling her admission. The Courts should be on the qui vive to prevent injustice being perpetuated. That apart this Court declined to pass any interim order while admitting the appeal on 7.12.1998, but the appellants, we would not forbear expressing, have not cared to observe in compliance with the order passed by the learned single Judge even though the Supreme Court declined to intervene in the matter. On 12.3.1999, this Court passed an order that the petitioner be allowed to appear in the ensuing examination subject to the result of the special appeals and subject also to the condition that the result would not

be published until further orders. The appellants failed to comply even the order dated 12.3.1999 and had not allowed the respondent to appear in the examination even though special leave was refused by the Apex Court.

15. In the above conspectus, we are of the view that the learned single Judge was justified in granting the relief. Accordingly, the appeal fails and is dismissed. The appellants will ensure that the respondent is allowed to pursue her studies and take the examination along with the next batch (1999-2000) of students admitted to M.Ed, course. The respondent shall be entitled to Rs. 2,000 as cost of this appeal.