

(1961) 10 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 415 of 1961

Banshidhar

APPELLANT

Vs

University of Rajasthan and Another

RESPONDENT

Date of Decision : 09-10-1961

Acts Referred:

Constitution of India, 1950 — Article 15(1), 226, 29(2)
Rajasthan University Act, 1946 — Section 22A, 30

Citation : AIR 1963 Raj 172 : (1962) RLW 499

Hon'ble Judges : Sarjoo Prosad, C.J;P.N. Shinghal, J

Bench : Division Bench

Advocate : V.P. Tyagi, for the Appellant; C.L. Agarwal, (for No. 1) and Kan Singh, Government Advocate (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

Shinghal, J.—This is a petition of Banshidhar Vyas under Article 226 of the Constitution for the issue of Mandamus or other direction to the Principal, Jaswant College, Jodhpur (respondent No. 2) to admit him to the LL. B. (Previous) Class.

2. The petitioner graduated B.A. (External), having taken the degree from the Gujrat university as a private candidate. He applied to the Principal, Jaswant College, Jodhpur (respondent No. 2), on August 2, 1961, for admission to the LL.B. (Previous) Class. He was informed that he could not be admitted as instructions had been received from the University of Rajasthan (respondent No. 1) in their letter Ex. P.2, dated February 13, 1960, that students passing the B. A. Examination as private candidates from other Universities should not be admitted to the LL.B. classes. The petitioner thereupon formally wrote to the Principal enquiring why he was not being admitted when he was eligible and there were vacancies. The Principal informed him in his letter (E. P.4) dated August 5, 1961, that he was not eligible for admission under the rules. As the rule under which the petitioner was held to be ineligible was not mentioned in

that letter, the petitioner personally went to the Principal for clarification and he was informed that he had not been admitted because students who had passed the degree examination as private candidates from other Universities could not be admitted under the instructions of the University. The petitioner moved the Chancellor and the Visitor of the University to redress the wrong, because he had been refused admission although he was eligible and there were vacancies in the College, but those authorities have not disposed of his representation so far. Thus far, the facts are not in dispute.

3. The controversy between the parties is that while the University of Rajasthan claims that the petitioner is not eligible for admission to the LL.B. (Previous) Class under the proviso to Ordinance No. 252 of the University which was added by the Syndicate's resolution dated February 13, 1960, the petitioner contends that no such bar could be raised on the authority of the proviso as its addition to the Ordinance has been held to be illegal in a decision of this Court in *Sucha Singh v. The University of Rajasthan*, Writ Petn. No. 123 of 1961, D/- 6-7-1961 (Raj). While therefore the petitioner claims that he is eligible under the Ordinance, the University asserts that the defect in the earlier resolution dated February 13, 1960, has been rectified as the Academic Council has "approved and ratified" that resolution in its meeting on August 19, 1961, and that the petitioner has therefore been rightly refused admission to the LL.B. (Previous) class. The petitioner has further pleaded that the refusal of his admission is arbitrary and discriminatory, to which the University's answer is that the petitioner could not claim admission to the LL.B. (Previous) class as of right and that it was for the University to decide what students should be admitted in its affiliated colleges.

In this connection it has also been pleaded by the University that when it does not allow private candidates (other than women candidates, teachers, inspecting officers of the Education Department and Librarians of colleges) to appear in its B. A. Examination so that no private candidate can take its B. A. degree and seek admission to the LL. B. (Previous) class, the question of admission of the B. A. External degree-holders of other Universities to its LL. B. (Previous) class could not possibly arise. The University further claims that the Syndicate has the power u/s 22 of the University of Rajputana Act, 1946 (hereafter referred to as the Act) to maintain proper standards of teaching and examination in consultation with the Academic Council and if private students have been debarred from seeking admission to the LL.B. (Previous) Class with a view to improving the standard of legal education, the petitioner could not be heard to lay a charge of discriminatory treatment.

4. The Principal, Jaswant College, Jodhpur has filed a separate written statement in which he has pleaded that as the College is affiliated to the University and belongs to the Government, admission to it is governed by the rules of the University and the orders of the Government. He has invited attention to notification No. F. I. (808) Edu/B/57 dated April 29, 1957, publishing the

"Rules for admission to the Government Post Graduate and Degree Colleges in Rajasthan."

to show that it is within the competence of the Principal to refuse admission to any student without assigning any reason. The Principal has therefore pleaded that the matter of admission is discretionary and since he has been acting in accordance with the aforesaid Rules and directions of the University, no relief could be granted to the petitioner against him.

5. It is not in dispute that the petitioner would have been admitted to the LL. B. (Previous) class of the Jaswant College if the proviso to Ordinance No. 252 had not been there, the learned counsel for the petitioner has therefore directed his arguments mainly to show that the proviso has not been validly added to the Ordinance. His contention is that u/s 30 (1) of the Act the Syndicate could not make an Ordinance concerning admission to the University or its examination or courses of study unless a draft thereof had been proposed by the Academic Council, and that since it has been held by this Court in *Sucha Singh, Writ Petn. No. 123 of 1961, D/-6-7-1961 (Raj)* that no such draft had been proposed by the Academic Council when Ordinance No. 252 was amended by the Syndicate's resolution dated February 13, 1960, by adding the proviso, kind the proviso has been struck down for that defect, it could not be revived by a mere resolution of the Academic Council dated August 19, 1961.

Thus the contention is that after the resolution of the Academic Council had been passed on August 19, 1961, the matter should have gone up again to the Syndicate for making an amendment in the Ordinance, and that since this procedure has not been followed, the Ordinance cannot be said to have been amended according to the law prescribed therefor. Mr. Tyagi further submits that the B.A. (External) degree of the Gujarat University having been recognised as equivalent to the corresponding examination of the University of Rajasthan, the petitioner is eligible for admission to the LL. B. (Previous) class and should have been admitted to it. To support his prayer for the issue of a mandamus against the University to carry out its duty of admitting the petitioner in such circumstances, Mr. Tyagi has placed reliance on *Shobha Bhatnagar Vs. State, and Himendra Chandra Das v. Gauhati University, AIR 1954 Ass 65*.

6. On behalf of the University, Mr. Agarwal has raised several arguments. He has contended that the petitioner's representations to the Chancellor and the Visitor are pending consideration and that the writ petition should not therefore be considered as otherwise there would be likelihood of conflicting decisions being given by the several authorities. As regards recognition of the B.A. External degree of the Gujarat University, he has argued that such recognition could only be made on a reciprocal basis, and that when no one could take the Bachelor's degree of the University of Rajasthan as a private candidate, there could be no occasion for that University to recognise the B.A. External degree of another University. It has also been argued that it is always open to the University to lay down restrictions in the matter of admission to its courses of study -- and that

under Ordinance 142 a student is not eligible for such admission unless he has passed the qualifying examination of the University or any other examination recognised by the University as equivalent thereto, and possesses such further qualifications, if any, as may be prescribed by the Ordinance.

The learned counsel has therefore argued that it was within the competence of the Syndicate to take decisions regarding equivalence and recognition of examinations of other Universities and that its impugned resolution dated February 13, 1960, was, really a resolution to the effect that the B.A. External degree shall not be deemed to be equivalent to the B.A. Degree of the University of Rajasthan. On these premises, the learned counsel has tried to suggest that there was only a misplacing of that resolution by incorporating it as an amendment to Ordinance No. 252, whereas it should have found a place in Chapter XXXVIII of the

" "Laws, Statutes, Ordinances, Regulations and Rules of the University."

The learned counsel has referred to *Hanwantchand Vs. Principal, Maharaj Kumar College, Jodhpur*, *S.B. Chaturvedi Vs. G.C. Chatterjee and Others*, and *Surendra Kumar Mittal v. University of Rajputana*, 1956 Raj LW T68 as previous decisions of this Court in matters relating to the University of Rajasthan. He has also placed reliance on paragraphs 193 of Volume II of Halsbury's Laws of England, Simonds Edition, for the proposition that

"No mandamus will lie to the provost and fellows of a college to restore an individual to a fellowship,"

and to show that such societies have absolute discretion as to the management of their own affairs and there is no legal right that can be enforced against them by mandamus.

Reference has also been made to *Shudarshan Lal Dwivedi and Others Vs. Dean of the Faculty of Science, University of Allahabad and Another*, and *Kumari Asha Lata Vs. The Principal, Meerut College, Meerut*, for the proposition that the petitioner had no legal right to be admitted to the college. Further, the learned counsel has invited attention to *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, to support his argument that the Academic Council's ex post facto approval of the resolution D/-February 13, 1960, adding the proviso to Ordinance No. 252 should be considered sufficient as the intention of the Council had been unequivocally expressed therein.

7. The learned Government Advocate has argued on behalf of the Principal (respondent No. 2) that he could not be compelled to admit the petitioner to the LL. B. (Previous) class because as an employee of the State he has to discharge his duties in accordance with the "Rules for Admission to the Government Post Graduate and Degree Colleges" (referred to above) and the instructions of the University; and that the petitioner cannot claim to be admitted to the College as of right.

8. The Jaswant College, Jodhpur, is admittedly a public institution which is maintained by the State exchequer for public benefit. All those who are eligible can therefore apply for admission to it and in the absence of any impediment, it cannot be said that they have no right to do so. All those who otherwise fulfil the requisite qualification, and so long as there is vacancy in the College, have a right to say that they cannot be discriminated against and shut out from being admitted in the College on arbitrary and illegal grounds. In this case the order refusing admission is a speaking order and it shows that admission has been denied because, according to the Principal, the petitioner was not eligible under the rules. The Court is therefore entitled to see whether denial of admission on the above grounds is justified. *Shudarshan Lal Dwivedi and Others Vs. Dean of the Faculty of Science, University of Allahabad and Another*, and *Kumari Asha Lata Vs. The Principal, Meerut College, Meerut*, cited by the learned counsel for the respondents do not lay down a contrary proposition and those cases are based on different facts. *Shudarshan Lal Dwivedi and Others Vs. Dean of the Faculty of Science, University of Allahabad and Another*, was a case based on the regulations of the Allahabad University and the point for consideration was whether the University had the right to prescribe class examinations and to detain students at the end of first year for failure at those examinations, and that is why the High Court refused to interfere.

In *Kumari Asha Lata Vs. The Principal, Meerut College, Meerut*, the petitioner was refused admission to the Meerut, College, which was not a public institution of the Government, because the limited number of seats providing laboratory equipment had already been filled up in accordance with the rules. Besides, no rule was referred to in that case prescribing the principles for selection of students for admission to the college which could be said to have been violated. The instant case relates to a public institution and the Rules for admission require that admission should be made "on the basis of merit"; and the order of preference has also been mentioned in the Rules. It has nowhere been contended by the respondents that the petitioner was not eligible for admission under those Rules, or that the seats had already been filled up by more deserving candidates. As has been held by this Court in *Deonarain v. Principal, Jaswant College, Jodhpur*, 1950 Raj LW 19 it is the duty of the head of an educational institution to run it in accordance with the law and he cannot ignore the rules and the instructions by a mere refusal to admit a student at his sweet will. We are therefore not persuaded to hold that the petitioner has no right to maintain the petition.

9. We may here refer to another argument of Mr. Agarwal that no mandamus can be issued to a corporation like the University to admit a student to its courses of study. The argument is sought to be advanced on the authority of paragraph 193 of Halsbury's Laws of England, third edition. Volume IT, and ILR (1956) Raj 429 : (S) *Hanwantchand Vs. Principal, Maharaj Kumar College, Jodhpur*, referred to above. This argument is again untenable. A number of cases have been brought to our notice by the learned counsel for the petitioner in which

mandamus has been issued to Universities and heads of other educational institutions. In fact the argument of Mr. Agarwal does not find support from Halsbury's Laws of England also. In paragraph 193 on which reliance has been placed by Mr. Agarwal, it has been mentioned that while the Court will not interfere in any matter within the Visitor's jurisdiction and any question of a domestic nature, if the Visitor refuses to exercise his jurisdiction, he can be compelled by mandamus. So also, (S) Hanwantchand Vs. Principal, Maharaj Kumar College, Jodhpur, does not support the contention that a mandamus cannot be issued to a University, under appropriate circumstances, for the admission of a student to its courses of study.

In Himendra Chandra Das's case, AIR 1954 Gau 65 to which one of us was a party, the case law on the subject was reviewed and it was held that a writ of mandamus would lie against public bodies compelling them to carry out their duties; and there can be no doubt that the University is a public body. It has further been observed in that case:

"The University is a creature of the Statute and must obey the rules and regulations by which it professes to be bound. If it acts in violation of those rules and thereby adversely affects the rights of others, its conduct is open to question".

If, therefore, we reach the conclusion that the respondents have not followed the relevant law relating to the petitioner's admission, we would, be bound to issue a mandate for its observance.

10. We may now proceed to consider the main point of controversy between the parties, namely, whether the petitioner was debarred from seeking admission to the Jaswant College by virtue of the proviso to Ordinance No. 252 of the University? The Ordinance is to the following effect:

"252. A candidate who, after taking the Bachelor's degree of the University or of an Indian University recognised for the purpose by the Syndicate, with full course prescribed for the degree, has completed a regular course of study in an affiliated college for one academical year in law, shall be admitted to the Previous Examination for the degree of Bachelor of Laws:

Provided that a candidate passing the degree examination of any University as a private candidate (except teachers, inspecting officers, Librarians, Library clerks or women) shall not be eligible for admission to the course".

As has already been stated, the proviso had been added by the Syndicate's resolution dated February 13, 1960 and this Court had occasion to consider its legality in Sucha Singh's case Writ Petn. No. 123 at 1961 D/- 6-7-1961 (Raj) to which one of us was a party. Under Sub-section (1) of Section 30 of the Act, Ordinances have to be made by the Syndicate, but no Ordinance concerning admission, to the University or its examinations or courses of study, etc. can be considered "unless a draft of such Ordinance has been proposed by the Academic

Council".

Under Sub-section (2) of Section 30, it has further been provided that the Syndicate shall not have power to amend any draft proposed by the Academic Council under the provisions of Sub-section (1), but that it may reject it or return it to the Academic Council for reconsideration either in whole or in part, together with any amendments which the Syndicate may suggest. Thus the scheme of the Act is to place the question of admission to the University or its examinations and courses of study etc., primarily under the control of the Academic Council so that the Syndicate cannot itself initiate or amend any proposal relating to those matters. The resolution dated February 13, 1960, adding the proviso to Ordinance No. 252 was not recommended by the Academic Council and this is why it was held by this Court in Sucha Singh's case, Writ Petn. No. 123 of 1961, D/- 6-7-1961, (Raj) that the Syndicate could not have added it on its own initiative. The proviso was therefore held to be without any force and it could not form part of the Ordinance.

11. The judgment in Sucha Singh's case, Writ Petn. No. 123 of 1961, D/- 6-7-1961 (Raj) was given on July 6, 1961, and it is now claimed that, thereafter, the Academic Council approved and ratified the addition of the proviso in its meeting held on August 19, 1961. In other words, the contention on behalf of the University is that although the proviso was not initially inserted in Ordinance No. 252 according to law and had to be struck down by this Court for that reason, the subsequent adoption of a resolution by the Academic Council ratifying the insertion by the Syndicate has cured that defect. This argument loses sight of the fact that u/s 30 (1) of the Act the Syndicate does not have the power to consider an Ordinance unless a draft thereof has been proposed by the Academic Council. The other defect in the argument is that even if the resolution of the Academic Council dated August 19, 1961, is taken to be a proposal for amending the Ordinance, it was still necessary, u/s 22-A of the Act, before that proposal could have the effect of amending the Ordinance, that the Syndicate should have approved it after the resolution of the Academic Council had been passed on August 19, 1961. But it is not claimed that the Syndicate has done so; on the other hand, it has been conceded that the Syndicate has not passed any resolution after August 19, 1961, for addition of the impugned proviso to Ordinance No. 252. It is therefore obvious that the requirement of the law for the making of the amendment to the Ordinance has not been fulfilled so that the proviso must be held to be invalid and cannot form part of the Ordinance.

12. Mr. Agarwal has tried to get out of this difficulty by raising an ingenious argument that since the Syndicate had the power under the Act "regarding equivalence of examinations and recognition of the examinations of other bodies,"

its resolution dated February 13, 1960, was in fact a decision to withdraw the recognition of the B.A. (External) examination of all Universities for purposes of admission to the LL. B. (Previous) class of the Rajasthan University. Mr. Agarwal has therefore argued that there was only a misplacing of that decision of the

Syndicate by inserting it as a proviso to Ordinance No. 252 and that the more appropriate course was to incorporate it in Chapter XXXVIII of the "Laws, Statutes, Ordinances, Regulations and Rules of the University" published in Part II of the University's Hand-Book.

There is however a two-fold answer to this argument. Firstly, under Clause (vii) of Sub-section (2) of Section 23-A of the Act it was for the Academic Council to advise the Syndicate regarding equivalence of examinations and recognition of the examinations of the other bodies and even if its resolution dated August 19, 1961, is deemed to relate to such equivalence or recognition, it is nobody's case that the Syndicate has taken any decision after that date on the recommendation of the Academic Council. Secondly, regulation 44 shows that up to date the University of Rajasthan continues to recognise the B.A. External examination of the Gujarat University as equivalent to its B.A. examination without any reservation, and Mr. Agarwal has not been able to contend that any amendment has been made in that regulation so far. We are therefore unable to accept the argument that the resolution of the Syndicate dated February 13, 1960, should operate as a bar to the petitioner's admission to the LL. B. (Previous) class on the ground that his external degree ceased to be recognised for purposes of such admission.

After the decision of this Court in Sucha Singh's case. Writ Petn. No. 123 of 1961, D/- 6-7-1961 (Raj), if the intention of the University was to amend the relevant Ordinance and the Regulation, it was incumbent upon it to proceed to do so in the regular manner indicated by the law and not short circuit the same. It should be realised that when an amendment is properly incorporated in the University Calendar, people interested have full notice of the same and can seek admission elsewhere; otherwise it is obviously unjust to shut out a candidate from admission by some sudden fiat or resolution of the University not adequately sanctioned by the law, when the candidate concerned has already lost much valuable time in seeking admission to a college of the University on the faith of the law as it stands.

13. Lastly, it has been argued by Mr. Agarwal that as the petitioner has moved the Chancellor and the Visitor of the University, there would be risk of conflicting decisions if his petition is not dismissed by this Court. This argument is hardly of any consequence because no action has been taken by those authorities on the petitioner's representations although they were made almost two months ago. The petitioner could ill-afford to wait for those decisions when they were not forthcoming expeditiously because every day's delay is a matter of great consequence to his studies.

14. It would thus appear that Ordinance No. 252 does not debar the petitioner from getting admission to the LL. B. (Previous) class of the Jaswant College and the respondents have acted illegally in taking a contrary view.

15. It is a matter of regret that although the proviso to Ordinance No. 252 had

been held to be invalid by this Court in Sucha Singh's case, Writ Petn. No. 123 of 1961 (Ra)), the University thought it proper, without amending that Ordinance according to law, to issue instructions as per letter Ex. P.2 that candidates passing the degree examinations from other Universities privately should not be admitted to higher courses. It should have been apparent to the concerned authorities that the instructions were illegal when they were issued, and the successful challenge to their validity necessarily leads to interference with the autonomous working of the University which we are constrained to do with much reluctance. As was observed in Himendra Chandra Das's case, AIR 1954 Gau 65 the University is a Body which acts pro bono publico and

"an august body of such importance is entitled to all reasonable latitude which its position deserves",

but it has, at the same, to carry out the rules and regulations by which it professes to be bound. Since the law has been violated in this case, we have no alternative but to issue a direction to the respondents that the petitioner is entitled to admission and his application for the purpose of admission to the LL. B. (Previous) class must be entertained. The petitioner shall be entitled to Rs. 100/- (One Hundred) as the hearing fee of the case.