
(1995) 07 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 28 of 1993

Chatradhar Sharma and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Raj 97 : (1996) 2 WLC 181

Hon'ble Judges : D.C. Dalela, J;B.R. Arora, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; M.S. Singhvi and C.R. Jakhar, Dy. Govt. Advocate, for the Respondent

Judgement

B.R. Arora, J.—This special appeal is directed against the judgment dated 24-11-1992, passed by the learned single Judge by which the learned single Judge dismissed the writ petition filed by the petitioner-appellants.

2. The appellants were selected for admission in the General Nursing and Midwifery Training; Course (hereinafter referred as "G.N.M. Course") on 10-5-1989 on the basis of Intermediate Certificates and marksheet of intermediate Science Examination issued by the Central Board of Higher Education, New Delhi, which were submitted by the appellant-petitioners along with their application forms. Appellant No. 1 Chatradhar Sharma and appellant No. 3 Braham Prakash Yadav were given admission in the G.N.M. Training Centre, General Hospital, Jalore, while appellant No. 2 Virendra Singh was admitted in the G.N.M. Training Centre, Mahatma Gandhi Hospital, Jodhpur. The Course of G.N.M. Training was of three years and the trainees have to clear two examinations. The appellant-petitioners passed the First Examination and attended the classes for almost all the/three years and completed their training. The Second Examination, which is final, was to be held on 28-5-1992. The appellants were not allowed to appear in this examination as according to the respondents they got admission on the basis of the certification of Intermediate

Science Examination issued by the Central Board of Higher Education, New Delhi, which were not recognised by the Jodhpur University as equivalent to First Year T.D.C. When the appellants were not allowed to appear in the examination, they filed the writ petition before this Court. While admitting the writ petition on 20-5-1992, notices of the stay application were, also, issued and the conditional stay order was passed by the learned single Judge directing the respondents to issue permission letters and roll numbers to the appellant-petitioners so that they may appear in the examination of G.N.M. course to be held on 28-5-1992 and onwards but the result of the petitioners shall not be declared till further orders. It was further clarified in the stay order that the appearance of the petitioners in the examination vide this order will not create any right in their favour. The writ petition was contested by the respondent No. 2, i.e., the Rajasthan Nursing Council and it was stated in the reply that the petitioner have not come to this Court with clean hands and the Central Board of Higher Education, New Delhi, from where they passed the Intermediate Examination in Science, is not a recognised institution and they got the admission on the basis of the forged certificates and even tried to mislead the Court by producing the document showing the equivalence which was not issued by the proper authority and as the petitioners obtained the admission on the basis of the certificates issued by a bogus institution, they were, therefore, wrongly granted admission and they were rightly not allowed to appear in the examination. The learned single Judge upheld the objections raised by the respondents and dismissed the writ petition filed by the petitioner-appellants by holding that the petitioners were not eligible to be admitted in the G.N.M. Training Course and they have taken admission on the basis of fraud perpetuated by them on the admitting authority. The learned single Judge further observed that the petitioners have, also, defrauded this Court by producing false certificate issued by a person who is not competent to issue such certification regarding equivalence. It is against this judgment that the petitioner-appellants have preferred this appeal.

3. The first question, which requires consideration in the present case, is : whether the appellant-petitioners were eligible for being admitted in the Three Years G.N.M. Training Course, in which appellants Nos. 1 and 3 were given admission by the Chief Medical Officer, Jalore and the appellant No. 2 was given admission by the Superintendent, Associated Group of Hospitals, Jodhpur ? The necessary qualification for being admitted to the Three Years G.N.M. Training Course is that the incumbent should have passed First Year T.D.C. or 10 + 2 Examination and preference will be given to the candidates who have passed such examination with Science Subjects, namely, Physics, Chemistry and Biology, The appellants, along with their application forms, submitted the Marksheet & Certificate of Intermediate Examination in Science Subjects issued by the Central Board of Higher Education, New Delhi. Admittedly the Intermediate Examination in Science subjects, conducted by the Central Board of Higher Education, New Delhi, have not been recognised as equivalent to First Year T.D.C. or 10 + 2 by the Jodhpur University, Jodhpur or any other University in the State of Rajasthan.

Majority of the Universities in India have not granted equivalence to the Intermediate Certificates of this institution and only Gauhati University, Karnataka University and Jabalpur University and some of the Foreign Universities have granted equivalence to this examination conducted by the aforesaid institution. The Ministry of Human Resources and Development, Department of Education, vide letter Annexure. R. 2/10 dated 23-8-1991, also, informed that the Central Board of Higher Education, New Delhi, pertains to the registration of the Society under the Societies Registration Act, 1860, which has no concern with the recognition of the aforesaid organisation or the examinations conducted and certificates issued by it. The Ministry further informed that the registration of an organisation under the Societies Registration Act, 1860 and the recognition of an organisation and the examinations conducted by it, are totally different things. The Intermediate Science Examination conducted by the Central Board of Higher Education, New Delhi, was not recognised as equivalent to First Year T.D.C. or 10 + 2 Examination and, therefore, the appellant-petitioners, on the basis of these certificates, could not have been admitted in the Three Years G.N.M. Training Course as these were not the certificates recognised by the Jodhpur University, Jodhpur and as such their admissions to the Three Years G.N.M. Training Course were wholly illegal and the learned single Judge was right in holding that the petitioner-appellants were ineligible for being granted admission in this training course.

4. The next question, which requires consideration, is: whether the appellants are entitled to continue the study and for declaration of their result in the Final Examination ? The plea of promissory estoppel and equity have been put-forth by the learned counsel for the appellants for completion of the study and declaration of the result of the appellants. It is an admitted fact that the appellants got admission in the Three Years G.N.M. Training Course on the basis of the Certificates of Intermediate (Science) obtained by them from the Central Board of Higher Education, New Delhi, which Board is not recognised by the Jodhpur University, Jodhpur, and the certificates issued by this Board has not been granted equivalence to 10 + 2 or First Year T.D.C. But apart from this qualification, appellant No. 1 Chatradhar Sharma has passed the Secondary School Examination from the Board of Secondary Education, Rajasthan, Ajmer, in the year 1980 in Arts subjects with First Division. He has also, obtained the Degree of Bachelor of Arts from the University of Rajasthan in the year 1984. Appellant No. 2 Virendra Singh has, also passed his B. A. (Final) Examination in the year 1981 and M.A. (Final) in Political Science in the year 1983, both, from the University of Jodhpur, Appellant No. 3 Braham Prakash Yadav has, also, passed his First Year T.D.C. Examination in Science in the year 1987. These documents have been placed on record by the learned counsel for the appellants in the appeal before this Court. These certificates, therefore, clearly show that on the date when the appellants applied for admission to the Three years G.N.M. Training Course and when they were selected, they were eligible for admission to the G.N.M. Training Course, of course, they were not entitled for any preferential

treatment as per the Notification and they got their admission in the training course on the basis of the Intermediate (Science) Certificates of the Central Board of Higher Education, New Delhi, as they were having science subject in that examination. Along with their application forms, they filed the marks-sheets issued by the Central Board of Higher Education, New Delhi, and these marks sheet are not the forged documents, of course, the Board from which these marks sheets were obtained is not a recognised institution by the University of Jodhpur and the university did not grant equivalence to this Intermediate (Science) Examination. The marks sheets were neither bogus nor forged one and considering those marks sheets and other relevant documents issued by the Central Board of Higher Education, New Delhi, the Chief Medical Officer, General Hospital, Jalore and the Superintendent, Associated Group of the Hospitals, Jodhpur, granted admission to the appellants in the Three Years G.N.M. Training Course and after being admitted to the this training course, the appellants continued their training and passed the First Part of the Examination and they filled-up their forms for Final Examination to be held on 28-5-1992 but the Admission Cards were not issued and they were not allowed to appear in the examination as the Rajasthan Nursing Council informed the authorities that the candidates got admission in the Three Years G.N.M. Training Course on the basis of the certificates issued by a bogus Board which has not been granted equivalence by any of the Universities in the State of Rajasthan. Looking to the qualification of the appellants, they are otherwise eligible for being admitted in the Three Years G.N.M. Training Course. So far as the Certificate dated 20-9-1991, issued by Mr. Bhanwar Singh -- the Assistant Registrar, faculties of Arts. Education and Science, University of Jodhpur, is a concerned, it is said to have been issued by an unauthorised persons and the University has informed the respondents that action against Mr. Bhanwar Singh for issuing such certificate is being taken. The appellants got their admission in the year 1989 on the basis of the Intermediate (Science) Certificates issued by the Central Board of Higher Education, New Delhi, which were not recognised by the University of Jodhpur as equivalent to First Year T.D.C. or 10 + 2 Examination but still the Chief Medical Officer, Jalore and the Superintendent, Associated Group of Hospitals, Jodhpur, selected the appellants for admission in the Three Years G.N.M. Training Course and they were admitted in the course. They completed their training of three years. They passed the First Part of the Examination and when they were not allowed to Appear in the Final Examination, they filed the writ petition and it was as per the direction of this Court that they were allowed to appear in the Second Year Examination. While directing the respondents to allow the petitioners-appellants in the examination, of course, it was mentioned that this appearance in the examination will not confer any right in favour of the petitioners but the fact remains that they were given admission for Three Years G.N.M. Training Course, they joined and completed their training and passed the First Year Examination. After passing the First Year Examination the appellants completed their training and appeared in the Final Examination and at the time of Final Examination their admission was cancelled and they were informed that the

equivalence has not been granted to the Intermediate (Science) Certificates issued by the Central Board of Higher Education, New Delhi, on the basis of which the appellants were given admission in the G.N.M. training course. In such circumstances, we are, therefore, of the opinion that no useful purpose will be served, now, at this stage, to cancel the admission of the appellant-petitioners and not to declare their result of the Examination in which they appeared on the direction given by this Court after completion of the Three Years G.N.M. Training Course.

5. The learned single Judge, while dismissing the writ petition, relied upon the Division Bench judgment of this Court in: *Smt. Manjulata v. Hitkari Cooperative Shiksha Mahila Mahavidhyalaya, Kota*, (1987) 2 LR 84. In this case, Smt. Manjulata was admitted to the B. Ed. Course though she was not eligible for admission to that Course. She, after admission, studied regularly and delivered twenty lectures each in Hindi and Social Study -- the Optional Subjects taken by her and completed the study for one Academic Year but she was restrained to appear in the Final Year B. Ed. Examination, 1987, Smt. Manjulata was not found eligible for admission to the B. Ed. Course as she had not taken the necessary subjects in her B. A. Examination and she had, also, not taken English as one of the Teaching Subjects. As Smt. Manjulata was lacking the necessary qualification for admission to the B. Ed. Course and was not eligible for admission and, therefore, her admission was cancelled and she was not allowed to appear in B. Ed. Examination. But in the present case, the appellants possess the necessary qualification though not eligible for preferential treatment and, therefore, when they were given admission, have completed the Three G.N.M. Training Course and, also, passed First Year Examination of the training course and as such it will not be proper, at this late stage, to cancel their admission.

In *Dharmendra Acharya v. State of Rajasthan*, (1992) 2 WLC 202, the petitioner was granted admission in XI Class in Rajasthan Bal Mandir Senior Secondly School, Bikaner. The admission to Dharmendra Acharya was made against the Regulations of the Board of Secondary Education, Rajasthan, Ajmer. As per the Regulations of the Board, a candidate for admission to this class should have passed all the six subjects including English, with 33% minimum marks. The Regulation further provides that no candidate can be admitted in XI Class unless he obtained 33% marks in all the subjects including English. Mr. Dharmendra Acharya passed with only two subjects from the Board of Secondary Education, Assam, with 30% marks only and, therefore, he was not entitled for admission. Mr. Dharmendra Acharya was not fulfilling the eligibility criteria and had not passed all the six subjects but passed only two subjects with 30% marks and as such the admission given to him was in contravention of the Regulations as he was not having the basic qualification for admission and was wrongly admitted in Class XI and, therefore, his admission to Class XI was rightly cancelled. But in the present case, the appellants were eligible for admission in the Three Years G.N.M. Training Course and were having the necessary qualification for admission to this training course.

In *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, some students from Rajasthan were granted admission to the B.E. Degree Course in Karnataka University. The condition for eligibility for B.E. Degree Course was that the students seeking admission to this course should have passed Two Years Pre-University Examinations conducted by the Pre-University Education Board, Bangalore or any examination held by any other Board or University recognised by the University as equivalent to it. The Higher Secondary Examination held by the Board of Secondary Education, Rajasthan, Ajmer, was not recognised as the equivalent qualification by the Karnataka University for admission to the B.E. Course. The B.Sc. Examination of Rajasthan University and Udaipur University were, also, not recognised as the equivalent qualification to the Pre-University Examinations. The Supreme Court, therefore, held that the appellants were not eligible for admission to the B.E. Degree Course of the Karnataka University and, therefore, their admissions were contrary to the conditions of eligibility. But the Supreme Court allowed the appellants to continue their study in the respective Engineering Colleges in which they were granted admission because according to the Supreme Court the fault lies with the Engineering Colleges which provided admission to the appellants.

In *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, Mr. Ashok Chand Singhvi, who was a Diploma holder in Engineering, was working as Instructor in the Engineering College. He applied for admission to the B.E. Degree Course as well as for study leave. He was having less than 60% marks in the Diploma Course but his case was considered by the competent authority even after objection being raised by the Office and he was given admission to the Second Year Degree Course in Engineering. He deposited the requisite fee and started attending the classes. But for sometime his admission was put in abeyance and later on it was cancelled as according to the University, the admission was made by mistake and the petitioner was not having the requisite marks in the Diploma Examination. The petitioner preferred a writ petition before the High Court challenging the order of the Dean, Faculty of Engineering, University of Jodhpur, Jodhpur, putting his admission in B.E. Course in abeyance. The writ petition, filed by the petitioner, was dismissed. The petitioner preferred an appeal before the Supreme Court. The Supreme Court allowed the appeal filed by the appellant-petitioner and held that when after considering all the facts and circumstances of the case and, also, the objections raised by the Office, the Vice Chancellor directed the admission of such a candidate then such admission cannot be said to have been made through mistake. The Supreme Court further observed assuming that the appellant was admitted through mistake, the appellant, not being at fault, it is difficult to sustain the order withholding the admission of the appellant and the order passed by the Dean was cancelled and the appellant was allowed to continue his studies in B.E. Course.

In *Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others*, Kumari Madhuri Patil was given admission to the Medical College on the basis of the Certificate of Scheduled Tribe in her favour by

the Tahsildar. She continued her studies upto five years of the M.B.B.S. Course and later on it was found that the caste "Hindu Koli" to which she was belonging, was not recognised under the Scheduled Tribes category, and as such her admission was cancelled and she was not allowed to appear in the examination. The Supreme Court, after considering the material available on record, came to the conclusion that Kumari Madhuri Patil was not the member of the Scheduled Tribe and she was not entitled for her admission in the M.B.B.S. course on the basis of the Certificate of Scheduled Tribes in her favour. The Apex Court, therefore, upheld the cancellation of the social status of the appellant as Mahadeo Koli, which was fraudulently obtained by her but she was allowed to appear in the Final Year Examination of M.B.B.S. Course. It was, however, made clear by the Hon"ble Supreme Court that she will not be entitled for any benefit in future on the basis of the fraudulent social status as Mahadeo Koli.

In: Director of Tribal Welfare, Government of Andhra Pradesh Vs. Laveti Giri and another, Laveti Giri was given admission to B.E. Course of Usmania University on the basis of a forged certificate of Scheduled Tribe issued by the Tehsildar, Vallabhnagar, Rangadevi District. While provisionally admitting Laveti Giri in the First Year B.E. Course, the Principal of Usmania University referred the matter to the Director, Tribal Welfare for confirmation of the social status of Mr. Giri. The Director, after enquiry, held that the Tehsildar was not competent to issue the Social Status and further held that the caste "Kapoor", to which the petitioner belongs, is not a Scheduled Tribe and he rejected the claim of the respondent. The petitioner preferred a writ petition before the Andhra Pradesh High Court. The learned single Judge dismissed the writ petition by the petitioner but in the appeal, filed by the petitioner-appellant, the Division Bench of Andhra Pradesh High Court directed the respondents to admit Shri Giri in B.E. Course and under the orders/directions of the High Court, Mr. Giri completed his Engineering Course. The Supreme Court though held that Mr. Giri played a fraud on the Constitution depriving the real tribal candidate of the benefit of admission in the Engineering Course but since he had already completed his Engineering Course, his examination was not cancelled and the only order passed against him was that he will not be treated as a member of Scheduled Tribe and is not entitled for employment or any other advantage on the basis of his false status as Scheduled Tribe, namely Kandakapu.

The appellants, in the present case, were given admission by the Chief Medical Officer, General Hospital, Jalore and the Superintendent, Associated Group of Hospitals, Jodhpur, on the basis of their Intermediate Certificate (Science) issued by the Central Board of Higher Education, New Delhi. They completed the full training of three years and passed the First Year Examination and when they applied for Final Examination after completing their Three Years Course, they were denied admission to the Final Examination. They appeared in the Final Examination on the direction of this Court and, therefore, we think it proper to direct the respondents to declare their result of the Final Examination of Three Years G.N.M. Training Course because otherwise they were having the requisite

qualification for admission, but it is observed that this judgment will not be treated and be not used as a precedent in future cases for the purpose of giving similar directions.

6. The appeal, filed by the appellants, is disposed of with the above observations.