
(1986) 03 AHC CK 0022

In the Allahabad High Court

Case No : Writ Petition No's. 392, 836, 1118, 1164 and etc. etc. of 1986

Dharmendra Kumar and Others

APPELLANT

Vs

Vice-Chancellor, Kanpur University, Kanpur and Others

RESPONDENT

Date of Decision : 24-03-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1987 All 44

Hon'ble Judges : S.K. Dhaon, J;A.N. Varma, J

Bench : Division Bench

Advocate : R.R. Yadav, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—In this group of petitions, the various petitioners have assailed the validity of the admissions made by the Kulbhaskar Ashram Degree College on 27-12-85 to the M.Sc. (Ag) course for the year 1985-86. Each of the petitioners claims that if the respondent-College had conducted the process of admission fairly and in accordance with the norms laid down by the Admission Committee u/s 28(4) of the U.P. State Universities Act, he would have been entitled to be admitted in preference to those who were admitted on that date. The petitions are being disposed of by common judgment as the controversies raised therein are substantially similar.

2. The Kulbhaskar Ashram Degree College, Allahabad is affiliated to the Kanpur University. Admissions to various courses of study in this College are hence regulated by Section 28 of the U.P. State Universities Act. Subsection 4 of Section 28 lays down that the Admission Committee of the concerned University may issue directions as regards criteria or methods of admissions to the affiliated colleges and such directions shall be binding on such colleges. The Admission Committee of the Kanpur University accordingly laid down the criteria or norms for admission to the various courses of study including M.Sc. (Ag) for academic session 1985-86. The relevant part of the norms is being reproduced herein :

"1. (a) 40% of the total No. of seats shall be reserved for applicants from the same college.

(b) 40% shall be reserved for applicants from the college affiliated to Kanpur University. Applicants for (from?) the same colleges will also be eligible for consideration under this clause.

(c) The remaining 20% of seats shall be filled up by the open competition.

2. In all above categories 18% seats will be reserved for S.C. and 2% for ST applicants. If not available the seat will be treated as general.

3. Admission be made on the basis of index prepared according to the following norms (i) percentage of marks obtained in all the theory papers plus

(ii) Half of the percentage of marks obtained in all the practical plus

(iii) percentage of marks obtained in the theory papers of the subject in which admission is sought plus

(iv) Half of the percentage of marks obtained in the practical of the subject in which admission is sought plus

(v) 3 points for High School in First Division

(vi) 5 points for the Intermediate in First Division.

(vii) 10 points for being sons/daughters of employees of the college concerned.

(viii) 5 points for being sons/daughters of teacher employee of another college affiliated to the Kanpur University,

(ix) 5 points for being sons/daughters of Kanpur University employees.

Explanation : For the purpose of calculating the index for admission of M. Sc. (Ag) classes, the internal assessment if any, shall not be taken into account. Only marks obtained at public examination shall be taken into account."

3. These norms also lay down the reservations allowed to various categories of candidates including, inter alia, scheduled castes candidates and those coming from other States.

4. As regards the procedure, the Admission committee has laid down that the candidate should apply on prescribed application forms obtainable from the Principal of the college duly supported by certificates of academic attainments. The Selection Committee nominated by the Principal will thereafter finalise the list of selected candidates in the light of the norms prescribed by the Admission committee. It further provides that the selection will be made strictly on the basis of merit index prepared in accordance with the norms quoted above. The next step laid down is that within seven days of the last date fixed for the receipt of the applications, the list of candidates selected for admission shall be pasted on the notice board of the College and the intimation thereof sent to the

candidates by registered post. The selected candidates will thereupon be given 14 days time from the date of despatch of the notice to deposit admission fee in the form of bank draft failing which they will forfeit their claim and their seats shall be offered to the candidates who are on the waiting list.

5. These in brief, are the criteria and methodology prescribed for admission.

6. Turning to the facts of the present cases, the position is that the number of seats sanctioned by the University for admission to the said course was 44. Out of these, 22 seats were filled up by the Principal on 15-12-85 by candidates who were selected for admission. Each of them had a higher merit index than that of any of the petitioners and there is no challenge either to their admission or to the procedure adopted therefore.

7. For filling up the remaining post, the Principal of the College authorised prof. R. K. Sharma, who from the record of the case produced by the learned counsel for the College, appears to have sent a notice on 26-12-85 for being published in Northern India Patrika on 27-12-85. The notice was published in the said Newspaper on 27-12-85 and the same reads as follows :

"A. Degree College. All applicants for M.Sc. (Ag) admission are notified that they should come with Bank draft for Rs. 382.50 on Dec. 27/27 at 10 a.m.".

8. It is significant to note that the College in question is Kulbhaskar Ashram Degree College whereas the notice which was actually published is headed only as "A Degree College". Again, the notice was published on 27th Dec. i.e. on the very date on which the candidates were required to be present at the college with Bank Drafts at 10 a.m.

9. The simple stand taken by the college is that on the 27th Dec. only 27 candidates appeared for admission at 10 a.m. out of whom 22 were admitted and the admissions were closed at 11 a.m. Thereafter, eight other candidates came but by that time the seats had already been filled up. The 27th candidates who had appeared before Dr. R. K. Sharma at 10 a.m. as well as eight others along whom some of the petitioners are also included, signed on an attendance sheet, a true copy whereof is annexure CA 1 to the counter affidavit filed on behalf of the College in writ petition No. 1118 for 1986. The Scheduled caste candidates who were entitled to be accommodated on merits against the eight seats reserved for them were not admitted for the simple reason that they arrived in the college after 11 a.m. after the admissions had been closed. It is said that some of the-petitioners of writ petition No. 1118 of 1986 were also amongst the late comers. It is further conceded that the seats reserved for Scheduled Caste and Scheduled Tribe candidates were filled up on 27-12-85 by the general candidates who were present at 10 a.m. on that date. These assertions find place in para 12 of the counter affidavit filed in writ petition. No. 1118 of 1986.

10. Learned counsel for the respondent College, however, very fairly conceded

that if the petitioners in this petition and writ petition No. 1169 of 1986 had come on time i.e. at 10 a.m. on 27-12-85, they would have been entitled to be admitted in one subject or the other as they had higher merit index than the candidates who were admitted on that date. In regard to some other petitioners also it was conceded that they had higher merit index than of those actually admitted, but the respondent took the stand that students with lower index were admitted because the Scheduled Caste candidates and others entitled to be admitted against reserved quota had not turned up.

11. This was demonstrated by the learned counsel for petitioners and was also endorsed by the learned counsel for the College with the help of merit index of the applicants.

12. Having set out the broad features of the case based on facts about which there was no controversy, we proceed to examine more closely the facts of each of these petitions.

13. First, the first of this batch petitions, namely, writ petition No. 1118 of 1986. All the six petitioners were students of the Kulbhaskar Ashram Degree College and also belonged to Scheduled Caste. They were hence entitled to be considered not only against the 18% of the seats reserved for the Scheduled Castes but also 40% seats reserved" for the applicants of the same College as well as 40% quota reserved for the applicants from the colleges affiliated to Kanpur University, the College being affiliated to Kanpur University.

14. It is not disputed that on merits, each of these petitioners were entitled to be admitted in preference to the candidates who were actually admitted against the quotas reserved for Schedule Caste candidates as also for students of Kulbhaskar Ashram Degree College. Further, it was not disputed that each of the petitioners had already prior to 27-12-85 deposited with the College Bank Drafts of Rs. 230/- each which is the fee prescribed for admission in the case of Schedule Caste candidates. The petitioners were also undisputedly amongst the candidates selected for admission. The relevant particulars of Bank Drafts and the date on which they were submitted find mention in paragraph 11 of the writ petition and the same were not denied by the respondents.

15. These petitioners having already deposited the admission fee and they being among the candidates selected for admission plainly became entitled to be considered for being admitted on 27-12-85 even if they reached the College late and were not physically present at 10 A.M. on 27-12-85. They had complied with all the requisite formalities. The notice published in the Newspaper merely required the candidates to come with Bank Draft for Rs. 382.50 P. (which is the fee prescribed for admission of general candidates) the refusal to consider the petitioners for admission on the mere pretext of their physical absence on 27-12-85 at 10 a.m. in the College was plainly arbitrary and unwarranted. They were entitled to be admitted on merits in preference to the candidates who were actually admitted in their places. They had also complied with all the requisite

formalities. Physical presence of the candidates was required merely for the deposit of the admission fee and allocation of subjects. In any case, admittedly, the petitioners had reached the College according to the respondents themselves immediately after 11 a.m. on the date fixed for the purpose.

16. Further, after examining the affidavits as well as the record produced before us, we also cannot resist the feeling that the entire procedure adopted by the College for admissions on 27-12-85 was inherently unfair and unjust, rendering the process of admission a complete mockery. The notice was published on the morning of 27-12-85 itself requiring the candidates to be present in the College on that very date at 10 a.m. giving a complete go bye to the requirement of allowing the candidates 14 days time to deposit the admission fee. It was, besides, totally misleading inasmuch as it did not mention the name of the College. A casual reader could not in the least suspect that the notice related to admission to the Kulbhaskar Ashram Degree College.

17. Further, the whole process of admission was rushed through and was concluded in an unseemly haste having been concluded within just an hour or so on the own showing of the respondents. Indeed by 11.30 a.m. Dr. Sharma had left the College after concluding the admissions. The Authorities who were charged with the sacred duty of making admissions strictly according to the merit should, in all fairness, have waited for a reasonable length of time to enable the candidates to get Bank Drafts prepared and thereafter present the same to the Institutions. All this was bound to consume 3 to 4 hours. Finalizing the admissions, particularly in view of the fact that the news item, misleading as it was, was published only in that morning's paper, by 11 a.m. was in this backdrop completely arbitrary, to say the least.

18. We have, therefore, not the slightest hesitation in holding that this single factor alone rendered the entire process of admission concluded on 27-12-85 suspect and vitiated deserving to be struck down.

19. The petition filed by Ashok Kumar and five others, namely, writ petition No. 1169 of 1986 discloses much the same story. Each one of the petitioners had a higher merit index in one subject or the other than the candidates admitted by the College on 27-12-85. In paras 20 to 23, the petitioners have given details of their merit index and those of the candidates who were admitted by petitioners in various subjects which fully substantiate the contention of the petitioners. Indeed, learned counsel for the respondent-College also had to concede that this is so. His contention, however, was that these students had reached the College after 11 a.m. i.e. after the admissions had already been finalised. The assertions of the petitioners on the other hand, is that they had reached there at 10 a.m. and on their failure to obtain admission they had also lodged a written complaint with the Principal of the Institution, a true copy whereof is Annexure 10 to the writ petition.

20. In the view that we are taking that this petition is entitled to succeed in any

view on the first ground discussed above, namely, that the opportunity to the selected candidates to be present at the time of admission to make the deposit and indicate their choice of discipline within a reasonable time was totally denied, it is unnecessary to give any concluded finding on whether petitioners had reached the College at 10 a.m. or after 11 a.m. we are prepared to believe the assertion of Dr. R.K. Sharma that these students reached the College after 11 a.m. In our opinion, even if the petitioners had reached after 11 a.m., they should not have been excluded from consideration for admission in the facts and circumstances of the case.

21. The intimation about the date fixed for admission was published only on the 27th Dec. 1985 in the Northern Indian Patrika requiring the students to reach the College at 10 a.m. with Bank Draft of Rs. 382.50. It is apparent that even if the petitioners had come to know through the Newspaper that admission would take place on 27-12-85, they had to get Bank Drafts prepared which could not have been possible before 10 a.m. The report submitted by Dr. R.K. Sharma shows admission was denied to some simply on the ground that they had not brought the bank draft.

22. At any rate, the petitioners had reached the College latest by 1 p.m. which is the time noted by the Principal on the written protest lodged by the petitioners. The original of Annexure 10 was produced by the learned counsel for the College and in that the time noted is 1 p.m. The petitioners had reached the college at the earliest in pursuance of the notice published in Northern Indian Patrika. They had not been intimated the fact of their selection by registered post as was mandatory under the rules of admission which provides that the selected candidates may deposit the admission fee within 15 days.

23. We next turn to writ petition No. 3112 of 1984 filed by six petitioners. Their case is that they did not get any notice about the date fixed for the admissions for filling up the remaining 22 seats. However, on getting information some how about the admissions they reached the College on 27-12-85 while admissions were still going on. As they were not aware of the date fixed for the admissions they naturally did not have the bank drafts ready with them. So Prof. R. K. Sharma directed them to bring the bank drafts, but by the time they returned with the bank drafts, they were told that the admissions were already over. It was contended that on merits, they were entitled to be admitted in preference to those who were actually admitted.

24. As we have already held that there was no proper notice or opportunity given to the candidates to appear on 27-12-85 and that on that ground alone the impugned admissions made on that date are liable to be quashed, it is not necessary to express any final opinion on whether the petitioners were entitled to be admitted even if they had appeared on that date at 10 a.m. along with the bank drafts. As we propose to direct the respondent-College to fill up the remaining 22 seats afresh after considering the cases of all the petitioners as well as all those already admitted, we are leaving the question whether the

petitioners were entitled to be admitted on merits against the 22 seats to be determined by the College in accordance with the prescribed norms and reservations.

25. The case of Ved Prakash Shama (Writ Petition No. 836 of 1986) is that he did not get any notice about the date fixed for admissions. Consequently, he could not appear on that date. It is claimed that according to his merit index, he was entitled to be admitted. As we are directing the respondent-College to have a fresh look at the admissions for filling up the remaining 22 seats, the case of the petitioner may also be considered on its merit against the said 22 seats.

26. The case of Shamsher Bahadur Singh (Writ Petition No. 392 of 1986) is also based on the same complaint namely that according to his merit index, he was entitled to be admitted in preference to the candidates who have been admitted. In the counter-affidavit filed on behalf of the College, the stand taken is that if the cases of scheduled caste candidates are taken into account, the petitioner will not be entitled to be admitted. Here again the College will examine when reconsidering the question of filling up the remaining 22 seats whether the petitioner would be entitled to be admitted in accordance with the prescribed norms and reservations.

27. The grievance raised in writ petition No. 3113 of 1986 (Om Prakash and another) is that because of the defective notice published in the Newspaper on 27-12-85 and shortness of time, the petitioners could not get the bank drafts prepared before 11 a.m. and consequently when they reached the College they were told that admissions had already been completed. It is contended that they had higher merit index than some of the students who were admitted on that date.

28. Again, it will be for the respondent-College to consider the case of the petitioners as well when they are undertaking the admissions afresh in accordance with the directions of this Court. If they find that the petitioners are entitled to be admitted on merits as well as in accordance with the reservations carved out for different categories of students, they will admit the petitioners otherwise not. The petitioners, like the other petitioners are at best entitled only to have their claim reconsidered against the 22 seats.

29. In writ petition No. 3107 of 1966 (Virendra Kumar v. Vice-Chancellor), the claim of the petitioner is that he had already deposited the bank draft but was illegally refused admission on the ground that the admissions have been closed. He also claims to be a member of scheduled caste. His case too shall be considered for admission on its merits consistently with the prescribed norms and reservations while filling up 22 seats in consonance with the directions of this Court.

33. Lastly we turn to the case of Sudhir Kumar (writ petition No. 1587 of 1986). The case of this petitioner is that he was entitled to be considered both against the quota reserved for the students of Kanpur University as well as those coming

from other States, His further case is that he had actually been admitted provisionally on the basis of the letter issued by the Principal on 3-12-85 but in the final lists prepared on 15-12-85 and 27-12-85, his name did not find place. In the counter affidavit which has been filed on behalf of the College, it is asserted that the provisional admission of the petitioner was of no avail as placement of various candidates in different disciplines of studies could not be undertaken or concluded unless all the selected candidates appeared on the date fixed and indicated their choice. The petitioner was not entitled to be admitted against 22 seats which were filled up on 15-12-85 as all those candidates had a higher merit index and better claim than that of the petitioner. In regard to the admissions made on 27-12-85, the respondent's case is that the petitioner was not admitted because he had not turned up on that date from the charge produced before us, it is apparent that the petitioner was not entitled to be admitted in preference to those who were admitted on 15-12-85. As regards the admissions made on 27-12-85, in view of the fact that we are quashing the same for reconsideration, the case of the petitioner shall also be considered on its merits against the quotas fixed for Kanpur University as well as those coming from other States.

31. Sri K. N. Tripathi, learned counsel for the students who were admitted on Dec. 27, 1985, advanced two submissions for our consideration. His first contention was that under the rules of admission candidates are required to make separate applications for each of the Disciplines in which they are seeking admission. That being so, the placement of candidates in various Disciplines necessarily requires the personal presence of the candidates on the date fixed for admission. The candidates indicate their preference on that date by having a look at their relative position in the list of candidates already selected for admission before them. In this view, the college was clearly entitled to take into consideration the cases of only those students who had actually appeared on Dec. 27, 1985 at the appointed hour.

32. We will assume for the purposes of this case that the personal presence of the candidates selected for admission is essential for placement of candidates in different Disciplines keeping in view the availability of seats, merit index and reservation. But in the present case, as demonstrated above, the petitioners were denied the opportunity to be present on the date at the appointed hour either because they could not know about the notice published in the Newspaper or their inability to get bank drafts prepared in time or because they were misled by the notice. We have also found that sufficient opportunity was not given to the candidates to be present at the appointed hour and the petitioners were refused admission simply because they had reached the college after 11 a.m. or on the ground that they had not come ready with the bank drafts. These things clearly rendered the entire procedure adopted defective entitling the petitioners to a fresh consideration of their claims for admission for filling up the remaining 22 seats.

33. Sri Tripathi also submitted that the irregularity or defect in the notice issued on Dec. 27, 1985 was not material as some of the petitioners had, in any case, appeared on that date. The submission is devoid of any merit. In the first place, some of the petitioners could not reach the college at all on Dec. 27, 1985. Others were refused admission because they had not brought the bank drafts. Still others were denied admission even though they had already deposited the admission-fee on the ground that they had reached after 11 a.m. The refusal by the college to consider the cases of the petitioners on these grounds was clearly unjustified in view of the palpable inadequacy of the notice quite apart from the fact that the notice was misleading.

34. The second submission of Sri K. N. Tripathi was that the parties represented by him are completely blameless and this Court should not in its discretion under Article 226 of the Constitution issue any direction which may result in their being displaced in the middle of the session. They had reached the College at the appointed hour with the bank drafts and among the candidates who were present they had clearly a preferential right to admission. It was further submitted that these students have been prosecuting their studies for nearly three months now and have also deposited fees and incurred heavy expenditure in the process of settling down in the institution. It would be unjust and they would be hit hard both financially and mentally if they are unsettled at this stage.

35. We find considerable merit in the above contention. In our opinion, the students who have already been admitted should not be disturbed even if it involves the total number of students admitted for the session in question going beyond the sanctioned strength of 44 students. It was not disputed by the learned counsel for the respondent-College that in the past also there have been some instances of the number of students eventually admitted exceeding the sanctioned strength owing to special circumstances and exigencies over which the college had no control.

36. The fact that we are directing extension of seats with a view to preventing dislodging of the students who were selected for admission on Dec. 27, 1985 would not, however, justify a similar order in respect of such of the petitioners as cannot find place among the 22 seats which are now being filled up in accordance with the directions given hereunder. The students already admitted constitute a separate and distinct class and their cases cannot be equated with that of those petitioners who could not have secured admission on Dec. 27, 1985 even if they were present and ready with the bank drafts at the appointed hour. Upon the conclusion reached by us the petitioners have become entitled at best only for a fresh consideration of their claims for admission against the 22 seats.

37. Sri Radhey Shyam, learned counsel for the Kanpur University, submitted that this Court should not issue any direction which may result in the total admissions going beyond the sanctioned strength of 44. It is not necessary to repeat the comments which we have already made as regards the circumstances which have persuaded us to issue directions with a view to prevent dislocation of the

students who have already been admitted.

38. We wish to make it clear however, that the fact that we are issuing direction for retention of the students who were already admitted on Dec. 27, 1985, would not entitle them to be retained in the particular Discipline in which they were admitted on Dec. 27, 1985. They will continue to remain on the rolls of the college but in the subject in which they will be found eligible for admission as a result of fresh admissions which will be made for filling up the remaining 22 seats.

39. Sri Prabodh Gaur placed before the Court the decision taken by the college as regards the allocation of seats to the scheduled caste and scheduled tribe candidates in the various Disciplines. The seats were allocated as follows :--

Horticulture 2 Agricultural Extension 2 Agricultural Economics 2 Agricultural Botany 1 Agricultural Chemistry. 1 Total 8

40. We think that the distribution of seats is valid and proper, and the same is approved.

41. To sum up, the admissions made on Dec. 27, 1985 are liable to be quashed as they suffer from a fundamental error of procedure, namely, denial of opportunity to the petitioners to appear on the date fixed for admissions. As a consequence, the petitioners have become entitled to have their claims for admission reconsidered as against the 22 seats.

42. In the result, the petition succeeds and is allowed. The admissions made on Dec. 27, 1985 to the M.Sc. (Ag) Course of the 1985-86 session, are quashed. The respondent-college is directed to undertake admissions to fill up 22 seats afresh strictly according to the prescribed norms and the quotas reserved for various categories subject to the condition that the selection shall be confined only to the petitioners and those who were admitted on Dec. 27, 1985. The petitioners as well as those already admitted shall present themselves before the Principal or any member of the teaching staff appointed in that behalf by the Principal, on Mar. 31, 1986 with bank drafts of requisite amount (unless the bank drafts have already been submitted) between 10 a.m. to 12 a.m. The Principal or the teacher appointed in that behalf shall thereafter undertake admissions in each Discipline according to the merit index and in accordance with the quotas of reservation. Those among the 22 candidates already admitted on Dec. 27, 1985 not finding place in this list of 22 candidates shall also be admitted in accordance with their merit index and to that extent the total number of sanctioned seats shall stand increased in respect of this year's batch only. In the circumstances, the parties shall bear their respective costs.