

(1991) 01 MP CK 0030
In the Madhya Pradesh High Court
Case No : M.P. No's. 2308 of 1990

Ku. Sandhya Pastor

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 01 MP CK 0030

Hon'ble Judges : Sacheendra Dwivedi, J;K.K. Verma, J

Bench : Division Bench

Advocate : K.K. Lahoti, for the Appellant; M.G. Khedkar, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sacheendra Dwivedi, J.—This is a petition under Articles 226/227 of the Constitution of India for a direction to the respondents 1 and 2 to admit the petitioner as a regular candidate in B.A. (Part II) in Government Madhav College, Chanderi (for short, "the College") of District Guna.

2. Admittedly, petitioner, Kum. Sandhya Pastor was a regular student of B.A. (Part I) of the College in the Session 1989-90. She appeared in the annual examination with the examination centre at the College in March-April, 1990. Smt. Usha Mishra, a member of the College-teaching-staff, acted as an invigilator in some papers, in which the petitioner took the examination. The petitioner secured pass marks in the annual examination, vide copy of the statement of marks (Annexure P-I).

3. It is also not disputed by the respondents that the petitioner sought admission in B.A. (Part II) of the College for the next session. 1990-91 and that respondent No. 2 (the Principal) refused admission to her in the light of a resolution (Annexure R-3), passed by the College Council, which included respondent No. 3, as one of its members, in the meeting chaired by respondent No. 2, held on

31-7-1990.

The material portion is at paragraph 6 of the minutes of the meeting. It runs as follows:--

^^rRi"pkr cSBd esa mifLFkr LHkh InL;ksa us egkfo|ky; esa vuq"kkluhu Nk=ksa ds izos"k IEcU/k esa fopkj O;Dr fd;s rFkk izos"k IEcU/kh fu;eksa dh leh{kk dh bl lUnHkZ esa lfefr us loZ IEefr ls ;g fu.kZ; fy;k fd ,sls Nk= Nk=kvksa dks ftUgksu foxr o"kZ esa vuq"kkluhurk rFkk vHknzrk dh gks mUgsa egkfo|ky; eas izos"k ls cafpr fd;k tk;s ftls egkfo|ky; dk okrkoy.k "kkfUr ,oa vuq"kklu) jgs blh rkjrE; esa izks- Jherh m"kk feJk us dq- IU;/k iLrkSj }kjk muds ?izks- feJk? fo:) yxk;s x;s vkjksi i= dks ifj"kn ds le{k fopkjFkZ j[kus dk vuqjks/k Jheku v/;{kk egksn; ls fd;k] mDr fuosnu dks Lohdkj dj Jheku v/;{kk egksn; us ml vkjksi i= dks ifj"kn esa j[kus gsrq vknsf"kr fd;k ftls dk;kZy; ds eq[; fyfid Jh ,e- ,y- "kekZ us izLrqr fd;kA bl f"kd;k;r i= dk ifj"kn }kjk xgu v/;;u rFkk fopkj foe"kZ fd;k x;k rFkk ifj"kn bl fu"d"kZ ij igqaph fd d- IU;/k iLrkSj ?iq=h Jh t; ukjk;.k iLrkSj? Nk=k ch- ,- izFke o"kZ 1989&90 }kjk yxk;s x;s leLr vkjksi vLR;] fujk/kkj ,oa nqHkkZouk iw.kZ gksdj izk;/kid dh xfjek dks BSI igqapkus okys gS rFkk Nk=k dh vuq"kkluhurk ,oa mn.Mrk dks iznZf"kr djrs gSA vr% ifj"kn }kjk loZIEefr ls Nk=k dq- IU;/k dks izos"k ls oafpr djus dk fu.kZ; fy;k x;k lkFk gh v/;{k egksn; us ;g fu.kZ; fy;k fd bl lanHkZ esa vU; dkj.k dkSfly ds le{k izLrqr fd;k tkrs gS tks ifj"kn dk fu.kZ; loksZifj gksdkj ekU; gksxk-

5. Admittedly, the petitioner's father Jainarain Pastor and petitioner Ku. Sandhya made written representations to the respondent No. 2 on 10-8-1990 and 13-8-1990, respectively. It is not the case of respondent No. 2 that he considered these representations made for the purpose of seeking admission to the petitioners in B.A. (Part II) of the College.

6. The admitted and undisputed facts constitute the core of petitioner's case of the existence of alleged legal right in her, to be considered for being admitted in B.A. (Part II) class in the College and also of the redressal of the alleged wrong done to her by the respondent No. 2, by depriving her of the right, in an arbitrary manner, not warranted by the rule of admission.

7. The petitioners has also urged as one of the grounds that respondent No. 3, Smt. Usha Mishra, had an animus against her and had manipulated the affairs of the admission process so as to block her admission in the College.

8. According to the petitioner, the respondent No. 3 had an axe to grind in the matter in the light of the following facts:

(a) When the petitioner was appearing in B.A. (Part I), she was unnecessarily harassed and undue interference was made by respondent No. 3, Smt. Usha Mishra, as the petitioner had not joined her tuition-group. It has been stated that when the first paper of B.A. (Part I) was being solved by the petitioner in the examination hall, respondent No. 3 made searches of the petitioner, many a times, but nothing incriminating was found on her. Due to these searches, the

petitioner was mentally disturbed.

(b) The case of the petitioner further is that when second paper B.A. (Part I) was in progress, respondent No. 3 again made attempts to harass the petitioner. Her answer book was taken away by respondent No. 3 and it was returned to the petitioner only after about half an hour.

(c) The father of the petitioner made a complaint in writing to the Principal of the College in this regard and subsequently the father of the petitioner, considering the possibility of adverse effect that may be caused to the petitioner's educational career, took the petitioner to respondent No. 3 to settle the matter by tendering apology, but the respondent No. 3 and her husband, instead, lodged a false report against the petitioner, her father and brother. On such a complaint being made, it was learnt that the Police registered offences under Sections 451, 504, 341 and 506 (Part II), I.P.C. and also u/s 3(e) of the M. P. Examinations Act. Having come to know of the registration of the above offences, an application was filed by the petitioner, her father and brother for grant of anticipatory bail before the learned Sessions Judge, Guna. The learned Sessions Judge, who had the opportunity of examining the case diary, on examination, found that no offence u/s 506 (Part II), I.P.C. was made out at all. It was further found that in the case diary there was no mention of registration of offence u/s 506 (Part II), I.P.C.

(d) The learned Sessions Court further found that as against the petitioner there was no allegation and that no offence was registered, nor the police wanted to arrest her; as such, there was no question of grant of bail to her and the application was rejected for those reasons. With regard to petitioner's father and brother, the lower Court held that as against them also no offence u/s 3(e) of the M. P. Examinations Act was made out, yet an offence having been registered by police, their bail application was allowed. The petitioner has filed copy of the order of the learned Sessions Judge, Guna, as Annexure P-3.

9. The petitioner has submitted that having passed her B.A. (Part I), when she applied for admission in B.A. (Part II), it was not given to her and no intimation of any refusal order to that effect was conveyed to her. She was not afforded any opportunity of being heard. She made a representation and a copy of that representation (Annexure P-6) has been filed with the petition. The representation having not been considered and disposed of this petition has been filed seeking a direction against the State and the College Authorities for giving her admission in B.A. (Part II) in the College.

10. The State and the Principal of the college have contested the petition in a Common return. A separate return has been filed by respondent No. 3, Smt. Usha Mishra, without furnishing a copy thereof to the petitioner or her counsel. She engaged no counsel of her own and absented herself of the petition. However, no relief is claimed against her.

11. The respondents 1 and 2 have denied the allegations of the petitioner and

have based their case of not giving admission to the petitioner on the ground that since in the meeting held on 31-7-1990, (vide the copy of proceeding Annexure R-3), the College Council had resolved that admission should not be given to the petitioner due to her misconduct. In this regard, the respondents relied on State Government Notification No. F-40/1/81/E-5/20, dated 20-6-1981, which authorises the College Councils to take decisions regarding admission to the students. The copy of Notification has been filed as Annexure R-4.

12. Thus, according to respondents 1 and 2, the petitioner has been refused admission in the light of the resolution (Annexure R-3) of the College Council Meeting dated 31-7-1990, but the respondents have not filed any documents to show whether the subject-matter regarding admission of the petitioner was at all on the agenda of the meeting for that day, without which the consideration of the matter and the decision thereon would be unjustified and improper, particularly, when the petitioner has urged as one of the grounds of attack for such a decision, that respondent No. 3, Smt. Usha Mishra, had an animus against the petitioner and had manipulated the affairs of admission process, so as to block her admission in the College.

13. Paragraph 6 of the minutes of the meeting (Annexure R-3) goes to show that it was respondent No. 3, Smt. Usha Mishra, who, all of a sudden in the discussion of the meeting, had requested the Chairman, i.e., the Principal, respondent No. 2, that the charge-sheet made (Aarop-Patra) by the petitioner against her, be placed and considered in the meeting, and accepting that request, the respondent No. 2 directed the Head-clerk of the office to place the charge-sheet in the meeting of the Council. The Council after intence study and discussion, took the decision of not giving admission to the petitioner. It does not disclose the details of the alleged charge-sheet whether it formed part of some judicial proceedings or a complaint filed by the petitioner in some Court, is also not known. The minutes of the proceedings (Annexure R-3) also do not disclose the , contends of the alleged charge-sheet or show any act or omission, which may amount to misconduct. The plain reading of paragraph 6 of Annexure R-3 discloses non-application of mind before taking decision of depriving the petitioner of her a valuable right of seeking admission in the College.

14. For the respondents, to make out a case of their legal and bona fide action of not giving admission to the petitioner, the so-called "complaint "was the most material document and the circumstance of non-filing of this document goes against the respondent.

15. Further, in para (c) of the return, the respondents have stated that.

"the admission to the College is based on several rules and instructions and if the candidate does not fulfil all the requirements, the candidate is not entitled for admission in the College."

It is a sorry state of affairs that though mention of several rules and instructions have been made, nothing has been placed or shown except the instructions

(Annexure R-4).

16. For not giving admission to the petitioner, the ground urged by the respondents is of her misconduct alone. In this regard, no document or material has been placed before this Court to show any act of misconduct of the petitioner against any of the members of the College-staff and/or any attempt ever made by the petitioner, which amounts or may be called as an act of misconduct.

17. Further, while denying the admission to the petitioner, no opportunity of hearing was given to her. It has also been submitted that the resolution (Annexure R-3) is also otherwise vitiated, as respondent No. 3, Smt. Usha Mishra, who is the alleged complainant against the petitioner, remained present and participated in the proceedings of the meeting dated 31-7-1990, when the resolution was passed, materially and substantially influencing the proceedings adversely against the interest of the petitioner and seeking favour of the Council in her own interest.

18. When Smt. Usha Mishra was herself the complainant and when the petitioner was not being heard. The College Council ought to have taken a decision about excluding Smt. Mishra from the meeting of the College Council. But when Smt. Mishra did partake and had a say in the deliberations on the subject affecting the petitioner's admission to College, it was the requirement of the principles of natural justice that the petitioner also ought to have been heard. The principles of natural justice are as much applicable to the proceedings before other authorities as to the law Courts, as has been held by their Lordships of the Supreme Court in *Diwakar Shrivastava and Others Vs. State of Madhya Pradesh and Others*, Thus, there being no compliance of rules of nature justice, the decision of refusal to admit the petitioner is illegal, unjust and improper.

19. Thus, there being absolutely to material on record to show any act of indiscipline or of misconduct on the part of the petitioner against the College-staff or any member thereof and the resolution, Annexure R-3 being against the established usual procedure, is violative of principles of natural justice and. was arbitrary. The decision of refusal of admission having been taken without due application of mind, we are of the opinion that the petitioner has wrongly been denied admission in B.A. (Part 11) in the College.

20. In the result, the petition succeeds and is allowed. A writ of mandamus be issued against the State and the Principal of the College to give admission to the petitioner in B.A. (Part 11). In the circumstances, we also allow the costs of this petition to the petitioner against respondent No. 1, since the respondent No. 1 instead of examining the merits of the meeting dated 31-7-1990 and the resolution thereof also joined respondent No. 2 in the stand, which we have found as unsustainable in law. Counsel's fee Rs. 250/-if already certified. Outstanding amount of security, if any, be returned to the petitioner.

21. This order shall be sufficient authority for deeming due compliance of the requisite formalities and requirement inclusive of time factor and/or any other

requirement of attendance etc. With regard to her admission, except the payment of fees by the petitioner, as the petitioner is not to be blamed for the delay for the prospective admission and since the default lies with the respondents is denying admission to the petitioner, This order shall be the authority to respondent No. 2 to complete necessary formal requirements and admit the petitioner in B. A. (Part II) in the College. The petitioner shall be admitted within a period of 10 days from the receipt of this order, being communicated to the respondent No. 2 and necessary formalities shall be completed by him within that period.