
(1989) 02 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19886 of 1987

Kum. M. Anuradha, Adv.

APPELLANT

Vs

Sri. Venkateswara University, Triupati

RESPONDENT

Date of Decision : 24-02-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1990 AP 122

Hon'ble Judges : Syed Shah Mohammad Quadri, J

Bench : Single Bench

Advocate : G. Vedantha Rao, for the Appellant; P. Ramachandra Reddy, for the Respondent

Judgement

1. The petitioner studied in Adoni Arts and Science College, Adoni during the academic years 1984-87. The first year examinations of the B.Sc, were scheduled to be held in June, 1985. The petitioner was seriously ill during that period. Therefore, she did not attend the examination due to illness. She however appeared in the supplemental examinations held in September, 1985 and passed in one attempt. She also passed second year examination in one attempt; so also the third year examination. She secured 58% of marks in Chemistry, 72.8% in Botany and 67.4% in Zoology in the aggregate of all the three examinations. She applied for admission in M.Sc., Botany. The list of selected candidates was announced on December 17, 1987 but her name was not included while a candidate who secured. 63% in Botany was selected. She was later informed that as she passed the first year examination in September, 1985 instead of June, 1985, She was treated as having passed in second attempt and was not selected, pursuant to R. 2 of the General Conditions for Admission to Different Courses of Study. The petitioner therefore challenges the validity of the Rule as being arbitrary and unjust and unreasonable and violative of Art. 14 of the Constitution of India and prays that the said Rule be struck down.

2. The respondent filed a counter-affidavit stating that under R. 2, the University

had framed the order of priority for admission, The petitioner comes under Category II(c) and as the other candidates who passed all the three examinations in the first attempt were available, they were granted admission in the first category and the petitioner was not selected in view of the R. 2 of the admission rules. It is further stated that there are many candidates in Category 11(a) and II(b) and therefore the petitioner who falls in Category II(c) cannot be considered for admission to the course. In these circumstances, it is prayed that the writ petition be dismissed.

3. Sri G. Vendantha Rao, the learned counsel for the petitioner, submits that R. 2 is arbitrary, unreasonable was oppressive and, therefore, it has to be struck down as it does not take into consideration the unforeseen events like sudden sickness, accidents, etc., due to which the candidate may not take the Examinations.

4. Sri P. Ramchandra Reddi, the learned counsel for the respondent, submits that the rule has been framed in the best interest of the standards of education. Therefore, the rule cannot be said to be arbitrary.

5. Rule 2 of the General Conditions for admission to different courses of study which is challenged in this writ petition reads thus:--

"2. Admission will be on the basis of merit subject to reservation. Order of merit is decided taking into account the marks obtained as well as the attempts made. Any candidate who has not taken the examination at the appropriate time for any reason will be considered as having attempts."

6. The rule provides that the admission will be on the basis of merit subject to reservation, and that the order of merit is decided taking into account the marks obtained as well as the attempts made. The Rule further says that any candidate who has not taken the examination at the appropriate time for any reason will be considered as having attempts. In so far as the first limb of the Rule is concerned, no valid challenge can be made. The challenge might only be against the second limb of the Rule noted above. There may be cases where a candidate, due to sudden illness, may not be in a position to attend the examination. There may as well be a case where due to accident, or due to any other unforeseen circumstances beyond his control a student is prevented from taking the examination. The Rule does not take into consideration these aspects. If really the candidate takes the examination and does not pass the same, there will be justification in counting it as attempt against him. But where the candidate does not take the examination at all for reasons beyond his control, to count it as attempt against him would be oppressive and unreasonable. I am supported in my view by a judgment of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangabad* and *Another*. In that case, the candidate fell seriously ill and was hospitalised during the final term of III M.B.B.S. and he could not attend the classes and clinics. He applied to the Dean to cancel the third M.B.B.S. final term and to permit him to attend classes and clinics regularly

with the next batch and he was allowed to do so. But he was denied admission to M.S. Course on the ground that he passed the M.B.B.S. Examination in the second attempt and, therefore, a deduction of five percent was liable to be made from the marks percent obtained by him. The University authorities relied on R. IV 5(e) of the Rules relating to Appointment of Residencies for denying admission to the candidate. The Supreme Court observed (Para 3):

"All the more if the rule has the effect of treating failure to appear at the examination because of serious illness as non appearance at the examination so as to make the candidate liable to a deduction of five percent of marks when seeking admission to a Post Graduate course the rule is indeed arbitrary."

7. From the above discussion it follows that in so far as the second limb of R. 2 is concerned, it has to be held as unreasonable and arbitrary as it does not take into consideration the circumstances which might prevent the candidate from appearing for the examination while counting it as an attempt. The offending portion of R. 2 is separable from the rest of the Rule. Therefore, the second limb of R. 2 of the General Conditions for admission namely, "Any candidate who has not taken the examination at the appropriate time for any reason will be considered as having attempted", is struck down.

8. It cannot be disputed that if that portion of the operation of the Rule which has been struck down is ignored while evaluating the petitioner's merit selection, the petitioner will fall in the second category as she secured more marks than the last candidate who was admitted in M.Sc., course, so she is entitled to be admitted to the course.

9. On 31-12-1987 this Court granted interim direction to the respondent to permit petitioner to attend classes. On 5-2-1988, further direction was given to the respondent to permit the petitioner to attend practicals as well. In these circumstances, the respondent is directed to regularise the admission of the petitioner after taking requisite fee and treat her as a regularly admitted candidate and permit her to study the course accordingly. The W.P. is allowed as indicated above. No Costs.

10. Petition allowed.