

(1958) 11 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2566 of 1958

Kumari Asha Lata

APPELLANT

Vs

The Principal, Meerut College, Meerut

RESPONDENT

Date of Decision : 13-11-1958

Acts Referred:

Agra University Rules — Rule 2(2), 3
Constitution of India, 1950 — Article 226

Citation : AIR 1959 All 224

Hon'ble Judges : B.R. James, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; B.D. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

B.R. James, J.—Can a student secure admission into an educational institution as of right, is the issue of importance this petition under Article 226 of the Constitution raises. No one denies the desirability of every boy and girl in the country being able to receive the education that he or she might want, but the question for decision before me here is whether a school or College can be compelled to admit him or her into the desired class.

2. The facts are quite simple. The petitioner is Km. Asha Lata, daughter of one Om Prakash Gupta of Meerut. She was a student of the Meerut College, a College affiliated to the University of Agra. She appeared at the B.Sc. Final examination of that University in 1957 and passed. She then joined the M. Sc. Previous class in Botany in the College. She appeared for the M.Sc. Previous examination of University in 1958, but failed. Thereupon she expressed a desire to be readmitted to her old class for the sessions 1958-59.

But the Colleg'e authorities expressed their inability to oblige her, The reason was that, since for Science subjects practicals are as important as theory, and since the laboratory equipment of the College is limited; it has only eight seals in

the M.Sc. Previous class in Botany, and an equal number in the M.Sc. Final Class; all these seats had been filled in accordance with certain rules framed in this behalf by the College, so that there was no vacancy which could be offered to the petitioner.

Her father Om Prakash took up the matter with the, Principal of the College, and wrote him a number of letters, including a highly objectionable one dated 28-8-1958, insisting that she be admitted. But on the Principal refusing to yield, the petitioner has come to this Court and prays for the issue of an order of mandamus commanding the Principal to admit her into the M.Sc. Previous class in Botany for the current session.

3. Now, it cannot be disputed that in this Court the petitioner can succeed only if two conditions are fulfilled : first that she has a legal right to be admitted to the class she wants; and second that there is a legal duty cast on the Principal to admit her.

4. Her learned Counsel, Mr. S. C. Khare, has totally failed to show that either condition is fulfilled. If the; rights and duties alleged by her do exist, they must be found in the Agra University Act, or in the Statutes, Ordinances and Regulations made thereunder. But the Act is silent on the point while Mr. Khare has been unable to place his finger on any Statute, Ordinance or Regulation which could conceivably support the petitioner's claim.

The best that he has been able to do is to refer to Rule 3 of Chapter XX of the Ordinances. This Rule runs : "A student shall be recognised as a member of a College as soon as he has been accepted by the Principal and has paid the fee demanded by the College." This Rule is not of the slightest avail to him, for the petitioner has not been accepted by the Principal.

Mr. Khare has further attempted to rely on Clause (2) of Rule 2 Chapter XXIX-B of the Ordinances, which is in these words : "Every candidate seeking permission to appear at an examination of the University shall be required to remain a student of the affiliated College in which he completed his course." But this Chapter is confined to ex-students, and its Rule 5 unequivocally lays down : "Every ex-student who desires to appear at the subsequent examination shall pay Rs. 10 as annual fee to his affiliated College to retain his membership of the College."

That is to say, an ex-student who desires to appear at a University examination must remain a member of his College by paying an annual affiliation fee of Rs. 10/-. The petitioner can no doubt take advantage of this Rule if she wishes to appear at the next University examination, nevertheless there is nothing in it which entitles her to continue to attend regular classes in the College or to pay the monthly College fee.

5. This discussion makes it clear that there is nothing in the Rules of the University which either gives the petitioner a right to be admitted to the College

or which compels the Principal to admit her.

6. Mr. B. D. Gupta, learned Counsel for the Principal, states that the College as an autonomous institution has framed Rules consistent with the Agra University Act and the Statutes, Ordinance and Regulations framed thereunder, and his contention that these rules must be binding both on the students and the authorities of the College is a perfectly valid one).

He has filed a copy of the Rules framed for admission to the M.Sc. class in the college.

These rules classify candidates in order of preference, top place being given to those who have secured a first class in the B.Sc. Mr. Gupta relies specifically on Rule (vi) which enacts: "Admissions shall be restricted to successful B.Sc. candidates of the same year." This rule would completely eliminate the petitioner, inasmuch as she is not a "successful B.Sc. candidate of the same year." Mr. Gupta rightly points out that, far from casting a legal duty on the Principal to admit her, this Rule entitled him to reject her.

7. The next argument of Mr. Khare is that since the petitioner was an acknowledged member of the College in the preceding session she must be deemed to continue as a member of it in the current session also. In other words, he wants me to hold that "once a member always a member". As already pointed out, there is nothing in the Rules of the University, or of the College, supporting such a proposition nor am I prepared to accept its validity, and indeed I notice that the affidavit accompanying the petition, which has been sworn by the father Om Prakash itself acknowledges that admission is from session to session.

8. Mr. Khare's next contention is of a different character and is based on the hypothesis that there is at least one seat which the petitioner can be given. The argument runs thus. In the subject of Botany the College has only eight seats for the M.Sc. Previous and an equal number in the M.Sc. Final, total sixteen seats. By the petitioner's failure in the 1958 examination there cannot be more than seven students in the M.Sc. Final.

But the College has arranged the teaching of subjects in such a manner that no difference is made as to what number of students are taken in the Previous and the number taken in the Final, so long as the total remains sixteen. Since the total number of students at present in both the years cannot be more than fifteen, one seat remains which can be offered to the petitioner.

Assuming for the sake of argument that Mr. Khare's arithmetical calculations are correct, what his plea amounts to is that the Principal should be asked to use his discretion in admitting the petitioner. But, quite plainly, this is not a matter which is amenable to a writ of mandamus, under which writ no authority can be directed to exercise its discretion in a particular manner.

9. Finally, Mr. Khare has advanced an argument which may be termed an

argument based on sentiment: he submits that if admission is refused the petitioner's educational career will be ruined. On behalf of the Principal Mr. Gupta points out that there should be no fear of this, for under Chapter XXIX-B of the Ordinance, the petitioner can still take the University M.Sc. Previous examination in Botany in 1959, that she is already well-equipped to sit for it in view of the theoretical and practical teaching she received in the College during the last session, and that the number of seats in the class being limited, and having already been filled with more deserving candidates, there is no seat left to which she can be accommodated.

Mr. Gupta further submits that if the petitioner's prayer is granted by this Court, one student who has already attended the M.Sc. Previous class for several months will have to be thrown out and that it is his educational career which is likely to be ruined. The force of Mr. Gupta's argument cannot be gainsaid. Besides, if the petitioner chooses to come to Court for getting her grievances redressed, she must rest her claim on legal rights and not on matters of sentiment.

10. It is evident from the discussion attempted above that neither the Agra University Act nor the Rules framed thereunder give the petitioner any right to secure admission into the class she wants, nor is there any legal or statutory duty on the Principal of the College to admit her. I do not imagine that Acts and Rules which govern other educational institutions in Uttar Pradesh contain anything different.

It is highly significant that learned counsel have not been able to cite before me a single authority, either of this country or elsewhere, where a school or College has been compelled to admit a student: such matters are deemed to be domestic affairs of the institution concerned and are left to the discretion of the authorities who are charged with the responsibility of managing it.

The petitioner was ill-advised in approaching this Court for relief; the Principal alone had the authority to do what he wants, and it is not inconceivable that the rude letters of her father Om Prakash contributed towards the disinclination of the Principal to admit her.

Bo that as it may, it is clear, that she has failed to establish the rights and duties without which her claim cannot succeed. Consequently her petition fails and is dismissed with costs. The interim order dated the 12th September 1958 passed by the Hon"ble Application Judge is hereby vacated.