

(1992) 10 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 28590, 28591 and 30476 of 1992

Kumari Ruchi

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 29-10-1992

Acts Referred:

Banaras Hindu University Act, 1915 — Section 11, 18, 18(1)

Citation : (1992) 4 AWC 578 Supp

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : A. Upadhyaya, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Banaras Hindu University, Varanasi (herein afterin after referred to as the university) invited applications in February, 1992 for Pre-Medical Test (hereinafter referred to as the P.M.T.) for selecting candidates for admission to M.B.B.S. course for the session 1992-93. There were 50 seats in the M.B.B.S. course and 5 supernumerary seats were reserved for the studens of the University. By an information leaflet, a copy of which has been produced before me and the relevant extract of which has been filed along with the writ petition, eligibility qualifications were laid down. So far as the 5 supernumerary seats were concerned, which were reserved for the students of the University, eligibility qualifications were laid down in appendix I to the information leaflet, relevant extract from which in reproduced below :

A quota of 5 supernumerary seats is reserved for the bonafide students of degree course who have attended the prescribed courses of studies by having actually studied and pursued the course in accordance with the attendance requirements that is, having a minimum of 65% attendance in the course in 1-91-92 session. The minimum attendance of 65% will be computed only at the end of session for determining whether a student is on the roll of the University on the date of the

P.M.T. A student who does not fulfil the minimum attendance of 65% will not be treated as a bonafide student on the roll of the University on any ground.

2. All the Petitioners in the three writ petitions mentioned above, who were students of B.Sc. Part 1 in the University, applied for the test in pursuance of the aforesaid advertisement. Petitioners were permitted to appear in the P.M.T. by the University. The result of the test was declared and separate lists containing the names of selected candidates and the candidates whose names are placed in the waiting list for 50 and 5 supernumerary seats were prepared. In the list of selected candidates for 5 supernumerary seats, name of Km. Ruchi, the Petitioner in Writ Petition No. 30476 of 1992 was placed at serial No. 5 while names of Sri Ashish Rai and Sri Anoop Tripathi, Petitioners in the other two writ petitions were placed at serial Nos. 7 & 9 of the list of candidates in waiting. As some of the selected candidates against the 5 supernumerary seats did not join, Km. Ruchi was placed at serial No. 2 in the list of selected candidates and Sri Ashish Rai and Sri Anoop Tripathi also improved their positions. However, these Petitioners were not granted admission as they did not have 65% attendance in the B.Sc. Part I in the session 1991-92. Representations were accordingly made to the University authorities. Deputy Registrar of the University vide his letter dated 28-5-1992 recommended the cases of the Petitioners to the Director of the Indian Institute of Medical Sciences of the University mentioning therein that since the attendance requirement for appearing in B.Sc. examination has been fixed at 60% the attendance requirement for P.M.T. should also be suitably modified. The Director in pursuance thereof passed an order on 29-5-1992 extending the benefit of the resolution of the Academic Council of the University, whereby requirement of attendance was reduced to 60% to students, of P.M.T. No action having been taken in spite of the above order of the Director} Ashish Rai, Petitioner in writ petition No. 28590 of 1992 filed a writ petition before this Court, which, was disposed of with the direction that the matter will be placed before the Academic Council for taking appropriate decision. On the representation of the Petitioner therein, the Academic Council accordingly on 14-8-1992 resolved not to make any change in out off attendance requirement, i.e., 65% and the representation was accordingly rejected. This was communicated vide letter dated 17-8-1992. The Petitioners have accordingly filed these writ petitions for quashing the decision of the Academic Council dated 14-8-1992 and for writ of mandamus directing the Respondents to admit them in M.B.B.S. course. As the Petitioners have not been admitted due to their attendance being less than 65%, Sarvasri Dharmendra Kumar Pandey, Pankaj Vema and Miss. Farah Durrani, who secured less marks in P.M.T. than some of the Petitioners, but were having 65% attendance, have been admitted to M B B S. course. These persons have accordingly been impleaded as Respondents Nos. 5, 6 & 7 to the writ petitions as the relief granted in these writ petitions is likely to affect them adversely.

3. The Petitioners have served the Respondents Nos. 5 to 7 and an affidavit of service has been filed. Sri M B. Saxena, Advocate has appeared on behalf of

Respondents Nos. 6 & 7. The Respondents have filed counter affidavit and the Petitioners have filed rejoinder affidavit in reply thereto. I have heard the the learned Counsel for the parties.

4. Sri V.B. Upadhyaya, learned Senior Advocate for the Petitioner in writ petition No. 30476 of 1992 has made three submissions namely, (i) prescription of attendance requirement of 65% is illegal being against the special Ordinance No. 11, framed by the University, (ii) as the Academic Council of the University has passed a resolution on 25-3-1992 reducing the attendance requirement to 60% for the academic year 1991-92 in view of the prolonged agitations and strike in the session, there was no justification for keeping the attendance requirement at 65% for P.M.T only. Subsequent resolution dated 14-8-1992 of the Academic Council being ultra vires the Petitioner having 60% attendance was entitled to be admitted to the M.B.B.S. course in view of the resolution of the Academic Council passed on 25-3-1992, and (iii) the Director of Institute is the sole competent authority to deal with the examination and all matters in connection therewith and he having passed an order on 29-5-1992 reducing the attendance requirement from 65% to 60%, it, was not open to the Respondents to refuse admission to the Petitioners. Sri R.N. Singh, learned Counsel for the other two Petitioners, apart from reiterating the first submission made by Sri Upadhyaya, has also argued that as the Petitioners have made representations before the University for condoning the shortage of attendance, those applications are liable to be decided. Sri S.N. Verma, learned Senior Advocate for the University, apart from disputing the above submission and supporting the orders of the University has submitted that the Petitioners are not bonafide students of the University because they have not appeared in B Sc. Part I examination of the University and their sole object in getting admission in B.Sc. Part I was to avail of the benefit of 5 supernumerary seats. On this basis the submission is that this Court should not interfere at their instance.

5. The University has framed both General and Special Ordinances. By General Ordinance 16(a) attendance requirement of 75% during each year has been prescribed but power has been given to appropriate authority for condoning shortage of attendance not exceeding 50% for the reasons mentioned therein. The University has framed Special Ordinances for admission to institute of Medical Sciences. Institute of Technology, institute of Agriculture Science and certain other courses. For Institute of Medical Sciences details regarding the examination have been laid down in those Ordinances. Ordinance No. 11, which provides for 5 supernumerary for the students of ths University, being relevant is reproduce below :

11. A quota of 5 supernumerary seat is reserved for the Students who are on roll of the Banarus Hindu University at the time of appearance in the pre-Medical Test and qualify in the P.M.T. Such students will be selected from amongst themselves in order of merit in the P.M.T. In case of equal marks of the last seat, the selection for the last seat will be made in accordance with the clause 10 above as

applicable to the general candidates.

6. From the plain reading of Ordinance No. II, it is clear that (i) 5 supernumerary seats have been reserved for the students, who are on the roll of the University at the time of appearance in the P.M.T. and (ii) the selection from amongst the students of the University will be made in order of merit in the P.M.T. However, the appendix I to the leaflet has reserved 5 supernumerary seats for the bona fide students of degree course, who have attended the prescribed course of studies and have the attendance requirement of 65% in the year 1991-92. Although, according to Ordinance No. 11 reservation is for the students, who are on the roll of the University and there is no requirement of any attendance, but by appendix I requirement of bona-fide students with the minimum attendance of 65% has been laid down.

7. Ordinance 11 has been framed by the University in exercise of its legislative power u/s 18 of Banaras Hindu University Act, 1915 (hereinafter referred to as the Act). Section 18(1)(c) and (f), being relevant are quoted hereinbelow :

Ordinances :

18. (1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely :

(c) the qualifications for admission in courses of study for degrees, diplomas, certificates and other academic distinctions and to examinations of the University and the award of degrees, diplomas, certificates and other academic distinctions :

(f) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators :

The Ordinance can be amended, repelled or added to by the Executive Council as provided by sub-Section (3) of Section 18 of the Act. Special Ordinance No. 11 mentioned above has been framed in exercise of power u/s 18 and being a piece of delegated legislation is "law". Although, it is open to an appropriate authority to fill in the lacuna in the statutory rules but it cannot add anything which is inconsistent with the basic requirement of the rule. As mentioned herein before 5 supernumerary seats have been reserved "for the students, who are on the roll of Banaras Hindu University". This requirement cannot be diluted by adding rider to the effect that only those bonafide students, who have got minimum 65% attendance, can avail of the reservation of those seats. The requirement laid down by the Ordinance has been whittled down and has in fact been nullified by the appendix I to the information leaflet and what was available to every student, who was on the roll of the University, has been taken away and the benefit has been confined to a Section of students, who could obtain 65% attendance. Attendance requirement has nothing to do with the merit of a student. This consideration is foreign to and inconsistent with the special Ordinance, mentioned above. The language of Ordinance being clear and there being no ambiguity in it, it was not open to the authorities to provide eligibility

qualifications which run counter to the express provision of the Ordinance. Even if it is conceded that the University authorities have ancillary and incidental power to provide something which could effectuate what was laid down in the Ordinance, they have no such power to lay down anything which is contrary to the express provision. Appendix I of the information leaflet as such, is ultra vires the Special Ordinance No. 11, so far as it has laid down the requirement of 65% attendance.

8. Relying on Section 11 of the Act, Statute 26 and pages 252 and 253 of the Calendar of the University Part 1 Vol. I, learned Counsel for the University has submitted that Academic Council either by itself or through a committee constituted by it has the power to lay down the eligibility qualifications for P.M.T. Section 11 has declared the Academic Council to be the Academic Body of the University and has entrusted it with the charge of organization of study, research in the University and the colleges, course of study and the examination of the students and the conferment of degrees. Statute 26 enables the Court, the Executive Council, the Academic Council or any faculty to appoint the Board or committees for performing such functions as may be assigned to them. In exercise of power under Statute 26 Admission Co-ordination Board, reference of which has been made at page 252 and 253 of the Calendar has been constituted. One of the powers and functions of the said Board is formulation of general admission policy and making recommendation to the Academic Council regarding minimum eligibility requirement and principles of weightage and reservation, if permissible, for different course. The submission of the learned Counsel is that the eligibility qualification of 65% attendance, having been laid down by the Admission Co-Ordination Board, is well within the power of the authorities. It is not possible to agree with the learned Counsel. A Division Bench of this Court in *Awadhesh Kumar Saxena v. Vice Chancellor, B.H.U.* 1989 (2) U.P. LBEC 379, has considered the scope and extent of power of Academic Council and has laid down that P.M.T. is not an examination in the strict sense, which could be controlled by the Academic Council and the only authority, which is competent to deal with it is the Executive Council. Relevant extracts from that judgment are reproduced below :

An Entrance Test is held not for the purpose of granting diploma or certificates or conferring degrees and other academic distinctions but for facilitating the University to provide for instructions in various branches of learning. The pre-Medical Test, therefore, is strictly speaking not an examination in the sense contemplated in the aforementioned provisions of the Act and the Statutes. The test is held not for the mere purpose of separating the grain from the chaff but also with avowed object to selecting the best grain available. This is so as the seats for admission to the M.B.B. S: First Year course are limited. Such an activity of the University falls in the administrative domain. The Executive Council in Section 10, having been constituted as the executive body of the University and having been charged with the conduct of all administrative affairs of the University not otherwise provided for, is clearly authorised to have a say in the

Pre-Medical Test. The words "conduct of all administrative affairs of the University" are wide enough to empower the Executive Council to conduct the Pre-Medical Test.

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Section 11, inter alia, provide that the Academic Council shall be the academic body of the University and shall have charge of the organization of study and research in the University and Colleges, the courses of study and the examination of students and conferment of ordinary and honorary degrees " and shall exercise such other duties as may be conferred or imposed on it by Statutes and Ordinances, and shall have the right to advise the Executive Council on all academic matters. We have already taken the view that a Pre-Medical Test, the purpose of which is to enable a student to unlock the doors so as to gain entry into the temple of learning, is distinct and separate from an examination held by the University for the purpose of conferment of diploma and degrees. We have, therefore, no hesitation in taking the view that a Pre-Medical Test cannot be termed as an academic matter within the meaning of Section 11. We have already held above that such a Test falls in the realm of administration,

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The entrance examinations are not embraced in the term examination used in the Statute under reference. The conclusion, therefore, is inevitable that the Academic Council does not come into picture at all when the Executive Council resolves to cancel a Pre-Medical Test.

As the Academic Council does not have power to deal with the P.M.T., It either directly or through a committee appointed by it, cannot lay down any eligibility qualification, for it.

9. Decision of a learned Single Judge of this Court relied upon by the learned Counsel for the University in the case of Rahul Prasad Vs. Institute of Medical Sciences, Banaras Hindu University, Varanasi and others, cannot help the Respondents for the reason that the prescription of eligibility requirement as laid down in the information leaf-let was not challenged before the learned Judge on the ground of being violative of Special Ordinance. In this connection reference may also be made to the decision of a Division Bench of this Court in the case of Kumari Leena Gupta v. Institute of Medical Sciences, B.H.U. 1989 (I) UP LB EC 619, wherein the Ordinance, which came up for consideration before this Court was as follows :

A quota of 5 seats is reserved for the bona fide students of Degree Course who have attended the prescribed course of studies and who are on the rolls of Banaras Hindu University at the time of appearance in the Pre-Medical Test.

While interpreting the above Ordinance, this Court held that Ordinance does not contemplate prescription of attendance. The relevant passage of this judgment is reproduced below :

On a bare reading of the Ordinance, by no stretch of imagination it can be said that the word "prescribed" referable to the word "attendance." In fact the word "Prescribed" refers to the word "course." We are, therefore, of opinion that the Ordinance does not lay down that the bona fide students must have put in prescribed attendance in an academic session to enable him to get admission in M.B.B.S. course against the quota reserved for bona fide students of degree course.

The first submission of the Petitioners has to be accepted and the attendance requirement of 65% is liable to be ignored.

10. The second submission of the learned Counsel is also liable to be accepted. The Academic Council in view of the agitation and strike in the academic year 1991-92 has already on 25-3-1992 reduce the attendance requirement to 60% for examinations conducted by the University. It is because of this resolution of the Academic Council that the Deputy Registrar recommended to the Director of Institute by his letter dated 29-5-1992 for reducing the attendance requirement to 60% on the basis of which the Director passed an order on 29-5-1992 for reduction of attendance requirement for P.M.T. from 65%. As mentioned hereinbefore the Academic Council however, on 14-8-1992 refused to make any change in the cut off attendance requirement and insisted that a student, who does not have 65% of attendance in the session, is not eligible. But no valid reasons as to why the Academic Council relaxed the attendance requirement from 65% to 60% for the whole University but insisted on the requirement of 65% attendance for P.M.T. have been disclosed. When in the academic session in question there were agitations and strike affecting the smooth working of the University, it was expected that the Academic Council makes the relaxation, which is applicable to all examinations.

11. The submission of Sri R.N. Singh that applications of the two Petitioners, namely, Ashish Rai and Anoop Tripathi for condonation of Shortage of attendance are liable to be considered by the Academic Council and till those applications are disposed of, candidature of those two Petitioners ought not to have been rejected has merit. As the authorities have been given power to condone the shortage of attendance, candidature of a candidate should not be rejected unless his prayer for condonation of shortage of attendance has been considered on merit and is rejected.

12. The submission of the learned Counsel for the University that these writ petitions should not be entertained, as the Petitioners were not bonafide students on account of their not having appeared in B.Sc. part I examination, cannot be accepted. Even the two students, namely, Ritesh Kumar Singh and Miss. Farah Durrani, who have been admitted against the 5 supernumerary seats reserved for the students of the University did not appear in B.Sc. Part I examination. Whatever standard is applied by the University it must be uniform. It is not open to it to deny admission to the Petitioners on the ground that they have not appeared in B.Sc. Part I examination but admit others even though they have

also not appeared in the said examination.

13. As I have accepted the first two submissions of the learned Counsel for the Petitioners, it is not necessary to decide the third submission relating to the power of the Director of Institute.

14. learned Counsel for the University has raised an apprehension to the effect that in case these writ petitions are allowed, University has to reopen the whole question of admission against 5 supernumerary seats. The apprehension is not justified for two reasons, viz., firstly, seats are only 5 and the total number of candidates in the select and the waiting lists are only 10 on account of which the exercise of selecting 5 out of 10 candidates is not gigantic, and secondly the University is generally required to take action only in respect of those candidates, who have approached this Court and in whose favour this Court has passed appropriate direction. But it cannot be said to be the hard and fast rule. It all depends on the facts and circumstances of the case, the underlying object being always the selection of meritorious candidates for admission to M.B.B.S. course.

15. As mentioned above, there are only 5 supernumerary seats for the University students. In the list of the selected candidates 5 names have been mentioned including the name of Km. Ruchi, who has been placed at serial No. 5. Sri Sanjay Kumar Srivastava, who is placed at serial No. 1 in that list has been admitted to the M.B.B.S. course as a candidate of the general list. He is, as such, out of list. Sri Ritesh Kumar Singh, who is placed at serial No. 2, has been granted admission against one of the 5 supernumerary seats. The fate of two candidates, namely, Sri Sumit Samant and Sri Surya Nath Tripathi, whose names have been placed at serial Nos. 3 & 4 of the above list, is not known. These two candidates are also entitled to be admitted in view of their placing in the merit list ; but the exact information about them is not available on the record. Km. Ruchi, petitioner in writ petition No. 30476 of 1992 was placed at serial No. 5 in the list of selected candidates. She is, as such, entitled to be admitted and her writ petition is liable to be allowed. Sri Dharmendra Kumar Pandey, whose name initially was placed at serial No. 6 of the list, is now within first five of the list and as such, is entitled to be admitted. He has already been admitted and his admission is not liable to be disturbed in view of his merit and it is to be maintained. In this manner 2 supernumerary seats are left for admission against which the University is required to grant admission strictly on the basis of merit as shown in the lists of selected candidates and the candidates in waiting, a copy of which has been filed as Annexure I to the counter affidavit of Miss- Farah Durrani in Writ petition No. 28590 of 1992, Ashish Rai v. Banaras Hindu University, Varanasi and others, the correctness of which has been accepted by the learned Counsel for the Petitioners and the learned Counsel for the University and other Respondents. As mentioned hereinabove, Sri Sumit Samant and Sri Surya Nath Tripathi, whose names were placed at serial Nos. 3 & 4 of the list of selected candidates, are -entitled to be admitted to the above course in view of their merits. The Respondents, as such, should give an opportunity to them for

admission to the above course within a week from the date of presentation of certified copy of this judgment and if they join, writ petition of Sri Ashish Rai will stand dismissed and the admission granted to Pankaj Verma, Respondent No. 6 will stand quashed. However, if they decline or do not respond within two weeks from the date of offer, the admission is liable to be granted to Sri Pankaj Verma, Respondent No. 6 and Sri Ashish Rai (Petitioner in Writ Petition No. 28590 of 1992). As Sri Pankaj Verma has already been admitted, his admission is liable to be maintained, if the aforesaid two persons Sarvasri Sumit Samant and Surya Nath Tripathi do not join. In this manner all the 5 seats would be filled up and there will be no vacancy left for admission of any other candidate. Accordingly writ petition of Sri Anoop Tripathi, being Writ petition No. 28591 of 1992 is liable to be dismissed. Similarly the admission granted to Miss. Farah Durrani, who was placed at serial No. 10 is liable to be quashed.

16. As requirement of attendance has been declared to be ultra vires, there is no question of asking the Respondents to consider the applications of Sri Ashish Rai and Sri Anoop Tripathi for condoning the shortage of attendance.

17. Writ petition No. 30476 of 1992, Km. Ruchi v. B.H.U. & others is allowed. The impugned order refusing her admission to M.B.B.S. course is quashed. The attendance requirement for P.M.T. is declared ultra vires. The Respondent are directed to admit the Petitioner (Km. Ruchi) to M.M.B.S. course forthwith. The Respondents are further directed to give an opportunity to Sri Samant and Sri Surya Nath Tripathi for admission to the above course immediately within a week from the date of receipt of certified copy of this judgment. In case they join, the writ petition No. 28590 of 1992, Ashish Rai v. Banaras Hindu University & others will stand dismissed and the admission granted to Sri Pankaj Verma will also stand quashed. However, if the above two persons do not join or do not respond within two weeks from the date of offer made to them by the University admission will be granted to Sri Ashish Rai Petitioner in Writ petition No. 28590 of 1992 and the admission already granted to Sri Pankaj Verma will be maintained and will not be disturbed. Admission granted to Miss Farah Durrani, Respondent No. 7 is quashed. Writ petition No. 28591 of 1992 filed by Sri Anoop Tripathi is dismissed.

18. Before parting with the case, it may be observed that in case it is possible for the University to admit the Petitioners without disturbing the admission of Respondents Nos. 6 & 7 the University authorities may do so and the Respondents No. 6 & 7 may also be permitted to continue their course, as they have already been admitted and are pursuing their studies so far.