

(1999) 12 AP CK 0085

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2533 of 1999

Laveti Suresh Babu

APPELLANT

Vs

Convenor, MCACET-98, Sri Krishna Devaraya University,
Anantapur and others

RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 ALD 428 : (2000) 2 ALT 65 : (2000) 2 APLJ 427

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. Duba Nagarjuna Babu, for the Appellant; Mr. P.S. Naidu and Mr. T. Rajendra Prasad, for the Respondent

Judgement

1. The petitioner is a graduate having passed BSc., Examination. He belongs to BC-D Category. He appeared for MCACET-98 examination conducted by the first respondent in September, 1999. He got a rank of 2629. After obtaining the rank card he applied to Sri Venkateswara University, Nagarjuna University and Andhra University, Visakhapatnam. As he is a local candidate with reference to Andhra University area, though he received call letters from Sri Venkateswara University and Nagarjuna University, he could not get a seat. The Andhra University conducted first counselling and second counselling by sending personal call letters to candidates who got a rank between 1-2000. He did not receive any call letter for obvious reasons.

2. On 9-1-1999, the Andhra University issued a paper notification in Vaartha and Eenadu newspapers inviting candidates to be present for third counselling for the purpose of admission to additional seats which were created in two new private colleges and also for some seats which fell vacant due to the admitted candidates joining some other courses. Pursuant to notification dated 9-1-1999 third counselling was conducted by Andhra University on 11-1-1999 and 12-1-1999. In connection with the second counselling when the petitioner went to Tirupati on

18-1-1999, he came to know that Andhra University conducted third counselling by issuing a paper notification.

3. The petitioner states that he comes from a remote village in West Godavari District and no newspaper is available and as such he could not go to Visakhapatnam, the seat of the University and be present during the third counselling. According to him, the University committed gross irregularity in not sending individual call letters to respective rank holders for third counselling also. Be that as it may, he submitted a representation to the second respondent on 22-1-1999 and as he did not receive any reply, he approached this Court. He contends that the action of the Andhra University is illegal and arbitrary.

4. When the matter came up before this Court on various occasions, this Court directed the Standing Counsel for the University to furnish a list of BC-D candidates to the petitioner who were admitted during the third counselling and who got a lesser rank than the petitioner. This direction was complied with. Therefore, the petitioner filed WP MP No.26452 of 1999 praying to implead the five BC-D candidates as respondents 4 to 8. This Court ordered notice on this application amended as per Court order dated 18-2-2000 and the notices are not yet served.

5. In the affidavit accompanying the application for impleadment, the petitioner submits that all the five candidates who were admitted in third counselling got a lesser rank than the petitioner and that on account of arbitrary and illegal action of the respondents 2 and 3, the petitioner's legitimate expectation is ignored. The petitioner also states in the supplementary affidavit accompanying the petition that the 3 years' MCA course consists six semesters, that the first semester examinations are already completed and the second semester examinations are likely to be held in January, 2000. As he is deprived of a seat to which legitimately he is entitled to, he cannot be denied a seat on the ground that one year course is already completed.

6. The respondents 2 and 3 have filed a counter affidavit denying any arbitrariness or illegality in conducting third counselling after inviting candidates through a paper notification. The respondents also state that the last candidate who was admitted in the University College of Engineering in First Year MCA course got a rank of 159 and, therefore, the petitioner has no chance of securing a seat. The counter-affidavit further reveals that a notification was issued on 11th, 13th and 15th of January, 1998 in various newspapers inviting applications for admission to MCA course in the University College of Engineering and other affiliated colleges. Applications were invited only from the candidates who got ranks in MCACET-98. During January, 1999 when another counselling was to be conducted due to starting of two new colleges, one at Kakinada and another at Eluru and also for vacant seats, as time was not sufficient, no individual call letters were sent to 3400 left over candidates. When there are large number of candidates and number of seats available are few, the practice being followed by the Convenor of Common Entrance Tests is to issue a notice to the press in

leading newspapers. In fact, the petitioner applied initially pursuant to a paper notification issued in July, 1998 inviting applications for admission to MCA course. Therefore, the petitioner ought to have availed the opportunity of being present during the third counselling pursuant to the paper notification. It is also averred in the counter-affidavit that no candidate who got lesser rank than the petitioner was admitted to MCA course during the third counselling while filling up the vacant seats.

7. The learned Counsel for the petitioner submits that during the first two counselling, admittedly the University has sent individual call letters to the rank holders who obtained ranks upto 2000. Therefore, such a procedure gave rise to a legitimate expectation to the likes of the petitioner to receive a call letter even for third counselling. As the arbitrary and illegal action of the University in notifying the third counselling only in the newspapers and deviated from the standard procedure of sending call letters has resulted in denying legitimate expectation, a right should be viewed to have accrued to the petitioner and he should be admitted to a seat in MCA course. Though he has invited my attention to the statutory rules framed by the Government of Andhra Pradesh, especially, Rule 5(7), he is not able to show any rule under which there is an obligation on the part of the University to send individual call letters. That being the rule position, the petitioner's Counsel submits that though there is no rule, as the University resorted to sending call letters for first and second counselling, the same procedure ought to have been followed even for the third counselling,

8. The learned standing Counsel for Andhra University, respondents 1 and 2, has produced before me the list of candidates admitted on 12-1-1999 during the third counselling and also the list of admitted candidates belonging to BC-D category. On the basis of these two documents, he submits that among the candidates who were admitted in the third counselling on 12-1-1999, there was no BC-D candidate who got a rank lesser than the petitioner. This is with reference to admission to Chaitanya Degree College, Kakinada. The other college at Eluru is a Woman's College and, therefore, there is no question of the petitioner's candidature being considered for admission in Eluru college. Therefore, it is the submission of the learned standing Counsel for respondents 1 and 2, that no candidate with a lesser rank than the petitioner was admitted in Kakinada on 12-1-1999. Further, with regard to the vacant seats in other colleges all the candidates who were present at the time of counselling were called and they were admitted. Those BC-D candidates were admitted on 12-1-1999 - who are respondents 4 to 8 herein - were not sent any individual call letters and they were present during the third counselling in response to the paper notification in Vaartha and Eenadu dated 9-1-1999. Further submission is that during the first and second counselling call letters are sent keeping in view the number of seats available as otherwise all the candidates who appeared and who applied for MCACET would venture to come to the counselling in which event it is not possible to complete the admissions within the time frame. When there are left over seats during the third counselling, they were offered to those

candidates in order of merit who were present during the third counselling. In the procedure adopted by the University, it is submitted, there is no illegality or arbitrariness and that either in the rules or in the prospectus issued to the candidates no promise was held out that all the candidates will be sent call letters. Therefore, there is no legitimate expectation for a candidate to wait for a call letter and the only "expectation" is that whether the notice issued in the newspaper is sufficient or not.

9. As per Rule 5(7) of the Rules issued in G.O. Ms. No. 119, mere appearance in the entrance test does not entitle the candidate for a seat in MCA course and the eligible candidate who got a rank has to make an application seeking for admission. Relying on this, the learned Counsel submits that there is an implied obligation on the part of the University to send personal call letters. Even by stretching the language in Rule 5(7), it is not possible to countenance the submission of the learned Counsel. Therefore, the petitioner cannot have any grievance on this score and he cannot complain that any rules are violated.

10. The next submission centers round the doctrine of legitimate expectation. It is not denied that Sri Venkateswara University, Nagarjuna University and Andhra University have sent call letters to candidates upto certain rank only for first and second counselling. Sri Venkateswara University and Nagarjuna University have not conducted third counselling. Andhra University which conducted third counselling, having regard to the large number of left over candidates (3400 to be precise), have advertised in two newspapers. This method of notifying the candidates for third counselling, especially when the left over candidates are in large numbers, in my considered view, is the most appropriate and rationale method of conducting admission procedure. The petitioner initially applied to the University only pursuant to such paper notification. Therefore, it is rather preposterous for any graduate to complain that as he is a resident of remote village, he is not getting any newspaper and that it is not possible for him to respond pursuant to paper notification. The doctrine of legitimate expectation is not available for a person who is not vigilant with his opportunities which have not yet ripened into rights. As presently discussed, even the petitioner cannot invoke the doctrine of legitimate expectation.

11. In my judgment in WP No.23845 dated 17-11-1999 I have considered the aspect of legitimate expectation vis-a-vis a situation which is squarely governed by the Rules. In Punjab Communications Ltd. Vs. Union of India and Others, , His Lordship, Hon''ble Sri Justice M. Jagannadha Rao reviewed the entire law of doctrine of legitimate expectation and held that a change in the policy resulting in deprivation of legitimate expectation would only permit the Court to test the legality or reasonableness of the policy and not beyond that. Referring to this judgment, I have summarised the principles of legitimate expectation as under:

(1) For a legitimate expectation to arise, the decisions of administrative authority must affect the person by depriving him of some benefit or advantage, which he had in the past or been permitted by the decision maker, which the person can

legitimately expect to be permitted to continue and the person received assurances from the decision maker that the benefit will not be withdrawn without giving him an opportunity of advancing reasons.

(2) The procedural aspect of legitimate expectation relates to representation for hearing or other appropriate procedure.

(3) Substantive part of the principle is that representation made for a benefit of substantive nature, will be granted or if the person is already in receipt of the benefit, it will be continued and not varied.

(4) The decision makers action to change the policy in public interest, cannot be fettered by the application of principle of substantive legitimate expectation.

(5) If the authority proposes to defeat a person's legitimate expectation, the authority should afford the person an opportunity to make a representation in the matter. From this point of view, the doctrine imposed a duty to act fairly by taking into consideration all relevant factors relating to such legitimate expectation.

(6) The protection of legitimate expectation do not require the fulfillment of legitimate expectation, where an overriding public interest required otherwise.

(7) If a person is denied the benefit by virtue of a legitimate enactment or change in the statutory rules, it is always taken that the result of a change in the policy by Legislation, does not give rise to legitimate expectation.

(8) The principle of legitimate expectation certainly gives the person sufficient locus standi to seek judicial review; and

(9) The substantive legitimate expectation merely permits the Courts to find out if the change of policy resulting in defeating legitimate expectation was irrational or unreasonable.

12. In the instant matter, admittedly rules do not provide for sending individual call letters to the candidates. Sending individual call letters for first and second counselling by all the Universities was only for the sake of convenience to restrict the number of responding candidates to complete the admissions within the time frame. Further, when the third counselling was conducted, treating all the left over 3400 candidates equally or, in other words, giving the same treatment to all of them, the same does not permit a person to raise the question of legitimate expectation. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , it was held that when all the persons are treated equally, the same cannot be termed arbitrary and the doctrine of legitimate expectation does not arise.

13. In the present case, as demonstrated by the learned Standing Counsel for respondents 2 and 3, in respect of one private college, no candidate with lesser rank than the petitioner was admitted. All the BC-D candidates who were present during the third counselling pursuant to the paper notification dated 9-1-1999

were considered for the vacant seats and duly admitted. While admitting the candidates during third counselling, rule of merit was followed and only high ranking candidates were admitted. Therefore, the submission of the learned Counsel for the petitioner that petitioner's legitimate expectation is defeated, is liable to be rejected. It may also be added that legitimate expectation only permits the petitioner to invoke judicial review which permit this Court to see whether the doctrine of fairness was followed or not and not more than that.

14. For the above reasons, the writ petition is devoid of merits.

15. The Writ Petition is accordingly dismissed. No costs.