
(2004) 03 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 18448 (W) of 2003

Madhumita Das

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 142, 16, 226

Citation : (2005) 1 CHN 313

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Kaushik Chanda, for the Appellant; Dipankar Dutta, S.K. Patra and Rajib Kumar Basak, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—By this writ application, the petitioner, a student of LL.B. Course in the Jogesh Chowdhury Law College under Calcutta University has prayed for the following reliefs:

(A) A declaration that the circular as disclosed in Annexure P-10 to this application, which prohibits registration of students under the University of Calcutta, who passed Senior School Certificate Examination from Central Board of Secondary Education through Patrachar Vidyalaya, is violative of Articles 14 and 16 of the Constitution of India and accordingly be struck down.

(B) A writ of and/or in the nature of mandamus commanding the respondents to forthwith revoke/set aside/cancel the order of the respondent No. 2 which was communicated to the petitioner vide letter No.ADM/CE/0/2003 dated 26-9-2003;

(C) Issue a writ of and/or in the nature mandamus directing the respondents concerned to give registration number to your petitioner as a student of University of Calcutta forthwith;

(D) Issue a writ of and/or in the nature mandamus directing the respondents

concerned to issue mark-sheets of Part I, Part III and Part IV LLB examinations to your petitioner forthwith;

(E) Issue a writ of and/or in the nature of certiorari directing the respondents concerned to transmit and authenticate the records of the case so that conscionable justice may be rendered upon your petitioner upon hearing the parties;

(F) Issue rule NISI in terms of prayer (A), (B) AND (C);

(G) Pass an interim order directing the respondents concerned to issue provisional marksheets to your petitioner of Part I, Part III and Part IV LLB examinations till the disposal of the application;

(H) An ad interim order in terms of prayer (D);

(I) Pass any other or further order or orders, as Your Lordships may deem fit and proper.

2. The facts giving rise to filing of the present writ application can be summed up thus:

a) The petitioner passed Senior School Certificate Examination from the Central Board of Secondary Education ("CBSE") in the year 1992 as a student of "Patrachar Vidyalaya" category and the CBSE gave migration certificate to the petitioner declaring "no objection" in her joining any recognized college or institution or taking examination of any University or Board established by law.

b) In the year 1997, the petitioner enrolled herself in the Faculty of Law at Jogesh Chowdhury Law College under the University of Calcutta in LLB Course of five years.

c) After her admission in the said college, the petitioner submitted all the required documents including migration certificate for the purpose of registering her name in the University of Calcutta, and accordingly the college authority sent all those documents to the University.

d) The petitioner appeared in Part I LLB examination and prior to that admit card was issued to her wherein the registration number was mentioned as "Pending".

e) The marksheet of Part I LLB examination was however, not issued to the petitioner and according to her, the College authority informed her that as her registration was pending, the marksheet was withheld. The college authority, however, permitted her to fill up the form for appearing at the Part II examination and consequently, admit card was issued and she not only appeared at the examination but also passed Part II examination as would appear from the marksheet issued by the University.

f) Thereafter, the petitioner appeared at the Part III examination and it will appear from the admit card that the registration number was even then shown to be "pending". The petitioner asserts that although she passed in such

examination but marksheet was not issued and the University assured her that the same would be issued along with the marksheet of Part IV examination.

g) The petitioner, however, was permitted to appear at the Part IV examination but ultimately the marksheet of such examination has not been issued.

h) Being dissatisfied, the petitioner in the past moved another writ application before this Court being W.P. No. 12178(W) of 2003 thereby praying for a direction upon the University to give registration number to the petitioner and to issue marksheets of Part I, Part III and Part IV LLB examination but the Hon'ble Justice Jayanta Kumar Biswas on August 12, 2003 was pleased to dismiss the said application as the same was not preceded by a demand of justice before the University. His Lordship, however, granted liberty to the petitioner to make representation before the University.

i) The petitioner, in terms of the order dated August 12, 2003 passed by Biswas J. made a representation to the University praying for issue of the marksheets and the registration number.

j) By a letter dated September 26, 2003, the Controller of Examination responded the representation along with a copy of the reasoned order passed by the Vice-Chancellor of the University thereby rejecting the prayers of the petitioner.

3. The said reasoned order (Annexure "P-10") is really the subject-matter of this writ application.

4. The sum and substance of the said reasoned order is that the University, before the admission of the petitioner in the Jogesh Chowdhury Law College in the year 1997, published circulars in all leading newspapers debarring students of "Patrachar" category from taking admission in any course conducted by the University and thus, her admission was illegal, as a result, registration number was not granted. It was further explained that as per convention of the University, the admit card of LLB Part I was released pending registration but the result of Part I was rightly kept withheld. It was further alleged that while filling up the form for LLB Part II examination, the petitioner not only suppressed the fact that her result of LLB Part I had been withheld but also falsely stated that she had passed such examination. According to Annexure P10, the University was misled by her false statement and eventually allowed her to appear at the Part II examination and released marksheet of Part II examination.

5. It is further stated that admit cards for Part III and Part IV were released inadvertently. The petitioner, it is alleged in the reasoned order, again gave a wrong impression that she had passed Part III examination although such result was withheld.

6. According to the reasoned order, the University was deceived by the wrong statements of the petitioner and consequently, allowed her to appear at the Part II, Part III and Part IV examinations and similarly through mistake released the

marksheet of Part I examination.

7. Mr. Kausik Chanda, the learned Counsel appearing on behalf of the petitioner, has at the outset attacked the decision of the University not to recognize a candidate who has passed in the category of "Patrachar Vidyalaya" as violative of Article 14 of the Constitution of India. Mr. Chanda contends that a candidate under "Patrachar Vidyalaya" category appears at the same examinations held for other categories of students and the criteria for being successful in such examination being same, there was no valid reason for not recognizing a student who passed the examination as "Patrachar" even though he may have obtained higher marks than a student of other categories in the self-same examinations. According to Mr. Chanda there is no intelligible differentia which distinguishes a "Patrachar Student" from the students of other categories and that there is no rational nexus to the object sought to be achieved by the impugned decision as the sole object of the decision should be to exclude less meritorious candidates. Mr. Chanda in this connection relies upon the decisions of the Supreme Court in the cases of (1) Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, , (2) State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, and of a Division Bench of this Court in the case of Atreyi Mitra v. University of Calcutta, reported in 1998 WBLR (Cal) 291.

8. Apart from the aforesaid point, Mr. Chanda contends that the petitioner in her application for admission having disclosed all materials including marksheet and the migration certificate and the college authority having admitted her after consideration of all materials, now at the conclusion of the course cannot disqualify her on the ground of lack of educational qualification.

9. In support of such contention he relies upon the decisions of the Apex Court in the cases of (1) Ashok Chand Singhvi Vs. University of Jodhpur and Others, , (2) Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, and (3) A. Sudha Vs. University of Mysore and Another, .

10. Mr. Chanda, thus, prays for orders in terms of the prayers made in this application.

11. Mr. Dipankar Dutta, the learned Counsel appearing on behalf of the University, has vehemently opposed this application.

12. Mr. Dutta contends that this application should be outrightly dismissed on the ground of deliberate false statement made in the application. Mr. Dutta by referring to paragraphs 7 and 12 of the application points out that in those two paragraphs the petitioner has made specific untrue averments that she passed Part I and Part III examinations although her results were not at all published. He further contends that by making such false statements in the application forms, she obtained admit cards and appeared at Part II and Part IV examinations. According to Mr. Dutta, fraud vitiates the entire proceedings and this Court should not assist a petitioner who gained admission in the college and appeared in the examinations by taking resort to deception and knavery.

13. As regards the challenge thrown to the decision of the Academic Council prohibiting admission of "Patrachar Students" in the University, Mr. Dutta asserted that a body of experts having taken such decision, it is beyond the competence of a Writ Court to examine such decision. Mr. Dutta submits that even if the experts have taken a decision which may not appear to be wise to the Court, such fact cannot confer right upon the Court to substitute its own view. Mr. Dutta, however, justifies the decision to debar "Patrachar Students" on the ground that the students other than that of "Patrachar Category" are required to undergo studies in three additional subjects for which internal assessments are made by the concerned school; whereas a "Patrachar Student" is not required to study those subjects. Mr. Dutta, thus, submits that there are intelligible differentia which distinguish "Patrachar Students" from the students of other categories.

14. Mr. Dutta further draws attention of this Court to the Rules of the Bar Council of India prescribing the qualifications of a lawyer which mandate that at the time of joining the course of instruction in law for a degree in law, the person concerned must pass an examination in 10+2 or 11+1 course of schooling recognized by the educational authority of Central or State Governments or possess such academic qualifications which are considered equivalent to 10+2 or 11+1 courses by the Bar Council of India.

15. By referring to those rules, Mr. Dutta contends that while excluding the "Patrachar Students" the experts of the Academic Council might have in their mind the aforesaid condition making course of "Schooling of 10+2 or 11+1" as qualification for admission. Mr. Dutta submits that the "Patrachar Students" not having the qualification of "10+2 or 11+1 Schooling" were rightly denied admission in law colleges. At any rate, Mr. Dutta submits that this Court cannot examine the decision of the experts in this application.

16. Mr. Dutta further submits that this question should have been raised by the petitioner before getting improper admission in the College. Accordingly, to Mr. Dutta, this application should be dismissed on the ground of gross delay as well as acquiescence.

17. Lastly, Mr. Dutta contends that the Jogesh Chowdhury Law College in spite of specific instruction given by the University not to admit any "Patrachar Student", having admitted the petitioner, his client cannot be forced to accept the mistake of the College. Moreover, according to Mr. Dutta, the petitioner in spite of knowledge that she had no requisite qualification having gained admission by suppression of fact, is not entitled to the benefit of her own wrong.

18. In support of all these contentions, Mr. Dutta relies upon the following decisions:

1. Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, .
2. Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, .

3. Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .
4. U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, .
5. Delhi Pradesh Registered Medical Practitioners Vs. Delhi Admn. Director of Health Services and Others, .
6. Dr Preeti Srivastava and Another Vs. State of M.P. and Others, .
7. Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, .
8. W. B. Central School Service Commission v. Gita Guha, reported in 2002(2) CHN 531 39 to 43.
9. State of M.P. and Others Vs. Nandlal Jaiswal and Others, .
10. State of Rajasthan and Others Vs. Lata Arun, .
11. Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, .
12. C.B.S.E. and Another Vs. P. Sunil Kumar and Others, .
13. Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others, .
14. Council for Indian School Certificate Examination Vs. Isha Mittal and Another, .
15. A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, .
16. Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, .
19. The first question, therefore, which falls for determination in this writ application is whether the petitioner is entitled to get a declaration that the circular disclosed in Annexure "P-10" prohibiting registration of a student who passed Senior School Certification Examination from C.B.S.E. through "Patrachar Vidyalaya" is violative of Articles 14 and 16 of the Constitution of India.
20. As pointed out earlier, Mr. Dutta has raised a preliminary objection as regards this point on the ground of delay, fraud and acquiescence. I, therefore, at the outset propose to deal with such preliminary objection.
21. It is now settled position of law that relief under Article 226 of Constitution of India is discretionary, but I am not prepared to accept the contention of Mr. Dutta that such relief, irrespective of the nature of writ prayed for and the right infringed, can be said to be discretionary. A remedy is called discretionary when it is not available as a matter of right and may be refused by the Court on consideration of certain circumstances which disentitle an applicant to the relief

even though his right has been infringed. For instance, a Court may refuse such discretionary relief where a) there is an alternative adequate remedy, b) the conduct of the applicant is such that he does not deserve the discretionary remedy, c) the grant of remedy will be highly prejudicial, d) even though the order impugned will be without jurisdiction or otherwise invalid, the effect of quashing it will be to revive another illegal order, e) the application is a premature one, and f) relief, if granted, would be ineffective and infructuous.

22. A remedy under Article 226 of the Constitution of India is available if ordinary legal right or fundamental right of a person guaranteed by our Constitution is invaded by the action or inaction of the State. Therefore, when a person goes before a Court under Article 226 of Constitution of India alleging violation of his ordinary legal right, the Court may refuse such relief if any of the aforesaid six conditions exists. However, if infraction of fundamental right is alleged, in such a case, it is the duty of the High Court to enforce fundamental right guaranteed to a citizen and in such a situation, relief under Article 226 of the Constitution cannot be refused. It is preposterous to suggest that the ground of delay or acquiescence can be applied as a bar to the relief where fundamental right has been transgressed, because there can be no loss of fundamental right merely on the ground of non-exercise of right. (See *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India,)

23. In the case of *The Amalgamated Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara*, , the Supreme Court observed that if a tax imposed is held to be ultra vires, the petition under Article 32 of the Constitution of India cannot be refused on the ground that the petitioner had been paying the tax without objection for years because such ultra vires tax would encroach upon the petitioner's fundamental right under Article 19(1)(f)(g). As pointed out by the Supreme Court in the case of *Daryao and Others Vs. The State of U.P. and Others*, once a citizen establishes that his fundamental right is violated, relief under Article 32 is not discretionary. In the case of *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, it has been specifically held that there cannot be any waiver of fundamental right conferred under Article 14 of the Constitution of India.

24. As regards the question of delay, the rule which says that High Court may not enquire into belated and stale claim, is not a rule of law but a rule of practice based on sound and proper exercise of discretion. The principle on which the relief to a party on the ground of laches or delay is denied is that rights which have accrued to others by reason of delay in filing petition should not be allowed to disturb unless there is reasonable explanation for delay. The real test to determine delay in such cases is that the petitioner should come to Court before a parallel right is created and lapse of time is not attributable to any lapse or negligence. (See AIR 1992 SCW 3181)

25. Keeping in view the aforesaid principles, I find that the petitioner in this case having alleged violation of Articles 14 and 16 of the Constitution of India, if the

petitioner can establish such allegation, then the relief prayed for, cannot be said to be a discretionary remedy and it is obligatory upon this Court to enforce fundamental right. Moreover, even if there is any delay, by virtue of such delay no parallel right has accrued in favour of any person in this case.

26. As regards the allegation of fraud, the law is equally settled that mere wrong statement in the application cannot disentitle the petitioner from getting proper remedy if such wrong statement is immaterial for the purpose of determination of the dispute involved therein. In the present case, all that is pointed out by the respondent is that in the writ application, the petitioner has made wrong statement that she passed Part I and Part III examination, although, her result was withheld. In my view, for the purpose of adjudication of the point involved herein viz. whether the decision of the University to debar "Patrachar Student" from registering in the University is violative of Article 14 or 16, such wrong statement is immaterial; thus, even if Mr. Dutta is correct that the petitioner made a wrong statement in the application that she passed Part I and Part III examinations and although her result was not published, such wrong statement cannot stand in the way of this Court in deciding the pure question of law raised by the petitioner.

27. I thus, overrule the aforesaid preliminary objection taken by Mr. Dutta and propose to enter into the merit of the allegations.

28. It appears from the record that the University has taken a decision not to admit students who have passed Senior School Certificate Examination from C.B.S.E. as "Patrachar Student". In affidavit-in-opposition the respondent in para 18 has precisely disclosed the reason why "Patrachar Vidyalaya Students" are not recognized by the University in registering their names in the different courses of the University. The said paragraph 18 is quoted hereunder:

"The contents of paragraphs 21 and 22 of the writ application are categorically denied and disputed. Students of "Patrachar Vidyalayay" passing the All India Senior School Certificate Examination conducted by the Central Board of Secondary Education cannot be treated at par with the regular students passing the same examination conducted by the same Board, It would appear from the letter of the West Bengal Council of Higher Secondary Education extracted above that the students of "Patrachar Vidyalayay" are students of unrecognized institutions, i.e. not recognized by the Central Board of Secondary Education itself. These students do not receive any formal training in the sense that they are not required to attend regular classes. In schools recognized by the Boards of Secondary Education where the students are obliged to attend classes regularly, each such school makes attempt to put into practice new ideas and theories brought about by the latest research on the subject concerned. These activities are aimed at bringing to the surface the latent talent of the students which includes building their character and laying the foundation for their all-round growth. This inculcates in the students qualities of initiative and co-operative effort so as to make them useful and well-informed citizens of tomorrow. The

quality and/or standard of teaching imparted to students of recognized institutions is conspicuously absent in the case of students associated with non-formal system of education, Since the "Patrachar Vidyalayay" candidates are not required to attend classes, they are deprived of formal training and imparting of education by trained teachers which a regular student can otherwise avail of and the "Patrachar Vidyalayay" candidates appear in the examinations held by the concerned Board by scrambling answers/ summaries published by enterprising publishers resulting in their appearance in the concerned examinations being mere tests of memory rather than tests of initiative, ingenuity and ability to tackle the problems which they are asked to solve. Building up character and personality which are important traits in a man's life are facilitated in a much better way if that man is subjected to the discipline one associates with a school in comparison to the students who are not required to attend any class. The regular students passing out from recognized institutions thus stand on a higher pedestal compared to "Patrachar Vidyalayay" candidates and both form separate classes clearly distinguishable from each other. There being an intelligible differentia which classifies regular students from "Patrachar Vidyalayay" candidates and such differentia having a reasonable nexus with the object of the University, i.e. advancement of learning, it cannot be contended that the "Patrachar Vidyalayay" candidates ought to be considered eligible for pursuing higher course of studies in the University upon cancellation of its decision. The decision taken by the University not to recognise the "Patrachar Vidyalayay" candidates therefore, cannot be faulted and warrants no interference of this Hon'ble Court,"

29. After hearing the learned Counsel for the parties and after going through the aforesaid explanation, I am of the view that there is no reason for raising a screen between students who have passed the examination under "Patrachar Vidyalaya" category and the other students who have passed the self-same examination.

30. It may not be out of place to mention here that students under "Patrachar Category" appear at the same examinations which the students of other categories appear, although, a regular candidate is further required to go through three different subjects viz. General Studies, Work Experience and Physical & Health Education which are assessed internally by schools apart from the examination conducted by the Board. A candidate from a recognized school who has some physical deformities or is otherwise unable to take part in work experience and Physical & Health Education may be granted exemption by the Chairman on the recommendation of the Head of the institution supported by medical certificate from a medical officer of the rank not below an Assistant Surgeon. It further appears that a regular candidate will be eligible to get pass certificate from Board if he/she gets a Grade higher than "E" in all subjects of internal assessment unless he/she is exempted. Failing this, the result of external examination will be withheld but not for a period of more than one year.

31. Therefore, if a regular student is unable to get a Grade higher than "E" on any of the subjects of internal assessment, his result may be withheld for a period of one year but thereafter the Board is bound to declare him "pass" if he passes in the examinations conducted by Board. Therefore, those three subjects are not compulsory subjects and even if a student is unable to get higher Grade than Grade E in internal assessment, at the most, the Board can withhold the result of such a candidate for a year. In this case, the petitioner took admission in law college after expiry of five years from passing the Senior School Certificate Examination.

32. At this juncture, it will not be out of place to mention here that apart from regular students and "Patrachar Vidyalayay" category, there are students who are private students and also students sponsored by "adult school" who are also exempted from undergoing the study of Work Experience, General Studies and Physical & Health Education like "Patrachar Vidyalayay Students" but the University authority has permitted those students to be registered in the University if they pass in the Board Examination.

33. Therefore, there is no intelligible differentia that distinguishes a "Patrachar Student" from the students of "private" categories or students sponsored by adult school who are similarly placed with "Patrachar Students". The regular students who even fail in those three internal subjects can get "pass certificate" after the expiry of one year from the date of publication of result. At this stage, it may be also mentioned here that a "Patrachar Student" must pass secondary examination of 10 years duration as a regular student in order to appear as "Patrachar Student". The only difference is that the regular students are attending two further years in a regular school whereas "Patrachar Students" are not required to undergo their studies in a recognized school for those two years. I have already pointed out that although a private candidate or a candidate sponsored by adult school is not required to attend school during those two years, no restriction has been imposed upon those two categories. Therefore, the explanation given in para 18 of the affidavit-in-opposition does not justify exclusion of "Patrachar Students" from registering as a student in the University when the University allows private students and the students sponsored by "adult schools".

34. I am also not impressed by the submission of Mr. Dutta that having regard to the rules framed by Bar Council of India, the decision of the University in prohibiting "Patrachar Students" was justified. The rules framed by Bar Council of India merely prescribes that at the time of joining the course of institution of law for a degree in law, the person concerned should pass an examination in "10+2 or 11+1 course of schooling" recognized by educational authority of Central and State Government or possess such academic qualifications which are considered equivalent to 10+2 or 11+1 courses by Bar Council of India. The word "schooling" appearing in the aforesaid phrase does not mean attachment to a school but means that a person must undergo a course of education for 10+2

or 11+1 years. The word "schooling" according to Oxford Advanced Learner's Dictionary of Current English, 4th Edition. By A.S. Hornby means "education". The following examples are given under the aforesaid heading of "schooling": "He had very limited schooling"; "who's paying for her schooling"; the word "schooling" according to the Dictionary of English Synonyms and Synonymous Expression by Richard Soule, 1966 Edition, means tuition, instruction, education, teaching, training, nurture, discipline. According to the Oxford Concise Thesaurus compiled by Betty Kirk Patrick 1st Indian Edition, 2000, the word "schooling" is defined as follows:

Noun: 1) Education, instruction, teaching, continuous learning, book learning.

2) Training, coaching, instruction, drill, discipline.

35. Therefore, it is clear that the word "schooling" does not mean that the course of education should be in an institution recognized by Board. I have already pointed out that a person who has passed Senior School Certificate Examination as "Patrachar Vidyalayay" candidate must undergo 10 years regular course of studies and after passing Junior School Certificate Examination is further required to wait for two years before he can appear as "Patrachar Student" in the Senior School Certificate Examination. Therefore, he is required to undergo a course of 10+2 years schooling or education and before completing such 12 years course, he cannot appear at the examination. Therefore, even a "Patrachar Student" conform to the bye-laws provided by Bar Council of India.

36. I, thus, find that the University authority in debarring "Patrachar Vidyalayay Students" who have passed Senior School Certificate Examination from C.B.S.E. violated Articles 14 and 16 of the Constitution of India when such authority has allowed even other students who have passed the self-same examinations of the Board. In this connection, reference may be made to a Division Bench decision of this Court in the case of *Atreyi Mitra v. University of Calcutta and Ors.*, reported in 1998 WBLR (Cal) 291 where a Division Bench of this Court directed the self-same University to register the name of a petitioner who passed as a candidate of such "Patrachar Category" and to publish her result.

37. Although, Mr. Dutta strenuously contended that the experts in the field of educations having taken a decision that student under the category of "Patrachar Vidyalayay" is not equivalent to students of other category, this Court should not impose its decision upon the University, I am not at all impressed by such submission. There is no dispute that in an academic question, the Court should not disturb the decision taken by the University but that does not mean that a Writ Court is not within its competence to decide whether such decision violates Article 14 or 16 of the Constitution of India. If it appears that such decision infringes the fundamental rights guaranteed by the Constitution, a Writ Court is free to strike down such decision being ultra vires the Constitution of India. (See observation of the Supreme Court in the case of *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, .

38. I now propose to consider the various decisions cited by Mr. Dutta in this regard.

39. In the case of Krishna Priya Ganguly v. University of Lucknow (supra) although there was a mandatory rule regarding putting in two years work in the department concerned fixed by the academic body of the University, the High Court relaxed the said rule. Under such circumstances, the Supreme Court held that High Court could not devise its own criterion and had no jurisdiction to introduce its notions in such academic matter and to direct admission.

40. In my view, the principle laid down therein cannot have any application to a case where a particular decision by academic body is held to be ultra vires Articles 14 and 16 of the Constitution of India.

41. In the case of Kumari Chitra Ghosh and Anr. v. Union of India and Ors. (supra) in para 9 of the judgment upon which reliance was placed, it is stated that as Central Government bore the financial burden of running the medical college, it is for them to lay down the criteria for eligibility. It was further held that under such circumstances, the Government cannot be denied the right to decide from what source the admission would be made, that being essentially a question of policy and being depending, inter alia, on overall assessment and survey of requirements of residents of particular territories and other categories of persons for whom it is essential to provide facility for medical education and the Court should not interfere with such decision. In the very same paragraph, the Court, however, pointed out that if the sources are properly classified whether on territorial, geographical or other reasonable basis, it is not for the Courts to interfere with the manner and method of making the classification. It, therefore, necessarily follows that if the sources are not properly classified on reasonable basis, the Court can definitely interfere. The said decision thus, does not say that even if there is violation of Article 14 of the Constitution of India a Writ Court will be powerless.

42. In the case of Maharashtra State Board of Secondary and Higher Secondary Education and Ors. v. Paritosh Bhupesh Kumareseth (supra) the Supreme Court reiterated the well-settled principle that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by legislature or its delegate and to strike down as unreasonable a byelaw merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purposes of the Act. In my view, the said decision cannot have any application to a case where the State has taken a decision which affects Articles 14 and 16 of the Constitution of India. In this case, I have already pointed out that the decision of the University not to permit students of "Patrachar Category" in the University violated Article 14 of the Constitution as they have illegally discriminated them against other categories of students.

43. In the case of U.P. Financial Corporation v. Naini Oxygen and Acetylene Gas Ltd. and Anr. (supra) the State Financial Corporation advanced a term loan of Rs. 30,00,000/- to the respondent. The respondent however, made persistent default in repayment of the loan instalment, as a result, recovery certificate was issued against the respondent u/s 3 of U.P. Public Money (Recovery of Dues) Act. The respondent challenged the said recovery proceeding before High Court by filing a writ application where the High Court interfered. While disposing of appeal preferred by the Corporation, the Supreme Court held that this is not a matter where the High Court could have stepped in and substituted its judgment for the judgment of Corporation which should be deemed to know its interest better; whatever the sympathies the Court had for the prosperity of the company and in commercial matter, the decision of the body authorized to decide should not normally be interfered with by Court. I fail to appreciate how the principle laid down in the said decision can be applied to a case where a University has framed a regulation violating Articles 14 and 16 of the Constitution of India.

44. In the case of Delhi Pradesh Registered Medical Practitioners v. Director of Health (supra) Indian Medical Central Council recognized Ayurvedda Ratna and Vaid Visharad degrees of Hindu Sahityya Sammelan Prayag up to 1967. The appellant obtained those degrees much later after the commencement of Medical Central Council Act, 1970. The question was whether the appellants were entitled to practise u/s 73 of the said Act. While deciding such a case, the Supreme Court held that laying down norms of education for a practitioner in Indian Medicines is not subject to judicial review as the said matter is in the realm of policy decision of the Constitutional functionaries other than Court and should be left to the appropriate authority having requisite knowledge in the subject. It appears from the last paragraph of the judgment at page 691 that there was no challenge to the validity of the said Act of 1970. Thus, when the validity of the said Act was not challenged, the observation made by Supreme Court in the said decision cannot be applicable to the present case where the validity of the decision of the University has been challenged. The said decision is, thus, of no avail to the University.

45. In the case of Preeti Srivastava and Anr. v. State of M.P. and Ors. (supra) in para 37 of the judgment upon which reliance has been placed, the Supreme Court pointed out that while considering the standard of education in any college or institution the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, the Supreme Court proceeded, training or programme can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the student is poor or they are unable to carry out the instruction that is imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken. I fail to understand how the said paragraph can help the University in excluding "Patrachar Student" from consideration when students of other categories appearing at the same examination and who have obtained lower marks in such examination are

permitted to be enrolled. I, thus, find that the said decision cannot be of any help to the petitioner.

46. In the case of *Rajendra Prasad Mathur v. Karnataka University and Ors.* (supra) the Supreme Court reiterated the well-settled principle that the University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. The Supreme Court emphasized that in academic question the Court should not disturb the decision taken by the University. In para 7 the Supreme Court pointed out that in that case no material had been placed before the Court on the basis of which the Court could say that the decision of the University not to recognize a Board examination of the State of Rajasthan as equivalent to the pre-University examination of Bangalore was arbitrary or not based on reason. The aforesaid observation necessarily implies that if materials are produced showing that the decision was not based on reason or was arbitrary, the Court can surely interfere, In this case I have already held that there was no valid reason for excluding the "Patrachar Students".

47. In the case of *West Bengal Central School Service Commission v. Gita Guha* (supra) the question before the Division Bench was whether degree on the basis of correspondence course obtained by a candidate from Himachal Pradesh University should be recognized as requisite qualification for appointment to the post of Headmaster in terms of an advertisement. While deciding such question, the Division Bench after considering various Supreme Court decisions held that it should be left to the executive policy of the Government to prescribe the qualification of the post and the Court and tribunal should not give any direction in this matter and ultimately, directed the University of Calcutta to decide the question of equivalence and to give its reasoned findings within six months from the date of receiving of the record.

48. In my opinion, the said decision cannot have any application to a case where a party has challenged a decision arrived at by the University declaring that some of the students who have passed self-same examination should be ineligible for a course whereas other candidates who have passed the very same examination should be eligible.

49. In the case of *State of M.P. v. Nandlal Jaiswal and Ors.* (supra) the Supreme Court in paragraph 24 stated that the power of High Court to issue appropriate writ under Article 226 of the Constitution of India is discretionary and Court does not assist an indolent or acquiescent or a lethargic. I have already pointed out earlier that in case of violation of fundamental right there cannot be any waiver. It appears that in the said decision the earlier decisions of larger Benches of the Supreme Court mentioned above have not been considered. Thus, the said decision cannot have overriding effect upon the decisions relied upon by this Court as mentioned earlier.

50. In the case of *State of Rajasthan v. Lata Arun* (supra) I find that in para 10 of the judgment the Supreme Court specifically stated that in an appropriate case the Court can examine whether policy decision or administrative order dealing with matter is based on a fair, rational or reasonable ground; whether such decision has been taken on consideration of relevant aspect of matter; whether exercise of power is obtained with mala fide intention; whether decision serves the purpose of giving appropriate training to the candidates admitted or it is based on irrelevant, or irrational consideration and intended to benefit an individual or group of candidates. Therefore, the said decision rather goes against University and if it appears that decision to exclude "Patrachar Student1 is unfair, irrational and unreasonable, the Court can interfere.

51. In the case of *Shrist Dhawan v. Shaw Brothers* (supra) the Supreme Court pointed out that fraud and collusion vitiates even the most solemn proceeding in any civilized system of jurisprudence. I have already pointed out that in this case for the purpose of disposal of the question involved herein, the question of fraud is immaterial. It may not be outplace to mention here that the University could not produce the application form filed by the petitioner while gaining admission in Jogesh Chandra Law College. Therefore, this is not a case where the petitioner had by practising fraud suppressed that she passed the said examination as "Patrachar Student". Thus, the University having failed to produce such document in its possession, this Court should draw adverse presumption against the University and it should be presumed that the petitioner disclosed in her application that she passed as "Patrachar Student". Therefore, fraud is not involved in this writ application and the said decision is of no assistance to the University.

52. In the case of *Mallikarjuna Mudhagal Nagappa v. State of Karnataka* (supra) students admitted in educational institution in excess of the permitted seats were disallowed from taking examination. In such circumstances, the Supreme Court held that the High Court was right in not giving any relief to those students. The principle laid down in the said decision can not have any application to a case where decision of the University debarring a particular category of students has been challenged as ultra vires Article 14 of the Constitution of India.

53. In the case of *Council for Indian School Certificate Examination v. Isha Mittal and Anr.* (supra) Supreme Court held that interlocutory order should not be passed granting relief which can only be granted at the time of final decision. The said decision, in my view, has no application to the fact of the present case.

54. In the case of *A. P. Christians Medical Education Society v. Government of A. P. and Ors.* (supra) the appellant, a college without having the requisite qualification, admitted students by taking huge amount of money. Ultimately, when the matter went before the Supreme Court, the Supreme Court held that the Court could not issue appropriate direction to the University to protect the interest of the students of such illegal institution and no direction to allow the students to appear at the examination could be given in clear transgression of

the provision of the University Act and regulation of the University. The Supreme Court further pointed out that Court cannot by its fiat direct the University to disobey the statute to which it owes its existence and regulations made by the University itself. There is no dispute with the aforesaid proposition of law but the said decision cannot be relied upon in a case where the regulation framed by the University itself is challenged as violative of some of the provisions of the Constitution of India.

55. Lastly, in *Ram Preeti Jadau v. U.P. Board of High School and Intermediate Education* (supra) a student knowing fully well that his result had been withheld because of allegation of having used unfair means in examination, suppressed such fact and took admission in B.A. and studied further. Under such a fact the Supreme Court refused to grant relief to such a person. I have already held that in this case, the petitioner fully disclosing that she passed as "Patrachar Student" got admission and challenged the decision of the University not to recognize such category of students. Thus, no fraud is involved here and the said decision cannot be of any help to the University.

56. Therefore, the decisions cited by Mr. Dutta are of no avail to his client.

57. On consideration of entire materials on record, I therefore hold that the decision to debar candidate of ""Patrachar Category" from getting admission in the University was violative of Articles 14 and 16 of the Constitution of India as by appearing at the self-same examination, other students, who have even obtained lesser amount of marks, are given admission. Such restriction is not even imposed upon "Private Students" and students sponsored by adult schools although those students do not attend classes in any school and are similarly placed with "Patrachar Students".

58. Mr. Dutta faintly contended that this writ application should be dismissed being barred by principles of constructive res judicata as in the past the petitioner filed another writ application which was dismissed. I have already pointed out that the said writ application was filed at a point of time when the University was not issuing registration number and disclosing result and such writ application was dismissed not on merit but on the ground that the said application was not preceded by a demand of justice. Pursuant to such direction, the petitioner demanded justice and by order impugned herein, the University for the first time has disclosed the reason for not registering her name and not furnishing result of examination on the ground that she being a "Patrachar Student" cannot be admitted in the course of the University. Therefore, the petitioner had no occasion to challenge such decision in the earlier writ application and thus, the principle of constructive res judicata is not applicable.

59. In view of my aforesaid findings, it appears that the other point raised by the petitioner, namely, that the University having permitted her to appear at the examination now cannot deny registration, has become academic. I am, however, of the view that if the aforesaid decision of the University was not

violative of Articles 14 and 16 of the Constitution, in such a case, merely because the University through mistake had issued admit card to the petitioner, such fact could not confer any right upon the petitioner to appear at the examination and demand publication of result thereof.

60. The three reported cases cited by Mr. Chanda in this connection are distinguishable.

61. In the case of *Ashoke Ckand Singhvi v. University of Jodhpur* (supra), both the appellant and the University were under the impression that the appellant did not obtain the required 60% mark for getting admission which was found to be wrong by the Supreme Court; according to the findings of the Court the appellant obtained 61.5%. Thus, the Supreme Court found that the appellant was eligible. The said decision cannot have any application to a case if it is found that the candidate had no required qualification.

62. In the case of *A. Sudha v. University of Mysore and Ors.* (supj-a), the Supreme Court notwithstanding the findings that the concerned colleges illegally admitted the students after taking capitation fees, permitted the students to continue their studies as they were innocent and the regulations suffered from ambiguity. Such order was passed apparently in exercise of power conferred by Article 142 of the Constitution of India for doing complete justice. Similar power is not available to a High Court dealing with an application under Article 226 of the Constitution under which the High Court can interfere only if there is infringement of legal or fundamental right of the applicant. In the absence of any such right, the High Court is powerless.

63. In the case of *Rajendra Prasad Mathur v. Karnataka University* (supra) by virtue of the interim orders passed by the High Court as well as Apex Court the appellant was permitted to pursue his study notwithstanding his ineligibility. Under such circumstances, the Apex Court exercised power under Article 142 of the Constitution permitting the appellant to continue. Thus, similar benefit cannot be given to the petitioner at the instance of this Court.

64. Thus, the aforesaid decisions cannot help the petitioner.

65. However, as held earlier while discussing the first point, it is declared that the petitioner had no disqualification in gaining admission in the law college and in appearing at the examination. The University authority is, therefore, directed to register the name of the petitioner and to publish the result of the petitioner of Part I and Part III and Part IV examinations of LLB examination within fortnight from today. The decision to debar "Patrachar Student" is struck down as violative of Articles 14 and 16 of the Constitution of India.

66. The writ application, is thus, allowed.

67. In the facts and circumstances, there will be however, no order as to costs.