
(1978) 10 RAJ CK 0015
In the Rajasthan High Court
Case No : C.W. Petition No. 576/78

Mahendra Singh Gehlot

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 06-10-1978

Acts Referred:

Constitution of India, 1950 — Article 14
Oaths Act, 1969 — Section 7

Citation : (1978) WLN 357

Hon'ble Judges : K.D. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.D. Sharma, J.—A notice was issued to the non-petitioners Nos. 1 to 5 to show cause why this petition be not admitted. Mr. S.L Mardia, Additional Government Advocate appeared on behalf of non-petitioners Nos. 1 to 4 and filed a written reply to the writ petition. The non-petitioner No 5 refused to accept the notice. Hence, the notice was deemed to have been served on him. No body appeared on behalf of non-petitioner No 5.

2. Heard Mr. M.R. Singhvi, learned Counsel for the petitioner, and Mr. S.L. Mardia, Additional Government Advocate, appearing on behalf of non-petitioners Nos. 1 to 4.

3. The petitioner passed Higher Secondary Examination from the Board of Secondary Education, Rajasthan, Ajmer, in the year 1978. He applied to the Principal, Polytechnic College, Jodhpur for admission to Three Years" Diploma Course & was called for interview at the Polytechnic College, Jodhpur, on August 14, 1978, at 8a.m. along with the original testimonials and the prescribed fees. It is alleged in the writ-petition that the interviews started at is a.m. on August 14, 1978, and the petitioner was present there in the main hall upto 5.45 p.m. In the first instance, 107 students were admitted to the aforesaid Diploma course on the basis of merits but as the total number of seats was 144, the interview for

the remaining 37 seats started and 28 students were selected for admission amongst those who were present at that time. According to the petitioner, the basic criterion for admission, i.e. merits was ignored and students having lesser marks were given preference to students who had obtained higher marks in the Higher Secondary Examination. According to the petitioner, he had a better claim for admission than that of non-petitioner No. 5 because the petitioner secured 59.3% marks in the Higher Secondary Examination while non petitioner No. 5 could obtain about 53% marks only as an ex-student. It was further urged in the writ petition that when students having obtained 59% marks in the Higher Secondary Examination were called (or interview, the petitioner raised his hand and tried to enter the hall but he was not allowed entrance, with the result that the petitioner could not get admission in the second phase of interview also and 28 other students were selected for admission. After selecting 135 students for admission, interviews for selection of the remaining 9 seats started and 10 candidates including the petitioner were selected for admission on the basis of merits. After the selection a list of 10 candidates was prepared and the petitioner and 9 others were given the prescribed form for the purpose of enrolment. The form was filled by the petitioner in his own handwriting and handed over to non-petitioners Nos. 2 to 4. The petitioner and 9 others were prepared to deposit their fees, but they could not do so on account of some miscreants having entered the hall and become violent. However, the petitioner and 9 students were assured by non-petitioners Nos. 3 and 4 that their fees would be accepted after some time. The petitioner and 9 other students later on went to non-petitioner No. 3 and requested him to accept their fees but the latter refused to allow them to have their fees deposited. The petitioner thereafter met non petitioner No. 3 many a time and requested him for permission to pursue his studies but the non-petitioner No. 3 refused to allow him to sit in the class. Later on, the non petitioner No. 3 made an unsuccessful attempt to fill up 37 seats on August 30, 1978 by stating that on August 14, 1978 only students were selected for admission. Hence, the petitioner had no course open but to file a wait-petition in this Court for issuance of an appropriate writ, order or direction to the non-petitioners Nos. 2 to 4 to accept the fees of the petitioner and to allow him to pursue his studies and to quash the admission of the non-petitioner No. 5.

4. In the written-reply filed by Shri S.L. Mardia Additional Government Advocate on behalf of non petitioners Nos. 1 to 4, it was stated that 107 students only were admitted on the Three Years' Diploma Course in the morning August 14, 1978 on the basis of merits and the admissions were closed at 12 in the noon the very day. However, 13 other candidates presented themselves for admission in the afternoon of August 14, 1978. Their particulars were verified but they were not considered for admission without intimation to all the candidates who had obtained 193 or more than 193 marks in the Higher Secondary Examination and who had missed an opportunity for the admission in the morning of 14, 1978. It was further denied that 10 students including the petitioner were selected for admission on the basis of merits of August 14, 1978 and that the petitioner was

present on August 14, 1973 during the the period between 8 am and 5 45 p m. As regards non-petitioner No. 5, it was alleged that he was not admitted but was permitted to attend the classes in pursuance of an order of the High Court till the disposal of his writ-petition. In short, the contention of the non-petitioners is that the regular classes have commenced from August 16, 1978 and no new admission is possible now and the petitioner was never selected for admission August 14, 1978.

5. Firstly, it has been contended on behalf of the petitioner that the petitioner's admission to the Three Years" Diploma Course had become final as soon as he was allowed to fill in the admission form marked Ex. 4 and thereafter it was not open for the non-petitioners Nos. 2 to 4 to refuse to accept the fees and to deny his right to attend the classes, especially when the petitioner was ready and willing to deposit the fees. The above contention has no force From a bare look into the admission form Ex. 4, it appears that a blank form has been produced by the petitioner along with his writ-petition The contention of the petitioner h that he filled in the form in his own handwriting and it is in the possession of the non-petitioners Nos. 2 to 4. The non-petitioners have denied this fact and further pleaded that the petitioner was not present at the time when admissions were made. In support of their plea, they have put in affidavit of Shri Som Nath Purohit Workshop Instructor (Electrical), Jodhpur Polytechnic Shri Som Nath Purohit stated in his affidavit that 107 students only were admitted on August 14, 1978 in order of merit and no other merit list of eligible candidates was prepared or notified on that date. He further declared on oath that the names of the 10 candidates including the petitioner were noted down by him on a piece of paper as they had turned up in the evening on August 14, 1978, According to him, there were other 44 candidates also who had trued up for admission in the evening of August 14, 1978 and whose names also were noted down but none of those candidates was admitted and no admission forms were issued to those students including the petitioner and no such forms were filled-in by them in the evening. There is no reason to disbelieve the affidavit of Shri Som Nath Purohit. Had the petitioner been present in the main hall of the Jodhpur Polytechnic during the period when 107 students were admitted and the particulars of 28 candidates securing less than 191 marks were checked and verified, his particulars also would have been verified and he would have been allowed to deposit his fees as was done in the case of 28 candidates, fie mere fact that the names of 10 students including the petitioner were noted down on a piece of paper by Shri Som Nath Purohit does not indicate that the petitioner was admitted to the Three Years" Diploma Course. From a bare perusal of Ex. 3 it appears that the candidates were required to attend the main hall of the Polytechnic College, Jodhpur, at 8a.m. on August 14, 1978 along with their certificates & testimonials specified therein and to make a report about their presence to the authorities. It was specifically laid down in Ex 3 that if any candidate came late or had no requisite certificates or fees with him, he would lose his right for admission on the basis of merit. This direction is contained in

para 2 of Ex. 3. It read as follows:

vki ls vuqjks/k gS fd fnukad 14&8&78 dks 8 cts izkr% dky uhps of.kZr izek.ki= vksj Qhl lkFk ysdj bl laLFkk ds eq[; gky esa fjiksVZ djsA nsj ls vkus ij vFkok vko";d izek.k&i= u gksus ;k Qhl tek u djkus ij izos"k ugha fn;k tk ldsxk vkSj izos"k esa ;ksX;rk lwfpr ds vuqlkj izkIr vf/kdkj tkrk jgsxkA

There is no material on the record to show that the petitioner presented himself in the main hall of the Jodhpur Polytechnic College at 8 a.m. and made a report to this effect to the authorities concerned. Consequently, I am unable to hold that the petitioner despite his presence in the main hall at 8 a.m. on August 14, 1978, was shut out from being admitted to the Course of Three Years Diploma on arbitrary grounds. If the petitioner was not present when the admissions were going on, no fault could be found with the non-petitioners. Had the petitioner been shut out from being admitted at the sweet-will of the non-petitioners despite his presence, he would have surely lodged a complaint in writing with the Principal or some other competent authority & would not have rest content by merely requesting Som Nath to note-down his name on a piece of paper in the evening of August 14, 1978.

6. The learned Counsel appearing on behalf of the petitioner vehemently contended before me that the affidavit of Shri Som Nath Purohit has not been properly verified and so it is not a proper affidavit. The defect pointed out in the affidavit of Som Nath Purohit is that it is nowhere stated therein that the contents of the paragraphs are true to his knowledge or belief. In support of his above contention he has relied upon two authorities of this Court *Vinay Kumar Vs. Smt. Purnima Devi*, and *Bhagwan Das Jagdish Chander Vs. Delhi Administration*, I have considered the above contention. It is no doubt true that Som Nath Purohit omitted to state in his affidavit that the contents of the paras thereof are true to his knowledge. He merely declared on oath that the contents of all the paras of his affidavit are true and correct and nothing has been concealed and no part of his affidavit is false. But this defect in the swearing in of the affidavit is of no material significance in view of the provisions of Section 7 of the Oaths Act, 1969, which read as follows:

7. Proceedings and evidence not invalidated by omission of oath or irregularity
No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

The referred to above authorities cited by the learned Counsel for the petitioner are distinguishable on facts of this case, because the verification in those cases was based on knowledge as well as on information without disclosing the source of information or belief.

7. Another contention put forward by the learned Counsel for the petitioner is that the petitioner's claim for admission to the Three Years' Diploma Course was better than that of non petitioner No. 5 who has been admitted and given preference to the non petitioner No. 5 by the non-petitioners Nos. 2 to 4. In support of his above contention, he referred to the followings authorities on the principle of equality before law enshrined in Art. 14 of the Bhopalsingh Vs. State of Rajasthan and Others, Kathi Raning Rawat Vs. The State of Saurashtra, , Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , R. Chitralkha and Another Vs. State of Mysore and Others, , and Nripenranath v. Gauhati University AIR 1967 Gau. 57. The above contention also is devoid of substance, because the plea of the non petitioners is that non petitioner No. 5 also was never admitted to the Three Years' Diploma Course but was allowed to sit in the class in compliance with the order of the High Court. Apart from this, when the petitioner was not present at the time 107 students were admitted to the course and when particulars of 28 other students including non-petitioner No. 5 were checked and verified in the evening of August 14, 1978, he cannot be heard to say that his better claim for admission was ignored and he was shut out from being admitted on arbitrary grounds.

8. Lastly, it was argued on behalf of the petitioner that so long as there are as many as 9 or 10 vacant seats, the petitioner and others who have the requisite qualifications for admission are entitled to be admitted and not to be discriminated against In support of the above contention reliance has been placed on Banshidhar Vs. University of Rajasthan and Another, wherein it has been held that the matter relating to admission in colleges maintained by the State is not discretionary and it is the duty of the Principal to act in accordance with law in such matters. It is not disputed before me that 144 students were to be admitted to the Three Years' Diploma Course of the Polytechnic College, Jodhpur and out of them 107 students only were given admission, according to the non-petitioners. Upon writ petitions being filed in this Court by 28 students, this Court issued interim direction to the non-petition is to allow them to sit in the classes and to pursue their studies during the pendency of their writ petitions In this manner, there are some vacant seats which may be filled in by admitting students who fulfil the requisite qualifications for admission. The non-petitioners, however, have stated in their reply that by a communication dated August 21, 1978 an attempt was made to fill up the vacancies numbering 37 on August 30, 1978, but no admissions were made on that date on account of unusual law and other situation as the students threaded the Principal and did not allow hi in to conduct the admissions. It was further pleaded that the regular lasses have commenced from September 16, 1978 and no new admission is possible now, because a part of the Course has already been completed. However, I may like to observe that the petitioner may approach the Principal and request his to fill up the vacant seats after giving intimation to all the students who fulfil the requisite qualifications for admission.

9. There is no other point in this writ petition which requires determination.

10. The writ petition has no force and is hereby dismissed summarily.