

(1995) 07 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : SSW No- 111/1994

Manjit Kour Sason

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1996) KashLJ 271

Hon'ble Judges : B.A.Nazki, J

Bench : Single Bench

Advocate : P.N.Goja, D.C.Raina, Baldev Singh , Advocates appearing for the Parties

Judgement

The petitioner applied in pursuance of a Notification for her selection in BSc. Agriculture programme. Her application was entertained and she was

allotted Roll No. 2858. She appeared in the written test conducted by the respondents on 471993. Vide Notification No. AU/ACC/9394/2919

dated: 18.02.1994, twenty candidates were selected for admission to BSc. Agriculture Programme for the session 1994. Out of these twenty

candidates, some of the candidates did not join at F. A. O. Wadoora (Sopore) and Regional Agriculture Research Station, R. S. Pura. After 20

candidates were selected/admitted for undergoing the said course on the basis of their merit, some of them, did not join the said course. According

to the petitioner. when she filed this writ petitioner, there were three seats vacant in Regional Agriculture Research Station, R. S. Pura and she and

two other candidates were recommended by a letter of the Dean in the month of April. 1994, for selection/admission. Copy of this letter has been

annexed with this petition.

The simple case of the petitioner is that despite the said recommendation and inspite of the fact she was entitled to get admission because seats

were vacant, the respondent No 14 has not issued formal orders, of her admission. She has therefore, sought a direction from this Court that

respondents be directed to grant admission to her in B. Sc Agriculture Programme in Regional Agriculture Research Station, R. S. Pura for the

session 1994, as per the recommendation of respondent No. 3.

Objections were sought from the respondents, and the same have been filed. By an order of this Court, Mr.. D. C. Raina appearing for the

respondents was directed to produce the select list of the candidates, which he has submitted alongwith the Information Brochure. The L/C for

Parties have agreed that the matter be decided at this stage,

I have heard learned counsel for the parties. From, the perusal of record produced by the learned counsel for the respondents it appears that the

candidates upto Serial No. 43 in the merit list produced by Mr.. D. C. Raina have already been admitted to various courses. Mr.. Raina submits

that candidate appearing at. S, No. 43 bearing Roll No. : 5544 has already been admitted, and candidates from

, S. No. 44 and onwards have not been admitted, and the petitioner figures at S. No. 47 in the merit list. He has not disputed the correctness of

the letter produced by the petitioner, which is contained in .Annexure ""B"" to the writ petition. This letter shows that candidates bearing Roll Nos :

1461, 0978, 1026 were selected and admission letters were issued to them in March, 1994, but none of them excepting Roll No : 0978 had

joined at R. S. Pura. The said letter made a recommendation on the basis that candidates bearing Roll Nos : 1461 and 1029 had not joined, and

therefore, there .were three vacancies. After calculating the position of the vacant seats, he had recommended the admission of candidates bearing

Roll Nos. 3103, 5147 and 0477. The petitioner's Roll No. is 3103. It is clear from the said letter all the candidates upto S. No. 46 were granted

admission ; and . excepting a few all of them had joined the courses. The candidate appearing at S. No. 46 in the select list immediately above the

petitioner has also been grant admission, which is borne out from the letter Annexure ""B"". Mr.. Raina has further submitted that there is only a

recommendation in favour of the petitioner, and that would not entitle her for

any admission. Another objection raised by him is that even if the seats are vacant, it would not entitle the petitioner, to get admission. In this behalf, he has relied upon a judgment of the Supreme Court reported in AIR 1992 S.C. page 932. In that case the Supreme Court did not approve the practice of granting admission to students at the mid of the session.

In the present case, the admissions have been made in the year 1994 and by now one or two semesters must have been over.

The Supreme Court held :

Considering from this Point of view, to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that the students would have full opportunity to study full course to meet their excellence and come at per excellence. Admission in the mid stream would disturb the courses and also works an handicap to the candidates themselves to achieve excellence.

Considering from this pragmatic point of view we are of the considered opinion that vacancies of the sets would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained'.'

There can be no dispute with the submissions made by Mr.. D. C. Raina. But in this case I find that it is because of the callous and negligent

attitude of the respondents, that three seats have gone waste. The state has provided seats for training candidates in different fields after spending

huge amounts in establishing these professional Institutions. It is at the cost of state exchequer that the professors and teachers of the Institutions

are being paid. It is also at the cost of the state Exchequer that these big professional Institutions are being run. It is expected that these Institutions

are run to their full capacity. If three seats have "been wasted for the session 1994, who is responsible for that ? Somewhere some responsibility

shall have to be fixed, Mr.. Goja learned counsel for the petitioner has drawn my attention to a judgment delivered by constitution Bench of the

Supreme Court reported in AIR 1993 S. C. page 2178. In this judgment the Supreme Court has unambiguously held that right to education flows

from Article 21 of the Constitution reported in AIR 1981 S. C. 746, the Supreme Court held that subject to economic capacity and content of

the development, right to education would be a fundamental right. The Supreme

Court was deciding a pointed question, whether the Constitution of India guarantees fundamental right to education to its citizens. While considering Articles 41 and 45 of the Constitution as parameters for determining conclusion whether right to education flows from Article 21, the Court observed and held, as under :

- a) "Every child/citizen of this country has a right to free education until he completes the age of 14 years, and
- b) After a child/citizen completes 14 years, his right to education is circumscribed by the Limits of the economic capacity of the State and its development ...

After holding that Articles 41, 45 and 46 are designed to achieve the goal of universal education, the Supreme Court determined the content and

parameters of right to education. In the present case, this court is not dealing with right to education to a child below the age of 14 years. This

court is dealing with a matter concerning a citizen who has completed the age of 14 years. The Supreme Court dealt with both the matters

separately, and while dealing with the matters separately, and while dealing with matter at (b) supra, the court also considered the judgment

reported in 1992 AIR SCW 2100 which had manifestly held that "the right to education flows directly from right to life." While agreeing with this

principle, the Constitution Bench however posed a question as to what should be the content of this right ? how much and what level of education

is necessary to make the life meaningful ? If further posed a question "does it mean that every citizen of this country can call upon the State to

provide him education of his choice ?" The Court did not agree in full with the law laid down in the Supreme Court judgment of 1992 and held,

that right to education which is implicit in the right life and personal liberty guaranteed by Article 21 must be construed in the light of the directive

principles in Part IV of the Constitution. After laying down the parameters, the Court held that after the age of 14 years, although a citizen has

right to demand education of his choice, but it shall be circumscribed by the economic capacity, of the State and its. development.

This would mean that if the economic capacity of the State and the overall development of the State permits the State to impart education to a

particular candidate/citizen in the sphere of his/her choice, the State shall be

bound to provide him/her the education subject to his/her eligibility.

Applying this principle to the facts of the "" present case, I am of the opinion, that gross injustice has been done to the petitioner, and a valuable right

which flows directly from Article 21 of the constitution, has been denied to her. From the pleading of the parties, it is clear that the petitioner was

eligible under rules for selecting admission in B.Sc. Agriculture Programme. It is also clear that although she did not obtain a sufficient merit in the

qualifying test, to be admitted in the said court at the first instance, but after the drop out position was certainly entitled to get admitted. After

certain candidates higher in merit to the petitioner did not join, three seats fell vacant and it was for the respondents to fill up those seats. The

University was bound to admit the petitioner and other two candidates. The law of the land makes it obligatory upon every functionary of an

Educational Institution to make full use of its economic capacity, because the right education is a fundamental right of a citizen. Had there been no

seats available, this Court would not have forced the respondents to admit the petitioner. But, since the State has provided funds and requisite

facilities for imparting education in a particular field, to a particular number of students, no Institution can be permitted or allowed to waste these

seats at the cost of State exchequer. By the callous and indifferent attitude of the University authorities, three seats which would have trained three

candidates in one of the most important field i. e. Agriculture, have been wasted. This country has meager resources and if these resources are

diverted for educating and training a particular number of students, and seats thus created with these meager resources are wasted, it shall be a

criminal act, which it needs to be deprecated.

In these circumstances, I allow this writ petition and order that if possible, the petitioner shall be admitted during the current session. In case for any

technical reasons, the same is not possible, the petitioner shall be admitted to B. Sc. Agriculture Programme during the next session. If, the

petitioner is admitted during the next session, she shall not be admitted against the regular permitted number of seats but an additional seat should

be arranged. Since the valuable time of the petitioner has been wasted, and resources of the State have been kept unutilized to its full capacity, I

expect the Chancellor the University to look into the matter and fix the

responsibility. The petitioner is held entitled to a costs of Rupees Ten thousands.