

(1989) 08 MP CK 0083

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 899 of 1988

Manoj

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1990 MP 5 : (1989) JLJ 645 : (1989) MPJR 665 : (1990) 35 MPLJ 791 : (1990) MPLJ 791

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : P.K. Saxena, for the Appellant; Surjit Singh and V.S. Kokje, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

By this petition the petitioner challenges the decision dated 5-8-1988, taken by the State of Madhya Pradesh respondent No. 1, declaring 233 failed candidates at the Combined Entrance Test hereinafter referred to as "the CET) held in the year 1988 for Engineering Group, to be admitted in the State Engineering Colleges in the next year, i.e. 1989 academic session and prays for quashing the same with other directions or orders, as may be deemed necessary.

Facts leading to the presentation of this petition may be briefly stated as follows: It is an admitted fact that the Government of Madhya Pradesh, by order No. 2354/3759/-88 42 JaNi, One-Bhopal. dated 29-8-1988, filed as Annexure R 1, took a decision that all such candidates who having failed in English Subject in the year 1988. but securing a high percentage of marks in Physics. Chemistry and Mathematics higher than the last candidate in the merit list of pre-Engineering Test (for short, the PET) Examination, 1988, shall be admitted in the State Engineering Colleges, without having had to appear at the Combined

Entrance Test Examination for Engineering Group, otherwise known as PET examination, to be held in the year 1989. The total number of such candidates inclusive of all categories is 311. This decision taken by the State Government was on being published in the local press, as per cutting Annexure P/1, naturally resulted in unrest amongst students desirous of seeking admissions to Engineering courses in State Engineering Colleges, particularly the general class, studying in twelfth class, aspiring for being admitted to the Engineering Colleges of the State, next year, i.e. 1989. The petitioner, who was President of the Indore University Students Union. Indore, and interested in the Students' welfare, has come forward with this petition, filed as early as 8-8-1988.

It is a common ground that admissions to Engineering Colleges in the State, are governed by the Rules as framed by the Professional Examination Board (for short, the Board) and issued by the, Vyavsayik Pareeksha, Mandal. as framed by the Directorate of Technical Education, Govt. of Madhya Pradesh, respondent No. 2. The rules pertaining to both the years 1988 and 1989 have been placed before us and they are available on record.

The petitioner contends that the rules as framed and issued, particularly Rule 1.1.2, which provides that admissions to Engineering Colleges shall be made only on passing the PET and Rule 1.2.1 lays down that admissions would-be made only from the merit-list prepared by respondent No. 1, on the basis of the above test. Rule 15 and Rule 1.15.1 prescribe the manner in which the merit list is to be prepared, while Rule 25 prescribes the mode of selection, Rule 2.12, provides for the period up to which the merit-list, so prepared and declared would be operative.

"Admittedly, the candidates covered by the Government's decision dated 29-8-1988, Annexure Rule 1, are those those had failed at the PET examination, held in the year 1988. The contention advanced by the petitioner is that the State has no power to grant admission to such candidates, who have not passed the PET examination. The decision taken in this behalf is not only contrary to the rules framed and published in the year 1988, but it is also most arbitrary, affecting the rights of several-hundred students, who have appeared at the PET examination this year, while the 311 by mere resolution of the State Government, are being admitted without having had to appear at the test at all. The State action has been denounced as most discriminatory and violative of Article 14 of the Constitution of India.

The apprehension. expressed by the petitioner at the time of filing of this petition, was that as many as 311 candidates from the general seats, in spite of having failed at the previous test held in the year 1988, would be provided-seats in the Engineering Colleges of the State, while equal number of seats would not be available to general candidates and this apprehension of grave injustice being done to the candidates, who have appeared this year is sought to be justified by saying that the State Government reserved the right to amend any rule for admission and all its decisions regarding selection of candidates for admission

under the rules shall be final and binding as "per Rule 2.7. and Rule 2.8, as framed for the urgent year 1989. It is this right derived from the aforesaid Rules, which has been canvassed by the learned Government Advocate) in defence of the decision taken by the respondent State.

It was contended on behalf of the State that the open competition has not been disturbed by the mere curtailment of the number of general seats available for open competition. It was also urged that if the policy decision Annexure R 1. was not followed, injustice would be done to those covered by this decision and lastly, it was contended that it is the right of the State to fix the number of seats available for each category in accordance with Rule 1.1.4 of the Rules.

There are in all, three returns filed by the respondent-State. They are on record. The first return was filed on 25-10-1988. The second return is dated 24-3-1989. In addition to this return, filed on 24th March, 1989, the respondents came out with an additional return, filed on 20th of June, 1989. In this additional return the respondents have expressed and tried to explain their inability to increase the number of seats for reasons, such as paucity of staff, equipments, the capacity of Colleges, the recommendations made by the All India Council for Technical Education and the impact of the Act No. 52 of 1987.

As against this, Shri P. K. Saxena, learned counsel for the petitioner pointed out that the students, who had failed at the PET examination of the year 1988, had challenged the Rules in writ petitions before this Court. One of these, was registered as Misc. Petn. No. 2394 of 1988, Awadeesh Nema and Others Vs. State of Madhya Pradesh and Another, The failed candidates, who are now being sought to be admitted without having had to appear at the PET examination of 1989, lost the said petition, not only before this Court, but also before the Supreme Court as well. The State was a party at both the stages and Shri Saxena pointed out that at no stage it was brought to the notice either of this Court or the Supreme Court that the State had taken the decision as per Annexure Rule I. It was contended that it was the duty of the State to have placed such a policy decision before the Court. The judgment in the aforesaid petition was delivered on 19-9-1988, while the decision, Annexure R/I, was taken by the State on 29-8-1988. A mere reading of the above judgment would show that the stand taken by the State was that the failed candidates had no right to challenge the Rule prescribing "General English" as a subject and the contention of the State was upheld. If the State had taken a decision, there was time enough for bringing the same to the notice of the Court, but it did not.

It may be noted that one Pramod kumar Bhatt has made an application (I.A. No. 2397/89 dt. 24-6-1989) as an Intervener. He is one of those who had failed at the PET examination held in the year 1988. Relying on the decision dated 29-8-1988 of the Government of Madhya Pradesh, Annexure R/1, he contends that he and many others like him did not appear at the PET examination of this year. The position of such students, as the Intervener, is stated to be worse, inasmuch, as they did not appear at the 1989 examination on the assurance

given by the State that they would be straightaway admitted without any such test or examination. They were kept out of field by respondent, Govt. of Madhya Pradesh, by assuring direct admission,

Shri Saxena, learned counsel for the petitioner inviting attention to Rule 1.2.1 submitted that all admissions to Engineering Colleges are to be made only from the merit list prepared by the Board for various categories on the basis of the result of the PET examination. The Rule 1.2.1 reads as follows :

"Rule 1.2.1 -- All admissions to the courses and Colleges mentioned above shall be made only from the merit list prepared by the Board for the various categories, on the basis of the result of the "above test and the rules of concerned courses, except "in case of seats in State Engineering Colleges and Medical Colleges, placed at the disposal of the Government of India (GOI).

If this Rule is to be of any meaning and significance, then the policy-decision dated 29-8-1988, arrived at by the respondent State and filed as Annexure R/1, stands nowhere in the scheme of the Rules.

Shri Surjeet Singh, learned Government Advocate, however, contended that in the light of Rule 1.1.4, which provides for Reservation of seats, reads as follows;

"Rule 1.1.4 -- Reservation of seats under various categories for various courses had been shown on the inside front-cover. College wise reservation under each Category is shown in the rules for admission to various courses. Any of the existing categories for reservation may be deleted or a new category included by the Govt. Similarly the number of seats in various categories may be varied by the Govt. at any time. Such information will be published in the Official Gazette and through the popular media."

The State has a right to reserve seats under various categories for various courses, as it pleases, and it was on this ground that the reservation of seats for failed candidates at the 1989 test examination was sought to be justified.

I am afraid, if such unguided, unprincipled, uncanalised absolute right can be conceded in favour of the State in face of the equality of opportunities clause, as enshrined in Article 14 of the Constitution of India.

What has actually happened in the instant case, as is evident from the return filed by the respondent-State, is that a separate category of candidates, who had failed at the 1988 PET examination, has been created, and exempted from appearance at the ensuing examination of the year 1989, and assured of admission without even being required to appear at the PET examination.

In order to justify this classification, the learned Government Advocate relied on Rules 2.7 and 2.8 of the 1989 Rules. Both these Rules are reproduced :

"Rule 2.7 -- The State Government reserve the right to amend any rule procedure for admission and any modification so made shall be binding.

8 -- The State Government will be the final authority for deciding all questions of policy regarding selection of candidates for admission. If any question arises relating to the interpretation of these rules for admission, the decision of the State Government shall be final and binding."

What surprises us most is the reference of Rule 2,8, which as quoted above provides for a final authority in the matter of interpretation of these rules by the State Government. If such executive instructions were to be upheld, as contended by the learned Government Advocate, and the interpretation of the Rule, as put by the State is to be made final and binding, as envisaged by the Rule, it, would be nothing short of setting at naught the guarantee contained in Article 14 of the Constitution of India. These rules, as referred to and relied upon by the learned Government Advocate, do, not help in saying" the decision, dated 29-8-1988, filed as An- nexure R/1

As already noted above, there are three returns on record, filed by the respondents. The first return was filed on 25-10-1988, the second on 24-3-1989 and the last one on 20-6-1989. What is surprising is that in the first return filed by the respondent-State on 25-10-1988, no disclosure whatsoever was made about the State policy decision dated 29-8-1988, On the other hand what was contended by the respondent-State is reproduced in toto:

"The petitioner has made an attempt to challenge a State policy that the candidates who could not get admission this year as they were not successful in English paper will be given" admission in the next year without any further examination; The petition is premature and the cause of action would arise in the year 1989 when applications are invited and admission cards are issued and for this reason the petition deserves to be dismissed on the aforesaid ground;

. . In view of the submissions made above, no para-wise reply is necessary."

It would thus be seen that there was not only suppression of material fact on the part of the State, when it came out with a return on 25-10-1988. A contention was also advanced that the petition was premature and the State policy could not be challenged until and unless admission-cards were issued to such failed candidates.

It is not only in this petition but in the other petitions filed by the failed candidates, the judgment of which is reported in *Awadeesh Nema and Others Vs. State of Madhya Pradesh and Another*, the suppression of a material fact as regards policy decision is writ large.

It would thus be seen that firstly, the State did not place its policy decision before the Court when there was time enough to do so. The policy decision, Annexure-R/1, ought to have been brought to the notice of the Bench which heard *Awadeesh Nema and Others Vs. State of Madhya Pradesh and Another*, (supra). Secondly, even in this petition while filing the - return on 25-10-1988, the petitioner is told to wait till actually admission cards-are issued to the failed

candidates, covered by the policy decision and assured of admission even without appearance at the PET examination 1989. A fixed number of seats (311) have been reserved for such failed candidates.

On what fringes of constitutional standards, not the kernel and core thereof, such action be saved? The rules referred to have been already discussed above; Not merely deriving meaning from, but also inferring meaning, into Article 14 of the Constitution, the Supreme Court in a series of decisions laid down the test of permissible classification. Two basic conditions are an intelligible differentia and a rational nexus to the object. Reservation of seats for such candidates, who had appeared but failed at the immediately preceding year (1988) and that too without even being required to appear at any test. What intelligible differentia could there be in providing reservation for failed candidates? It is not a case of reservation in respect of any backward or weaker sections. The reservation made in favour of the failed candidates assuring them of admissions to State Engineering Colleges next year, i.e. 1989, exempting them from appearance at the PET examination. It is a hostile discrimination -- a gross violation of the equality clause enshrined in Article 14 of the Constitution.

Apart from the fact that the State action in providing accommodation this year (1989) to the failed candidates of the last year (1988) is not only contrary to the Rules, 1.1.2, 1.2.1, 1.14, 1.15 and 2.5, but the very negation of these Rules, the reservation made for the failed candidates is based on most illogical and irrational principle and therefore, liable to be quashed. It may be noted that Rule 2.3 provides for reservation of seats for categories, such as Scheduled Caste and Scheduled Tribes, Military Personnel, Freedom Fighters, Physically handicapped, Nominees of the Union territories and Technical stream and there is no challenge to these reservations. Surprisingly enough the reservation made for failed candidates is nowhere to be found in the Rules, as published by the Board. What is shown is seats available, as against sanctioned seats and this availability of seats is nothing but the curtailment of total number of seats, in order to provide berth to the failed candidates, in accordance with the policy decision, Annexure-R/1, which as has been discussed above, is most arbitrary and illogical and irrational and must, therefore, be quashed and is accordingly quashed.

Coming now to the difficulties, the State has expressed about accommodating the failed candidates, and increasing total number of seats in the Engineering Colleges of the State. A reference has been made to the recommendations made by the All India Council for Technical Education, these recommendations relate to (1) prevention of commercialisation of technical education, (2) maintain, high standards of technical education, (3) and, to improve fast deteriorating educational standards.

No one disputes the wisdom of these recommendations and it is these recommendations, which have weighed with the State Government. It defies one's comprehension how can failed candidates be assured of admission particularly when their claim for admission was opposed tooth and nail by the

State. How can uniformity be brought about in determining merits of candidates passing the PET examination in two different years and not at the same sitting, even if the State plea is to be taken into account that the failed candidates had secured a good percentage of marks in subjects, such as Mathematics, Physics and Chemistry. How can their merit be compared with those, who have appeared this year, unless they compete with them.

The binding nature and effect of these recommendations apart, since the State relying upon it has filed it as Annexure-R/2, it would not be out of place to remind the State that the Council at Serial No. VII has noted "Admission should be made on the basis of a common system of examination". One is obliged to ask, what commonness of system of examination is there in assuring admissions to the failed candidates, even without asking them to compete at the test?

We cannot afford to be oblivious to the plight of those three hundred and odd candidates, who on an assurance made to them by the State, did not appear at the PET examination, held this year. While they cannot be preferred against those selected for admission on the basis of merit and without going into the legality and legalism of their claim of promissory estoppel against the State, particularly when the State does not dispute it. We hope that the State will fetch out all its resources to accommodate them, but certainly not at the cost of those meritorious ones selected this year, but by creating additional seats in the State Engineering Colleges and not otherwise, encroaching upon the rights of successful and selected candidates of this year.

A plea has been raised in the additional return dated 20-6-1989, filed by the State, again placing reliance on the directions and recommendations as contained in Annexure-R. 2. It has been averred by the State :

(v) The proposals which have been already made by the Government of Madhya Pradesh for establishing new institutions and new courses for technical education, are pending for sanction with A.I.C.T.C. and are not being finalised as yet, while provisions therefore in the State budget have been already made.

(vi) There is no budget provision or financial sanction for incurring huge expenditure (in crores of rupees) for providing the additional seats.

(vii) The engineering graduates are not in demand in proportion to the pass-outs, at present keeping a view their employment position all over the country. Therefore, providing additional seats means multiplying the number of unemployed engineering graduates which in the present state of economy is not desirable and is not in the larger interest of the students community as a whole.

If it is, as averred by the respondent-State. "The Engineering graduates are not in demand in proportion to the pass-outs", then why the preference and promise to failures as against the successful ones. No material whatsoever has been placed with regard to the proposal as adumbrated in sub-para (v). What was really needed was, whether respondent-State at any point of time apprised the

Council of the fact that a decision had been taken by the State that three hundred and odd failures were going to be provided admissions next year, i.e. 1989, for which they had in fact been promised and a policy-decision taken. Not a word about it has been stated either in the returns -- in all three of them -- or in the affidavits, nor any document produced and what is stated is that "proposals are pending before the Council (A.I.C.T.E.). How long for they have been pending, the nature of proposals, the period and the steps taken by the State for their processing, nothing is disclosed in the return.

The legal position is very clear. The decision, Annexure-R/1, having been quashed, it is entirely for the State to see as to how best those covered by the decision are accommodated in face of the quashing of the order dated 29-8-1988, Annexure-R/1. The grounds pleaded by the State, in absence of any material whatsoever in support thereof, for providing additional seats, to say the least, do not impress us, much less convince.

It is, however, open to the State to accommodate such students as are covered by the decision; Annexure-R/1, by providing or encroaching upon the rights of the candidates who have appeared in the PET examination this year (1989) and if for some reason it is not feasible, then a fresh Examination be held at the earliest so that those deprived of an opportunity of appearing at the PET examination this year (1989) because of the assurance given by the respondent-State as per decision, Annexure-R/1, (which now stands quashed by order of this Court) may appear at any such Examination and compete in a common lest.

(SIC) the foregoing reasons, this petition stands allowed with costs. The decision (of-the State) dated 29-8-1988, Annexure-R/-1, taken by the respondent-State, is set aside and directions made as indicated above. Counsels fee shall be Rs. 500/ -, if certified.