
(1983) 01 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Special Appeal No. 72 of 1981

Miss. Niharika Tak

APPELLANT

Vs

The University of Jodhpur

RESPONDENT

Date of Decision : 12-01-1983

Acts Referred:

Constitution of India, 1950 — Article 15, 226

Citation : (1983) WLN 32

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Lodha, J.—The petitioner-appellant whose writ petition Under Article 226 of the Constitution was dismissed summarily by the learned single Judge vide order dated April 2, 1981 has filed this appeal u/s 18 of the Rajasthan High Court Ordinance, 1949. It may be stated that the learned single Judge dismissed the three writ petitions by a common order. The appellant shall be referred as the petitioner here in after.

2. The petitioner passed the Intermediate Examination from the Board of Secondary Education, Madhya Pradesh, Bhopal. She applied for admission to Part II of the Three Years Degree Course (TDC) of the University of Jodhpur (which will here in after be referred to as the University") at Kamla Nehru College, Jodhpur for the academic year 1980-81. Ordinance 35 framed by the University in 1978 lays down the conditions with regard to the eligibility for admission to Part II of the TDC. It prescribes that the students who have passed 1st year TDC Examination of the Universities of Rajasthan or any other recognised University or have passed the Intermediate Examination from any recognised University Board with General English and General Hindi as compulsory subjects shall eligible for admission to Part II of the TDC. The petitioner had not passed the Intermediate Examination of the Board of Secondary Education, Madhya Pradesh, Bhopal with General English as a

compulsory subject. The petitioner was, however, admitted to Part 11 of the TDC at Kamla Nehru College, in September 1980. She deposited the fees. By order (Annexure-3) dated September 25, 1980, the admission of the petitioner was cancelled on the ground that she had not passed the General English at the qualifying examination. Aggrieved by the order (Annexure-3) dated September 25, 1980 cancelling the admission of the petitioner, the petitioner filed the writ petition in this Court on October 29, 1980 praying that by an appropriate writ, order or direction, the University may be asked to withdraw the notification dated July 31, 1980 issued by the Registrar and to strike down Ordinance 35 of the University. Registrar, University of Jodhpur and Director, Kamla Nehru College for Women, Jodhpur were impleaded as respondents No. 2 and 3 respectively. No relief was prayed for in the writ petition for quashing the order (Annexure-3) dated September 25, 1980 by which the petitioner's admission was cancelled.

3. On October 30, 1980, a show cause notice was issued to the respondents as to why the writ petition be not admitted. An ad interim order was also passed that meanwhile the operation of the order Annexure-3 dated September 25, 1980 in so far as it relates to the cancellation of the admission of the petitioner would be stayed.

4. A reply to the show cause notice was filed on behalf of the respondents contesting the writ petition on various grounds, on December 10, 1980. On April 2, 1981, an application for amendment of the writ petition was filed on behalf of the petitioner praying that leave may be granted for amending the writ petition by incorporating the prayer for quashing the Annexure-3 dated September 25, 1980.

5. Here, it will be useful to state the findings recorded by the learned single Judge:

(1) that the order Anx. 3 dated September 25, 1980 was not passed in violation of principles of natural justice;

(2) that in the facts and circumstances of the case, the principles of equitable estoppel cannot be invoked; and

(3) that there is no equity in favour of the petitioner.

In view of the aforesaid findings, the learned single Judge by his order dated April 2, 1981 dismissed the writ petition and also the application for amendment of the writ petition. Hence this appeal by the petitioner as aforesaid.

6. We have heard Mr. M. Mridul, learned counsel for the petitioner and Mr. H.M. Parekh, learned counsel for the University.

7. The appeal was admitted on May 7, 1981. On that day, after hearing the learned counsel for the parties, the following order was passed on the stay petition:

It has been urged by the learned counsel for the petitioner that the examinations

are going to take place on 11-5-81 and 16-5-81 and onwards. Considering the dates of the examinations it would be proper that the appellant may be allowed to appear in the ensuing examination.

Accordingly, the respondents are directed to allow the appellant to appear in the ensuing examinations. It is, however, made clear that this permission to appear to the appellant in the ensuing examinations will not clothe the appellant with any right whatsoever and her appearance in the examination will not in any way prejudice the case of the respondents.

At the commencement of the arguments, learned counsel for the petitioner assailed that part of the order under appeal by which the application for amendment of the writ petition was dismissed by the learned single Judge but subsequently, he stated that he does not want to challenge that part of the order by which the amendment of the writ petition was disallowed. He, however, submitted that in view of the facts and circumstances of the case, the a mission made should not be disturbed. It is necessary to state the relevant events in this connection.

8. It appears from the reply filed on behalf of the respondents that the petitioner was admitted on September 19, 1980 when she deposited the fees. The admission was cancelled on September 25, 1980. Actual teaching had started from October 6, 1980. The petitioner filed the writ petition on October 29, 1980 and the operation of the order Anx. 3 dated September 25, 1980 was stayed by this Court. The petitioner-appellant appeared at Part II of the. TDC. Examination in 1981. She passed it and thereafter, she was admitted in III (Final) year of the TDC. The writ petition was dismissed on April 2, 1981. On May 7, 1981 the petitioner was allowed to appear in the examination. It was, of course, made clear that the permission to appear at the examination will not confer any right what soever on her and that it will not prejudicially affect the case of the respondents. She appeared in the IIIrd (Final year) TDC, Examination, 1982. The notification No. JU/Aca/M/2719 dated January 11, 1982 was issued by the Registrar by which the Chancellor u/s 24(1) of the Jodhpur University Act, 1982 approved the promulgation of the amendment to Ordinance 35 with effect from December 23, 1981. The material part of the notification runs as under:

It is hereby notified that the Chancellor u/s 24(1) of the Jodhpur University Act, 1962, has approved promulgation of amendment to the Ordinance 35 with effect from 23rd December, 1981.

Order 35 No students shall be eligible for admission to the course of Study for Part II of degree course unless he/she has passed.

Part I Examination or the TDC Part II examination of this University.

OR

I Year TDC of Universities of Rajasthan.

OR

First Year TDC Examination from any recognised University.

OR

Intermediate Examination from any recognised University Board with General English and/or Hindi as compulsory subjects.

The candidates who have passed the Intermediate Public Examination of the Board of Intermediate Education, Andhra Pradesh, Hyderabad be permitted to First Year TDC Class.

Note:

(1) Candidates who have passed Junior Diploma Course in Secretarial and Business Training Part II shall be eligible for admission to Part II of the degree course in the Faculty of Arts, Social Sciences and Commerce only.

(2) Those candidates who have passed Intermediate Examination from any recognised University/Board without General English and/or General Hindi as compulsory subjects may be admitted to the Second Year TDC subject to the condition that they will have to clear Hindi and/or English compulsory paper(s) of First Year TDC before they are awarded the Degree as is done in the case of First Year.

Subsequently, another Notification No. Ju/Aca/A/2729 dated January 12, 1982 was issued by the Registrar of the University which is as follows:

It is hereby notified that the amended Order. 35 has been promulgated vide Notification No. JU/ACA/M/2919 dated 11-1-82.

The Students who have passed Intermediate Examination from any recognised University/Board with General English and/or General Hindi as compulsory subject have become eligible for admission to the Courses of Studies of Part II of Three Year Degree Courses, i e. B.A./B. Sc /B. Com. Such students may seek admission provisionally, if eligible, in accordance with provisions contained in Order 35, subject to availability of seats and in accordance with merit in respective classes of various Faculties.

Further, students, who will be admitted in accordance with the above said provisions will be required to give an undertaking that:

(i) They will not demand for extra coaching for completion of their courses which has already been taught in respective classes.

Further it is also made clear for information of students that University will not be able to provide any extra staff and the students will not demand for the same.

(ii) They will not demand for postponement of examination on the plea that they were admitted late and they could not complete their courses.

The candidates who are desirous to seek admission in pt. II of Three Year Degree Course shall submit their duly filled in Admission Application Forms to respective Dean and Director latest by 27-1-1982. Thereafter no admission will be granted.

The students who are desirous to seek admission as above will be required to give an undertaking in writing along with the Admission Application Form.

Since the last date of Admission as prescribed by the Admission Board is already over the Vice-Chancellor has agreed, as a special case, to consider the applications of students whose cases are covered up in accordance with the Ordinance No. 35.

While dealing with admissions to educational institutions his Lordships Bhagwati, J., speaking for the Court in *Ajay Hasia v. Khalid Mujib* AIR 1981 SC 502 observed:

But we do not think we would be justified in the exercise of our discretion in setting aside the selections made for the academic year 1979-80 after the lapse of a period of about 18 months, since to do so would be to cause immense hardship to those students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed three semesters and, moreover, even if the petitioners are ultimately found to be deserving of selection on the application of the proper test, it would not be possible to restore them to the position as if they were admitted for the academic year 1979-80, which has run out long since.

9. Their Lordships of the Supreme Court in *Smita Johnbhai Master and Others Vs. State of Gujarat and Others*, . while dealing with the question pertaining to the benefit by Court's interim order observed as under:

Undoubtedly a grievance is being made now that those who benefit by the Court's interim order should not be allowed to take any advantage of it if the petition in which interim order was made is liable to be rejected. Another grievance equally meritorious is that those who secured admission which is found to be unjustified but continued to receive training under the interim orders of the Court, would enjoy an unfair advantage over those who failed to get admission because of the invalid admissions of the first mentioned persons. Conversely if interim arrangement is not directed what an oppressive outcome it would be if the challenge initially made in the petition to the Court turns out to be effective and valid. These are some unavoidable consequences of the system which howsoever one may disapprove, cannot be wished away. Even if we do not grant any relief to the petitioners whose petition is being dismissed, those who could not secure admission would not be better off, because their loss of one year cannot be compensated or restored by any process known to law. Clock cannot be put back howsoever one may ardently desire.

In that case, their Lordships granted relief to the students, who were appellants before them while holding that the order under question cannot be struck down

being violative of the Regulation or Article 15 of the Constitution and dismissed the writ petition but granted relief to the petitioner on the ground that her studies should not be interrupted and her carrier should not be put in jeopardy. A direction was issued to the respondent to treat the student as a regular student of the College where she has been admitted and allowed her to continue her studies.

10. In view of the interim orders passed by the Court on October 30, 1980 in the stay application in the writ petition and May 7, 1982 on the stay application in the special appeal and the facts (i) that the Notification dated January 1, 1982 was given retrospective effect from December 23, 1981 and (ii) that the petitioner had appeared in II year TDC Examination in 1981 and passed it; (iii) that she was admitted in III (Final) year TDC and appeared in III (Final) year TDC Examination, 1982. we are of opinion that though the petitioner was not eligible at the time of her admission in September, 1980, her career should not be put in jeopardy and interest of justice requires that the petitioner who was allowed to continue as a student of II year TDC on the basis of the interim order dated October 30, 1980 and further allowed to appear at the examination in pursuance of the order passed on May 7, 1981, her admission should not be disturbed.

11. No interference can be made with the order under appeal,

12. With the observations made above, the special appeal is dismissed without any order as to costs. We, however, direct the University and the other respondents not to disturb the admission of the petitioner-appellant which was made in Part II of of TDC in September, 1980. Further consequences will follow like that of a regular student of II of TDC