

(1996) 01 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 25052 of 1995

Mohammad Salim Siddique	Vs	APPELLANT
Principal, K.B. Post Graduate Degree College and Others		RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (1996) 01 AHC CK 0016

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

Bench : Single Bench

Advocate : K.K. Roy, for the Appellant; Ajit Kumar and H.N. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—In this case, the Petitioner had applied for admission in M. Sc. Chemistry under the Poorvanchal University, Jaunpur, in the year 1993. According to the Petitioner, he was at the top of the list on the basis of merit but he was refused admission. He then applied for the next session, when again admission was refused to him. According to the Petitioner, though the persons far below the Petitioner in merit have been given admission, but the Petitioner's case has not been considered.

2. In the counter-affidavit, a case has been made out that Petitioner's admission will pollute the academic atmosphere of the College as has been reported by the Proctorial Board, and sufficient materials are there to come to such a finding. According to Mr. H. N. Tripathi, the Principal has the discretion to refuse admission to a student even if he is otherwise eligible. He contends that there is no malice or mala fide on the part of the Institution. It has been considered that the Petitioner's presence as a student in the College would disturb the educational atmosphere.

3. Mr. K. K. Roy, learned counsel for the Petitioner, contends that since the

Petitioner is eligible on merit in 1993 and admission was refused illegally despite his eligibility, he is entitled to be admitted in the next session and, therefore, even if his name does not appear in the Select List, On the basis of his application made in 1994, he should have been admitted. He further contends that the ground of refusal of admission is alleged in the counter-affidavit is merely an apprehension. There is no sufficient material to arrive at the said conclusion that the Petitioner's presence would be undesirable.

4. Mr. Roy relies on the judgment in the case of Sashi Kant Mal v. Vice Chancellor, G.B. Pant Krishi Evam Pradyogic Vishwavidyalya, Pant Nagar, Nainital and Ors. 1982 UPLBEC 152 and contends that in the previous year when a student was eligible on the basis of merit to have admission, in that event, he should be admitted in the next course. The facts of the said case are completely distinguishable and cannot be applied in the present case. In the said case, though on the basis of merit, the student was eligible for admission but in the next session, the method having been changed to the extent that every one has to appear in the written test but the Petitioner so having not qualified to appear in the written test, he was entitled to admission.

5. He then relies on the decision in the case of Dr. Vinay Rampal Vs. State of Jammu and Kashmir and Others, and contends that in view of the said decision, the Petitioner is as of right entitled to admission in the subsequent session. In the said case, it appears that the Petitioner was found to be eligible for admission but his case was ignored. Therefore, it was held that the Petitioner having been eligible for admission in the subject in the year 1981 according to the qualification and other requirements, set out in the advertisement the sands of time having run out which is inevitable in Judicial process, the Court can grant the relief to such a person who has been refused admission unjustifiably. In the facts and circumstances of the present case, it is not a refusal of admission simpliciter despite eligibility. Here admission has been refused on the basis of allegations. Therefore, the principle laid down in the decision of Dr. Vinay Rampal (supra) cannot be attracted.

6. Now the question that has been raised by Mr. Roy is that refusal cannot be based on an alleged misconduct of a student at the pre-admission stage. He could be expelled or subjected to disciplinary action or rustication on account of misconduct after the admission. In support of his such contention, he relies on the judgment in the case of Sameer Kumar Singh v. University of Gorakhpur, Gorakhpur and Ors. 1996 (1) UPLBEC 48. In the said case, a list was circulated by the University that the students mentioned in the said list shall not be granted admission. The said case deals with the admission in the Research Scholarship. There it has been held that such publication or circulation of list is wholly without the power of the Admission Committee. There it was held further that the provision of admission does not contemplate refusal of admission on the ground that the admission of a student is undesirable without any appropriate finding to that extent cannot be sustained. In the said case, the admission was denied only

on the ground that his name was included in the said list without any finding as to whether the allegations made against him are correct. In the facts and circumstances of the present case, there are certain allegations by the Proctorial Board which are Annexures "CA-1" and "CA-2" respectively which gives rise to a reasonable apprehension that they might create a situation which is undesirable.

7. Mr. Tripathi, on the other hand, relies on the judgment in the case of Anand Kumar v. Principal Agra College, Agra and Anr. 1993 (1) UPLBEC 216, in which it was held:

The Principal cannot refuse admission to any student merely on the basis of complaint or on the ground of suspicion. The power given to the Principal under the proviso appears to be absolute in terms but reading the proviso juxtaposition with the clarification appended thereto. It is clear that it is under limited circumstances under which the Principal can refuse admission.

8. In the said case, the allegations were enumerated in para 5 thereof which runs as follows:

5. In the instant case the only thing which has been cited against the Petitioner in the counter affidavit for refusing him admission is a letter dated 26.5.1992 sent by the Principal to the Chairman of the college in reply to the letter of the Vice Chancellor regarding the admission of the Petitioner. A copy of this letter has been filed as Annexure II to the counter-affidavit. In the said letter it has been mentioned that the Petitioner used to quarrel on the play ground and in March 1991 he entered the girls section of the college and abused the teacher. Similar letter was sent by the Principal to the Vice-Chancellor, a copy of which has been filed as Annexure III to the counter-affidavit. It is difficult to believe those allegations. If the Petitioner was really guilty of misconduct mentioned in those letters, the matter should have been reported to the authorities for taking disciplinary action against him, but nothing of the kind was done. Without holding the Petitioner guilty of any misconduct, he has been refused admission, which is not permissible under Law.

9. Therefore, it appears that without holding the Petitioner guilty of any misconduct, if the admission is refused, the same is not permissible under the law.

10. According to Mr. Tripathi, in the present case, the Petitioner not being a student of the college, he could not be subjected to any disciplinary proceeding. Therefore, no such finding could be arrived at. On the other hand, on account of his conduct, certain reports were given by the Proctorial Board on the basis whereof reports were also lodged to the police station.

11. He then relies on the judgment in the case of Pradeep Kumar Arora v. Vice-Chancellor, Meerut University, Meerut and Ors. (1993) 2 UPLBEC 1019. In the said case, it was held as under:

A perusal of the section will show that it confers power on the State Government

to issue orders to regulate admission to Medical, Engineering Colleges, or for degrees in Education, or Ayurvedic or Unani Systems of medicines. "Regulate" means to bring under control of law or constituted authority. Other things being equal, the Principal cannot certainly pick and choose and has to proceed in accordance with the merit list prepared by the Vice Chancellor for granting admission to students. However, the Government Order does not in any manner affect the general power possessed by a Principal of an institution to take such steps as he deems necessary to maintain a proper academic atmosphere in the institution. If Principal is bona fide of the opinion that the presence of a particular student, looking to his past conduct and general reputation, would seriously affect the academic atmosphere and jeopardise the teaching in the institution affecting the career of all the students, he certainly has the right to refuse to grant admission to such a student. It is not possible to lay down exhaustively the situation under which a student may be refused admission. Take the case of a student who may be suffering from a deadly and highly contagious disease. Should the Principal still grant his admission, seriously affecting the health of all the students, merely because his name has been recommended by the Vice-Chancellor on the basis of his academic record. In my opinion, the Principal would be within his right to refuse to grant admission to him. I am, therefore, clearly of the opinion that the Principal of an institution has discretion in the matter and he can refuse to grant admission to a student even though his name has been recommended in accordance with the Government order. However, this discretion should not be exercised arbitrarily, but should be exercised bona fide in order to maintain proper academic atmosphere in an institution and on objective considerations. The materials on record show that an order was passed in January 1986 by a competent Magistrate u/s 144, Code of Criminal Procedure whereby the Petitioner was restrained from entering the premises of Meerut College and University and some other institutions in the city of Meerut. The District Magistrate of Meerut had also given reports on August 6, 1986 and October 15, 1988 to the effect that adverse reports had been received against the Petitioner and his admission in an institution could give rise to a serious law and order problem. In my opinion, there was sufficient material on record which showed that the decision of the Principal not to admit the Petitioner in Meerut College is not arbitrary but is based upon sound considerations.

12. In the present case, it appears that there are sufficient materials on which the principal is of bona fide opinion that the presence of the Petitioner, looking to his conduct, would seriously affect the academic atmosphere and jeopardise the teaching in the institution affecting the career of other students. The materials disclosed are sufficient reasons to arrive at such a conclusion.

13. Inasmuch as the student went to such an extent that complaint was to be lodged with the police. The allegations against the Petitioner are also of gross nature as would appear from the statement made in para 4 of the counter affidavit. The said statement, however, has been denied in the rejoinder-affidavit. This is purely a question of fact which this Court cannot go into sitting in writ

jurisdiction. In the academic atmosphere, certain discipline is to be adhered to. It is the Principal who is at the field and he is the best Judge to decide the same. Though the Court might be of a different opinion, it cannot impose the same and replace that of the Principal. Since the Principal of the College himself, on the basis of the report of the Proctorial Board, has arrived at such an opinion, it cannot be said that there is no bona fide and that such an opinion is unreasonable. In the present case, it appears that there has been application of mind which factor was absent in the case of Sri Sameer Kumar Singh (supra) by which a general order was issued. Whereas in the present case, it was a particular individual case on which, on the basis of the materials available, an opinion has been formed which a reasonable man may form in such circumstances.

14. In that view of the matter, I am not inclined to interfere with the present grievance of the Petitioner. As such, this writ petition fails and is dismissed. There will be no order as to costs.