

(1995) 09 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 687 of 1994

Mukund Prasad Khare

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 115

Citation : AIR 1996 MP 130 : (1995) ILR (MP) 563 : (1996) JLJ 753 : (1995) 2 MPJR 414 : (1996) 41 MPLJ 355 : (1996) MPLJ 355

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : V.K. Tankha, for the Appellant; P.D. Gupta, Government Advocate and Atul Awasthy, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order -- Annexure-P/ 6 dated 9-2-1994, whereby the petitioner's admission to college of Veterinary "Sciences and Animal Husbandry, Jabalpur was cancelled on the ground that the petitioner submitted a false certificate of his father being "agriculturist".

Petitioner avers that the petitioner's father and his family members livelihood is mainly dependent on the agriculture, though the petitioner's father is also working as Assistant Teacher in the village. After due verifications, the Revenue Officer not below the rank of Naib Tahsildar issued the certificate dated 20-8-1990 -- Annexure-P, 4, that the father of the petitioner is a bona fide "agriculturist", whose livelihood is mainly from agriculture. The petitioner submitted the form Annexure-P/3 -- for entrance examination annexing the certificate -- Annexure-P/4 according to the format given in Rule 8.12 wherein the relevant words are: "VE KARYARAT VASTAVIK KRISHAK SHRENI SE

SAMBADHA HAI/NAHIN HAI/TATHA INKI JIVIKA MUKHYA-TAYA KRISHI HAT." After verification, the form was accepted by the Professional Examination Board of Madhya Pradesh. The petitioner successfully passed the entrance examination held by the respondent No. 2 for admission to five years course of Veterinary Science and Animal Husbandary including one year internship. After counselling, the petitioner was admitted in Veterinary Sciences and Animal Husbandary College, Jabalpur in the first year in the year 1990. The petitioner pursued the course of BV Sc for 3 1/2 years. To utter surprise, the petitioner received a notice Annexure-P/6 on 9-2-1994 of cancellation of his admission to the Veterinary Sciences and Animal Husbandary Course on the ground that the petitioner's father does not fall within the category of "agriculturist". Hence, the petitioner has approached this Court for quashment of the order.

A learned Judge of this Court on 4-3-1994 after hearing the petitioner issued the notice to show-cause to respondents and passed an interim order directing the petitioner's continuance in the College shall not be terminated. After notice, the matter came up for hearing on 4-8-1994, after hearing the parties, the interim order so passed was confirmed. The petitioner submits that he has completed 9th semester successfully, now only last semester of internship is to be attended, but, the petitioner is not being allowed, therefore, the respondents be directed to allow the petitioner to join and attend the internship.

Shri V.K. Tapkha, learned counsel for the petitioner contended that the Rules are clear in respect of quota of seats in the category of Krishak, i.e. agriculturist, who is recorded as such in revenue records. To get the eligibility for admission in the quota, if a revenue officer not below the rank of Naib Tahsildar certifies and grants a certificate after the verification of the person being a bona fide agriculturist whose livelihood is mainly from agriculture. As the petitioner's father is an agriculturist, the certificate --Annexure-P/4 was issued to him after due verification, which was accepted not only by PET Board, but also by the respondent No. 4. The rule does not require that the livelihood of such, agriculturist should be completely or wholly from agriculture. There is material difference between the words "MUKH-YATAYA" and "PRUNATAYA" and that is why for the next examination of the year 1991 in the form prescribed in column 9.15 it is stated that "VE KARYARAT VASTAVIK KRISHAK SHRENI SE SAMBADHA HAI/MAHIN HAI/TATHA INKL JIVIKA PURNATAYA KRISHI PER NIRBHAR HA I". It is also submitted that before cancellation of the admission of the petitioner, the petitioner was not afforded any opportunity of hearing, otherwise the petitioner would have satisfied that the certificate is not false. The order of cancellation of the admission is against the principles of natural justice, and is liable to be quashed, in support of the contentions, learned counsel cited the decisions: The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others, , Rajendra Prasad Mathur etc. etc. v. Karnataka University, 1986 (Supp) SCC 740, Sanatan Gauda Vs. Berhampur University and others, , Balkrishna Tiwari v. Registrar of Awadesh Pratap Singh University, Rewa, 1978 MPU 172 (FB).

Shri Atul Awasthy, learned counsel for the respondents submitted that an agriculturist who is employed or carrying on other occupations is excluded from the category of "Kishan" as is clarified by note (ii) of Rule 4.6, which reads thus: "AISE VYAKTIYON KO JO NOKARI YA ANYA PESON ME SANLAGNA HAI KARYARAT KISHAN KI SHRENI ME NAHIN MANA JAVEGA." As such the petitioner was not entitled to get the admission in reserved quota of agriculturists, hence, the admission was rightly cancelled.

After hearing counsel, I am of the opinion that the order -- Annexure-P/6 -- cannot be sustained for the reasons to follow:-- in Rule 4.6(b) and in the format given in Rule 8.12, the expression used in "MUKHYATAYA KRISHI HAI" while clause (ii) of the note of Rule 4.6 clarifies that persons who are in service or engaged in other occupations, shall not be considered in the category of agriculturist (Kisan). Rule 4.6(b) relates to reservations or relaxation for those who are the sons and daughters of bona fide residents and agriculturists whose primary or main source of livelihood is agriculture. That is also clear from the format given. However, in the clarification an exclusion is made of the persons who are employed or otherwise occupied in other occupations than agriculture. This clarification does not say that even such persons shall be excluded, whose livelihood primarily or mainly is from agriculture. Note (ii) is in nature of explanation or clarification. It is settled that mere description of a certain provision such as Explanation is not decisive of its true meaning. The function of an Explanation is to explain the meaning and effect of the main provision to which it is an Explanation and to clear up any doubt or ambiguity in it, but, ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect. The Supreme Court in case of *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, has laid down that the interpretation must obviously depend upon the words used therein, but, this must be borne in mind that when the provision is capable of two interpretations, that should be adopted which fits the description. An Explanation is different in nature from a proviso for a proviso excepts, excludes or restricts while an explanation explains or clarifies. Such Explanation or clarification may be in respect of matters, where meaning is implicit and not explicit in the main section itself, however, on true reading the intention of the legislature should be given effect to. In case of conflict between the main section and the explanation, the former is to prevail and the latter must yield to the main provision, see *Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others*, .

In the case in hand, the clarification or explanation in note (ii) of Rule 4.6 does not say that such agriculturist shall also be excluded from the definition of "Kisan" whose primary or main source of livelihood is from agriculture, even if they are employed in service or occupied in other occupations on callings. True, the burden lies on a person to establish that he belongs to a particular category. The question whether a person is agriculturist or not has to be decided with reference to the facts of each case. A person may have several occupations if one

of them is agriculture, then it has to be decided whether main source of livelihood is agriculture or not. For determining that before cancellation of admission enquiry was necessary. It is not the case of the respondents that the petitioner's father is not bona fide agriculturist. whose main livelihood is not from agriculture. On the other hand, the petitioner's father is recorded as "Kisan" in the revenue records and the certificate was issued to that effect by the authorized Revenue Officer. Hence, merely because the petitioner's father is also employed as an Assistant Teacher in the village that will not deny the benefit of seat from the reserved quota of agriculturist.

The order of cancellation of admission is punitive in nature and involve civil consequences in as much as the petitioner is deprived of the benefit of the admission in the courses in which he prosecuted his studies, for 3 1/2 years. Hence, in the circumstances the decision could not have been taken except in accordance with the principles of natural justice. One of the cardinal principles of natural justice is audi alteram partem pattern requiring that the party affected should be first heard before being condemned. Admittedly, no opportunity of hearing was given to the petitioner before cancellation of the admission, which vitiates the impugned order. See a Division Bench decision of this Court in case of Brijraj Singh v. Principal, Tatya Tope State Physical College, Shivpuri, 1993 (1) VIBHA 155.

The case in hand is not a case of practicing fraud nor a case of cancellation of admission on discovery of fraud. On the other hand the case is that the petitioner's father is also employed as a village teacher. Knowing full well of this fact after enquiry the Revenue Officer issued the certificate in the format given under the Rules, which was accepted by the Professional Examination Board. After clearance of the entrance examination, the petitioner on counselling after verification of the documents, was granted admission by respondent No. 3. Even assuming for arguments sake according to the clarificatory note of Rule 4.6, the petitioner was not eligible to get admission in reserved quota of agriculturists, in that case, as the question of eligibility to get admission in reserved seat depended on interpretation of the Rules, and where two interpretations are reasonably possible, the principle of estoppel can be applied depending on the fact that the petitioner was admitted, pursued his course on the assumption that the respondents may be taken to have accepted the interpretation favourable to the petitioner. See Full Bench decision of this Court in case of Balkrishna Tiwari v. Registrar of Awadesh Pratap Singh University, Rewa, 1978 MPLJ 172.

In the result, the petition is allowed, the order of the cancellation of the petitioner's admission is quashed, a writ of mandamus is issued commanding the respondents to allow the petitioner to complete his course of Veterinary Sciences and Animal Husbandary. No costs.