

(2002) 09 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33306 of 2002

Priyanka Singh

APPELLANT

Vs

Matambar Tewari, Director, UGAT-2002, Allahabad University
and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Citation : (2002) 5 AWC 3771 : (2003) 1 UPLBEC 483

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Singh, J.—Prayer in this petition is for issuance of writ in the nature of certiorari quashing the letter/order of the respondents dated 1.8.2002 (Annexure-4 to the writ petition), by which claim of the petitioner for admission in B.A. Part I under the Freedom Fighter quota has been rejected.

2. The fact as has come on the record can be summarised thus-

For taking admission in various Graduation courses Allahabad University, hereinafter referred to as the University, conducted Under-graduate Admission Test, 2002. A brochure was also published mentioning various requirements and criteria which was to be adhered in the aforesaid test. A bridge Admission Rules was also published, copy of which has been brought on record alongwith counter affidavit. Petitioner claims to have appeared in the aforesaid test for taking admission in B.A. Part I as General candidate under Freedom Fighter quota. Petitioner secured 92 marks but she was not given admission. Petitioner earlier also came to this Court by filing Writ Petition No. 23629 of 2002 which was disposed of by this Court on 30.7.2002. It was directed that in the event petitioner approaches respondents and satisfies about his rights as dependant of freedom fighter, she will be given admission. Pursuant to the direction of this Court petitioner approached respondents and filed documents establishing her to

be the dependant of freedom fighter upon which the impugned letter/order dated 1.8.2002 came into existence which made the petitioner aggrieved to come up to this Court.

3. Sri R.K.S. Chauhan, learned Advocate who appears for the petitioner submits that earlier respondents have refused admission to the petitioner on the pretext that petitioner do not come within the category of dependant of freedom fighter and therefore, on the direction given by this Court petitioner has filed required documents but now the respondents on the plea that the petitioner has not secured required 34% marks i.e. 102 marks rather she has secured 92 marks, denied admission. It is further submitted that petitioner having been proved to be dependant of freedom fighter, 2% seats under the said quota being available in which petitioner could have been admitted, but the respondents having been annoyed on account of filing of earlier writ petition on a wholly arbitrary premises rejected the petitioner's claim. Learned Counsel submits that respondents are bound to give admission to the petitioner in accordance with the reservation policy as has been provided by the State Government. It is further pointed out that action of the respondents in giving reservation in favour of the wards of the staff of University is clearly illegal as all kinds of reservation has to be confined upto the extent of 50%. Learned Counsel submits that this kind of concession and reservation to the wards of the staff of the University has been dis-approved by the decision as has been given by this Court as well as by the Apex Court. He has referred to the decision as has been given by the Apex Court in the case of Chairman/Director, Combined Entrance Examination (CEE), 1990 v. Osiris Das and Ors., reported in 1992 ESC 143 , and decision given by this Court in the case of Ganga Prasad Yadava Vs. Allahabad Agricultural Institute and others, Other decision which has been referred by the learned Counsel for the petitioner that reservation cannot exceed more than 50% even in minority institutions has been given in case of Shashank Chaudhary v. Ganga Prasad Yadav, as has been reported in (1995) 2 UPLBEC 1097.

4. Dr. Padia, learned Counsel who appears for the respondents in response to the aforesaid arguments submits that the University is fully justified in giving concession to the ward of the staff of the University and also providing cut of marks for getting admission to the students of general category excluding the reserved class. He submits that for the students of Schedule Caste and O.B.C. class the requirement of 34% mark has not been insisted but so far student of general class, it has been rightly insisted. Learned Counsel submits that this concession of not insisting cut of marks for the students of the reserved class is with the object of achieving reservation policy and this discrimination cannot be said to be arbitrary. In support of the aforesaid contention that the discrimination about criteria and cut of marks can be provided, the decision as has been given by the Apex Court in the case of Haridas Parsedia Vs. Urmila Shakya and Others, has been referred.

5. In view of the aforesaid submission as has come from both sides, the

pleadings as has been set forth have been examined.

6. There appears to be no dispute about the fact that the petitioner appeared in the admission test as candidate of general class claiming her admission in the Freedom Fighter quota. So far the cut of marks i.e. 34% which is said to be required for getting admission, on the facts of the present case it cannot be an issue as on this ground so far the petitioner is concerned she cannot be denied admission. Petitioner is entitled to get herself admitted in the light of provision as are contained in the Abridged Admission Rules as provided by the respondents themselves. The case in hand, claims admission under the Freedom Fighter quota. The relevant provision as is contained in the Abridged Admission Rules for the purpose of admission will be useful to be quoted here-

"1. Except the following categories of candidates seeking admission to B.A., B.Sc. Home Sc, B. Com. Part I class have to appear at the Admission Test for B.A./B.Sc./B.Sc. Home Sc./B.Com. respectively.

(a) The Foreign National (Rule 6).

(b) The sons/daughters/spouses of serving retired/deceased teachers or Class III or Class IV employees of the University who have been granted exception by the Director General (Admission), on such a specific request, from appearing at the Test.

2. For admission to the course of study seats are reserved in accordance with the U.P. State Reservation Act, 1994 for the candidates belonging to the following social categories :

(i) Schedules Caste : 21% (ii) Scheduled Tribes : 2% (iii) Other Backward Caste of Uttar Pradesh : 27%

3. Except the above candidates whose admission is governed by the Reservation Act, an applicant who has appeared in the Admission Test shall be considered for admission only when he secured at least 34% marks in the Test.

9. Special considerations admissible to Test Category candidates at the time of Admission.

Special consideration for admission are admissible to the (a) Physically Handicapped candidates and Outstanding Sports-persons, (b) Dependants of Freedom Fighter and (c) Son/Daughter of a Defence Personnel of the armed forces posted in the Field Area if they, have secured the minimum prescribed marks on the Test as per Rule 3 above :

(a) A candidate who is (i) physically handicapped and has been duly examined and recommended by the University Medical Board, or (ii) an outstanding sport-person who has been duly interviewed and recommended by the University Athletic Association, may be admitted to a course of study.

(b) A candidate who is the dependant of a Freedom Fighter and presents the

prescribed certificate, identification documents and the upto date F.F. Pensioner's Pass Book may be admitted to a course of study upto a maximum limit of 2% of the prescribed seats.

(c) A candidate who is the son/daughter of a defence personnel of the armed forces posted in the Field Area and presents a certificate to that effect issued recently by the Commanding Officer of that Unit may be admitted to a course of study upto a maximum limit of 2% of the prescribed seats."

7. In view of the aforesaid, it is clear that irrespective of condition as is provided under Clause 3, special consideration to various classes has been provided in Clause 9 of the aforesaid Rules. The aforesaid concession as is provided in Clause 9 (b) makes it clear that the dependants of freedom fighter is entitled to be admitted upto the maximum limit of 2% of the prescribed seats. In the event the insistence of the respondents that even for the candidate being dependant of freedom fighter, 34% mark is required then concession which has been specially provided stands frustrated. So far the admission to the candidates being dependant of freedom fighters, physically handicapped they are to be accommodated in the horizontal manner i.e. against the candidate belongs to that very class i.e., general class and reserved class (O.B.C., S.C. and S.T.). Providing of this concession to Physically Handicapped, Dependants of Freedom Fighter is not in any way, against the reservation policy as extent of benefits so available to the aforesaid category candidates are in that very class.

8. So far various kinds of categories are concerned it can be referred to as a class i.e., S.C, S.T. and O.B.C. and rest as General Class and so far the beneficiaries claiming their accommodation as Freedom Fighter and Physically Handicapped etc. In fact they are in no class but they can be classified as belonging to that category upon which they are to be accommodated under the classes referred above without disturbing the extent of the reservation so provided under reservation policy and the Act as issued in this respect i.e., 50% to the General Class and 50% to the reserved class. It is not the case of the respondents that in the physically handicapped quota under General Class any candidate having higher merit than the petitioner has been admitted and 2% of the prescribed seats has been filled. If this is not the case of the respondents then on the admitted facts, even in the light of their own guidelines and concession so provided under Clause 9 (b) of the Rules denial of admission to petitioner will not be justified. Respondents cannot be permitted to deny admission to the petitioner who has already secured admittedly 92 marks and comes within the dependants of Freedom Fighter quota in preference to those candidates who are wards of the staff of the University without appearing in the test gets admission, as this will be arbitrary and discriminatory. As in the present case neither this is the issued nor there is any occasion for considering the question that concession so being granted to the wards of the staff of the University, is illegal as challenged during the course of the arguments by the learned Counsel for the petitioner and therefore, this issue requires no decision

at this stage. Respondents are bound to accommodate the candidate belonging to the dependants of Freedom Fighter, Physically Handicapped Category within the percentage so provided in its own Admission Rules i.e. Clause 9(b) of the Rules and for that insistence of 34% marks cannot be said to be justified. There is no dispute that the respondents have admitted candidates against the reserved class even having lessor merit than the petitioner and in fact at earlier occasion when petitioner came before this Court on refusal of her admission, during the course of the arguments learned Counsel for the University has also not raised the dispute of requirement of cut of marks for the petitioner rather the arguments came on this aspect that petitioner has not been able to satisfy the University authorities that she is covered under the Freedom Fighter quota and therefore, the matter was remitted by the judgment dated 30.6.2002 for fresh consideration on furnishing adequate proof that she belongs to the dependants of Freedom Fighter category. It appears that the respondents by adopting rigid approach against the petitioner, obviously on getting a direction from this Court, has now taken shelter of cut of marks for the petitioner which on the facts and circumstances cannot be justified.

9. In view of the aforesaid discussion, this petition succeeds and is allowed. The impugned order of the respondents dated 1.8.2002 (Annexure-4 to the writ petition) is hereby quashed. Respondents are hereby mandated to admit the petitioner in B.A. Part 1 for the academic session 2002-03 and allot her subjects so applied by her in accordance with law within a period of one week from the date of receipt of certified copy of this order.