

(1988) 02 MP CK 0035

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 345 of 1985

Ravi Shankar Pandey

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 22-02-1988

Acts Referred:

Admission Rules — Rule 9(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1990 MP 1 : (1988) MPLJ 672

Hon'ble Judges : P.C. Pathak, J;C.P. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.L. Saxena, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

In this writ petition, the petitioner, who was a final year student in the Engineering College. Rewa, in challenging cancellation of his admission in the 5th year in the Rewa Engineering College, by order dt. 29-1-1985 by the Principal of the Rewa, Engineering College, and also the order dt. 11-3-1985, of the Ravi Shankar Vishwa-vidyalaya. Raipur, cancelling the result of the 1st year of the Bachelor of Engineering from the Raipur Engineering College.

The petitioner's case is that he passed the. Higher Secondary School Certificate Examination in 1st Division in the year 1978.

He did his B.Sc. (Part I) in 2nd Division in 1979., and B.Sc. (Part II) in 1980 in 1st Division. Thereafter, he applied for admission in the 1st year of Bachelor of Engineering in any of the Engineering Colleges in the State in accordance with the rules of admission published in the year 1980-81. He was selected and given admission in the Engineering College. Raipur. He passed 1st year examination from that college in the year 1981 -82 and then he got himself transferred to the

Government Engineering College. Rewa and passed 2nd year examination in 1982-83. 3rd year in 1983-84 and 4th year in 1984-85, securing 2nd Division in the first three examinations and 1st Division in the last examination. When he was due to appear in the final year examination he received the impugned order of the Principal dt. 29-1-1985, that as per direction of the State Government his admission in that college has been cancelled. Immediately thereafter, the petitioner filed the present petition and got an ad interim ex parte stay that effect shall not be given to the order dt. 29-1-1985. In view of this order, the petitioner appeared in the final year examination in April 1985 and his result has been withheld subject to the decision of this petition. The main ground of attack against cancellation of his admission was that the order has been passed without giving any notice or hearing. Such a procedure was permissible under R.9(k) (I) of the Rules of Admission for the year 1980-81 and, therefore, the rule is ultra vires being against the principles of natural justice.

After returns were filed by the State and also the Ravi Shankar University, the petitioner admitted that he got admission in the reserved quota of freedom fighters, being the grandson (daughter's son) of Bhola Prasad Pandey. He also challenged the subsequent order dt. 11-3-1985 of the Ravi Shankar Vishwavidyalaya, cancelling the result of his examination of the 1st year of B.E. from the Government Engineering College, Bilaspur, without again giving any opportunity in spite of the ad interim stay granted by this Court. According to the petitioner, his admission has been cancelled on the basis of complaints lodged by one Kuldeep Kumar son of Munindra Prasad Pandey and one Jagat Narayan Pandey. Munindra Prasad Pandey and Jagat Narayan Pandey are the step-brothers of the petitioner's father, Chandrakirti Prasad Pandey and there are litigations going on against the step-brothers and, therefore, with a view to harm him, such false complaints were lodged, the petitioner was not apprised of the nature of the complaints, nor any enquiry was held by giving him notice.

As per return filed by the State, complaints were received from one Kuldeep Kumar and other students and also from Jagat Narayan Prasad Pandey that the petitioner has obtained admission fraudulently in the reserved quota of freedom fighters. The petitioner is not the grandson (daughter's son) of the freedom fighter Bhola Prasad Pandey. Though he is recorded as a freedom fighter at serial No. 194 in the list maintained in the Collectorate, the certificate obtained by the petitioner that he is freedom fighter's grandson was a fabricated document. Therefore, the complaints were handed over to the District Vigilance Officer, who gave notice to the petitioner's father on 1-3-1984 to give information as to whose daughter he was: married and on what date. Since there was no response, another reminder was sent on 21-3-84, but the petitioner's father Chandrakirti Prasad had chosen not to supply the necessary information by remaining absent. The Vigilance Officer recorded statements of Jagat Narayan Prasad and others and also got the family "tree of Bhola Prasad Pandey from the Municipal Council, Sirmor, and the Tahsildar Sirmor. Bhola Prasad Pandey got a certificate from the Collector by saying that the petitioner was his daughter

Deokanya's son. It was learnt that Deokanya was married not to the petitioner's father but to one Ram Sumaj Tripathi, resident of Mukhtarganj, Satna, while the petitioner's father Chandrakirti Prasad Pandey was a resident of village Nadna, tahsil Sirmor and he was married at village Amra, tahsil Huzur, and it was also found that Chandrakirti Prasad Pandey did not himself apply for freedom fighter's certificate from the Collectorate and he did not come forward to give necessary information, when he was noticed by him. Therefore, by his report dt. 5-8-1984, the Vigilance Officer reported that a false certificate was obtained by practising fraud. In view of this report, the State Government directed the Principal to cancel admission of the petitioner in the Engineering College. When the petitioner was served with the order, he was informed by the Principal the reasons for the cancellation of his admission. Under Rule 9(k) (1) the Director of Technical Education can cancel any admission, if the same was obtained by breach of the rules or by practising fraud, without giving any notice. Though no notice was necessary, yet, notice was given to the petitioner's father, since he got admission of his son. The extraordinary powers of this Court under Article 226 of the Constitution should not be invoked in favour of the person, who deceived the Principal of the Engineering College, Bilaspur, in league and with active co-operation of a freedom fighter, which is a matter of regret, as a freedom fighter is not expected to be engaged in fraudulent activities. The petition, therefore, deserves to be dismissed. The Ravi Shankar University, by its return, supported the stand taken by the State Government and it was further submitted that the petitioner secured admission on false pretext and the petitioner was not entitled to appear in the examination, since his admission in the Engineering College has been cancelled.

Recording to the learned counsel for the petitioner, no opportunity was given to the petitioner to show cause before cancelling his admission, for having obtained admission in the freedom fighter quota by producing a false certificate. The enquiry held behind his back is invalid and not binding on him. No procedure was followed for holding the enquiry. The petitioner has already passed the 4th year B.E. examination in 1st Division and he has also appeared in the final year examination and his result should be declared as no one is going to be benefited by cancelling his result, when he has already completed his studies and appeared in the final year examination. According to the learned Additional Advocate General and the counsel for the Ravi Shankar University, the petition is misconceived and devoid of any substance and is not maintainable. Due enquiry was held, after giving notice to the petitioner's father, who got the petitioner admitted, when he was a minor. The freedom fighter Bhola Prasad Pandey has tarnished the image of a freedom fighter by taking money and swearing in a false affidavit and the petitioner's father got admission of the petitioner in the "Engineering College fraudulently. The petitioner's father had no courage either to participate in the enquiry before the District Vigilance Officer, nor to swear an affidavit to substantiate that he was married to Bhola Prasad Pandey's daughter Deokanya. For the first time, by rejoinder, the petitioner has taken a stand that

he is the adopted son of Deokanya, who is now a widow. This is falsified because in that event the petitioner would have described himself as son of Ram Sumaj Tripathi and not son of Chandrakirti Prasad Pandey.

Having heard the parties at length and giving our anxious consideration, we are of the opinion that this is not a fit case for invoking out extraordinary jurisdiction to interfere, with the impugned orders passed against the petitioner. It is evident that the petitioner is not the grandson (daughters sop) of Bhola Prasad Pandey. Bhola Prasad Pandey's daughter Deokanya was married to Ram Sumaj Tripathi in Mukhtarganj, Satna, and she is now a widow. Her husband Ram Sumaj Tripathi is already dead. The petitioner's father Chandrakirti Prasad Pandey was married in the family of Ramgopal Shukla in village Amra, tahsil Huzur. Even Bhola Prasad Pandey has not sworn an affidavit that Chandrakirti Prasad Pandey was married to his daughter Deokanya. After complaints were received by the State Government about the fraud practised by the petitioner's father in league with Bhola Prasad Pandey, the matter was enquired into by the District Vigilance Officer. The District Vigilance Officer gave two notices to the petitioner's father on 1-3-1984 and 21-3-1984 to furnish necessary information about his marriage and the place where he was married. He conveniently remained absent and had no courage to face the enquiry, as he knew that the certificate was false. By way of rejoinder, the petitioner has tried to wriggle out of the situation by saying that he has been adopted by Deokanya as a son, without giving any particulars. The petitioner's admission in the Engineering College was cancelled on 29-1-1985; but by filing this petition, without disclosing all facts and by making out as if he was selected on merits, he challenged cancellation of his admission and obtained an ad interim stay. Therefore, he was permitted to appear in the final examination also. But his result has been rightly withheld. The petitioner's father, who is S.D.O. in the Agri-; culture Department obtained such a false certificate in order to secure admission for his son in the Engineering College and Bhola Prasad Pandey became an easy tool in this regard, perhaps because he was paid handsomely for swearing in such a false affidavit as is apparent from the affidavit sworn by Jagat Narayan Pandey, who is step brother of the petitioner's father, that Rs. 4,000/- was paid to him and Rs. 2,000/- to the clerks in the Collectorate for obtaining freedom fighter's certificate. Therefore, there has been no breach of the principles of natural justice and giving relief to the petitioner will be to give premium for such fraudulent acts.

The Supreme Court, in State of Uttar Pradesh Vs. Om Prakash Gupta, has held that an enquiry must be conducted in accordance with the principles of natural justice. Those principles are not embodied principles. What principles of natural justice should be applied in a particular case depends on the facts and circumstances of that case. All that the Courts have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice. In the present case, the petitioner's father was given due notice to supply necessary information and if he had chosen to do so, he could have participated in the enquiry, but he deliberately remained absent

and had no courage to give the necessary information sought, as he knew that he had obtained a false certificate to secure admission for his son. Since the admission was obtained fraudulently, it was non-est and there was no necessity to give any opportunity to the petitioner before cancelling his admission, but still show cause notices were given to the petitioner's father and a regular enquiry was held and then, acting on the report of the District Vigilance Officer, the petitioner's admission was cancelled. In a similar case. in *Israr Ahmad Mansuri Vs. State of Madhya Pradesh and Another*, a Division Bench of this Court, found that the petitioner got admission to a Government Mining and Polytechnic. by fraudulently obtaining a certificate that he was a Harijan. He was allowed to pursue studies but subsequently he was found to be not a Harijan. It was held that the Government is not debarred by principle of equitable estoppel from cancelling his admission in the college, because he got admission by practising fraud and there lies no equity in his favour. However, learned counsel for the petitioner relied on certain decisions in order to suggest that the petitioner having already completed his studies and appeared in the final examination, his result should be ordered to be declared. In *The Board of High School and Intermediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, the Supreme Court set aside cancellation of the examination, as no opportunity to show cause was given. The cancellation was on the ground that there was shortage in attendance and according to the Supreme Court, "the enquiry should have been made before giving admission. The candidate having already appeared, in the examination, his examination could not be cancelled. That was not a case of fraud. Relying on this decision, a Division Bench of this Court in *D.P. Mahajan v. S.L. Agrawal*. AIR 1976 M P 40, set aside cancellation of admission in the 3rd year of M.B.B.S. course, as no show cause notice was given before cancellation. The ground of cancellation was that he had not taken B.Sc. (Part I) examination with physics as a subject. His admission was not provisional and, therefore, it could not be cancelled, as he had completed three years study in the college. Again, this is not a case of fraud. In *Haridayal v. State of J. and K.* AIR 1977 J&K. 1. cancellation of admission in the M.B.B.S. course has been set aside. The cancellation was because of. suppression, of certain information. Again, this was not a case of fraud. The case of *Ranbir Singh Vs. The State of Punjab and Others*, is clearly distinguishable. There it was alleged that the petitioner got admission on a false plea that he was of a scheduled caste. The petitioner had already passed the M.B.B.S. examination and even completed the internship training and, therefore, it was held that there was no question of cancellation of his examination. In *Inder Prakash v. Dy. Commr. Delhi* AIR 1979 Delhi 87 , a single Bench held that an educational institution cannot cancel student's initial admission on the basis of disqualification after letting the, student. study in the course for a long time. This was also not a case of fraud. No enquiry was held and behind his back it was held that he does not belong to scheduled caste. A single Bench in *Harphool Singh Vs. State of Rajasthan and Others*, held that where a student secured admission in Medical College on reservation quota by giving false declaration, the authorities were estopped from cancelling the

admission after 3-4 years. This case has been rightly differed from by this Court in *Israr Ahmad Mansuri Vs. State of Madhya Pradesh and Another*, (supra), as in case of fraud, there lies no equity. Lastly, in *Homesh Kumar v. V. C, Aligarh Muslim University* AIR 1985 All 106 admission to B.Sc. Engineering course was given in the reserved quota for sportsmen. Subsequently, admission was cancelled on the ground that the petitioner was guilty of impersonation during the test. It was held that it was not for the petitioner to prove, as required by the authorities", that he had not impersonated, but it was for the authorities to show that he had impersonated in the test.

With the result, the petition fails and is dismissed with costs. Counsel's fee Rs. 200/-, if certified. Costs to be shared by counsel for respondents 1. 2 and 3. Outstanding security-amount, if any, he refunded to the petitioner.