
(2004) 04 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4889 of 2003

Ritesh Arya and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 3 RLW 1990 : (2004) 3 WLC 323

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : P.R. Singh, for the Appellant; D.C. Sharma, for Respondent Nos. 2 and 5, Jagdish Vyas, for Respondent Nos. 3, 4 and 6 and Chandralekha, Dy. G.A., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 1.9.2003 with, the prayer that by appropriate writ, order or direction, the respondents No. 3 and 4, namely, Director, Computer Centre, Vigyan Bhawan, New Campus, Mohan Lal Sukhadia University, Udaipur and the Registrar, Mohan Lal Sukhadia University, Udaipur be restrained from charging extra fee of Rs. 16,000/- on the name of Self-Financing Course for Master of Computer Application and further, they be directed to treat the petitioner in the category of free seats in all the six semesters (3 years).

2. The case of the petitioners as put forward by them in this writ petition is as follows:-

The Jai Narain Vyas University published an advertisement (Annex. 1) whereby all concerned were informed that it was going to conduct the Rajasthan Master of Computer Application Admission Test (for short "RMCAAT") on 29th June, 2003 and the petitioners being eligible for the admission in MCA applied within the

stipulated time in the prescribed form, which was provided by the office of the respondent No. 2 Coordinator of JNV University. Thereafter, the respondent No. 2 Coordinator issued admission cards to all the petitioners whereby they were allotted role numbers. A copy of the admission card issued to the petitioner No. 1 Ritesh Arya is marked as Annex.2.

The further case of the petitioners is that thereafter, they appeared in the written examinations and they were declared pass and therefore, they were called upon by the respondent No. 2 Coordinator for counseling and a copy of the letter dated 8th July, 2003 calling the petitioner No. 1 Ritesh Arya for counseling is marked as Annex.3.

The further case of the petitioners is that through letter Annex.3, the petitioner No. 1 was apprised that while coming for counseling, he was required to bring two demand drafts of Rs. 18,000/- and Rs. 16,000/- and it was further clarified that the fee in private institution would be Rs. 34,000/- plus caution money whereas for Government institution, fee would be Rs. 18,000/- plus caution money and it was further clarified that in case he gets admission in a Government Institution, without self-sufficiency category, the demand draft of Rs. 16,000/- would be returned back at the same time.

The further case of the petitioners is that thereafter, they all appeared before the respondent No. 2 Coordinator for counselling alongwith requisite drafts and after counselling, they all were provided provisional admission in the Mohan Lal Sukhadia University (for short "MLS University") and a draft of Rs. 18,000/- was received by the office of the respondent No. 2 Coordinator. A copy of the receipt showing that a draft of Rs. 18,000/- was received by the office of the respondent No. 2 Coordinator from the petitioner No. 1 is marked as Annex.4.

The further case of the petitioners is that thereafter, all the petitioners reported to the respondent No. 3 MLS University and they were provided with the MCA Students Information Sheet, which was required to be filled-in up by them and they were required to join before 4th of August, 2003.

However, according to the petitioners, before they could report to the respondent No. 3 MLS University on 4th August, 2003, a telegraphic message was received by them whereby they were informed that they need not to report on 4th of August, 2003 and they were directed to contact the respondent No. 2 Coordinator. A copy of the telegraphic message received by the petitioner No. 1 is marked as Annex. 5.

The further case of the petitioners is that in compliance of the telegraphic message received by them, they appeared before the respondent No. 2 Coordinator, who informed them that they were allotted seats in the MLS University (respondent No. 3) on the basis of directives received from the Government.

The further case of the petitioners is that the respondent No. 2 Coordinator

further informed them that all the 60 seats allotted to the respondent No. 3 MLS University were free seats and no payment seat was available with the respondent No. 3 MLS University and the fee meant for free seats would be charged.

The further case of the petitioners is that the respondent No. 2 Coordinator wrote a letter dated 16.8.2003 (Annex.9) to the respondent No. 4 Registrar with copy to the respondent No. 3 Director of the MLS University and the relevant portion of that letter Annex.9 is reproduced hereinbelow:-

"Copy to Prof. K.K. Sud, In-charge MCA and Director University Computer Centre Vighyan Bhawan, New Campus MLS University, Udaipur with reference to his letter No. 159 dated 5.8.2003 and all previous correspondences. It is worth mentioning here that prior to declaration of result of RMCAAT and commencement of counseling there was no communication of differential rate of fee for the seats of MCA even after making available Information Brochure with application forms for sale. Therefore, it was not at all possible to charge different fee from the candidates. If the University wants, you may charge more amount of fee from all or some of the candidates by persuading them at your end."

The further case of the petitioners is that they were shocked to read the advertisement (Annex. 11) published in the Daily Rajasthan Pa-trika dated 28.8.2003 by the office of the respondent No. 4 Registrar of the MLS University whereby only 30 candidates were informed to report alongwith original documents on or before 1st September, 2003 and in that 30 candidates, the names of the petitioners were not there and it was further mentioned in that advertisement Annex. 11 that the remaining candidates if interested to be considered against self financing seats were required to report alongwith a draft of Rs. 16,000/- in favour of the respondent No. 3 Director on or before 1st September, 2003. This advertisement Annex. 11 issued by the respondent No. 4 Registrar has been challenged by the petitioners in this writ petition.

The further case of the petitioners is that thereafter, they received telegraphic message dated 28th August, 2003 whereby they were informed that they have not been found eligible for admission against free seats of MLS University, but in case they want to study on self financing seat, then additional draft of Rs. 16,000/- in favour of the respondent No. 3 Director be deposited" on or before 1st September, 2003. A copy of the telegraphic message dated 28.8.2003 issued to the petitioner No. 1 is marked as Annex. 12 and this telegraphic message Annex. 12 has also been challenged by the petitioners in this writ petition.

The main case of the petitioners is that they opted for MLS University on the pretext that they would be allotted free seats and therefore, later-on demanding of Rs. 16,000/- from each of the petitioner is nothing, but an arbitrary action on the part of the respondents and thus, the respondents No. 3 and 4 are not entitled to charge Rs. 16,000/- from the petitioners. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondent No. 2 Coordinator wherein it was submitted that since the admission of the petitioners was provisional, therefore, if any necessity took place later on, that should be complied with and further, if out of 60 seats only 30 seats were available against free quota and 30 seats were payment seats, that statutory requirement was to be followed by the students to make their admission final and thus, due to communication gap amongst the respondents No. 1, 2, 3 and 4, the irregularities in the admission process had taken place and moreover, even then, the concept of estoppel is not available. Hence, no case for interference is made out and this writ petition deserves to be dismissed.

A reply to the writ petition has also been filed by the respondents Nos. 3 and 4 and it has been submitted by them that to seek admission in such a technical course is not a fundamental right and the petitioners cannot seek admission as a matter of right against free seats and there is no violation of the fundamental rights of the petitioner and therefore, they cannot seek direction against the University to grant them admission in free seats.

It has been further submitted by the respondents Nos. 3 and 4 that through Annex.3, the petitioners were rightly intimated to bring two demand drafts of Rs. 18,000/- and Rs. 16,000/- and it was also intimated to them that if they got admission in a Government Institution without self sufficiency category, the demand draft of Rs, 16,000/- would be returned and since the petitioners were admitted against the self sufficiency category (self financing category), they were not entitled to receive back the demand draft of Rs, 16,000/-, but the respondent No. 2 Coordinator returned the demand draft of Rs. 16,000/- due to mistaken view that the petitioners were admitted against free seats.

It was further submitted by the respondents No. 3 and 4 that the Respondent No. 2 Coordinator had put the note on the telegram due to mistaken view and in fact, the MLS University was having in all 60 seats in MCA Course and out of 60 seats, 30 seats were self sufficiency (financing) seats and 30 seats were free seats and in this respect, letter Annex.R/2 dated 7.5.2003 was placed on record, which shows that the MLS University informed the respondent No. 1 State Government that out of 60 seats, 30 seats were free seats and the remaining 30 seats were payment seats.

It was further submitted by the respondents No. 3 and 4 that a meeting of the Centralized Admission Coordination (CAC) Committee was held on 11.8.2003 and in that meeting, it was resolved that the Chairman, RMCAAT 2003 was authorized to discuss the matter with the Vice-Chancellor of the MLS University to take further necessary action and it was further resolved by the Committee that the second counselling be done on 25/28.8.2003 in case of need and that decision was taken by the CAC Committee keeping in view the fact that all the 60 seats of the MLS University were wrongly allotted against free seats category. Thus, the respondent No, 2 Coordinator had wrongly admitted the petitioners against free seats contrary to the decision taken by the CAC Committee. The copy of the

Notice dated 7.8.2003 calling the meeting of the CAC Committee and the letter dated 15.16/872003 addressed to the respondent No. 2 Coordinator are marked as Annex.R/3 and Annex. R/4 respectively.

It was further submitted by the respondents No. 3 and 4 that it is true that 60 students as disclosed in the list Annex.8 were provisionally admitted by the respondent No. 2 in the MLS University in MCA Course and the names of the petitioners also appeared in that list, but in that list Annex. 8, the names of the candidates have not been shown as per their merit and their merit has been shown in column No. 4 of the list Annex.8 and the petitioners are lower in merit in comparison to those 30 students, who have been admitted against free seats. Furthermore, the respondents No. 3 and. 4 have provided admission to 30 students strictly in order of merit keeping in view the rules regarding reservation. Thus, the respondent No. 3 had rightly demanded the remaining fee of Rs. 16,000/- from the petitioners as they were not allotted free seats. Hence, no case for interference is made out and this writ petition deserves to be dismissed.

3. I have heard the learned counsel for the petitioners and the learned counsel for the respondents and gone through the materials available on record.

4. There is no dispute on the point that the petitioners appeared in the Rajasthan MCA Admission Test, 2003 and they were declared pass and thereafter, they were called for counselling by the respondent No. 2 Coordinator.

5. There is also no dispute on the point that as per letter Annex.3 dated 8.7.2003, each of the petitioner was asked to bring two demand drafts of Rs. 18,000/- and 16,000/-and it was made clear that fee for private institution would be Rs. 34,000/- plus caution money whereas for Government institutions, the fee would be Rs. 18,000/- plus caution money and it was further made clear that in case he gets admission in the Government Institution, without self-sufficiency category, the demand draft of Rs. 16,000/- would be returned. It was specifically mentioned in that letter Annex.3 that admission would be subject to the merit obtained by him in the Entrance Test of MCA.

6. There is also no dispute on the point that 60 students, as mentioned in the list Annex.8, including the petitioners were admitted in the MLS University, but since in the MLS University, out of 60 seats, 30 seats were payment seats and 30 seats were free seats and since 30 seats of free quota were to be filled-in up on the basis of merit, therefore, out of 60 students as mentioned in the list Annex.8, on the basis of merit, 30 students were admitted against free seats and these 30 students, who were admitted against the quota of free seats, stand higher in merit than the petitioners.

7. There is also no dispute on the point that as per the reply of the respondents No. 3 and 4, by the act of the respondent No. 2 Coordinator, the petitioners thought that they had been given admission against free seats.

8. There is also no dispute on the point that through advertisement (Annex. 11)

published in the Daily Rajasthan Patrika dated 28.8.2003 by the office of the respondent No. 4 Registrar of the MLS University, only 30 candidates were informed to report alongwith original documents on or before 1st September, 2003 and in that 30 candidates, the names of the petitioners were not there and it was further mentioned in that advertisement Annex. 11 that the remaining candidates if interested to be considered against self financing seats were required to report alongwith a draft of Rs. 16,000/- in favour of the respondent No. 3 Director on or before 1 st September, 2003.

9. There is also no dispute on the point that through telegraphic message dated 28th August, 2003 (Annex. 12) each of the petitioner was informed that he has not been found eligible for admission against free seats of MLS. University, but in case he wants to study on self financing seat, then additional draft of Rs. 16,000/-, in favour of the respondent No. 3 Director be deposited on or before 1st September, 2003.

10. There is also no dispute on the point that the students, who were admitted against quota of free seats, secured higher merit than the petitioners.

11. The question for consideration is whether in the facts and circumstances just narrated above, the petitioners have got any legal right to ask the. respondents that they should be admitted against the quota of free seats or not.

12. Before proceeding further, it may be stated here that in matters relating to the internal working of an educational institution (say, the matter of admission) and academic matters, the Court will not interfere unless the act complained of is clearly beyond jurisdiction; or contrary to the statute, rules or regulations governing the institution; or the Constitution or there is a statutory duty which the authority has failed to perform or the impugned act is mala fide or violative of natural justice.

13. It may further be stated here that educational authorities should be left without interference from the Courts and other outside agencies in administering their disciplinary jurisdiction over the examinees as long as they act in compliance with the rules of natural justice. The Courts in exercise of their writ jurisdiction are reluctant to interfere in the exercise of discretion of the educational authorities in the absence of strong reasons like contravention of law or statutory regulations governing the examinations.

14. The Courts have generally set certain limitations and self- imposed restrictions on the exercise of their discretionary power under Article 226 qua the decisions of academic bodies. The courts have consistently kept their hands off the high academic bodies unless flagrant violation of fair play based on bias or malafides is established. The High Court will be reluctant to interfere with the administrative and disciplinary matter unless it thinks that there has been a blatant deviation of any law or denial of basic human rights or violation of the principles of .natural justice or glaring discrimination or bias or malafides.

15. Keeping the above principles in mind, the facts of the present case are being examined. .

16. It may be stated here that Article 14 of the Constitution of India does not prohibit reasonable classification or distinction.

17. In the present case, there were 60 seats in MLS University and out of these 60 seats, 30 seats were earmarked as payment seats and the remaining 30 seats were earmarked as free seats and these 30 free seats were directed to be filled-in up on the basis of the merit and such Classification and distinction on the basis of merit cannot be said to be unreasonable or arbitrary and it does not hit the provisions of Article 14 of the Constitution of India.

18. In Jagdishsaran (Dr.) v. Union of India (I), the Hon''ble Supreme Court held that at the higher levels of education, merit should be the only test for admission.

19. Therefore, if out of 60 seats, 30 seats were treated as free seats and the remaining 30 seats were treated as non-free seats (payment seats) and 30 seats of free quota were allotted to those students, who stand higher in merit, by doing so, the respondents have not violated the provisions contained in Article 14 of the Constitution of India nor it can be said that on that basis, the petitioners have got any fundamental right. What to talk of fundamental right, the petitioners have got no legal right to seek relief under Article 226 of the Constitution of India on the ground that free seats should also be allotted to them merely on the basis that the respondent No. 2 Coordinator apprised them that they would be allotted free seats.

20. If by the conduct or action of the respondent No. 2 Coordinator, the petitioners were initially apprised that they would be admitted against free seats and later on, this mistake of the respondent No. 2 Coordinator was rectified by the MLS University (respondent No. 3 and 4), in such matter, no estoppel lies against the respondents No. 3 and 4 that they cannot rectify the" mistake that was committed by the respondent No. 2 Coordinator. From this point of view also, it cannot be said that any legal right has accrued in favour, of the petitioners.

21. The power of the High Court to issue writ under Article 226 of the Constitution of India can be exercised for a two fold purpose (1) for enforcement of fundamental rights as well as (2) for enforcement of non-fundamental or ordinary legal rights and for any other purpose. Under the second part, writ can be issued only after a finding that the aggrieved party has a legal right which entitles him to any of the writs and that such right has been infringed.

22. In the present case, by making a reasonable classification or distinction in the manner that out of 60 seats, 30 seats would be treated as free seats and the remaining 30 seats would be treated as payment seats and 30 free seats would be filled-in-up on the basis of merit, it cannot be said that the petitioners have got any fundamental right or legal right entitling them to seek relief under Article

226 of the Constitution of India.

23. Apart from this, there is no question to say that the petitioners are being discriminated on the basis that they were not given free seats. If the Autonomous Bodies like University had bifurcated that out of 60 seats, 30 seats would be treated as payment seats and 30 seats would be treated as free seats and admission against 30 free seats would be given on the basis of merit, such bifurcation based on merit cannot be regarded or termed as illegal or irrational or unreasonable and discriminatory. The classification and distinction made by the respondents is just, reasonable and fair and it does not violate provisions of Article 14 of the Constitution of India.

24. Thus, in view of the discussion made above, the action of the respondents in asking the petitioners to deposit additional draft of Rs. 16,000/- in case they want to study on self- financing seat as they were not found eligible for admission against free seats, cannot be said to be arbitrary, illegal and violative of Article 14 of the Constitution of India. Furthermore, 30 students, who were admitted against free seats, secured higher merit than the petitioners.

25. So far as the ruling relied upon by the learned counsel for the petitioner in *Virendra Kapur v. University of Jodhpur and Ors.* (2), is concerned, the same would not come to help the petitioners as the facts of that case and the facts of the present case are altogether different one.

26. For the reasons stated above, there is no merit in this writ petition and the same deserves to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.