
(2003) 03 KAR CK 0071
In the Karnataka High Court
Case No : Writ Petition No. 43772 of 2002

R.L. Raghunatha Reddy

APPELLANT

Vs

University of Agricultural Sciences and Others

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Citation : (2003) 3 KarLJ 400 : (2003) 3 KCCR 1634

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : T. Narayanaswamy Reddy, for the Appellant; D.N. Nanjunda Reddy, for Respondent-1 and V. Laxminarayana, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

H. Rangavittalachar, J.

The writ petitioner who was unsuccessful in securing a seat for studying in Ph.D. course in the subject Soil Science and Agricultural Chemistry, in the University of Agricultural Sciences, 1st respondent (hereinafter referred to as "University" for brevity), for the academic year 2002, has filed this petition challenging the admission of the 2nd respondent to Ph.D. course in the said subject as illegal.

2. Briefly stated, the facts are as under:

The University by its notification dated 9-9-2002 - Annexure-B invited applications for admission to various post-graduate degree programs including Ph.D. courses, in various disciplines for the academic year 2002-2003. Petitioner was an M.Sc. graduate having passed on 30-1-2002 was one among the several applicants. For selection of suitable candidates, the University held counselling on 8-11-2002. According to petitioner, though he secured 72.05 marks, at the counselling, was denied a seat and the 2nd respondent though was not even eligible to apply, having not passed M.Sc. before the last date for filing application has been provided a seat. He has therefore prayed for setting aside the selection of 2nd respondent and in his place direct the University to admit

him.

3. The University has stated in its statement of objections that, it had called for allotting seats to the Ph.D. course in various disciplines as per the notification Annexure-B. In the discipline of "Soil Science and Agricultural Chemistry", six seats were allotted. Out of the said six seats, 1 seat each was reserved for Scheduled Caste and Scheduled Tribe and candidates coming under Category III-A; 2 seats were reserved for candidates coming under other categories and 1 seat under the General Merit category. Petitioner had made the application seeking admission under reservation Category III-A.

4. It has denied that the 2nd respondent had not acquired eligibility criteria. It is stated that he was admitted to M.Sc. (Agri.) in Soil Science and Agricultural Chemistry during the academic year 2000-01, After completing the 2 year course, he submitted his thesis and took up his final viva voce held on 6-9-2000 and on the said date, the Advisory Committee which conducted the viva voce certified that he had passed satisfactorily his Master's degree in pursuance of which the results were communicated by the Director before 30-10-2002. Therefore, he was fully eligible to apply as per notification Annexure-B and no illegality has been committed by the University in awarding the seat. Alternatively, it is also submitted that the 2nd respondent was allotted a seat under reservation III-B category as he had scored 84.40 marks while the petitioner sought admission under Category III-A, Even if the admission of the 2nd respondent is set aside, the said seat cannot be allotted to the petitioner as both of them claim under two different categories of reservation.

5. In the light of these pleadings, Sri Narayanaswamy, petitioners Counsel, by reading the notification Annexure-B submitted in order to be eligible to apply for securing a seat in Ph.D. course, the candidate, should have "passed" M.Sc. in Agriculture on or before 7-10-2002 the last date fixed for filing the applications. Under no circumstance this rule could be relaxed. Elaborating the submission, it was contended in the context "pass" in M.Sc. Agricultural Science means candidates results must have been declared by a notification on or before the last date for filing applications and mere obtaining of the passing marks without a declaration of results cannot be equated to a "pass" in M.Sc. The 2nd respondent's results was only declared on 4-11-2002 which was after the last date fixed in the notification. If he was removed from the race, petitioner was the only alternative choice to fill up the said seat. University has admitted the 2nd respondent in violation of its own conditions stated in the notification Annexure-B. In support of the said contention, learned Counsel relied on the following decisions:

1. Bhupinderpal Singh and Ors. v. State of Punjab and Ors. AIR 2000 SC 2011 : (2001)5 SCC 262
2. Maharshi Dayanand University Vs. Dr. Anto Joseph and Others,
3. Vinod Kumar Garg v. Punjab University, Patiala and Ors. (1996)6 SLR 672 (P &

H)

4. Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another,

5. AIR 1998 91 (SC)

6. Mallikarjuna Swamy Vs. University of Agricultural Sciences,

6. In reply, Sri Nanjunda Reddy, learned Counsel for the University submitted, the University has framed its own regulations regarding the scheme of examination and the manner in which a student will be declared as "passed" which is peculiar to its own courses and different from normal procedure. In the facts, the 2nd respondent was admitted to the M.Sc. course during the academic year 2000-2001 and completed his course when the viva voce examination was held on 6-9-2002 and on the same day, his results were declared. The further acts of issuing a marks card is only ministerial and on account of certain internal disturbances, the marks card was not issued till the end of October 2002. Therefore, 2nd respondent as on 7-10-2002, had passed his Master's degree and was fully eligible for applying.

7. Thus, by the arguments at the Bar and the pleadings, question that falls for consideration is "whether the University has violated its own norms stated in Annexure-B while it provided a seat for Ph.D. course for the 2nd respondent and thereby depriving the petitioner a right to get admission". In order to answer the said contention, it is necessary to state the conditions or norms stated by the University in its notification-Annexure-B and also the relevant regulations framed by the University regarding the conduct of examination, and the meaning of the word "pass" occurring in the notification.

8. By a notification dated 9-9-2002, Annexure-B, the University invited applications to various post-graduate degree programs in Ph.D. in different disciplines for the academic year 2002-2003. The eligibility criteria for a candidate to apply as prescribed in the notification is, "a pass in M.Sc. (Agri.)". In the last column of Annexure-B under the heading "cost of application", it is stated "applications will be issued from 8-9-2002 to 3-10-2002 during office hours. Filled in application should be submitted on or before 7-10-2002 to the Registrar, UAS, GKVK, Bangalore only". It is also stated in the next column "late and incomplete applications shall not be considered".

9. The notification does not fix the last date before which a student must have "passed the M.Sc. examination" in order to qualify for applying.

10. Before adverting to the contention about the deviations of the conditions of the terms in the notification complained, let me also refer to the scheme of examination and the manner of admission of a student to Ph.D. course prescribed by the University. The University has framed its own regulations known as "University of Agricultural Sciences, Bangalore, Academic Information and Regulation governing Post-graduate Programs under Semester System" (hereinafter referred to as "regulations" for brevity). According to

Regulation 4.1 a candidate seeking admission should possess eligible Master's degree. Regulation 17.2 states the manner of awarding a Master's degree. It reads:

"17.2 Master's degree.--The thesis submitted in partial fulfillment of the Master's degree shall be read and examined by the Advisory Committee and evaluated by an External Examiner nominated by the Dean, on the recommendation of the Director of Instruction (PGS). The External Examiner shall be a specialist in the student's major field of study and shall ordinarily be appointed by the Director of Instruction (PGS) confidentially on the recommendation of the Major Advisor through the Head of the Department, from a panel of three names of specialists in the particular field in India but outside the University of Agricultural Sciences, Bangalore and, shall exclude the members of other institutions who have been recognised for PG guidance in the University.

The Director of Institution (PGS), however, has the discretion of selecting the External Examiner from outside the panel of specialists suggested.

The External Examiner shall send the report and the thesis to the Director of Instruction (PGS). An oral examination will be held by the Advisory Committee after the thesis is recommended by the External Examiner for consideration. At the time of final viva voce examination, the students shall present the salient features of the research work through audio-visual aids and defend the thesis. Further, a candidate for Master's degree should prepare at least one research paper fit for publication in a referred journal based on the thesis work and submit the same to the Major Advisor at the time of final viva voce examination.

The Chairperson shall send the recommendations of the Advisory Committee to the Director of Instruction (PGS) through the Head of the Department. On the unanimous recommendation of the Committee, the degree shall be awarded. If the external examiner does not recommend the thesis for acceptance, the Director, of Instruction (PGS) may refer the thesis for scrutiny and independent judgment to a second External Examiner chosen and nominated by the Dean. If the second Examiner recommends the thesis for acceptance, this recommendation shall be accepted.

If the opinion of the second Examiner is also negative, the degree shall not be awarded. In such cases, the student shall have the option to continue the work, rewrite the thesis and submit it once again after a lapse of at least one semester. If it is not accepted the third time also, the thesis cannot be resubmitted".

11. According to the extracted regulations, the student has to submit the thesis which shall be examined by the Advisory Committee and evaluated by an External Examiner. The report and the thesis will be sent to the Director of Instructions on the basis of which a oral examination will be held by the Advisory Committee called as viva voce examination. The result of this viva voce examination will be sent to the Director of Instructions who on the

recommendation of the Committee shall award a degree. The awarding of the degree and declarations of the result of the oral examination are two different events. The awarding of the degree, will take place at a later date though the results of the examination may be available earlier. The evaluation or awarding of marks is also different from other known normal methods which is done by awarding what is called as a "Grade Point" which has been defined by Regulation 2.74 as a measure of quality of work done in a course to meet the requirement in a semester which is computed by dividing the percentage of marks obtained in a course by 10. It shall be expressed on a 10 point scale up to a second decimal place. A grade point of six and above shall be considered as successful completion of thesis, as per Regulations 12, 12.1.2 and 12.1.3 which reads:

"12.1.2. The evaluation of student's performance in each course will be referred to as Grading by assigning course grade point up to a second decimal place on a ten point scale. The grade point is derived by dividing the percentage of marks secured in the course by ten.

12.1.3. A student obtaining a grade point of less than 6.00 in a course will be declared as "failed" (F) in that course. The student shall repeat the course in which "F Grade has been obtained till a minimum grade point of 6.00 is obtained in that course.

A student who obtains "F or "SA" grade in any of the courses of study shall either repeat the course when it is offered again or may register for a new course if it is not a core/compulsory course, on the recommendation of the Advisory Committee and approved by the Director of Instruction (PGS)".

12. Reverting to the facts, the University has made available the entire records. The 2nd respondent had as on 9-9-2002 submitted his thesis as per the requirement of Regulation 17.1.1. extracted above on the subject "Phosphate sorption - Desorption Characteristics in Acid Soils of Karnataka" and attended the viva held on the same day. On the same day, the Committee had staged that his performance was rated as good and recommended for approval of thesis. On 1-10-2002, the Grade Certificate was issued awarding 10 grade points to the said student. It is on this basis, the provisional degree was declared on 4-1-2002.

13. As on 1-10-2002, the 2nd respondent had secured 10 points and he had passed the Master's degree examination but, the other requirements of awarding a degree is a consequential act and is later done having regard to the administrative convenience and other factors. Therefore, the point of time at which a student can be declared to have "passed" M.Sc. degree is when the awarding of the grade points on the basis of thesis is done and not on the date of awarding of degree.

14. But, the contention of the learned Counsel for the petitioner is that the 2nd respondent was not in possession of any certificate showing that he had passed his Master's degree on 30-10-2002 as per the call notice issued by the University, therefore, he should not have been considered in the interview. In

answer, the University has stated why it could not issue the certificate before 30-10-2002 in its objections that is, because of some strike of the employees in the last week of October.

15. Be that as it may, the fact remains that as per the notification Annexure-B, even if it is considered 7-10-2002 as the date on which the student should have acquired the eligibility by passing in the M.Sc. examination (last date for filing the application), the 2nd respondent as on 1-10-2002 was already declared to have passed by securing 10 points in the 10 point scale and therefore, he was fully eligible as per the notification. The contention therefore, has no merit.

16. Let me refer to the decisions cited by the petitioner's Counsel. In Bhupinderpal Singh's case, *supra*, the question that fell for consideration before the Supreme Court is, what is the cut off date by a reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment. It was answered stating that the cut of date is the date appointed by the relevant service rules in the absence of which such date that may be appointed for the purpose in the advertisement calling for application. If there is no such date then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be considered by the Competent Authority. There is no dispute about the said proposition and in this case, that is not the question for consideration.

17. In Maharshi Dayanand University's case, *supra*, the question that arose was where the Medical Council of India prescribed three years training for eligibility for MD examination but a candidate had not completed three years training, could, he be held eligible by condoning the absence of a short duration? Court held, it cannot be done. I am at a loss to understand of this ruling having any application.

18. In Vinod Kumar Garg's case, *supra*, the question that arose was whether a candidate who had passed the qualifying examination in M.Sc. after the date of interview stated in the notification, had a right to be admitted, the Punjab and Haryana High Court held, they had no such right in view of the specific prohibition contained in the notification namely, "the results of candidate of the qualifying examination must be available on the date of interview". That is not the case herein.

19. In Ashok Kumar Sharma's case, *supra*, it has been held that "where applications are called for prescribing a particular date as the last date for filing the application, the eligibility of the candidates shall have to be judged with reference to that date and that alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such a representation. It cannot act contrary to it. One reason behind this proposition is, if it were known the persons who obtained the

qualification after the prescribed date but, before the date of interview would be allowed to appear for interview. Other similarly placed persons would also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualification by the prescribed date, they could not have been treated on a preferential basis". This decision rather than advancing the case of the petitioner, advances the case of the respondent. As per this ruling, the candidate should have acquired the prescribed qualification before the prescribed date. I have already stated that before the last date for filing of the application, the results of the 2nd respondent's examination was available.

20. In State of Rajasthan's case, *supra*, applications were invited for appointment of certain posts by means of an advertisement. The advertisement prescribed the last date for filing the application was 5.00 p.m. on 29-6-1992 and it was made clear that no certificate, marks sheet shall be accepted after receipt of application forms in the office. One of the candidates who had applied had appeared for the examination on 29-6-1992 and his result on the said day was not declared. When he had challenged the non-consideration of his application before the Court, the Court held that as on 29-6-1992, he was not eligible. That is not the situation in the present case.

21. N. Mallikarjuna Swamy's case, *supra*, was a case where the University had invited application for filling up the post of Assistant Professor of Agriculture, Economics and other posts. The last date for filing the application was 22-11-1993. His application was turned out on the ground that as on the day he submitted his application i.e., 22-11-1993 he had not successfully completed his M.Sc. degree as the marks card was issued to him only on 17-12-1993. This Court interpreting the regulations of the University in force during the year 1993 which is totally different from the present one held that the mere fact of having appeared for the examination and even obtaining qualifying marks will not clothe a student with a title to the degree unless and until the results are officially announced by the University. The decision is distinguishable. In the first place, the said case was for appointment of a person to a post. Secondly, it is not stated in the said decision, what was the eligibility criteria fixed for applying. But, the present case is one which deals with the admission of a student for studying in a higher course. The said principle cannot apply to a different and distinct situation.

22. Thus, none of the decisions cited has any application to the facts of the case.

23. It is always important to note that in admission of students to academic courses, the Courts should not take a technical view of the matter and interfere with University's decision. The matters must be left to the University to decide regarding the conditions of eligibility as stated by the Supreme Court in *G.N. Nayak Vs. Goa University and Others*, "the Court would not be justified in adopting a legalistic approach and proceed on a technical view of the matter without considering the intention of the University in laying down the condition of eligibility, and in *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*,

"that the decisions of the academic authorities should not ordinarily be interfered by the Courts. Whether a candidate fulfills the requisite qualification or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consists of experts on the subject relevant to the selection".

24. From the discussions made above, it cannot be said" that the University committed any grave illegality or violated its norms by admitting the 2nd respondent to the Ph.D. course.

25. For the reasons stated above, I do not find any merit in the petition. Petition is dismissed. Since the petitioner also has secured good marks and aspiring to study, the University will take this factor into consideration while considering his application filed, if any, in pursuance of any notification that may be issued by the University for admission to Ph.D. course in future.

26. No costs.