
(1966) 03 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 29 of 1966

S.A. Manjunath Annayyappa

APPELLANT

Vs

University of Bangalore and Others

RESPONDENT

Date of Decision : 03-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 311 (2)
Evidence Act, 1872 — Section 115

Citation : AIR 1967 Kar 119 : (1966) 1 MysLJ 716

Hon'ble Judges : T.K. Tukol, J; K. Bhimiah, J

Bench : Division Bench

Advocate : Shyamala Pappu, for the Appellant; R.S. Mahendra, High Court Govt. Pleader, for the Respondent

Judgement

1. This is a petition under Article 226 of the Constitution for issue of a Writ of Mandamus directing the Dean of the Medical College, Bangalore, to permit the petitioner to prosecute his studies in the pre-professional course in Medicine and to allow the petitioner to attend the classes and take the examination. An appropriate writ is also prayed for to cancel the order of the Chairman of the Selection Committee as also of the Dean which cancelled the admission of the petitioner to the Medical College.

2. The petitioner submitted an application in 1965 for a seat in the Bangalore Medical College. Along with his application he enclosed his marks card of the P. U. C. examination for the year 1959. That card showed that the petitioner had secured 190 marks in the group of subjects comprising Chemistry, Botany and Zoology. He was interviewed by the Selection Committee and was selected for admission to the Bangalore Medical College. He paid his fees on 21-8-1965 and commenced to attend the classes from 27-8-1965. On 28-8-1965, he received a communication (Ex. "A") from the Director of Health Services and the Chairman of the Selection Committee to the effect that his temporary selection made earlier had been cancelled as it had been ascertained from the Controller of

examinations, University of Mysore, that he (the petitioner) had in fact secured only 130 marks and not 190 marks in the optional group as shown in the marks card produced by him. This was followed by an identical communication (Ex. B) dated 31-8-1965 from the Dean of the Bangalore Medical College. The petitioner addressed four representations (Ex. "C", Ex. "D", Ex. "E" and Ex. "G"). The first two to the Dean of the Medical College and the last two to the Chairman of the Selection Committee. The request that he made in these representations is for return of his original certificates and refund of the fees paid by him. He was informed by the Dean of the Medical College as per Ex. "F" on 8th October 1965 that his request for refund of fees and retransmission of the marks card was under consideration. A similar reply was sent to him as per Ex. "H" dated 28th October 1965 by the Chairman of the Selection Committee. The present petition came to be filed for the aforesaid reliefs on 4th January 1966 against the University of Bangalore, the Dean of Medical College, Bangalore, and the Chairman of the Selection Committee.

3. Of these respondents, the Dean of the Medical College, Bangalore, has filed his counter, wherein he has stated that the petitioner had been provisionally admitted to the Pre-professional course in Medicine in the Medical College at Bangalore, that according to the University Register, the marks secured by him in the optional were only 130 and not 190 as per the report of the Controller of Examinations, Mysore University, that the admission of the petitioner to the Medical Course was due to inadvertence or mistake, and that the petitioner was not at all eligible for being selected by the Committee and hence no right had accrued to him to continue his studies for the Pre-professional course in Medicine. The Dean has also stated that the last candidate selected and admitted to the course from amongst candidates belonging to the Socially and Educationally backward Classes had secured 210 marks in all and that the petitioner's marks were only 156.

4. The learned Advocate appearing for the petitioner has submitted two points for our consideration . The first relating to the competency of the Chairman of the Selection Committee to cancel the admission once made and the second to a plea of estoppel.

5. Before examining these questions, we should like to mention that respondent No. 2 raised a technical objection to the effect that the University of Mysore was a necessary party as the marks card was issued by the Mysore University and it was the Mysore University which alone was competent to produce the necessary registers and correspondence relevant to the points at issue. The University of Mysore has not been added as a party. We, however, do not consider that as a ground of infirmity in the present Writ Petition, as the respondents have secured the relevant original Register of Marks of the Pre-University Examination held in April 1959 and placed also before us the entire correspondence relating to the petitioner. The Register of the University shows that the petitioner secured 48, 36 and 46 marks respectively in Chemistry, Botany and Zoology. In the marks card

produced by the petitioner before the Selection Committee, the marks shown as, having been secured by him are respectively 58, 64 and 68. Neither in the petition nor in any of the representations made by the petitioner, has he challenged the correctness of the marks as stated in the University Register which shows that his total marks were only 130. It has been submitted for the respondents that the marks card produced by the petitioner was not genuine. We refrain from pronouncing on the nature of the marks card as it appears that some investigation is pending in the University on this subject.

6. Coming to the question of competency of the Chairman of the Selection Committee to cancel the selection made by him, the learned Advocate for the petitioner has drawn our attention to Rule 15 of the Rules for selection of candidates for admission to the Pre-professional/1st B. Sc. Course leading to the M. B. B. S. Course in the Government Medical Colleges in the State of Mysore. That Rule reads as follows :

"15. Selection subject to decision of University :--

(a) with regard to eligibility or qualification for admission, the decision of the University shall be final and a candidate who has been selected by the Selection Committee but not found eligible subsequently by the University is liable to be refused admission. The Selection Committee shall not in such an event, be held responsible in any manner whatsoever.

(b) Where an ineligible candidate has been admitted to a College inadvertently by mistake or otherwise, such candidate shall have no claim to continue his studies in the College". What is contended by the learned Advocate for the petitioner is that after the selection of the candidates for admission to different Government Colleges is made, the Selection Committee becomes functio officio and that it is only the University thereafter which could cancel any admission made on the basis of the selection list. We have gone through the rules and we do not find in any of the Rules that the Committee is required to send its list of selected candidates to the University. On the other hand, Rule 13 lays down that the list of persons selected for the respective colleges together with the respective applications and other connected papers shall be forwarded to the respective colleges to which such persons are allotted and that the list shall be published in those colleges on any date to be fixed by the Selection Committee. The University does not come into the picture at all either in the preparation of the list of selected candidates or in the publication of the list. Under these circumstances, it is reasonable to interpret Rule 15 as constituting the University as the final authority to decide in case there is any dispute with regard to the eligibility or qualification for admission. The same view has been taken by this Court in Writ Petn. No. 1789 of 1965, rendered on 21st October 1965 (Mys). After quoting Rule 15, this is what their Lordships have stated :

"We are unable to spell out from this rule any duty on the part of the Selection Committee to submit the list of selected candidates for the final approval of the

concerned University. The rule, as we understand it, merely provides that if there is any dispute as regards the eligibility or qualification of a student to be admitted to the course in question, the decision rests with the University".

Further support for this view can be found from the other provisions contained in the Rules- What is eligibility is laid down in Rule 1, according to which no person who has not passed the P. U. C. Examination in Chemistry, Botany and Zoology as optional subjects etc., shall be eligible for admission, to confine ourselves only to the portion of the Rule which is relevant to our purpose. There is no doubt that the petitioner possessed the necessary eligibility for making an application to the selection Committee. The manner of preparing the list of selected candidates is provided for by Rule 10. That Rule enumerates various principles which ought to be taken into consideration in assessing the merit of a candidate. The first point to be taken into consideration is:

"the aggregate of the marks obtained by the Candidate in the subjects taken into account for making the selection and the marks obtained by the candidate of the interview". The present order of cancellation of admission had been issued by the Selection Committee on the ground that the aggregate of the marks obtained by the applicant in the group of optional subjects was, when verified with reference to the University Register, less than what was shown by the Marks card produced by him. In other words, the point involved is one as regards the fitness of the candidate to be included in the selected list of candidates having regard to the aggregate of the marks obtained by him. In that respect, we are unable to see how the Selection Committee is rendered incompetent to review the selection made by it, if it comes to its notice subsequently that the selection had been made by mistake or otherwise. Clause (b) of Rule 15 clearly lays down that where an ineligible candidate has been admitted to a college inadvertently by mistake or otherwise, such candidate shall have no claim to continue his studies in the college. In reading this Rule, we have to take into account not only the eligibility as laid down by Rule 1, but also the qualification for being included in the selected list which would necessarily depend upon the merit of the candidate as assessed by the application of the various principles enumerated in Rule 10.

7. We have noted already that the cancellation of admission in the present case has been done on the ground that the marks card supplied with the application did not represent the correct or the true state of the examination results of the petitioner. In other words, the selection was vitiated by a mistake arising as a consequence of the statement of marks contained in the card. The action in this case has been taken by the Chairman of the Selection Committee after ascertaining the marks of the petitioner from the Controller of the Examinations, Mysore University. This has also been duly communicated to the Dean of the Medical College. We are unable to see anything in Rule 15 which precludes the Selection Committee or the Chairman of the Committee from taking notice of a flagrant mistake or untrue statement of the type which had occurred in the present case and taking suitable action. We would like to qualify the statement

by adding that if the review of the selection made depended upon consideration of other factors for which consultation, assessment, objective or subjective, was necessary, then certainly it would be obligatory on the entire Committee to arrive at a decision. We are, therefore, unable to agree that the cancellation made in this case is without jurisdiction. Even if the petitioner's contentions were accepted, the cancellation would at the most be irregular but not Illegal.

8. The next question raised by the learned Advocate for the petitioner is that the rules of natural justice had not been followed by the Dean or the Chairman of the Selection Committee as no opportunity was given to the petitioner to explain the conflict between the marks shown by the card and the marks as entered in the University Register. It cannot be disputed from the records that the petitioner was not heard before the order of cancellation of admission was passed by the Chairman of the Selection Committee. But the principle of natural justice, which is a rule followed by all quasi-judicial Tribunals is not absolute and rigid. The obligation to observe it, depends upon the facts and circumstances of each case.. Further, whether the non-observance of it has resulted in injustice to the petitioner, is a point which will enter into the ultimate decision of the case. Mrs, Pappu, the learned Advocate for the petitioner, has drawn our attention to some decisions on this question. The decision in *State of Mysore Vs. S.S. Makapur*, related to a departmental enquiry and the question raised for their Lordships' consideration was as regards the reception of evidence recorded in the absence of the delinquent Government Servant. Dealing with the rule of natural justice, their Lordships observed :

"Domestic Tribunals exercising quasi-judicial Functions are not Courts and therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may have received unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts".

9. Our attention was also drawn to paragraphs 34 and 50 from the judgment of Bose, J. in *K.S. Srinivasan Vs. Union of India (UOI)*, , The appellant in that case had been appointed as Public Relations Officer in the All India Radio in a quasi-permanent capacity. His service was terminated because of the reduction in that post. He was appointed to officiate as Assistant Station Director in a purely temporary capacity until further orders. The point that arose for the consideration of their Lordships was whether the termination of his service had been in violation of Article 311(2) of the Constitution. Their Lordships held on the

facts that the appellant had no quasi-permanent status in the post of Assistant Station Director and his service was liable to be terminated when there was a reduction in the number of posts of Public Relations Officers. It was admitted in that case that the post had been wrongly described as quasi-permanent and that the mistake was discovered at a later stage. On the facts and circumstances of the case, their Lordships held by majority that the appellant had no quasi-permanent status in the post of Assistant Station Director and that his service was liable to be terminated when there was a reduction in the number of posts in that cadre. We are unable to see anything which is helpful to the petitioner either on facts or on propositions of law that arose for consideration of the court in that case.

10. Considering the facts of this case, the only record that has been used against the petitioner is the Marks Register of Pre-University Examination 1959 of the Mysore University. At no stage has the petitioner challenged the correctness of the entries made therein. No doubt, the Chairman of the Selection Committee would have done well if he had called the petitioner and confronted him with the marks as entered in the Register before cancellation of his admission, But, as already observed, the facts, on the basis of which the petitioner's admission was cancelled being undisputed and incapable of any explanation except on the hypothesis that the marks card produced by the petitioner was erroneous, we do not consider that the absence of notice to the petitioner had resulted in any injustice to him.

11. The last argument addressed by the learned Advocate for the petitioner is that the respondents were estopped from cancelling the admission. Expanding this argument, the learned Advocate contended that having issued the marks card, the University was estopped from challenging the correctness of the entries made therein and that the college authorities were equally estopped from preventing the petitioner from attending the classes having enrolled him on their register after receipt of the necessary fees. The learned Government Pleader, appearing for the Dean, contended in reply, that there was no mention of the grounds in the petition on which the plea of estoppel had been raised and that on the facts of the present case, the plea of estoppel could not be entertained.

12. In our opinion, we do not see any force in this contention of the petitioner. The question of estoppel would arise where on a representation made by a party, the party to whom the representation is made acts on such representation in such a manner as to change his position, and the question of permitting the party making the representation to resile from such representation is likely to subject the other party to irreparable loss or injury. In the present case, we have not thought it fit to express any opinion as to the genuineness or otherwise of the marks card. We have assumed for the purpose of our decision that the marks card was issued by the University officials. That by itself has not prejudiced the case of the petitioner in any manner so as to render his reversion to his original position inequitable or unjust. All that has happened in this case is that he

started to attend the college from 27-8-1965, and on the very next day he was informed that the marks card produced by him was not correct and that his admission had been cancelled. In advancing the argument, the learned Advocate for the petitioner sought much sustenance from the decision of the Madras High Court in Registrar, University of Madras v. Sundara Shetty AIR 1956 Mad 309. In that case, the Secondary School Leaving Certificate Examination Board had issued a certificate to the petitioner that he had passed the public examination. Thereafter, the petitioner was admitted to the College in due course and passed the first year course in the Intermediate Examination. On 7-4-1958, he was promoted to the senior Intermediate Class. He was served with a letter from the Principal of the College, on or about 22nd December 1953, that his name was not to be found in the list of S. S. L. C. holders of Madras 1952 declared eligible for University course of study and that he should show-cause against the same. In dealing with the question of estoppel, Rajamannar, C. J. who delivered the judgment of the Bench, referred to the facts of that case and came to the conclusion that that was a case of legal or equitable estoppel which practically satisfied all the conditions embodied in Section 115 of the Evidence Act. It may be noted that in that case, the petitioner had not only passed the next higher examination after the S. S. L. C., but was also nearing completion of the second year course in the Intermediate Examination. Their Lordships therefore thought under the circumstances of the case that it would be inequitable to cancel the admission of the petitioner as the additional qualifications that he had acquired after his admission in the College at considerable expense could not be rectified. Their Lordships observed that that was an incident where some substantial right was involved and a case of equitable estoppel arose. In the present case, beyond making payment of his fees the petitioner's position had not at all been changed. We have, therefore, no hesitation in holding that no question of equitable estoppel arises in the present case.

13. For these reasons, we are of the opinion that the petitioner is not entitled to any relief. Before closing, we should like to observe that Selection Committees of the type we have under consideration would do well to be armed with an authenticated list of marks supplied by the University, of candidates called for the interview so that they could be in a position to verify on the spot at the time of the interview itself the entries made in the marks card produced by the candidate with those in the University List. Such a step, in our opinion, would obviate difficulties and disputes of the type that are raised in the present Writ Petition.

14. We accordingly dismiss the Writ Petition, but make no order as to costs in the peculiar circumstances of the case.

15. Petition dismissed.