

(2000) 01 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. (1) 4643 of 1999

Sanjeev Chhajer

APPELLANT

Vs

Jai Narayan Vyas University, Jodhpur and Others

RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Raj 166 : (2000) 2 RLW 901 : (2000) 2 WLC 110

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : N.M. Lodha and Anil Bhandari, for the Appellant; J.M. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner who is a student, has filed this writ petition under Article 226 of the Constitution of India and prayed that respondent-University be directed to give admission to the petitioner in LL.B. Part I course in the current session of 1999-2000. In short writ of mandamus is prayed for by the petitioner in this petition as he was denied admission in LL.B. Part I course by the respondent-University only on the ground that he had less than 50% marks when he originally applied for admission on 9-7-99.

2. The petitioner initially took admission in B.Com. Part I course in the Jai Narain Vyas University, Jodhpur in the year 1996 and completed his B.Com. Final examination in the year 1999. His examination was held on 31-5-99 and the result of the same was declared within less than one month i.e. 28-6-99. As per mark-sheet he secured 49.38% marks. Within the prescribed time i.e. less than 10 days he applied for re-evaluation of marks on 7-7-99. Last date for getting admission in LL.B. Part 1 course was 13-7-99 and, therefore, the petitioner applied for admission in LL.B. Part 1 course with the respondent-University on 9-7-99 along with the application made by him for re-evaluation of marks. Unfortunately the inordinate delay took place in re-evaluation of his marks and

result of re-evaluation was declared on (sic) which was duly received by the petitioner on 18-10-99. However, by that time the admission was closed by respondent-University on 16-9-99 and the student who secured 49.7% marks, got the last admission. As per the re-evaluation result the petitioner secured 50.38% marks. Thus, one per cent marks was more. If there was a proper evaluation of marks in the beginning itself, then the petitioner would have secured 50.38% marks and thereby without any difficulty or hesitation he would have been entitled for the admission straightway in LL.B. Part I course, however, he was denied admission only because earlier his percentage of marks was 49.38%. The respondent-University has denied the admission to the petitioner only on the sole ground that it cannot give admission to the petitioner as the prescribed strength was already over and there was no more vacancy in LL.B. Part I course. This decision was taken by the respondent-University in the light of the resolution passed by the Bar Council of India.

3. Learned counsel Shri Lodha, appearing for the petitioner vehemently submitted that for no fault of petitioner he is made to suffer by the respondent-University by denying him admission in LL.B. Part I course. He submitted that the respondent-University cannot take up the stand that there was no more vacancy in the LL.B. Part I course and the admissions were closed on 16-9-99, therefore, the petitioner cannot be given admission.

4. However, learned counsel Sh. J. M. Bhandari appearing for the respondent University vehemently submitted that when there is no vacancy in LL.B. Part I course, then there is no question of giving the admission to the petitioner. He submitted that the University is bound by the resolution passed by the Bar Council of India, therefore, the University has rightly denied admission to the petitioner. He submitted that the petitioner has to wait for one year and he can get admission in the next year. Relying upon the Division Bench decision of this Court in case of Gir Raj Prasad Kaushik v. State of Rajasthan, reported in 1979 RLW 493 , he submitted that the petitioner had no right of admission to LL.B. Part I course particularly when there is no vacancy. Mr. Bhandari has also relied upon the Supreme Court decision in case of Narendra Bahadur Singh and Others Vs. Gorakhpur University and Another, and submitted that it is the duty of the University to see that no college affiliated to it shall give admission to students more than prescribed number as students so admitted suffer in the process. Similarly the University itself cannot give admission to a student more than prescribed number once the admission is over and there is no more vacancy in the particular course. Mr. Bhandari has also relied upon the Supreme Court Judgment in the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, and submitted that when the petitioner had prayed for writ of mandamus, then it can be issued in his favour only if he is able to satisfy this Court that his fundamental rights or the rights guaranteed under the Constitution have been infringed by the University and, thereby his legal right to get admission is denied by the University.

5. It is well settled law that no-one can ask for writ of mandamus, if he has no legal right. It is also true that there must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. It is also true that a person is aggrieved only when he is denied a legal right by someone who has a legal duty to do something. Under Article 41 of the Constitution of India, it is duty of the State not only to establish educational institutions but also to effectively secure the right to education. Thus, everyone is entitled to have the education and every citizen of this country has right of education. It is true that educational institutions established by the State to impart education are subject to the availability of the seats with such institutions and such institutions have to admit those candidates who are found eligible according to some rational principle.

6. Under Article 29 of the Constitution of India, no citizen can be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Thus, every citizen of this country has not only got a right of education guaranteed under the Constitution but as held by Hon'ble Apex Court in case of Miss. Mohini Jain Vs. State of Karnataka and others, it is a fundamental right and important observations made by Supreme Court in Mohini Jain's case (supra) in para 12, I would like to reproduce which is as under :

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

7. Thus the petitioner being citizen of India has not only the right guaranteed under the Constitution but also got fundamental right to education which cannot be denied to him only on the ground that when he became eligible, there was no more vacancy in the course in which he wants to study i.e. LL.B. Part I course.

8. Annex. R/3 is a letter dated 26-6-97 addressed by the Secretary of Bar Council of India to the Registrars of all the Universities Imparting Legal Education as well as the Principals of all the Law Colleges wherein three resolutions have been referred to which were passed by the Bar Council of India, which are as under :

1. Henceforth no admission should be made in a college, University, Law Department, over and above the sanctioned strength provided in prospectus for admission without the prior permission of the Bar Council of India.

2. No admission should be made after the cut-off date for the admission fixed by the institution is over.

3. Universities should strictly adhere to the norms for attendance prescribed by the Bar Council of India for abiding in the various examinations of LL.B. The Universities should seriously abide by the norms fixed by the Bar Council of India regarding attendance in the LL.B. Classes. Otherwise there will be difficulties in matters of enrolment of the law graduates coming out of the Law Colleges and the Law Departments for enrolling themselves as advocates."

9. We are mainly concerned with resolution No. 1 which is quoted as above. The stand taken by learned counsel Sh. Bhandari for the respondent-University was that the respondent-University was bound to strictly follow the resolutions passed by the Bar Council of India and when there was no vacancy in the course, then it cannot give admission to the petitioner in LL.B. Part I course. It is true that there is a resolution passed by Bar Council of India that once the admission is over and there is no vacancy, then the University or College cannot give admission to any student without the prior permission of Bar Council of India. It is also true that in the said letter Annex. R/3, it is clearly mentioned that under no circumstances, admission should be made over and above the sanctioned strength, if increase seats are not approved by the Bar Council of India. However, this was to be done by the Bar Council of India in view of the fact that at times admissions were given just few months before the examination which negate the whole exercise of attendance, effective teaching and even the standards of legal education. But the aforesaid letter and the resolution does not say that in no circumstance. University can give admission above the sanctioned strength. It only says that when the admission is to be given to a student above the sanctioned strength, then the University has to seek permission from the Bar Council of India for giving admission to such students. Thus it is clear that there is no complete embargo for giving admission, it is only a restriction. It further says that admission can be given in special case or in special circumstances with prior permission of Bar Council of India. 10. Coming to the facts of this case, it is clear that the petitioner was not at all at fault. If fault lies anywhere, it was with the respondent-University in the sense that though the petitioner has applied for re-evaluation on 7-7-99 and for admission on 9-7-99, but he could get the re-evaluated marks only on 18-10-99. Unfortunately, by that time admissions were closed on 16-9-99 by the University and student who has secured 49.7% marks which was less than the petitioner's re-evaluated marks 50.38% was given admission. It is unfortunate that though the result of the B.Com. final year was declared on 28-6-99, within less than one month of examination and as per mark-sheet, he secured 49.38% marks and immediately within less than 10 days, he applied for re-evaluation of marks, but respondent-University took more than three months" time to re-evaluate his marks and when he got re-evaluated marks, by that time admissions were already closed. If main result of the petitioner along with other students of B.Com. Final year could be declared within the period less than one month, then I failed to understand that how the respondents can take three months" time in re-evaluation. It may also be stated that last date for admission in LL.B. Part I course was initially

declared as 13-7-99 which was to be extended from time to time and ultimately last student was given admission with 49.7% marks. The admissions were closed on 16-9-99 just one month before receipt of the re-evaluated marks by the petitioner. Under the circumstances, can it be said that the petitioner is totally remediless or this Court has no power to interfere when such fundamental right of education of the petitioner is violated.

11. In my humble opinion, the answer would be "Yes". As stated earlier, as per letter Annex. R/3 which was heavily relied upon by Mr. Bhandari, counsel appearing for the University, the University could have sought permission from the Bar Council of India to give admission to the petitioner. In view of the resolution passed by Bar Council of India, I would have directed the respondent-University but having regard to the peculiar facts and circumstances of the case and the fact that the petitioner has been already given provisional admission in LL.B. Part I course as per interim order dated 10-12-99 passed by this Court in this writ petition, it would not be proper to issue such directions because so much time has passed and it will be an exercise in futility when the Court is fully satisfied that petitioner is entitled to get admission in LL.B. Part I course and he was wrongly denied the same.

12. One more submission is made by Mr. Bhandari, counsel appearing for the respondent-University that re-evaluation does not confer any right to the petitioner to get admission. He submitted that the form of petitioner was accepted by the University only because he secured more than 45% marks, but the last percentage of marks in result of B.Com. examination was 49.7% and the petitioner's percentage was 49.38%, therefore, he was not given admission. If this submission of Mr. Bhandari is accepted then in my humble opinion task of applying for re-evaluation marks by the students would become an exercise in futility. It may be stated that on re-evaluation, student might get less marks, but if he gets more marks, then can it be said that he had no right to get admission even after more re-evaluated marks? In my opinion it is only re-evaluated marks which must be taken into consideration for the purpose of admission. If the task of re-evaluation was done immediately or as early as possible by the University, then the petitioner would not have been made to suffer for all this time and he would not have been compelled to file such petition before this Court. For inordinate delay of more than three months to re-evaluate the marks on the part of respondent-University, the petitioner cannot be made to suffer.

13. In my view, the Judgment of learned single Judge of this Court in the case of Shaliendar v. University of Jodhpur, reported in 1982 WLN 7, is fully applicable in this case. It was held by learned single Judge in Shaliendar's case (supra) that if the University has framed the rules for re-evaluation in exercise of its executive power, then it is not open for the University to say that it can refuse re-evaluation at its sweet-will or to say that it would not abide by the rules for re-evaluation. Breach of rules for re-evaluation, whereby, any candidate or examinee suffers from any grievance, then the examinee or candidate cannot be

denied the remedy to get the rules enforced. In Shaliendar's case (supra), result of re-evaluation was not declared within the reasonable time and there was an unreasonable delay in declaring the same, therefore, the respondent-University was directed to declare the result of the petitioner. If the Court can issue such directions to declare the result, then I have no hesitation to hold that the Court can always issue directions to the respondent-University to give admission to the person who was though entitled but wrongly denied the admission.

14. Before parting, I may state that Division Bench decision of this Court in the case of Gir Raj Prasad Kaushik v. State of Rajasthan, reported in 1979 RLW 493 cited by Mr. Bhandari has been impliedly overruled by the Judgment of Supreme Court in case of Miss. Mohini Jain Vs. State of Karnataka and others, Similarly the judgment of Supreme Court cited by Mr. Bhandari in Narendra Bahadur Singh and Others Vs. Gorakhpur University and Another, has no application to the present facts of the case. Another Judgment of Supreme Court cited by Mr. Bhandari in Mani Subrat Jain and Others Vs. State of Haryana and Others, was on the point regarding appointment to the post of Distt. Judge and it is well settled law that a person has right to be considered for the appointment, but he has no right to be appointed. In Mani Subrat Jain's case (supra), the Supreme Court held that it was the exclusive jurisdiction of Government to appoint Distt. Judges and the Government is not bound to accept recommendation of the High Court. That is not the case here.

15. In view of the above discussions, this petition is allowed. The petitioner is already continuing his LL.B. Part I course under the interim orders of this Court and University has given provisional admission to the petitioner in the said course, which be now treated as regular admission and the petitioner be allowed to continue his LL.B. Part I course as a regular student. Accordingly this petition is allowed with no orders as to cost.