

(2001) 10 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : LPA No's. 149 and 150 of 2001

SKUAST and Another

APPELLANT

Vs

Anil Pathania and Others

RESPONDENT

Date of Decision : 06-10-2001

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
Jammu and Kashmir Certification of Outstanding Proficiency in Sports Rules, 1996 — Rule 3, 6

Citation : AIR 2002 J&K 78

Hon'ble Judges : S.K. Gupta, J; Nisar Ahmad Kakru, J

Bench : Division Bench

Advocate : S.K. Shukla and W.S. Narcal, for the Appellant; P.N. Raina, for the Respondent

Final Decision : Allowed

Judgement

N.A. Kakru, J.—Two letters patent appeals arise out of an Interim order of the Learned single Judge dated 13-9-2001 which has the effect

of granting admission to respondent No. 1 (writ petitioner hereinafter) to the course of BV. Sc. and Animal Husbandary Programme. LPA

150/2001 is filed by Sher-i-Kashmir University of Agricultural Science and Technology (for short SKUAST) and LPA No. 149/2001 is filed by a

candidate 'who claims entitlement to the seat.

2. The question which calls for consideration is whether a candidate can be considered for admission to the course under the sports category

without a certificate being enclosed with the application form. When the LPAs came up for consideration, LC for the parties agreed to the disposal

of the writ petition as well so that air of uncertainty no more hangs over the career of the candidates. On such consensus, LC for the parties were

but after concluding the arguments Mr. Raina appearing for the writ petitioner chose to withdraw the consent which is at the cost of public time.

Had he not consented to the disposal at the outset it would have taken us hardly a few minutes to pass appropriate orders. In fact he was heard at

length in the writ petition obviously, withdrawal of consent is immaterial and such reprobation cannot prevent the Court from deciding the matter,

nonetheless being alive to the principle that justice should not be done it should manifestly be seen to have been done, we choose to leave the

disposal of the writ petition to the wisdom of the Learned writ Court and proceed to decide the LPAs only by this common judgment.

3. The facts material for disposal may be noticed. SKUAST issued a notification vide its No. AU/J/ACAD/1/570 dated 26-6-2001 inviting

applications on the prescribed forms from eligible permanent state subjects of the state for admission to BV.Sc. Animal Husbandary Programme

besides B. Sc. Agriculture for academic session 2001 and the last date for receipt of application forms was appointed in the notification viz. 6/8/

2001. In so far as eligibility criteria goes it is published In the Information Bulletin (brochure hereinafter) by SKUAST which is relied upon by the

writ petitioner and forms annexure G to the petition. Consequent upon the aforementioned notification the writ petitioner applied for BV.Sc. and B.

Sc. Agriculture under sports category. Provisional select list of candidates to BV. Sc. and Animal Husbandary Programme and B. Sc. Agriculture

courses was issued vide notification No. 10-Acd. Of 2001 dated 24-9-2001. The selected candidates were directed to report to the SKUAST

for counselling along with all necessary certificates/documents in original on 3rd & 4th of September stipulating further that failure to attend on the

dates specified was likely to result in cancellation of the selection and the seat would be filled in by a candidate from waiting list. Writ petitioner

being one of the provisional selectees was also required to report for counselling. His selection was cancelled among others vide notification No.

11 /Acad. of 2001 dated 7-9-2001 attributing failure to him in reporting for counselling. This notification is impugned by the writ petitioner before

the writ Court controverting the allegation of failure. The impression of writ petitioners failure to report for counselling appears to have been prima

facie dispelled, resultantly discretion was exercised in his favour by the writ court by way of interim direction dated 13-9-2001 which reads :

Admitted for 25-9-2001. CMP 888/2000 operation of annexure ""A"" i.e. order of cancellation shall remain in abeyance. Petitioner to be permitted

to take part in the course of study.

4. We find that the notification does not give details of cancellation excepting failure of the candidates to report for counselling. Thus coupled with

the facts and circumstances which were pleaded before the writ Court the direction was called for in absence of the counter. Fact of the matter is

that the counter stands filed by SKUAST subsequent to the direction in question and the stand taken therein has changed the situation altogether.

We say so because averments made by SKUAST in its counter reveal that writ petitioner has failed to produce the sports certificate under 'sports

category' and cancellation of his admission is a consequence of such failure. We would like to place it on record that Mr. Raina in reply to a

pointed query of the Court admitted that the petitioner is not in possession of the certificate under 'sports category' which is the position even as on

date.

5. Before adverting to the proposition of law as to whether SKUAST could consider the writ petitioner for admission to the course In question in

absence of a certificate a few facts which have in fact given rise to the controversy in this case call for a mention. At the risk of repetition It may be

reiterated here that the parties are not at variance with respect to the fact that the writ petitioner's application form was received under sports

category without a certificate from Sports Council. In this behalf a communication bearing No. AU/J/Acad/01/850-51 dated 30-8-2001 (annexure

F to the writ petition) asking the writ petitioner to report along with certificate was addressed to him communicating further that consequence of

failure was cancellation of selection. The communication is reproduced hereunder :

Subject: Provisional selection for admission in BVSc. & AH for academic session 2001-02.

On the basis of the result of Entrance Test conducted by this University on! 9-8-2001, you have provisionally selected for admission to BVSc. &

AH in this University for the academic session 2001-02 under sports category. You are directed to report University HQ, Railway Road, Jammu

for counselling on 3rd and 4th September, 2001 along with original certificates/

documents. Your selection is subject to the production of original

sports category certificate issued by the authorised officer i.e. Secretary sports Council of J & K. Failure to attend on the dates specified above

along with relevant certificates is likely to result in the cancellation of the selection and corresponding fill up from the wait list.

Sd/-

Dy. Registrar (Acad).

Copy to :

Secretary, J. & K. Sports Council.

6. The communication indicates that its copy was endorsed to Secretary J & K Sports Council as well of course without requiring him to do

anything yet the Secretary chose to respond with a communication bearing No. 279/Secretary/Camp J/916 dated 3-9-2001 suggesting a

procedure in quite contravention of the Jammu & Kashmir Certificate of Outstanding Proficiency in Sports Rules, 1996 published vide Govt.

Order No. 163 of 1996 dated 22-2-1996 (Rules of 1996 hereinafter). It may be noticed here that these rules have come into being by intervention

of the Court in Ankur Mahajan v. State of J & K and others vide Govt. order No. 163-GAD of 1996 dated 22-2-1996. There is no dispute on

the count that these are the rules which govern the field as on date. Rules 3 & 6 being relevant may be noticed :

3. Procedure for submitting the application :-- A person claiming benefit of having outstanding proficiency in sports or games shall apply on form I

appended to these rules along with the certificates to the Secretary, Sports Council for grant of certificate.

6. Eligibility for claiming benefit under the sports category :-- Such candidates alone shall be eligible for consideration for selection to professional

institutions in the State under the Sports Category who append the certificate issued under these rules with the application form submitted by him in

pursuance of the advertisement notice issued by the authority competent to invite application in the State.

7. A bare perusal of the rule 3 reproduced hereinbefore reveals that a person who claims benefit of outstanding proficiency in sports council for

grant of certificate has to apply in the prescribed form. Rule 6 aforementioned depicts that only those candidates are eligible for consideration for

selection under the sports category who enclose certificates with their forms. The Secretary of the Council who functions under these rules for

purposes of grant of certificate has rightly made reference to the rules (refer to annexure H to the writ petition). How amazing it is that although

Secretary is marked by ready perception of the rules still he has suggested a procedure which is not only in utter violation thereto but also amounts

to transgression of powers. The same being without any authority of law no benefit whatsoever can flow to the writ petitioner on the basis of such

communication.

8. That apart rules of 1996 stand published in the Govt. gazette which fact is evident from the endorsement recorded thereto. Moreso, the

appellant has pressed into service the said rules and has based his claim on it. He, therefore, knows the authority to whom he had to apply. He also

knows that he could not submit the application without certificate to SKUAST because rule 6 is an obstacle for such course which is very specific

on that count. Thus ipse dixit of the writ petitioner cannot help him.

9. We would now like to examine the matter in the light of brochure and to appreciate the controversy in its right perspective the relevant Clause

may be extracted for facility of reference :

2.5(v) Candidates claiming consideration under sports category must produce certificate issued by Secretary J & K Sports Council.

2.6(ii) No claim for admission will be entertained at any stage of admission if the candidate is not meeting the prescribed eligibility criteria including age.

(iv) The candidates shall mention the category code for category under which he/she seeks consideration as per details below. The certificate

issued by the appropriate authority competent to issue be enclosed. The candidates shall be considered under open merit category in the absence

of any category certificate.

10. A plain reading of Clause 2.5(v) makes it obligatory upon a candidate who seeks consideration under the sports category to produce the

certificate issued by the Secretary so as to avail of the consideration but no role is known to the competent authority, SKUAST in this matter

which would require it to assist or help a candidate in obtaining the certificate. Likewise no scope is left by Clause 2.6(ii) for SKUAST to entertain

the claim of a candidate for admission under the sports category unless the candidate meets out the prescribed eligibility criteria and sub-clause (iv)

of Clause 2.6 provides that the certificate has to be enclosed with the form and clarifies further that short of certificate consideration available is

only under open merit category. The brochure being unambiguous there was no justification for SKUAST to consider the writ petitioner in absence

of certificate under the sports category.

11. What emerges from reading of rules of 1996 and the Clauses of brochure extracted hereinabove is that their terms are mandatory and

imperative. They admit no exception. They are crystal clear leaving nothing on the whims of SKUAST or the Secretary of the council but these

statutory obligations are left high and dry. We wonder how they could do so and in the process unfair advantage appears to have been bestowed

on the writ petitioner which is not sustainable in law and the SKUAST has very rightly cancelled his Provisional selection in view of his failure to

produce the certificate being a condition pre-requisite for selection.

12. A great deal of controversy was raised by Mr. Raina on the strength of case Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, on

the score that once the petitioner has been allowed to appear in the interview the SKUAST is bound to maintain his admission. The facts on which

judgment supra Is founded are that the Head of the Department had failed to scrutinize the admission form of the candidate and shortage of

percentage was not disclosed leaving the candidate free to appear in part IInd law examination whereas the facts of this case are that the writ

petitioner was provisionally selected subject to production of certificate. Having failed to produce the certificate his provisional selection was

cancelled at its very inception that too before he would be admitted to the course. Facts being distinguishable the judgment does not help him. He

has also placed reliance on judgment of the apex Court reported in AIR 1974 SC 1628 (In re. Prudential election) to canvass that he is not

required to produce the certificate because he stands provisionally selected. How judgment helps him he could not point out. Suffice it to say that

the judgment no way helps an ineligible candidate to seek regularisation of provisional selection to a professional course in absence of eligibility.

13. Mr. Shukla appearing in one of the appeals has relied upon Bhupinderpal

Singh and Others Vs. State of Punjab and Others, contending that when rules are silent about the cut off date in such eventuality criteria has to be applied by reference to the last date by which applications have to be received by the competent authority which in the case in hand is 6-8-2001 being last date for submission of application forms. Mandate of the judgment apart, the case on hand represents a situation where the writ petitioner has neither produced the certificate on the last date appointed for submission of application forms nor has he produced it at the time when consideration was accorded for provisional selection. Fact remains that his provisional selection is subject to production of certificate which he has failed to produce and admittedly it is not to his credit. Ex facie he has not satisfied the prerequisite condition therefore his selection cannot take effect. That being the position the writ petitioner is not entitled to the interim relief therefore, the interim relief has to go.'

14. Be it placed on record that for setting aside an order in an appeal reasons have to be given because an order cannot be set aside by taking mental note of facts and circumstances which persuade the appellate Court to display indulgence obviously observations by the appellate bench are inevitable but such observations have to be restricted to the extent of interim matter. Thus any expression made by us shall not affect the rights of the parties at the final stage and the writ court is within Its powers to deal with the matter without being in any way influenced by this judgment and nothing stated by us will prejudice rights and contentions of the parties they may urge when writ petition is finally heard.

15. In the aforementioned backdrop we allow these LPAs and vacated the order dated 13-9-2001 leaving the SKUAST free to offer the seat to the eligible candidate under the sports category subject to outcome of writ petition.

16. No order as to costs.