
(2016) 10 JH CK 0067
In the Jharkhand High Court
Case No : W.P.(C) No. 6736 of 2012

Snigdha

APPELLANT

Vs

Birla Institute of Technology

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIR(Jharkhand) 102 : (2017) 2 AIRJharR 300 : (2017) 1 JBCJ 589 : (2017) 1 JLJR 207

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/S Sumeet Gadodia and Prem Pujari Roy, Advocates, for the Petitioner; M/s Rohit Ashya Roy and Srija Choudhary, Advocates, for the Respondent BIT Mesra; Mr. P.A.S. Pati, Advocate, for the Respondent AICTE

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J.— Heard learned counsel for the parties.

2. Petitioner herein has approached this Court on cancellation of her provisional admission in Master in Urban Planning(MUP for short) for the session 2012-14 by the impugned notice dated 2.11.2012 (Annexure-4) issued by the Respondent Birla Institute of Technology(BIT), Mesra for failing to secure minimum 60% marks in qualifying examination of Bachelor in Architecture(B.Arch in short). The Respondent BIT being a deemed University under the U.G.C. Act, 1956 follows the admission criteria where in for the instant course minimum qualifying marks of 60% is prescribed for General category students while 55% marks for the Sponsored category students. The Sponsored category candidates are those who are employee in recognised Educational Institutes / Universities/ Colleges or in Government/Defence/Research Laboratories or in Industry etc. Such candidates should have normally 2 years of experience and are required to submit their application in prescribed format along with a letter of sponsorship from their Organization.

3. Petitioner was a appearing candidate in the B.Arch. Final year examination from Kavi Kulguru Institute of Technology and Science, Nagpur. Such appearing candidates were allowed to face the entrance test conducted by the Respondent BIT and were also provisionally admitted in MUP course subject to their obtaining the prescribed minimum qualifying marks of 60% for the General Category candidate. Petitioner apparently fetched 58.64% marks in the B.Arch. Course. That is why her provisional admission was cancelled by the impugned notice. Then she approached this Court in the present application on 5.11.2012 complaining that she would be denied permission to appear in the examination of First Semester of MUP course for the session 2012-14 on account of cancellation of her provisional admission. The learned Co-ordinate Bench of this Court by the order of the same date was pleased to allow the petitioner to provisionally appear in the First Semester examination of MUP course. However it was made clear that petitioner's result of the said examination shall be subject to the result of writ petition. Petitioner again approached this Court in the instant matter through I.A. No.3474 of 2012 seeking declaration of result of First Semester examination and permission to pursue studies in the Second Semester course. Learned Co-ordinate Bench of this Court vide order dated 9.1.2013 was pleased to direct the Respondent BIT to declare her result of First Semester of the MUP Course and if she has cleared the same, she shall be admitted in the second semester course provisionally, subject to the final outcome of this writ petition. Petitioner also sought permission to move an application for impleadment of AICTE, which was formally moved thereafter through I.A. No. 268 of 2013 and allowed vide order dated 20.2.2013. On being impleaded, AICTE was noticed to appear. She again approached this Court in the present matter through I.A. No. 3484 of 2013 seeking directions upon the Respondent BIT to publish the result of the Second Semester of MUP Course and also to allow her to take registration for Third Semester MUP Course. Taking note of the background fact and the fact that AICTE after its impleadment had not yet appeared and the issue raised herein is awaiting adjudication, by the order dated 1.7.2013 petitioner was provisionally allowed to appear in course subject to the final outcome of the writ petition. It was however also made clear that she would not claim equity in her favour on final adjudication of the writ application. Petitioner has completed the 2 years MUP Course for the Session 2012-14, final examination of which were held in June 2014. The Respondent BIT reportedly has also shown her result in the website as having passed but the final degree has not been issued. Petitioner therefore made a prayer through I.A. No. 4087 of 2016 for early hearing of the writ petition or in the alternative to direct the Respondent BIT to declare her final result and issue the certificate.

4. Learned counsel for the petitioner has sought to address the Court on the plea of classification between the Sponsored Candidate and General Category Candidate whose qualifying marks have been fixed as 55% and 60% as being discriminatory.

5. The Respondent BIT in their counter affidavit have relied upon the document

at Annexure-A which is said to be the guidelines laid down for admission of sponsored candidates to full time PG Degree Programmes issued in the 8th Meeting of the RO of the AICTE held on 15.2.1995 where under qualifying marks for admission to PG Degree Programme has been shown as 55% as approved by the AICTE. The University contends that the aforesaid yardstick of laying down 55% marks for the sponsored candidate and 60% marks for General category candidate is rational and has been followed in admission to the PG Degree Programme consistently by the University without any deviation. Petitioner being the General category candidate could not allege discrimination vis-a-vis Sponsored candidate who form a distinct class in themselves.

6. The All India Council for Technical Education (AICTE) has appeared during course of the proceedings of the case and also filed its affidavit. Learned counsel for the AICTE in its affidavit have however stated that they are not in a position to comment upon the guidelines at Annexure-A relied upon by the University since the entire document has not been annexed. According to them the present handbook for admission to PG Degree Course issued by the AICTE prescribes 50% qualifying marks for the Undergraduate Bachelor Course for admission. Beyond that they do not make any comment.

7. The authority to prescribe higher standards of eligibility criteria beyond what is prescribed by the Regulatory Body, AICTE, on the part of the State or the University is not in dispute as has also been reiterated by the Hon'ble Supreme Court in the case *Visvesvariah Technological University and another v. Krishnendu Halder and others* reported in (2011) 4 SCC 606 relying upon the judgment rendered by the Apex Court in the case of *Preeti Srivastava(Dr.) v. State of M.P.* reported in (1999) 7 SCC 120 and other judgments on the point. The category of sponsored and general category students form two distinct classes. Laying down of different eligibility criteria by the Regulatory Body or by the University does have a rational nexus for the object sought to be achieved. This Court is not satisfied that plea of discrimination raised by the petitioner merits acceptance. However, the underlying fact remains that the petitioner has finally completed the MUP course from the Respondent BIT for the session 2012-14. Apparently, case of the petitioner is not one of those where she has failed in the B.Arch examination and became wholly ineligible for even participating in the entrance test for admission to the master degree programme of the Respondent BIT or any other institute. She in fact fetched 58.64% marks, falling short of 1.46% from the prescribed 60% eligibility criteria.

8. As is informed, petitioner has also qualified in the entrance test conducted by the BIT for admission to the MUP Courses. It is only by virtue of the interim order passed by this Court earlier on different occasions, noted herein above, that she has been allowed to complete 2 years MUP Course by the Respondent BIT. The Respondent BIT does not dispute that petitioner has come out successful in the final examination for the said course. The aforesaid state of fact therefore present a unique situation to be dealt with in that perspective. There

cannot be any derogation in the laying down of uniform standard for admission to any such courses by the University or a deemed University. Any other view would not be warranted in the eye of law. However, the precious time used in imparting teaching and energy consumed in the process for undertaking the course, both by the petitioner and on the part of the University would be rendered waste if it is held that petitioner is not entitled for the degree that she has completed now successfully for the MUP Course. Apart from the loss to the petitioner, it could also be loss to the Society in that sense as valuable qualification earned in a master degree course would be rendered useless. It would also lead to waste of higher qualification acquired by her.

9. The Hon"ble Supreme Court in *State of West Bengal v. Committee for Protection of Domestic Rights* [(2010) 3 SCC 571] reiterated that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs but to enable the High Courts to reach injustice wherever it is found and to mould the relief to meet the peculiar and complicated requirement. In the case of *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749] it was held that mere fact that there is no provision parallel to Article 142 relating to the High Courts can be no ground to hold that the High Courts have not to do complete justice and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Reliance is also placed on the judgments in *FCI v. S.N. Nagarkar* [(2002) 2 SCC 475] and *ESI Corporation v. Jardine Henderson Staff Association* [(2006) 6 SCC 581] as also in the case of *A. Sudha v. University of Mysore* [(1987) 4 SCC 537]. The Hon"ble Supreme Court in the case of *Sandeep Subhash Parate v. State of Maharashtra and Ors.* [(2006) 7 SCC 501] had, on finding that prima-facie there was no commission of fraud and no lack of bonafides on the part of the appellant candidate in completing the Engineering course, considered it proper to allow award of degree to the appellant subject to payment of Rs. 1 lac by way of re-compensation. The Apex Court found that the question whether Koshti-Halbas were members of Scheduled Tribe, was not decided by the Court and the appellant had obtained admission and completed the Engineering course claiming to belong to a reserved category (Halba, ST) while he belonged to General category (Koshti). In order to complete justice between the parties in exercise of discretionary jurisdiction under Article 142 of the Constitution of India, however, the candidate was allowed to obtain the degree on payment of Rs.1 lac considering the heavy expenditure undertaken by the State in imparting such professional education.

10. This Court in the circumstances, therefore considers it proper to mould the relief. The Respondent BIT, Mesra, Ranchi shall publish the final result of the petitioner for the MUP Course and award the degree to her. This however shall not be treated as precedent for any other student.

11. Learned counsel for the petitioner on instruction from the petitioner fairly submits that this Court may while moulding the relief prescribe any such

reasonable condition, which the petitioner would comply without any objection.

12. Considering the totality of the facts and circumstance, while moulding the relief as above, petitioner is directed to deposit a cost of Rs.75,000/- with the University, BIT, Mesra, Ranchi, which would be used for the purposes for enriching its Library for the benefit of students and the teaching community at large. On deposit of the cost within the period of 3 weeks, the University would issue final result of the petitioner and award the degree in question.

13. For the reasons discussed herein above, the impugned notice at Annexure-4 dated 2.11.2012 is accordingly quashed. Let it be made clear that this Court has not in any way doubted the eligibility criteria laid down by the University for admission to the PG degree courses, like MUP course in question. The writ petition is allowed in the aforesaid terms.