
(1995) 01 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5156 of 1994

Umesh Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-01-1995

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 2, 3
University Grants Commission Act, 1956 — Section 1, 2, 3

Citation : (1995) 1 WLN 563

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.P. Singh, J.—The petitioner is seeking admission in Engineering Degree Course on the basis of Pre-Engineering Test, 1994 through this writ petition.

The Coordinator Pre-Engineering Test, 199 Mohan Lal Sukhadia University, Udalpur, (respondent No. 2) issued a notification which was published in the Rajasthan Patrika dated 6th August, 1994, for admission in Engineering Degree Course. It was a combined test for as many as 35 Institutes in Rajasthan. The name of Birla Institute of Technology & Science, Pilani, Rajasthan, (respondent No. 4) was also included in the said list.

2. The petitioner appeared in the Test. He secured 672 marks out of 900. The merit list was notified. In general category, merit position No. 1 to 762 and in the reserve list merit position Nos. 763 to 912 were notified. The petitioner's merit position was 1006. The candidates whose names appeared in the merit list upto 762 were called for interview on different dates and given admissions. There was no question of considering the petitioner for admission, as his position in the merit list was 1006. He has been rightly denied admission.

3. The Birla Institute of Technology & Science had already issued its own notification for admission. The last date for making applications was 30th June,

1994. All the admissions have been finalised by the beginning of August, 1994. The petitioner was not entitled to get admission in this Institute under any circumstance.

4. Apart from it in the merit list he stood at serial No. 1006 where as the admissions have been closed in all the Institutes of Rajasthan at serial No. 762. The writ petition deserves dismissal only on this ground.

5. Since the counsel for both of parties have argued at length, on the interpretation of relevant provisions of All India Council of Technical Education Act, 1987 (for short "the 1987 Act") and University Grants Commission Act, 1956 (for short "the 1956 Act"), the discussion has become inevitable, though it is only of academic value.

6. The sole question which remains to be decided in this case is whether the All India Institute of Technical Education Council has any jurisdiction to hold entrance test for admission in the Birla Institute of Technology & Science (respondent No. 4).

7. The 1987 Act was enacted for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

8. The Council is established u/s 3 and its functions are contained in Section 10, according to which it is the duty of the Council to take all such steps as it thinks fit for ensuring co-ordinated integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may under sub-section (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. It is empowered u/s 10(0) to provide guidelines for admission for students to technical institutions and Universities imparting technical education.

9. Technical Institutions" have been defined in Section 2(h), which runs as follows:

Technical Institution:"as an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the official Gazette, declare as technical institutions.

Section 2(1) defines "University", which runs as follows:

"University" - means a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University u/s 3 of the Act.

10. The University Grants Commission Act, 1956, has been enacted to make provisions for the co-ordination and determination of standards in Universities and for that purpose to establish a University Grants Commission. This Commission has the power to deal not only with the constituent colleges but also other colleges affiliated with the University. The function of the Commission is to take such steps as it may think fit for promotion and co-ordination of University education and for the determination and maintenance of standard of teaching, examination and research in Universities of of course, in consultation with the Universities. Section 2 Sub-section (f) defines "University" which runs as follows:

"University-means" an University established or in incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

According to Section 3 of the 1956 Act, the Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of the Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.

11. The Ministry of Education's Gazette Notification dated 27th of June, 1964, runs as follow:

No. F. 12-23/63-U2 - In exercise of the powers conferred by Section 3 of the University Grants Commission Act, 1956 (3 to 1956), the Central Government, on the advice of the Commission hereby dec/ares theft the Birla Institute of Technology and Science, Pilani, which is an institution for higher education, shall be deemed to be a University for the purposes of the said Act.

12. The All India Council of Technical Education, vide its letter No. F.766-4-3/RC/94, dated 16th September, 1994 wrote to the Birla Institute of Technology & Science as follows:

I am to refer to your letter No. A/31/1053 dated 19.8.1994 on the subject cited above and to state that Birla Institute of Technology and Science, Pilani is a deemed University and thus the admission of students shall he regulated as per the norms generally applicable to the Universities....

13. The information booklet for Pre-Engineering Test, 1994, issued by the Mohan Lal Sukhadia University, Udaipur, has clearly mentioned "The Centralised Admission Committee issues the following instructions for admission of candidates to the Engineering Colleges of Rajasthan, excluding Birla Institute of Technology & Science, Pilani, and other regional Engineering Colleges in India to be allotted to the State of Rajasthan." This notification closes the entire controversy, unnecessarily raised by the petitioner.

14. The respondent No. 3, the Council, has issued another Notification No. G.S.R.

476 (E), dated 20th of May, 1994, published on 26th of May, 1994, in the Gazette Extra-ordinary of the Government of India Part - II, Section 3(1). The relevant portion of the said Gazette is quoted below:

2. Application - These regulations shall apply to or professional college imparting diploma, degree or equivalent courses in engineering, technology, architecture town planning, management, pharmacy, electronics, computer science, applied arts and crafts and such other programmes or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare, but shall not apply to Universities, University departments or colleges, government colleges, aided colleges of the Central Government or State Government, Indian Institutes of Technology, Indian Institutes of Management, Regional Engineering Colleges, and such technical institutes which are fully funded by the Central Government, a State Government, the Council, or as the case may be, the University Grants Commission and any full or part-time post graduate courses or programmes in any discipline other than management.

15. The Birla Institute is an University. There is no direct or indirect control of the State or the Union of India as clarified vide notification published in the gazette in Part- I, Section 1, dated 27th June, 1964. It is wholly financed by its own resources and does not receive any regular funding or maintenance grant or other day to day expenses from any governmental Agency. All its maintenance expenditure is borne out of the fees and income received from its endowments. Developmental grants from the University Grants Commission or the Ministry of Human Resources Development are received on an occasional, non-recurring basis purely for specified projects. It falls in the category of private unaided schools, University or Educational Institution.

16. This Institute itself had issued a notification No. G.S.R. 476 (E), dated 20th May, 1994 which was published on 26th May, 1994, in the Gazette Extra-Ordinary of the Government of India fixing norms and guidelines for charging tuition fee and fees for admission of students to the professional colleges.

17. When the Birla Institute came to know about the notification issued on 6th August, 1994, including its name also in the list, it immediately wrote the respondent No. 3 to delete its name and to rectify the mistake, vide its letter No. A/31/1050-54 dated 19th August, 1994, wherein it was said - " Your attention is invited to earlier correspondence resting with out letter No. A/31/670, dated 15.8.1993, and letter No. A/31/226-37, dated 20.2.1994, wherein we have clearly stated that Birla Institute of Technology & Science, being a University does not come under the purview of Section 10(k) of the 1987 Act. Section 2(h) of the 1987 Act very clearly defines "technical Institution" as an "institution (not being a University)". The Birla Institute of Technology & Science is an University or a deemed University." The reason for exclusion of its name was made by the Institute on the ground that it was an University within a meaning of Section 2(1) of the University Grants Commission Act and not a Technical Institution as defined In Section 2(h) of the 1987 Act and exemption has already been

accepted by the Council.

18. Universities and the University departments are free to devise their own method of admission. There are large number of examples of the Universities which have their own procedure for admission to technical courses directly run by them. For instance, University of Roorkee, which is situated in Uttar Pradesh, has been holding its admission tests separately than such tests conducted by the U.P. Government for admission to professional courses. Similarly, Indian Institute of Science, Bangalore, situated in Karnataka, also has its own method of admission not connected with the admission procedure followed by the Karnataka Government.

19. The Birla Institute is an independent All India Institute of Technology & Science. It is not linked with the Pre- Engineering Test, Rajasthan. Admissions to this Institute are made on the merit of the candidates. The admission modality in this Institute is incorporated in the Bulletin 1994-95. According to which, the admissions are made on All India Basis. The actual mechanism of admission in this Institute is contained on Page 11-7 of the Bulletin which provides that all the Integrated First Degree Programmes have been classified into three groups, namely, Groups-A, Groups-B and Groups-C programmes. English is the medium for instruction of all the programmes in this Institute. Those with inadequate preparation in English but otherwise meritorious are eligible for admission with the special arrangements whereby they can speedily make up for the deficiency. Selection is based entirely on candidate's merits, his preferences, facilities available and the availability of the seats. While admissions are open without reference to caste, creed, sex or class, some special consideration is given to candidates belonging to Scheduled Caste and Scheduled Tribes.

20. While taking into consideration, the integrated First Degree Programmes, it is provided that the normal input for admission is 12 years product of the Central Board 10+2 school system or its equivalent with Physics, Chemistry, Mathematics and adequate proficiency in English. The inputs should have passed the 12th examination from a recognised Board/ University. The admission is not controlled by the All India Council for Technical Education under the 1987 Act.

21. Section 10 of the Act, 1987, is applicable to "Technical Institutions" which have been defined u/s 2(h) of the Act. The All India Council for Technical Education is empowered to grant approval to "Technical Institutions", which does not include "University". The Birla Institute being a deemed University, does not come within the purview of Section 10(k) of 1987 Act. This Institute is not bound to follow any instruction or guideline issued by the said Council.

22. Thus, the name of Birla Institute of Technology and Science had wrongly been included in the notice dated 6th August, 1994, which has already been corrected by the Council. Admission in this Institute cannot be made on the basis of that, selection.

23. Moreover, the petitioner himself has stated in paragraph 4 of the writ petition

that the Pre-Engineering Test, 1994, was held only for the following colleges, namely, (i) M.B.M. Engineering College, Faculty of Engineering, University of Jodhpur, Jodhpur, (ii) Malviya Regional Engineering College, Jaipur, (iii) Engineering College, Kota, (vi) College of Technology and Agricultural Engineer Rajasthan Agriculture University, Udaipur, (v) M.L.G. Government Textile Institute, Bhilwara. Thus, on his own showing, the test was not held for admission in the Birla Institute of Technology & Science (respondent No. 4) and the Modi Institute of Technology (respondent No. 5). But, taking a different stand, now his case is that Birla Institute of Technology & Science was also included in the list for which the combined test was held. The submission is not acceptable.

24. The learned Counsel for the petitioner has referred to a decision of the Supreme Court reported in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, According to him, scheme were framed under the guidelines given in the judgment with respect to other colleges of Engineering and colleges & institutions imparting technical education, including Electronics Computer Sciences established and/or run by private educational institutions and such other colleges to which this scheme is made applicable by the Government recognising an/or affiliating authority. He has specifically referred to paragraphs 206 to 210 of the said judgment. But, in paragraph 210, the Supreme Court has observed as under:

It is made clear that only those institutions which seek permission to established and /or recognition and / or affiliation from the appropriate authority shall alone be made bound by this Scheme. This scheme is not applicable to colleges run by the Government or to University colleges. In short, the scheme hereinafter mentioned shall be made in a condition of permission, recognition or affiliation, as the case may be. For each of them viz., grant of permission, grant of recognition, grant of affiliation, these conditions shall necessarily be imposed, in addition to such other conditions as the appropriate authority may think appropriate. No private educational institution shall be allowed to send its students to appear for an examination held by any Government or other body constituted by any University unless the concerned institution and the relevant course of study is recognised by the appropriate authority and / or is affiliated to the appropriate University, as the case may be.

25. A proper reading of this case would reveal that after framing of the guidelines by the Supreme Court, the Regulations framed by the All India Council for Technical Education have definitely excluded the applicability of the Act on respondent No. 4 which is an University or a deemed University. The controversy in hand has actually not been decided by the Supreme Court. As a matter of fact, in the case of *Unnikrishnan*, the point for consideration was regarding payment of the capitation fee in private colleges.

26. For the reasons given above, I am of the view that the petitioner being at serial No. 1006 in the merit list and all the seats have been filled in by giving

admissions to the candidates standing upto Serial No. 762 in the merit list, he has no right to be considered for admission in any Technical Educational Institute. Moreover, this Pre-Engineering Test was not for admission in Birla Institute of Technology & Science, Pilani. His claim for admission thus stands rejected.

27. The writ petition, being devoid of merit, is hereby dismissed.