

(1953) 09 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 60/5 of 1953

Vikaruddin

APPELLANT

Vs

Osmania University and Others

RESPONDENT

Date of Decision : 14-09-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Osmania University Rules — Rule 1, 11, 2, 3
Universities Act, 1904 — Section 25

Citation : (1953) 09 AP CK 0010

Hon'ble Judges : Srinivasachari, J; Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : B.V. Subbarayudu, for the Appellant; Gopalrao Ekbote and Rajaram Iyer, Generals, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—This is an application by one Mohd. Vikaruddin who sought admission into the first year M.B.B.S., Class of the Osmania Medical College, and was refused admission by the admission Committee. The Petitioner has alleged that he had passed the B.Sc. Degree Examination of the Osmania University with Chemistry, Botany & Zoology and secured 50.6 per cent of the total marks in the examination. He stated that he applied for admission for a seat in the Osmania Medical College within the prescribed time; that he was called for an interview wherein he fared well. He further alleged that in the list of candidates called for interview, which was arranged in the order of merit having regard to the marks obtained by the candidates seeking admission, he was placed as 89th in the list. However, in the final list of candidates selected, his name was not included while another Candidate, Shrimathi Indu Kulkarni, who was only an Intermediate and has secured less marks than the Petitioner, had been included.

The Petitioner also stated that after this selection four candidates were rejected on account of their not having been found fit in the medical examination and in

their places four others were included and the Petitioner was not given an opportunity even at this stage for admission. The Petitioner further stated that he also made a representation to the Principal and the other members of the Admission Committee and requested "them to reconsider their decision whereupon the Petitioner was directed to appear before the Selection Committee which he did, and nothing came out of the interview then. The result was that he was not included in the list of candidates qualified for admission into the M.B.B.S. class. The Petitioner did not rest content with this but he filed an appeal before the Secretary to Government in the Medical Department and the Minister in charge. He also made a representation to the Vice-Chancellor of the University and pointed out that there had been a violation of the rules and prayed that the wrong committed by the Admission Committee be rectified. This was on 19-7-1953. Not having received any reply the Petitioner filed the present application in this Court invoking our jurisdiction under Article 226 of the Constitution.

In this petition the Petitioner has impleaded the following parties:

1. Osmania University through the Vice-Chancellor or the Registrar;
 2. State of Hyderabad through the Secretary, Medical Dept.
 3. The Admission Committee by its Chairman, Dr. N.K. Pandit, Principal, Osmania Medical College; and
 4. The Principal of Osmania Medical College. The Petitioner has sought the assistance of this Court & has prayed for a Writ of Mandamus to be issued in the names of Respondents 3 and 4 to act in strict conformity with the rules for admission and to admit the Petitioner to the first year M.B.B.S. and for such orders or directions to be issued in the nature of a writ or otherwise against all the Respondents as the ends of justice may require.
2. The grounds that have been alleged in the petition justifying the exercise of our jurisdiction under Article 226 of the Constitution are that the rejection of the Petitioner's application by the Admission Committee was arbitrary and against the rules relating to admission and that it amounted to dereliction of duty on the part of Respondents 3 & 4. The Petitioner has also attacked the decision of the Committee on the ground that the members thereof had been actuated by considerations extraneous to the selection. The Petitioner further stated that there has been discrimination between him and the others who have been admitted and that, therefore, there has been a violation of Article 14 of the Constitution. Notices were issued to the Respondents. The State of Hyderabad and Respondents 3 and 4 were represented by the Government advocate while the University, Respondent 1 was represented by Shri Ekbote. Arguments were heard at length in the case.
3. It would be desirable to deal with the preliminary objection raised by the advocates on behalf of the Respondents that this application for a writ could not

be, as the Petitioner had an equally efficacious and adequate remedy. Even according to the Petitioner's showing the Petitioner did approach the higher authorities and sought redress. It would appear from Para 3 of the petition that the Petitioner filed his appeals before the Vice-Chancellor, the Minister and the Secretary to Government (Medical Dept), only on 19-7-1953 and before the result of his appeals to the higher authorities was known, he filed the present application in this Court. This petition was filed on 27-7-1953. It was, therefore, contended by the learned advocates, for the Respondents that having once pursued a remedy, it was premature to have invited the jurisdiction of this Court when he had not exhausted his remedies. There is much force in this argument and it is now well settled, that where there is an equally adequate and efficacious "remedy the High Court would not interfere by way of writ. We should have dismissed this application in limine on this ground alone but inasmuch as we allotted the Petitioner and the Respondents to argue on the merits as well we thought we might adjudicate on the merits of the petition also.

4. The argument relating to what, according to the Petitioner, is a violation of the principles embodied in Article 14 of the Constitution, may be disposed of first. At the threshold it would be necessary for us to point out that Article 14 gives protection against non-observance of equality before the law, only against the State, for the words are "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Can the University be regarded as a State? The function of a University is merely to promote education. It is not charged with any Governmental function. It is only where the University is maintained by the State that an act of such university which is repugnant to Article 14 of the Constitution would be declared invalid. The Osmania University is not maintained by the State. It only gets a lump sum from the Government.

The Petitioner's learned advocate sought to make out that the rules governing the admission of students into the Medical College were not uniformly observed by the Admission Committee. He invited our attention to the cases of two students who had been included in the list of candidates qualified, who, he claims, could not be admitted if the interpretation of rules urged by the Respondents be accepted as correct to join the Medical College. He further stated that the marks that had been obtained by the student Indu Kulkarni were less than the marks obtained by the Petitioner and the Admission Committee were wrong in having given preference to her over the Petitioner. In so far as this argument is concerned it was urged by the Respondents that in the particular case of Indu Kulkarni it happened that she passed the qualifying examination in "first attempt" while the Petitioner before us did not pass the examination in one attempt and, therefore, the former was given preference.

Our attention was drawn to Rule 2, 3 and 11 of the Rules framed for admission to the College. These rules are called "Rules of Admission to College in the Osmania University" and there are rules for admission to professional colleges. Rules 1

and 2 of the Rules of Admission, into Professional College are to the following effect:

1. Candidates for admission to the First year M.B.B.S. Class must have passed the Intermediate Examination of this University or an examination recognised as equivalent thereto, and must have taken Physics, Chemistry (Organic and Inorganic), Botany and Zoology, including the Elements of Genetics, as optional subjects at the Intermediate Examination.

2. Candidates who have taken the B.Sc. Degree will be eligible" for admission to the First Year M.B.B.S. Class provided that they had taken Physics, Chemistry (Organic and Inorganic), Botany and Zoology, including Elements of Genetics, at the Intermediate or the B.Sc., Degree Examination. In assessing the comparative merit of candidates who have passed the Intermediate or the B.Sc. Degree Examination, the benefit of higher percentage of marks at either of the examinations will be given to the candidate.

and Rule 11 of the General Rules says that admissions would be granted strictly in order of merit as shown by the aggregate of marks secured by a candidate who has passed the qualifying examination "in one attempt". The guiding principle, therefore, in the matter of admission appears to be to grant admission to students strictly in the order of merit having regard to the marks obtained by them in the qualifying examination in one attempt. According to the above principle preference would be given to such students as have come out successful in the examination in the first attempt and among such students the ranking would be according to the marks secured by them.

The learned advocate contended that what the rules contemplated was that the candidate should have passed all the subjects in one examination. It did not necessarily mean in one attempt. This interpretation of the rules, in our opinion, does not appeal to commonsense. On the very face of it this interpretation would appear to be fantastic. There can be no two opinions about this that a candidate who has passed an examination in the first attempt would certainly be considered to be superior to a candidate who passed an examination in more than one attempt. It may be that in the last attempt that he makes and is successful he passes in all the subjects. We are, therefore, not prepared to accept the interpretation which the learned advocate would like up to put upon these rules. It would, therefore, follow that the attack of discrimination that was urged by the Petitioner cannot stand. The discrimination is only imaginary.

5. Having disposed of the objection relating to Article 14 of the Constitution, we would have to consider as to whether the Petitioner is entitled to a writ of Mandamus in this case. Mandamus" is neither a writ of course nor a writ of right. It can be granted only if there is a duty in the nature of a public duty and affecting the right of an individual. No doubt it was urged by the advocates appearing for the Respondents that the rules framed are merely departmental regulations for the guidance of the department, which do not create any

statutory obligation binding upon the authority and it was urged that it is only where there was a statutory obligation on the authority that the Petitioner could enforce his right if there was a right in the Petitioner as such. We would state here that if there has been a statutory rule validly made, the effect of such rule is precisely the same that every person must conform to its provisions. But where a statute confers a discretionary power it cannot be regarded as imposing any obligation on the authority to do an act in a particular manner. Where a discretion is given to the authority, writ of Mandamus would not issue. In order that a writ of Mandamus might issue the Petitioner must bring his case within the four corners of Section 45, Specific Relief Act which governs the grant of a writ of Mandamus, and the conditions of Section 45 are cumulative and all of them should be fulfilled. There must have been a demand for justice and a refusal. Section 45 envisages the existence of a right in the Petitioner and a corresponding obligation on the authority. In so far as the question as to whether there is such a right in the student we are of the opinion that there is no inherent right in the Petitioner to compel the University to admit him. Further, we must say that the Constitution does not guarantee to the student studying in an educational institution to enforce a right to be admitted to a class for no such right exists. In this connection we would refer to the case reported in--King v. Benchers Lincoln's Inn (1825) 107 ER 1277 (A). As was observed in this case, all persons have not a right to be admitted members of a college; they must be approved of by the college or by others to whom the college has delegated the power of exercising a discretion as to the person they admit. It would, therefore, follow that the Petitioner has no right to enforce. If, therefore, an authority has exercised the discretion bona fide not influenced by extraneous or irrelevant considerations and such discretion has not been exercised arbitrarily or illegally the Court would not interfere. May it be observed that we are not sitting here as a Court of appeal over the decision of the Admission Committee we might herein refer to the observations of Farewell, J. in--Rex v. Board of Education (1910) 2 KB 165 p. 175 (B). The act of the authority must be so unreasonable that it may almost be described as being done in bad faith and he should not take into consideration irrelevant matters. Having regard to the allegations made in the affidavit and the application we must hold that the Petitioner has not been able to satisfy us that the action of the Admission Committee was capricious and was done in bad faith. We may also sound a note of warning here that the Courts would not ordinarily interfere in the internal autonomy of educational institutions. It would be encroaching upon the sphere of activity of persons responsible, for running educational institutions if we interfere with their discretion. The determination of the fitness of the candidate lay in the discretion of the college authorities and the Court would not wrench such discretion from them nor interrupt them in the proper exercise of it.

6. Our attention was drawn to a decision of the Madras High Court reported in "Natesan In re AIR 1918 Mad 763 (C). It was a case where the Applicant asked the Syndicate of the Madras University to forward to Govt. his protest against a

resolution, passed by the Senate of the University. The learned Judges of the Madras High Court in that case came to the conclusion that Regulation 64 of the University Regulations which were made u/s 25 of the Universities Act (Act 3 of 1904) left no discretion to the Syndicate to withhold any protest that may be lodged by a member against a resolution of the Senate. It has to submit the protest for the consideration of the Governor in Council. There is no discretion vested in the Syndicate to submit or not to submit as it thought this ease cannot help the Petitioner. The Admission Committee has to make a selection of course in conformity with the rules. But when a question of selection comes in, appreciation of the personal merits of candidates is involved. The Admission Committee cannot be regarded as an automaton, to list the students merely on fee marks secured by them. The impression that a candidate creates at the interview is not a matter to be ignored for otherwise there would be no meaning in asking candidates to present themselves for an interview.

7. We are clear in our minds that the Petitioner has not made out a case for the issue of a writ of Mandamus. As we have already pointed out the sum and substance of the Petitioner's application is that there has been no conformity with the rules. The other argument that there has been a violation of Article 14 of the Constitution does not arise for the reason that it is not the contention of the Petitioner that the rules that have been framed are void in law in that they violate the fundamental right conferred by the Constitution, and it cannot be said that in the application of the rules there has been a discrimination. For all the above reasons we are of opinion that this petition should fail. The application is, therefore, dismissed with the costs of the Respondents. Advocate's fee Rs. 100/- in each set.